

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14202 of 2014

1. Sujeet Kumar, Son of Late Nasibi Lal Roy, Resident of Mohalla- Tikulipar, Near-Bihar Club, P.O.+ P.S.- Biharsharif, District - Nalanda, Pin Code- 803101, At present posted at Upgraded Bikrampur, Mai, Rahui, Nalanda.
2. Dr. Arjun Prasad Son of Shri Bisheshwar Prasad Resident of Village- Goushnagar, P.O.- Kenar Kalan, P.S.- Sarmera, District- Nalanda (Bihar), At present posted at Upgraded Middle School Daulatpur, Rahui, Nalanda.
3. Dr. Ramadhin Singh Son of Anaras Prasad, Resident of Village- Nepura, P.O. + P.S. Asthawan, District- Nalanda, Pin Code- 803107, At present posted at Upgraded Middle School Musepur, Rahui, Nalanda.
4. Kamlesh Kumar Kamal Son of Ayodhya Prasad Resident of Village- Madachak, P.O.- Peshour, P.S.- Rahui, District- Nalanda, Pin Code - 803119, At present posted at Upgraded Middle School Panchori, Biharsharif, Nalanda.
5. Sitaram Prasad Son of Parmeshwar Prasad Resident of Village + P.O. Meghi, P.S.- Deepnagar, District- Nalanda, Pin Code - 803111. At present Posted at Upgraded Middle School, Sandalpur, Harnaut, Nalanda.
6. Anil Kumar Son of Late Saryug Prasad Singh Resident of Village + P.O.- Bhaganbigha, P.S.- Rahul, District- Nalanda (Bihar), Pin Code - 803119. At present posted at Upgraded Middle School Biskurba Biharsharif.
7. Anil Kumar, Son of Late Banaras Prasad Singh Resident of Village- Nepura, P.O. + P.S. Asthawan, District- Nalanda, Pin Code- 803107, At present posted at Upgraded Middle School Bhakharapokhar, Hilsa, Nalanda.
8. Baleshwar Prasad Son of Late Prasad Mahto Residnt of Village- Korari, P.O. + P.S.- Deepnagar, District- Nalanda (Bihar), Pin Code - 803111. At present posted at Upgraded Middle School Karanbigha, Parwalpur, Nalanda.
9. Md. Naiyer Azam Ansari Son of Md. Ainul Haque Resident of Mohalla - Kohna Sarai, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda (Bihar), Pin Code - 803101. At present posted at Upgraded Middle School Abdullichak, Rahui, Nalanda.
10. Manoj Kumar Madhukar Son of Late Lakshmi Prasad Resident of Village- Fatehpur, P.O. Ugawan, P.S.- Asthawan, District - Nalanda (Bihar), Pin Code - 803107. At present posted at Upgraded Middle School Baradih, Noorsarai, Nalanda.
11. Shailendra Kumar Son of Baleshwar Prasad Singh Resident of Village + P.O. Sarbahdi, P.S.- manpur, District- Nalanda (Bihar), Pin Code- 803107. At present posted at Upgraded Middle School Maksudpur, Asthawan, Nalanda.
12. Md. Khushnood Ahsan Raaz Son of Late Md. Ayub Ansari Resident of Mohalla- Shekhanna Kalan, P.O. + P.S. - Biharsharif, District- Nalanda (Bihar), Pin Code- 803101. At present posted at Upgraded Middle School Bikhaniibigha, Asthawan, Nalanda.
13. Md. Junaid Akhtar, Son of Md. MojibUddin Resident of Mohalla - Kohna Sarai, P.S.- Laheri, P.O.- Biharsharif, District- Nalanda (Bihar), Pin Code - 803101. At present posted at Upgraded Middle School Yarpur, Hilsa, Nalanda.
14. Ajay Kumar Son of Ramji Singh Resident of Mohalla- Khandakpar (Sirhi Gali), P.O. + P.S. - Biharsharif, District- Nalanda (Bihar), Pin Code - 803101. At present posted at Upgraded Middle School Haweli, Biharsharif.
15. Surendra Kumar Son of Late Lala Paswan Resident of Village - Makduance, P.S.- Manpur, Biharsharif, District- Nalanda (Bihar), Pin Code - 803101. At present posted at Upgraded Middle School Khiroti, Parwalpur, Nalanda.



16. Binod Prasad Singh Son of Late Chamari Prasad Singh Resident of Village- Goraiya Bigha, P.O. Badi, P.S.- Katrisarai, District- Nalanda (Bihar). At present posted at Middle School Murora, Biharsharif, Nalanda.
17. Anil Prasad Son of Kailash Prasad Resident of Village- Juafer Dih, P.O. Neerpur, P.S.- Nalanda, District- Nalanda (Bihar). At present posted at Upgraded Middle School Niyamatnagar, Silao, Nalanda.
18. Ram Naresh Prasad Son of Late Parmeshwar Prasad Resident of Mohalla - Uttari Koyri Tola Hilsa, P.O. + P.S. - Hilsa, District- Nalanda (Bihar). At present posted at Upgraded Middle School Yaarpur, Hilsa, Nalanda.
19. Shravan Kumar Son of Mathura Prasad Resident of Village + P.O. Telmar, P.S. Harnaut, District - Nalanda (Bihar). At present posted at Upgraded Middle School Bhathiyar, Harnaut, Nalanda.
20. Binod Kumar Son of Prayag Paswan Resident of Village- Hawanpua, P.O. - Bhandari, P.S.- Rahui, District- Nalanda (Bihar). At present posted at Upgraded Middle School Indwas, Rahui, Nalanda.
21. Sudhir Prasad Son of Kailash Prasad Resident of Village- Baraini, P.O.- Nekpur, P.S. Neemchak Battani, District - Gaya. At present posted at Upgraded Middle School Belaur, Silao, Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Patna Division, Patna.
5. The District Education Officer, Nalanda.
6. The District Programme Officer, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Sanjay Parasmani, Advocate
For the Respondent/s : Mr. Satya Prakash, AC to SC-22

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 02-11-2018

The instant case is a celebrating example of frustrating the direction issued by the Full Bench of this Court and taking advantage of its own wrong refusing the benefit available to the petitioner in terms of the Full Bench decision.

2. After series of litigation for nearly a decade, the issue



with regard to preparation of gradation list of Science and Arts Graduate Teacher was finally adjudicated by the Full Bench in the case of **Ram Nath Prasad Singh vs. The State of Bihar & Ors.**, reported in **2009 (3) PLJR 384**. The Court after declaring the law on the point directed the respondents to grant Graduate Trained Scale and thereafter prepare gradation list for grant of promotion as Headmaster. In para 9 of **Ram Nath Prasad Singh** case (supra), the Full Bench formulated the time frame for preparation of gradation list so that the promotion may be given effect to in terms of 1993 Promotion Rules. Para 9 of the judgment in the case of **Ram Nath Prasad Singh** case (supra) is quoted herein below:

“9. In the light of the above, we are of the view that a fresh seniority list has to be prepared in accordance, with the Promotion Rules 1993, and the joint seniority list prepared in accordance with the directions of the Division Bench in **Naresh Jha's case** (supra) and the draft Rules created in 2006 subject to the approval of this Court with regard to promotions cannot be acted upon. We direct the Government to prepare a fresh list and make consequential promotions and transfers according to law. No separate orders are necessary. In view of the interim order of *status quo* granted, promotions were not made for the last 10 years. In the above circumstances, we direct the Government to make separate seniority lists for promotion to Grade 4 for Arts and Science teachers afresh and thereafter to prepare a consolidated list for promotion as expeditiously as possible. The draft list should be



published within three months from the date of receipt of a copy of this judgment and the final seniority list shall be thereafter published and promotions and transfers made in accordance with law.”

3. From different Annexures appended to the present writ application, it would be evident that steps for grant of promotion in Grade-IV under 1993 Rules and for further promotion was initiated by the respondents.

4. Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the petitioners has drawn the attention of this Court to Annexure-3 to contend that on 31.12.2009 step was taken for preparation of separate gradation list of Science and Arts Teachers. Thereafter the further document contained in Annexures- 4 and 5 would indicate that the respondents have initiated step for preparation of final gradation list in order to give effect to promotion in Grade-IV (Graduate Trained Scale). The entire exercise was initiated by the respondents in terms of the direction of the Full Bench in the case of Ram Nath Prasad Singh (supra) in accordance with 1993 Promotion Rules.

5. From different Annexures including Annexures-7 and 8, it would be evident that process for preparation of gradation list for promotion under Graduate Trained Scale under 1993 Rules was taken by the respondents and right to consideration after finalization of the



gradation list in terms of 1993 Rules and the direction of the Full Bench in **Ram Nath Prasad Singh** (supra) accrued the petitioners much before 2011 Rule came into force vide notification no. 940 dated 01.09.2011.

6. It appears from Annexure-7 that final gradation list was prepared way back on 29.01.2011 and it was also approved by the Regional Deputy Director of Education, Patna Division, Patna. After preparation of the final gradation list the notification dated 01.09.2011 was issued. 2011 Rule repealed 1993 Rules. The said 1993 Rules was repealed with notification dated 01.09.2011, but the action taken under 1993 Rules was saved in terms of Rule 19 of 2011 Rules, since the process for grant of promotion in Grade-IV started prior to coming into force 2011 Rule and entire formality as condition precedent for grant of promotion was completed before coming into force 2011 Rules, petitioners were legitimately entitled to grant of promotion in terms of 1993 Rules.

7. The law in this regard is well settled by the catena of decision of the Apex Court. Reference in this connection may be made in the case of **Y.V. Rangaiah And Ors. vs J. Sreenivasa Rao And Ors.** reported in (1983) 3 SCC 284, in the case of **A.A. Calton Vs. Director of Education & Anr.**, reported in AIR 1983 SC 1143 and in the case of **P. Mahendran & ors. Vs. State of Karnataka &**



ors., reported in **AIR 1990 SC 405** and in the case of **Kulwant Singh & Ors. vs. Daya Ram**, reported in **(2015) 3 SCC 177** and several other cases where the Apex Court has categorically held out that once the selection process has commenced under the existing Rule, the same has to be given to its logical end in terms of the same rule and subsequent amendment in the Rule can defeat the right to consideration of individual cases in terms of existing Rule.

8. Considering the totality of the facts situation, the Court is of the considered view that once the respondents have prepared the gradation list for grant of Graduate Trained Scale i.e. Grade-IV under 1993 Rules, it was obligatory on the part of the respondents to grant promotion in terms of 1993 Rules and subsequent amendment in the Rule i.e. 2011 Rule will not apply in relation to the case of the petitioners, whose case for grant of promotion commenced before coming into force 2011 Rule.

9. In view of the above legal position, the writ application is allowed. The respondents are hereby directed to consider the case of the petitioners afresh for grant of Graduate Trained Scale and further promotion as headmaster in terms of the then existing 1993 Promotion Rules. Entire exercise for grant of promotion to the petitioners in Graduate Trained Scale under 1993 Rules must be completed by the respondent within a period of four months from the date of



receipt/production of a copy of this order.

10. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2018
Transmission Date	

