

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19622 of 2014

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1. Dr. Kanhaiya Singh Son of Late Shivpujan Singh Resident of Kurji Balupar, Sivaji Nagar, P.O-Digha Ghat, P.S-Digha, District-Digha, presently posted as assistant teacher at Siya Ram Singh High School, Sahpur, Daudpur, Patna
 2. Krishna Kumar Sinha Son of Shri Satrugan Prasad Resident of Village-Katai, P.O.Kurtha, P.S-Kurtha, District-Arwal, presently posted as assistant teacher at High School, Ekil, Jehanabad
 3. Dr.Alok Prakash Dwakar Son of Shri Dineshwar Pandit Resident of Mohallah-Rajiv Nagar, Road No.14, P.O-Keshrinagar, P.S-Rajiv Nagar, Patna-24, presently posted as assistant Teacher at B.R.V.High School, Anandpur, Patna
 4. Dr.Surya Bhusan Pd.Sinha Son of Sri Ram Chandra Prasad Resident of Village-Rampur, P.O-Chhatiyana, P.S-Harnaut, District-Nalanda, persently posted as assistant teacher at High School, Balwa, Patna
 5. Anju Kumari Wife of Shashi Bhusan Kumar Resident of Naveen Engineering Works, Chitraguptanagar, Parwatia Path, P.O-Lohia Nagar, P.S-Patrakar Nagar, District-Patna, persently posted as assistant teacher at Udehan Girl's High School, Bihta, Patna
 6. Ajay Kumar Son of Late Rajkebal Sharma Resident of Alka Colony Sandalpur, P.O-Mahendru P.S-Bhadurpur, Patna, persently posted as assistant teacher at Project High School, Mahua, Vaishali.
 7. Dilip Kumar Son of Sidheshwar Prasad Resident of Village-Krishnapur, P.O+P.S-Hilsa, District-Nalanda, presently posted as assistant teacher at Baleshwar singh High School, Dtasang, Nalanda.
 8. Dr.Parween Kumar Son of Prahlad Prasad Resident of Village-Jalgovind, P.O-Barh, P.S-Barh, District-Patna, persently posted as assistant teacher at L.N.S.R.High School, Kurmichack, Patna
 9. Krishanakant Roy Son of Ram Chandra Roy Resident of Village-Tojha, P.O-Babhan Toli, P.S-Goraul, District-Vaishali, persently posted as assistant teacher at High School, Sinduari, Vaishali
 10. Rajeev Ranjan S/O Ram Kumar Resident of Village-Ganjpar, P.O+P.S-Rajgir, District-Nalanda, presently posted as assistant teacher at High School, Beldar Bigha, Nalanda.
 11. Sarita Sinha Wife of Vinay Kumar Chandrayan Resident of Village-Chiti Att, P.O-Att.P.S.-Ben, District-Nalanda,, presently posted as assistant teacher at High School, Att.
 12. Ajay Kumar Son of Late Gendhari Yadav Resident of Village-Varui, P.O-Pairata, P.S-Sheikhpura, District-Sheikhpura,, presently posted as assistant teacher at Gramin High School, Chakbariya, Patna.
 13. Dr.Jaijeet Kumar son of Late Doman Pandit Resident of Mohallah-North Mandiri, Near Dwarika High School, P.O.-G.P.O.P.S-Buddha Colony, District-Patna., presently posted as assistant teacher at +2 Jagtarni High School, Rampur Diara, Patna
 14. Jainendra Sharma Son of Late Chandradeo Sharma Redident of J-92, P.C Colony, P.O-Lohianagar, P.S-Kankarbagh, District-Patna, presently posted as assistant teacher at High School, Sohsa, Kaler
 15. Dr. Mahseema Daughter of Anwar Ahmad Resident of Muskan Kothi, Bakarganj, Gola Road, Patna Academy Campus, P.O-Bankipur, P.S-Pirbahor, Patna-4, presently posted as teacher at Pavitri Girl's High School, Simri, Bihta



16. Dr. Ajay Kumar Upadhyay Son of Sri Raghubansh Bhushan Upadhyay Resident of Upadhyai Niwas, P.O-Bankipur, P.S-Kadamkuan, District-Patna,, presently posted as assistant teacher at High School ,Baghakol, Patna
17. Sanjay Kumar Son of Late Munshi Prasad Singh Resident at P.O-Gangapur, Via-Hulasganj, P.S-Hulasganj, District-Jehanabad, presently posted as assistant teacher at Maheshwari Vidyapeeth, Shahjahanpur, Patna
18. Rita Kumari Wife of Shri Murlidhar Pd. Singh Resident of Flat No.164, Block No.19, P.O-Rajendranagar, P.S-Kadamkuan, Patna-16, presently posted as assistant teacher at High School ,Daniyawa, Patna
19. Sunil Kumar Son of Brahmadeo Paswan Resident of Village-Dihra, P.O-Sirsi (Dihra), P.S-Harnaut, District-Nalanda,, presently posted as assistant teacher at High School Seodah, Nalanda.
20. Dr. Satya Narayan Mahto Son of Late Ram Bhajan Mahto Resident of C/O; Rajaram Sah, Mohallah-Mahatma Gandhi Nagar, P.O-B.H. Colony, P.S-Agamkuan, Patna, presently posted as assistant teacher at Mahanth Hariharnath High School Gulmahiabagh, Punadih, Patna
21. Jai Prakash Verma Son of Late Baliram Prasad Verma Resident of Banskothi, Digha, P.O&P.S-Digha, Patna, presently posted as assistant teacher at High School , Sukki.
22. Ravindra Kumar Son of Ram Prasad Pandit Resident of Village-Jolah Bigha, P.O-Sakurabad, P.S-Parasbigha, District-Jehanabad, presently posted as assistant teacher at Project Kanya High School, Kako, Jehanabad
23. Shiv Kumar Son of Shri Ram Prasad Chaudhary Resident at Bagulham, P.O-Hazipur, P.S-Naya Hazipur, District-Vaishali, presently posted as assistant teacher at Project Girl's High School, Ramgarhwa East Champaran
24. Rajesh Verma Son of Rajendra Prasad Verma Resident at Dalluchak, P.O+P.S-Khagaul, District-Patna,, presently posted as assistant teacher at High School, Pitwas, Patna
25. Mahesh Ram Son of Muneshwar Ram Resident of Village-Gannipur Bhanpur, P.O-Bharthipur, P.S-Baligawn, District-Vaishali, presently posted as assistant teacher at High School , Sindhuari, Vaishali
26. Gajendra Prasad Singh Son of Late Swambar Pd. Singh Resident of- At Bhikhua, P.O-Dumari, P.S-Fatuha, District-Patna,, presently posted as assistant teacher at High School, Shaibani , Patna
27. Sudhir Kumar Son of Sri Dhaneshwar Prasad Resident of Piyush Book Centre At+P.O-Dumari, P.S-Asarganj, P.S-Asarganj, District-Munger,, presently posted as assistant teacher at High School, Sitakund , Munger.
28. Arvind Kumar Son of Lakhan Lal Resident of Village-Shiodah, P.O+P.S-Kajra, District-Lakhisarai, presently posted as assistant teacher at High School, Chandanpura, Munger.
29. Usha Kumari Wife of R.K.Sukla Resident of Kisan Colony, Phase-1, P.O-Anisabad, P.S-Phulwarisariiff, District-Patna, presently posted as assistant teacher at Project Girl's High School, Jandaha, Vaishali.
30. Niranjana Pd. Yadav Son of Late Shital Pd. Yadav Resident of E10/6, M.T.P.S.Colony, P.O+P.S-Kanti, District-Muzaffarpur, presently posted as assistant teacher at Project Girl's High School, Kanti Muzaffarpur.
31. Sunil Kumar Son of Sri Gagandeo Singh Resident at-Gobarsahi Gandhi Nagar, P.O-Khawara, District-Muzaffarpur, presently posted as assistant teacher at Project Girl's High School, Saraiya Muzaffarpur.
32. Arjun Kumar Son of HariNandan Roy Resident at Nababganj, P.O-Patna City, P.S-Malsalami, District-Patna, presently posted as assistant teacher at High School Rampur, Vaishali



33. Kumari Ribela Rani Wife of Chandeshwar Singh Resident of -at Mahatma Gandhi Nagar,Shanti Devi Path,P.O-B.H.Colony,P.S-Agamkuan,District-Patna,presently posted as assistant teacher at +2 Project Girls High School,Nagma,Naubatpur,Patna
34. Md.Imtiyaz Son of Abdul Baheed Resident of-Shop No.2,Chodhary Market,P.O-Bankipur,P.S-Pirbahore,District-Patna,presently posted as assistant teacher at Berhna High School,Barh,District-Patna.
35. Nawal Kishore Kumar Son of Late Raghav Singh Resident at-Nissharpura P.O-Suppi,P.S-Kako,District-Jehanabad,presently posted as assistant teacher at High School,Makhdumpur,Jehanabad.
36. Sunaina Kumari Son of Sri Kali Charan Prasad Resident of Village-Kharijama,P.O-Chandhari,P.S-Islampur,District-Nalanda,presently posted as assistant teacher at Project Girls' High School,Makhdumpur,Jehanabad.
37. Kiran Sinha Wife of Dr.Anil Kumar Sinha Resident of Narayan Colony Old Police Line,P.O-AraKachari,P.S-Town Thani,District-Bhojpur,presently posted as assistant teacher at Ram Janki +2 High School,Ud vant Nagar,Bhojpur.
38. Indu Kumari Wife of Subodh Kumar Singh Resident of Village+P.O+P.S-Panapur,District-Muzaffapur,presently posted as assistant teacher at Project Girl's High School,Kurhani,Muzaffarpur.
39. Smt.Neelam Wife of Er.Anjani Kumar Resident of Doctor's Colony ,Khandakpar,P.O-G.P.O.Biharshariff,P.S-Bihar Thana,District-Nalanda,presently posted as assistant teacher at High School,Deepnagar,Karai,Nalanda.
40. Mirdula Singh Wife of Ravi Shankar Prasad Singh Resident of Mangal Asthan,Ramchandrapur,P.O-Ramchandrapur,P.S-Lehri,District-Nalanda,presently posted as assistant teacher at High School Bada Ranacanda.
41. Surya Kumar Singh Son of Late Ram Deo Singh Resident of c/o SH-Vinay Kumar,Road No.02,Khasmahal,Chiraiyataar,P.O-G.P.O, P.S-Jakkanpur,District-Patna,presently posted as assistant teacher at High School,Bheria-Suara,Dehri,Rohtas.
42. Ganesh Tiwari Son of Siddhnath Tiwari Resident of Mohalla- Ram Nagar,P.O-Chandwa,P.S-Nawada,District-Bhojpur,presently posted as assistant teacher at High School,Asni,Bhojpur.
43. Puran Jaiswal Son of Late Mathura Prasad Jaiswal Resident of at-Shantipuram,P.O-Ramna,P.S-Kazi Mohammadpur,District-Muzaffarpur,presently posted as assistant teacher at High School,Kanta,Muzaffarpur.
44. Dr.Shambhu Dayal Son of Late Lala Garai Resident of Village-Sundi Bigha,P.O+P.S-Akengersarai,District-Nalanda,presently posted as assistant teacher at Project Girl's High School ,Pandarak,Patna.
45. Jay Prakash "Jawala" Son of Sri Jagat Lal Yadav Resident at & P.O-Behta(west Tola),P.S-Bennipatti,District-Madhubani,presently posted as assistant teacher at Project Girls' High School,Bennipatti,Madhubani.
46. Ram Pukar Mahto Son of Sri Gonar Mahto Resident of at+P.O-Singhia Ghat(Block Road)P.S-Bihutipur,District-Samastipur,presently posted as assistant teacher at High School,Belamegh.
47. Manoj Kumar Singh Son of Sri Shankar Pd.Singh Resident at+P.O-Hardia,Singhia,District-Samistipur,presently posted as assistant teacher at High School,Kalayanpur,Samastipur.
48. Gayanand Das Son of Sri Singheswar Das Resident at+Nagargama P.O-Soyara,Via-Dalsinghsarai,District-Samistipur,presently posted as assistant teacher at Project Girl's High School,Raipur Ujjiyarpur(Samastipur)
49. Lakshmi Kant Das Son of Late Sukh Deo Jha Resident at+Dighi,(west)Ward No.18 ,P.S&District-Darbhang,presently posted as assistant teacher at Projects



Girl's High School, Singhia, Samastipur.

50. Satrudhan Pd.Yadav Son of Sri Gajjan Pd.Yadav Resident of Village & Post-Adhapur,(via-Tajpur),P.O &P.S-Samastipur,presently posted as assistant teacher at High School,Bingama Mohanpur,Patna.

51. Dr.Abhichandra Jha Son of Late Buchi Jha Resident of at+P.O-Bardaha,Via-Andhra,P.S-Babu Barhi,District-Madhubani,presently posted as assistant teacher at Project Girl's High School,Bennipatti,Madhubani.

52. Ganesh Kumar jha Son of Raghuwansh Jha Resident at+Morwadih,P.O - Morwa,P.S Musari Gharai,presently posted as assistant teacher at High School,Barahauna,(vidyapati Nagar).

53. Arun Kumar Ray Son of Sri Ram Swarath Ray Resident at &P.O-Sarbatta,via-Sarairanjan,presently posted as assistant teacher at M.N.D.High School,Raipur,Samastipur.

54. Sudhir Kumar Son of Late Ram Bahadur Singh Resident of Adarsh Nagar P.O&District-Samastipur,presently posted as assistant teacher at High School,Gangapur.

55. Pradeep Kumar, Sri Mewa Lal Shaw Resident of Opposite Canara Bank, Digha,P.O. - Digha Ghat, Patna- 800011.

56. Dharmendra Kumar Sinha S/o Sri Chandeshwar Prasad Resident of Village +Post- Singariyawan, P.S. Sahjahanpur, District- Patna.

57. Umesh Kumar Son of Mahendra Prasad Resident of Village- Ramgarha, District- Saran.

58. Kailash Prasad Swarnkar Son of Saukhi Lal Swarnkar Resident of Mohammadpur, Shahganj, P.O. Mahendru , P.S.- Sultanganj, District- Patna.

59. Rajesh Kumar Son of late Mahendra Thakur Resident of Village +Post- Marwa, P.S. Bihpur, District- Bhagalpur.

60. Prabha Shankar Kumar Pranay Son of Dhanraj Prasad Resident of Village +Post- Makunagarh, Via- Gharbharuari, P.S.- Dihra, District- Saharsa.

61. Devanand Ray Son of Yogi Rai Resident of Village- Daud Nagar, P.O. Chandho, P.S. Bidupur, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar

2. The Principal Secretary, Education Department, Government of Bihar, Patna

3. The Director Secondary Education, Govt. of Bihar, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19267 of 2014

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1. Vijay Kumar S/o Dr. Janardan Prasad, presently working as Assistant Teacher in the subject of Biology at High School, Chiraura, P.O.- Chiraura, P.S.- Naubatpur, District- Patna

2. Umesh Sharma, S/o Bhagwan Singh, presently working as Assistant Teacher in the subject of Mathematics at High School, Chiraura, P.O.- Chiraura, P.S.- Naubatpur, District- Patna

3. Ravi Shankar Kumar S/o Santosh Prasad Singh, presently working as Assistant Teacher in the subject of Biology at Ram Swarath Singh High School, Balwa, P.O.- Baruna, P.S.- Fatuha, District- Patna



4. Umesh Kumar, S/o Sri Arvind Kumar Singh, presently working as Assistant Teacher in the subject of Biology at High School, Purania, P.O.- Neura, P.S.- Bihta, District- Patna
5. Jainendra Kumar Sharma, S/o Late Bindeshwari Sharma, presently working as Assistant Teacher in the subject of Biology at High School, Painal, P.O.- Painal, P.S.- Bihta, District- Patna
6. Arun Kumar Sinha S/o Ram Naresh Sinha, presently working as Assistant Teacher in the subject of Mathematics at Anugrah Narayan Sarvoday High School, Usfa, P.O.- Usfa, P.S.- Gaurichak, District- Patna
7. Madheshwar Prasad, S/o Sri Bhagwan Yadav, presently working as Assistant Teacher in the subject of Mathematics at R.L.S.Y. High School, Paigambarpur, P.O.- Mauri, P.S.- Paliganj, District- Patna
8. Pramod Kumar, S/o Sri Tarachand Yadav, presently working as Assistant Teacher in the subject of Mathematics at +2 High School, Sikariya, P.O.+P.S.- Paliganj, District- Patna
9. Ashok Kumar, S/o Late Suresh Chandra Sinha, presently working as Assistant Teacher in the subject of Biology at S.R.K. High School, Pandooe, P.S. + District- Jehanabad
10. Ramhari Sardar, S/o Purnachandra Sardar, presently working as Assistant Teacher in the subject of Mathematics at R.M. Project Kanya Inter School, Pakaribrama, P.O.- Pakaribrama, P.S. + District- Nawada, Pin- 805124
11. Arbind Kumar Singh, S/o Late Ramanuj Singh, presently working as Assistant Teacher in the subject of Mathematics at High School, Purainia, P.O.+ P.S.- Neura, District- Patna
12. Dr. Dinesh Prasad, S/o Late Mahavir Prasad, presently working as Assistant Teacher in the subject of Mathematics at Sri Jagmohan High School, Tineri Post Nadaul, P.S.- Masaurhi, District- Patna
13. Pinki Sinha, W/o Sri Om Prakash Sinha, presently working as Assistant Teacher in the subject of Biology at Project Balika (+2) High School Asthama, Nalanda
14. Dr. Maheshwar Prasad Yadav, S/o Sri Jibachh Yadav, presently working as Assistant Teacher in the subject of Mathematics at S.B.L.P. High School, Nadaul, P.O.- Nadaul, P.S.- Masaurhi, District- Patna
15. Sanjiv Kumar Singh, S/o Sri Shyamnandan Singh, presently working as Assistant Teacher in the subject of Mathematics at High School, Painal, P.O.- Painal, P.S.- Bihta, District- Patna
16. Ashok Kumar Singh S/o Sri Madhav Prasad Singh, presently working as Assistant Teacher in the subject of Mathematics at High School, Chaukhandi Path, P.O. + P.S.- Rauja Road, Sasaram, District- Rohtas
17. Jawahar Lal Rai, S/o Sri Bhikhar Rai, presently working as Assistant Teacher in the subject of Mathematics at S.R.G.P. +2 High School, Pojhi Bhualpur Saran, P.O. + P.S.- Marhura, District- Saran
18. Md. Manir Ali S/o Md. Yashin Mian, presently working as Assistant Teacher in the subject of Mathematics at Shanti Raman Project Balika +2 School, P.O. + P.S.- Lishuapur, Chapra, District- Saran
19. Amit Kumar, S/o Sri Shivan Jha, presently working as Assistant Teacher in the subject of Biology at R.K. P.N. High School, Bochaha, P.O. + P.S.- Bochaha, District- Muzaffarpur
20. Ram Kumar Singh, S/o Sri Jagdish Prasad Singh, presently working as Assistant Teacher in the subject of Biology at Kalika High School, Alwalpur, Piyaria, P.O. + P.S.- Gaurichak, District- Patna
21. Maya Shankar Singh, S/o Sri Thakur Haridutta Prasad Singh, presently working as Assistant Teacher in the subject of Biology at Project Girls School, P.O. + P.S.-



Bidupur Bazar, District- Vaishali

22. Sushma Kujur, W/o Raimax Toppo, presently working as Assistant Teacher in the subject of Biology at G.C. High School, Rambag Bihta, P.O. + P.S.- Bihta, District- Patna

23. Indu Singh, W/o Sri Ram Pratap Singh, presently working as Assistant Teacher in the subject of Biology at Ramesh Rani Agrwal High School, Ghirni Pokhar, P.O.- Girni Pokhar, P.S.- Town Thana, District- Muzaffarpur

24. Renu Kumari, W/o Yogendra Prasad Kapri, presently working as Assistant Teacher in the subject of Biology at High School, Neura, P.O.- Neura, P.S.- Bihta, District- Patna

25. Suchitra Kumari, W/o Ram Narayan Yadav, presently working as Assistant Teacher in the subject of Biology at Babujee Sah Prabhujee Sah Kanya High School, Mansapur, P.O.- Mansapur, P.S.- Laukhi, District- Madhubani

26. Kumari Reeta, W/o Kumud Kumar Sharma, presently working as Assistant Teacher in the subject of Biology at D.P.G.R.D. Project Girls High School, Kanti, P.O.+P.S.- Kanti, District- Muzaffarpur

27. Vijay Shankar, S/o Sri Ram Pyare Prasad Singh, presently working as Assistant Teacher in the subject of Mathematics at Adarsh High School, Palanga, P.O.- Suitha, P.S.- Parsa Bazar, District- Patna

28. Madan Prasad, S/o Sri Karmu Prasad, presently working as Assistant Teacher in the subject of Biology at Adarsh High School, Palanga, P.O.- Suitha, P.S.- Parsa Bazar, District- Patna

29. Manoj Kumar, S/o Late Ram Babu Rajak, presently working as Assistant Teacher in the subject of Biology at Sri Brij Lal Prasad High School, Nadaul, P.O.- Nadaul, P.S.- Masaurhi, District- Patna

30. Anil Kumar Singh, S/o Late Atal Bihari Singh, presently working as Assistant Teacher in the subject of Mathematics at +2 High School, Baraon, P.O.+ P.S.- Nokha, District- Rohtas

31. Nutan Kumari, W/o Abhay Kumar, presently working as Assistant Teacher in the subject of Biology at Rasalpura High School, Saran, P.O.+ P.S.- Goldenganj Chapra, District- Saran

32. Arun Kumar, S/o Sri Siya Ram Mahto, presently working as Assistant Teacher in the subject of Biology at High School, Panapur, P.O.- Digha, P.S.- Akilpur, District- Patna

33. Surya Kumar Singh, S/o Ramdeo Singh, presently working as Assistant Teacher in the subject of Biology at High School, Bheria-Suara, P.O.- Pahleja, P.S.- Dehri, District- Rohtas

34. Bhushan Kumar, S/o Late Yadunandan Prasad, presently working as Assistant Teacher in the subject of Biology at Project R.K.B. Girl's (+2) School, P.O.+P.S.- Chandi, District- Nalanda

35. Gorakh Nath Singh, S/o Sri Hiralal Singh, presently working as Assistant Teacher in the subject of Biology at Jai Mangal High School, Pipradih, P.S.- Nasriganj, District- Rohtas

36. Tribhuvan Prasad Sinha, S/o Late Harihar Prasad, presently working as Assistant Teacher in the subject of Mathematics at High School, Panapur, P.O.- Digha, P.S.- Akilpur, District- Patna

37. Kiran Kumar, W/o B.N. Pathak, presently working as Assistant Teacher in the subject of Mathematics at Maner Girls High School, Maner, P.O.+ P.S.- Maner, District- Patna

38. Rashmi Sinha, W/o Mithilesh Kumar Sinha, presently working as Assistant Teacher in the subject of Biology at Project Balika High School, Nagwa, P.O.- Nagwa, P.S.- Naubatpur, District- Patna



39. Rajeev Ranjan, S/o Harshikesh Singh, presently working as Assistant Teacher in the subject of Mathematics at High School, Kayapur, Fatehpur, P.S.- Naubatpur, District- Patna
40. Himanshu Tripathi, S/o Late Devendra Tripathi, presently working as Assistant Teacher in the subject of Biology at High School Chaukhandi Path, P.O.- Rauja Road, P.S.- Sasaram, District- Rohtas
41. Jnanasheel, S/o Sri Nabin Deo Prasad, presently working as Assistant Teacher in the subject of Mathematics at Rajkiyakrit High School, Nargada, P.O.- Jamshaut, P.S.- Shahpur, Danapur, District- Patna
42. Sunandan Prasad, W/o Shailendra Ranjan Mandal, presently working as Assistant Teacher in the subject of Biology at Rajkiyakrit High School, Nargada, P.O.- Jamshaut, P.S.- Shahpur, Danapur, District- Patna
43. Pushpa Lawrence, W/o Charles Andrews Osta, presently working as Assistant Teacher in the subject of Biology at Duniyari High School, Hathiya Kandh Saray, P.O.- Saray, P.S.- Maner, District- Patna
44. Suresh Kumar, S/o Devendra Prasad, presently working as Assistant Teacher in the subject of Biology at High School, Dumari, P.O.- Jat Dumri, P.S.- Punpun, District- Patna
45. Jitendra Kishore Jha, S/o Surya Narayan Jha, presently working as Assistant Teacher in the subject of Biology at Gaya Das High School, Kabirmath, Rashid Chak, Mathia, P.O.+ P.S.- Hussainganj, District- Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Secondary Education, Government of Bihar, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 31 of 2018

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1. Ajay Kumar Das, S/o Ram Kishun Das, Assistant Teacher, (BIO), High School, Dhandiha, Post- Dhandiha, P.S. Koilawar, District- Bhojpur.
2. Bindeshwari Prasad, S/o Shivji Ram, Assistant Teacher, (BIO), High School, Gaziapur, Bhojpur, Post- Singha, P.S.- Krishan Garh, District- Bhojpur.
3. Dilip Kumar, S/o Pradeep Prasad, Assistant Teacher, (BIO), +2 High School, Bihea, P.S.+ Post. Bihea, District- Bhojpur.
4. Suresh Naryan Baitha, S/o Faud Baitha, Asst. Teacher (BIO) Project Girls High School, Harisiddhi, P.O.+ P.S.- Harisiddhi, District- East Champaran.
5. Anil Kumar, S/o Kuleshwar Prasad Singh, Assistant Teacher, (BIO), Ghanshyam Balika +2 High School Khagaul, P.O.+ P.S.- Khagaul, District- Patna.
6. Navin Kumar Verma, S/o Ram Lakhan Prasad Verma, Assistant Teacher, (BIO), +2 High School Belaganj, P.O.+ P.S.- Belaganj, District- Gaya.
7. Ajay Kumar, S/o Indradeo Prasad, Assistant Teacher, (BIO), S.S. +2 School Panditganj, P.O. Panditganj, P.S. Kadirganj, District- Patna.
8. Pramod Kumar, S/o Sukhnandan Kumar, Assistant Teacher, (Math), +2 S.V. High School Daniyala, P.O.- Shadipur, P.S. Banshi, District- Arwal.
9. Bipin Kumar, S/o Bhuwsheshwar Prasad, Assistant Teacher, (BIO), +2 B.H.S. Shahar Telpa, P.O.+ P.S.- Shahar Telpa, District- Arwal.



10. Md. Sarfaraz Alam, S/o Shahidul Haq. Assistant Teacher (BIO) High School Barsoi, P.O.+ P.S. Barsoi, District- Katihar.
11. Dharmendra Kumar Yadav, S/o Yamun Yadav, Assistant Teacher (BIO) High School Dewadh, P.O.+ P.S. Ghoghordiha, District- Madhubani.
12. Mahesh Prasad Sahu, S/o Fochai Sahu, Assistant Teacher (BIO) High School Khutawana, P.O.+ P.S. Khutawana, District- Madhubani.
13. Om Prakash, S/o Biran Gop, Assistant Teacher (BIO) High School Ulao, P.O.+ P.S. Ulao, District- Begusarai.
14. Bijay Kumar Das, S/o Madhuri Das, Assistant Teacher (BIO) High School Dashrathpur, P.O.+ P.S. Mansurchak, District- Begusarai.
15. Ranjeet Kumar Sudhanshu, S/o Sree Pandav, Assistant Teacher (Math) R.S.A.S. High School Ballia, P.O.+ P.S. Ballia, District- Begusarai.
16. Devendra Paswan, S/o Dhaneshwer Paswan, Assistant Teacher (Math) R. High School Garhpura, P.O.+ P.S. Garhpura, District- Begusarai.
17. Anil Kumar, S/o Jay Kant Jha, Assistant Teacher (Math) Project S.B.D. Girls High School Dashrathpur, Mansurchak, P.O.- Mansurchak, District- Begusarai.
18. Vijay Kumar, S/o Hira Chaudhary, Assistant Teacher (BIO) K.R.M. High School Netaul, P.O. Khalilabad, Netaul, P.S. Kadirgang, District- Patna.
19. Dharmendra Kumar, S/o Gayan Chand, Assistant Teacher (BIO) High School Bans Bigha, P.O. Bans Bigha, P.S. Dhanarua, District- Patna.
20. Ajay Kumar, S/o Shivdasi Rajak, Assistant Teacher (BIO) High School Sikariya, Post- Sikariya, P.S. Paliganj, District Patna.
21. Md. Amirul Haque, S/o Abdul Rauf, Assistant Teacher (Math) High School Shorampur, Post- Shorampur, P.S.- Janipur, District- Patna.
22. Prabhat Kumar, S/o Misri Lal Prasad, Assistant Teacher (BIO) Rani Braj Raj Kumari, Project Girls School, Deo, Post+ P.S. DEO, District- Aurangabad.
23. Nilam Latha Sinha, W/o Surendra Kumar, Assistant Teacher (BIO) +2 High School Sarathua, P.O.+ P.S.- Udwant Nagar, District- Bhojpur.
24. Vinay Chaudhary, S/o Budhdeo Chaudhary, Assistant Teacher (BIO) +2 High School Bakour, P.S. Bari Paithana, P.S.- Islampur, District- Nalanda.
25. Lily Kumari Sinha, W/o Wakil Shai, Assistant Teacher (BIO) Lal Pari Devi Balika Project High School, P.O.+ P.S.- Goraiya Khothi, District- Siwan.
26. Kumari Nutan Sinha, W/o Manoj Kumar, Assistant Teacher (BIO) Project Girls High School Harnaut, P.O.+ P.S.- Harnaut, District- Nalanda.
27. Sanjay Kumar Verma, S/o Maheshwari Prasad, Assistant Teacher (BIO) High School Seodah, P.O. Birjumilki, P.S. Harnaut, District- Nalanda.
28. Kapildeo Yadav, S/o Hari Yadav, Assistant Teacher (BIO) Jawahar Kanya +2 High School Jhing Nagar, P.O.+ P.S.- Biharsharif, District- Nalanda.
29. Awadhesh Kumar, S/o Chandra Shekhan Prasad Gupta, Assistant Teacher (BIO) Project Girls High School Giriyak, P.O.+ P.S.- Giriyak, District- Nalanda.
30. Sri Nivas Kumar, S/o Ramashish Prasad, Assistant Teacher (Math) High School Bairagibag, P.O. Ghorahanan, P.S. Masaudhi, District- Patna.
31. Jagdish Kumar, S/o Nand Kishore, Assistant Teacher (Math) R.K. High School Dhanaur Katra, P.O. Dhanaur, P.S. Katra, District- Muzaffarpur.
32. Mithlesh Kumar, S/o Ram Chandra Ram, Assistant Teacher (BIO) Project Balika High School Kanta, P.O.+ P.S.+ District- Muzaffarpur.
33. Bishnu Prasad, S/o Ram Sewak Prasad, Project Balika High School Mahdeiya, P.O.+ P.S.- Minapur, District- Muzaffarpur.
34. Deo Narayan Dinkar, S/o Laxman Mehta, Assistant Teacher (BIO) Haravat Raj, H.S. Lalpur, Saropatti, P.O. Lalpur, P.S. Singheshwar, District- Madhepura.
35. Barjendra Pratap Singh, S/o Virendra Pratap Singh, Assistant Teacher (BIO) Project Girl's High School Ram Shahar, P.O.+ P.S. Ram Shahar, District- Bhojpur.



36. Rita Kumari, W/o Vijay, Assistant Teacher (BIO) High School Chadauti P.O.+ P.S. Gaya, Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6204 of 2015

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1. Kumar Vinay Ranjan S/o- Late Jugat Narayan Singh, presently working as Assistant Teacher in the Subject of Mathematics at Jagtarini High School, Rampur Diyara, P.O.- Rampur Diyara, P.S.- Maner, District- Patna
2. Rajani Kant Malviya, S/O Late Mathura Tiwari, presently working as Assistant Teacher in the Subject of Mathematics at Project Girl School, Manpur Gaya, P.O. & P.S.- Buniyadganj, District- Gaya
3. Ramanugrah Prasad, S/o- Sri Harihar Singh, presently working as Assistant Teacher in the Subject of Mathematics at High School Khurar, P.O. & P.S.- Civil Aerodram, District- Gaya
4. Shailendra Kumar Sharma, S/o- Late Basant Kumar Sharma, presently working as Assistant Teacher in the Subject of Mathematics at Cherki High School, Cherki Gaya, P.O. & P.S.- Cherki, District- Gaya
5. Radha Krishna Ram, S/o- Sri Rambrit Ram, presently working as Assistant Teacher in the Subject of Mathematics at Sri Dandia Rama Adarsh High School, Kaster Rohtas, P.O. & P.S.- Kaster, District- Rohtas
6. Ram Swarup Paswan, S/o- Sri Muglal Paswan, presently working as Assistant Teacher in the Subject of Mathematics at +2 High School, Karpi, P.O. & P.S.- Karpi, District- Arwal
7. Manoranjan Prasad Sinha, S/o- Sri Saryug Pd. Sinha, presently working as Assistant Teacher in the Subject of Mathematics at Sri Ramhari +2 High School Pavera, P.O. & P.S.- Pavera, District- Patna,
8. Manoj Kumar, S/o- Late Nunu Lal Singh, presently working as Assistant Teacher in the Subject of Mathematics at J.K. High School, Ghingh Nagar, P.O.- Biharsharif, P.S.- Lahari, District- Nalanda. Nasariganj, P.O. & P.S.- Nasariganj, District- Rohtas
9. Ramesh Kumar, S/o- Sri Harilal Ram, presently working as Assistant Teacher in the Subject of Mathematics at Project Girls High School, Nasariganj, P.O. & P.S.- Nasariganj, District- Rohtas
10. Shashi Bhushan Prasad, S/o- Sri Ramchandra Prasad, presently working as Assistant Teacher in the Subject of Mathematics at Project Kamla Nehru Balika High School, Chandashi, P.O. & P.S.- Nursaray, District- Nalanda
11. Sanjay Kumar Shastri, S/O- Sri Prameshwar Paswan, presently working as Assistant Teacher in the Subject of Mathematics at Project Girls Inter School, Giriak, P.O. & P.S.- Giriak, District- Nalanda
12. Laldeo Yadav, S/o- Sri Moti Yadav, presently working as Assistant Teacher in the Subject of Mathematics at +2 Project Kamini Girls School, Malaypur Barhat,



P.O. & P.S.- Malaypur, District- Jamui

13. Ambika Prasad S/o- Late Baldoe Mahto, presently working as Assistant Teacher in the Subject of Mathematics at Kedarnath High School, Tarwan, P.O. Tarwan, P.S.- Bajirganj, District- Gaya

14. Kedarnath Rajak, S/o- Sri Shivan Rajak, presently working as Assistant Teacher in the Subject of Mathematics at +2 J.H. High School, Dumari Rajpur Sono Jamuie, P.O.- Sono, P.S.- Dumaria, District- Gaya

15. Ram Bilash Prasad, S/o- Sri Maheshi Prasad, presently working as Assistant Teacher in the Subject of Mathematics at +2 High School Magra, P.O.- Magra, P.S.- Dumaria, District- Gaya,

16. Bhuwali Singh, S/o- Late Chandradeo Singh, presently working as Assistant Teacher in the Subject of Mathematics at D.P. High School, Unuas, P.O.- Unuas, P.S.- Itari, District- Buxar

17. Rambachan Singh, S/o- Sri Siddh Nath Singh, presently working as Assistant Teacher in the Subject of Mathematics at High School Koran Saray, P.O.- Basawnkala, P.S.- Koransaray, District- Buxar,

18. Shelley Prasad, W/o- Sri Santosh Kumar, presently working as Assistant Teacher in the Subject of Biology at High School, Biroiyara, P.O.- Vir, P.S.- Dhanarua, District- Patna

19. Binod Kumar, S/o- Sri Ravindra Kumar, presently working as Assistant Teacher in the Subject of Mathematics at Project Balika High School, Harnaut, P.O. & P.S.- Harnaut, District- Nalanda

20. Prakash Chandra Gupta, S/o- Late Kanhaya Prasad Gupta, presently working as Assistant Teacher in the Subject of Biology at Sri Birchand Patel Girl High School, P.O.- Sripalpur, P.S.- Punpun, District- Gaya

21. Smt. Pushpam Kumari Sinha W/o- Sri Vijayendra Satyarthi, presently working as Assistant Teacher in the Subject of Biology at +2 High School, Maharaj Chandchue Vidya Mandir, P.O. & P.S.- Gidhaur, District- Jamuui

22. Jitendra Kumar, S/o- Janardhan Prasad, presently working as Assistant Teacher in the Subject of Mathematics at +2 Janta High School Satayan, P.O. & P.S.- Dandh, District- Jamuui

23. Fagu Das, S/o- Sri Bashudeo Das, presently working as Assistant Teacher in the Subject of Mathematics at +2 K.H.B. High School, Keshapur, Jhajha, P.O.- Keshapur, P.S.- Jhajha, District- Jamuui

24. Barundseo Singh, S/o- Late Randhir Singh, presently working as Assistant Teacher in the Subject of Mathematics at Project Girls High School, Amdabad Katihar, P.O.- Hemkunj, P.S.- Manihari, District- Katihar

25. Rana Ranjit Kumar, S/o- Sri Keshari Kishor Singh, presently working as Assistant Teacher in the Subject of Biology at Dindayal High School, Rupas, Athmalgola, P.O.- Rahimapur, P.S.- Athmalgola, District- Patna

26. Surya Narayan Yadav, S/o- Sri Vishnu Prasad, presently working as Assistant Teacher in the Subject of Mathematics at A.N. Inter School, Ranisakarpura, P.O.- Saharpur, P.S.- Perbata, District- Khagaria

27. Smt. Indramati Kumari, W/o Sri Gopal Chand, presently working as Assistant Teacher in the Subject of Mathematics at Balika Ucch Vidalya, Sabour, P.O. & P.S.- Sabour, District- Bhagalpur,

.... Petitioner/s

Versus

1. The State of Bihar through Education Department, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Secondary Education, Government of Bihar, Patna



.... Respondent/s
with

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Civil Writ Jurisdiction Case No. 8410 of 2018

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1. Pankaj Kumar Son of Surya Narayan Mandal Resident of Village - Sansad Marg, Ward No. 16, Laxmipur Mohalla, P.S. + Block - Madhepura, District - Madhepura.
2. Ranjan Kumar Son of Ramchandra Prasad Yadav Resident of Mohalla Ward No. 10, Jajhat, Sabaila Singheshwar, P.S. + Post - Singheshwar, District - Madhepura.
3. Bipin Kumar Son of Rishidev Prasad Yadav @ Rishidev Yadav Resident of Village - Kashipur, Ward No. 02, P.O. + P.S. - Murliganj, District - Madhepura.
4. Ramesh Kumar Raman Son of Jagdish Prasad Yadav Resident of Mohalla - Ward No. 09, Azad Nagar Madhepura, P.O. + P.S. - Madhepura, District - Madhepura.
5. Md. Arif Alam Son of Md. Musa Resident of Mohalla - Ward No. 15, Bhairaili, P.O. - Gaira (Samed), P.S. - Jalalgarh Purnea, District - Purnea.
6. Sadhana Wife of Birendra Narayan Singh Resident of Village - Murliganj, Post - Murliganj, District - Madhepura, at present Address - Sadhana wife of Birendra Narayan Singh, Resident of Mohalla East of Purnea College, Purnea Ward No. 18, P.S. - K. Hat, District - Purnea.
7. Md. Moin Akhtar Son of Abdur Rahman Resident of Mohalla + P.O. - Bhumma, P.S. - Araria, at present Address - resident of Mohalla - Islam Nagar, Doctor Salik Azam Road, Ward No. 26, Araria, P.S. - Araria, District - Purnea.
8. Pradeep Kumar Varnwal Son of Mohit Lal Resident of Village - Ward No. 10, Post - Gairki, P.S. + District - Araria.
9. Tara Kumari wife of Sri Mahendra Pratap Sah Resident of Village + P.O. - Damgara, P.S. + District - Purnea.
10. Ravi Shankar Kumar Son of Visheshwar Prasad Yadav Resident of Mohalla - Azad Nagar Ward No. 5/9, P.S. + District - Madhepura.
11. Kavita Nandani D/o Kaushalendra Kumar Resident of Mohalla - Azad Nagar, P.S. + District - Madhepura, at present address - Kavita Nandani, wife of Kaushalendra Kumar, Resident of Village - Chakla, Ward No. 14, Sripur Dakshinwari (S. Dakshinwari), P.S. + District - Madhepura.
12. Shanti Kumari D/o Bhuwneshwar Prasad Yadav Resident of Village - Bishnupur, P.O. - Parwa, Naya Tola, P.S. - Murliganj, District - Madhepura.
13. Keshav Kumar Son of Yogendra Thakur Resident of Village + P.O. - Balia Via Manguar, P.S. Basnahi, (Mahua Bazar), District Saharsa.
14. Pramod Kumar Prabhat Son of Sukhdeo Prasad Resident of Village - Latha (Larha), Post - Bhawanipur, P.S. - Singheshwar, District - Madhepura.
15. Pranav Kamti Son of Kameshwar Prasad Yadav Resident of Village - Gangapur, P.O. Gangapur, P.S. - Murliganj, District - Madhepura.

.... Petitioner/s
Versus

1. The State of Bihar through Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.19622 of 2014)

For the Petitioner/s : Mr. P.K. Shahi, Sr.Adv.
Mr. Shashi Bhushan Singh, Adv.
Mr. Gyan Abhinav, Adv.
For the Respondent/s : Mrs. Smt. Binita Singh, GP-31
For the Intervenor : Mr. Anshuman Singh, Adv.
Mr. Hardayal Kumar, Adv.

(In CWJC No.19267 of 2014)

For the Petitioner/s : Mr. Ram Shankar Pradhan, Sr.Adv.
Mr. Jainendra Kumar, Adv.

For the Respondent/s : Mr. Lalit Kishore, Sr.Adv.

(In CWJC No.31 of 2018)

For the Petitioner/s : Mr. Amit Shrivastava, Adv.
Mr. Rakesh Kumar, Adv.
Mr. Girish Pandey, Adv.

For the Respondent/s : Mr. Kameshwar Kumar -GP17
Mr. Arbind Kumar, AC to GP-17

(In CWJC No.6204 of 2015)

For the Petitioner/s : Mr. Ram Shankar Pradhan, Sr.Adv.
Mr. Jainendra Kumar, Adv.

For the Respondent/s : Mr. Lalit Kishore, Sr.Adv.

(In CWJC No.8410 of 2018)

For the Petitioner/s : Mr. Shekhar Kumar Singh
For the Respondent/s : Mr. Anjani Kumar- AAG4

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 18-05-2018

This batch of writ applications have been preferred by



the Assistant Teachers of Biology and Mathematics serving in the different high schools in the State of Bihar pursuant to their appointment vide memo no.438 and memo no.439 dated 22.06.2013 respectively. A copy of the consolidated appointment letters have been brought on record as Annexure-11 and 11/1 to the writ applications.

2. The petitioners are aggrieved with Rule 5 and 11 of the “Bihar Nationalized Secondary School Teacher’s Special Appointment Rule 2013” (hereinafter referred to as the Rules, 2013) published vide notification contained in memo no.850 dated 31.05.2013 (Annexure-10 to the writ application) issued under the signature of the Principal Secretary, Department of Education, Government of Bihar. It is their contention that the given paragraphs are violative of Article 14 and 16 of the Constitution of India as also those are in the teeth of the judgment of the Hon’ble Supreme Court in the case of **A.A. Calton Vs. Director of Education reported in AIR 1983 SC 1143**. The petitioners are seeking quashing of those two paragraphs of the notification as contained in Annexure-10 to the writ applications and upon holding these two Rules of the Rules, 2013 arbitrary and bad in law a further mandamus has been prayed for directing the respondents to grant seniority, salary and all other benefits to the petitioners counting their services from 08.10.1998 and



21.05.1999 as Assistant Teachers of Biology and Mathematics respectively. It is their contention that they have been selected pursuant to the advertisement no.1/88 and 1/95 and therefore they should be treated at par with the other appointees who have been appointed as Assistant Teachers in different subjects in the year 1997. The petitioners claim that the Vidyalaya Seva Board had sent a list of selected candidates for appointment on the post of Assistant Teachers of Biology on 08.10.1998 and on the post of Assistant Teachers in Mathematics on 21.05.1999, therefore they are entitled to be treated at par with the appointees from the same advertisement.

3. In order to appreciate the case of the petitioners, it would be just and proper to take note of the two Rules of the Rules, 2013 (Annexure-10) which are impugned in the present writ applications. The relevant Rule 5 and 11 read as under:-

“5. Appointment to Post- The candidates shall be appointed against newly sanctioned posts from the date of issue of appointment letter.

11. Service Condition:- The Pay-Scale of teacher appointment under these rules shall same as prescribed for the teachers for the Nationalized Secondary School appointed in regular scale. But for the purpose of pension, the contributory pension scheme 2005 shall be applicable to all the teachers appointed under these rules. The newly created posts will cease to exist after falling vacant due to retirement of incumbent or any other reason.”



4. Mr. P. K. Shahi, learned senior advocate assisted by Sri Shahi Bhushan Singh and Gyan Abhinav, learned advocates, while pleading the case of the petitioners, submits that the petitioners are seeking their right by virtue of their appointments made pursuant to the advertisement of 1988 and 1995. It is pointed out that pursuant to the instructions received from the Director-cum-Secretary, Secondary Education Department, Government of Bihar vide his letter no.6800 dated 09.03.1988 for the purpose of preparing a panel of Assistant Teachers including in the subject of Biology and Mathematics in different high schools in the State of Bihar, an advertisement was published in daily newspaper 'Aaj' in August, 1988 by Bihar School Examination Board, Patna. Interview letters were issued, the petitioners participated in the interview and thereafter the result of successful candidates was published and a panel was prepared accordingly. As regards the panel prepared for the subject of Biology and Mathematics a vigilance enquiry was set up and thereafter the panel was cancelled vide letter no.102 dated 20.02.1991. A direction was issued to the Chairman, Vidyalaya Seva Board, Patna to prepare a fresh panel with a direction that those candidates who had applied earlier would not apply.

5. On 29.09.1995 a fresh advertisement bearing no.1/95 was published which was shown to be in continuation of



advertisement no.1/88. A copy of the advertisement no.1/95 is Annexure-3 to the writ application. Learned senior counsel submits that on perusal of Annexure-3, it would appear that the fresh advertisement was issued in continuation of advertisement no.1/88. Fresh interviews were held for the candidates of Biology on 17.12.1997 and for the candidates of Mathematics in the month of September, 1998. All the writ petitioners appeared in the interview and thereafter result was published. They were declared successful and then a list of selected candidates was published on 08.10.1998 and 21.05.1999 for the subject of Biology and Mathematics respectively. Copies of the merit lists are enclosed as Annexure-4 series to the writ application. Despite publication of the merit list when the petitioners were not being appointed and no action was being taken by the respondents, some of the successful candidates in the subject Bio logy filed the writ applications, lead case being CWJC No.2994 of 2000.

6. By Annexure-5 to the writ application, the learned Single Judge of this Court disposed of the CWJC No.2994 of 2000 and other analogous cases. Before the learned Single Judge a question arose as to the existence of the vacancies in view of bifurcation of the State of Bihar due to coming into force of Bihar Re-organization Act with effect from 15.11.2000. The learned writ Court having discussed the materials available on the record finally came to a conclusion that



“..... Having regard to the fact that the figures of posts advertised and appointments made etc. leaving the backlog of 654 or 563 vacancies tally with the figure (of backlog) mentioned by the State, I proceed on the assumption that number of backlog vacancies is 563 and the number of reported vacancies is 534 as mentioned above.”

7. Thereafter the learned writ Court after rejecting the contention of the State that existing vacancies can be filled from the reserve category candidates alone held that vacancies in existence at the time of commencement of the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 cannot be treated as released. The learned writ Court also held that all 534 vacancies cannot be treated as ‘carried forward’ vacancies in view of the law laid down in **Indra Sawhney’s case** reported in **AIR 1993 SC 477**. The learned writ Court held that the State is obliged to consider the cases of the petitioners who include candidates in both unreserved and reserved categories following 50% rule for their appointment against the existing vacancies.

8. The learned writ Court found that the vacancies have to be re-worked out, 30% of the available vacancies have to be left apart for the Assistant Teachers of Primary/Middle Schools and



Clerks of the Secondary Schools. The Court also found that nothing whatsoever was stated by the State about vacancies in the project schools. The advertisement was for both the nationalized schools and the project schools. In these circumstances, the writ Court observed that “ the State is thus required to calculate the number of vacancies and consider the case of the petitioners and others similarly situated for their appointment from the panel against those vacancies in accordance with law.....”

9. The judgment of the learned writ Court in CWJC No.2994/2000 and other analogous matters came to be challenged in LPA No.439/2001 which was dismissed vide order dated 16.12.2004 (Annexure-7 to the writ application). A contempt application was preferred by the petitioners. The respondents gave an undertaking before the Hon’ble High Court that after verification of the certificates appointment letters shall be issued to the candidates. It is the case of the petitioners that their certificates were duly verified, but the State Government preferred Special Leave to Appeal (Civil) No(s).6369-6375/05 in the Hon’ble Supreme Court. Some of the candidates who were aggrieved by the order of the Hon’ble Division Bench also went to the Hon’ble Supreme Court. However, vide order dated 28.08.2012 (Annexure-9) all the SLPs were dismissed.

10. A reading of the order passed by the Hon’ble



Supreme Court would show that the Hon'ble Supreme Court was informed that during the pendency of the SLPs the entire process of selection for appointment of teachers in the State of Bihar had undergone a change but having taken note of the same the Hon'ble Supreme Court refused to interfere with the impugned judgment passed by the High Court.

11. After dismissal of the SLPs and during hearing of the contempt application before the Hon'ble High Court, the State Government came out with the notification contained in memo no.850 dated 31.05.2013 (Annexure-10). The petitioners have been appointed under the Rules, 2013 and because under the Rules, 2013 by virtue of Rule 5 and 11 therein they are sought to be covered under the 'New Pension Scheme,' they have raised a grievance, as stated above.

12. It is their contention that the Rules, 2013 has been framed with sole intention to frustrate the legitimate claim of the petitioners and, therefore, this Court while holding Rule 5 and 11 of Rules, 2013 arbitrary and bad in law should issue direction to the respondents to grant the petitioners all the benefits such as seniority and salary which were in existence prior to 1.09.2005 i.e. the date when the new pension scheme came into force.

13. The claims of the petitioners have been contested by respondent nos. 1 and 3. In the joint counter affidavit they have



submitted that in compliance of the order of this Hon'ble Court, the vacancies were recalculated on the basis of cadre strength and the figures were placed before this Hon'ble Court, thereafter the respondents were directed to make appointments against the recalculated posts and it was further directed to include such 30% vacancies which have been left out for the teacher of middle school and the clerks of secondary school. Accordingly, 675 new posts were again created in both subjects and after sanctioning the posts necessary appointments were made.

14. It is submitted that during the pendency of the SLPs before the Hon'ble Supreme Court the employment rules had gone under a complete change and new Employment Rules, 2006 came into force. Under the new Employment Rules, 2006, the posts of Assistant Teachers in secondary schools in regular scale were not existing and the vacancies accrued after enforcement of Employment Rules, 2006 were converted in the fixed salary pay. Since the previous rules of appointment were also repealed, therefore, Special Appointment Rules, 2013 and 2017 were published only for the appointment of candidates in both subjects. Therefore, the posts were created in the year 2013 and 2017 afresh with condition that these posts shall cease to exist after the retirement or death of the newly appointed teachers. It is submitted that the claims of the petitioners



are not in accordance with law and the writ petitioners cannot be allowed the benefits of seniority, payment of salary and pensionary benefits treating them as appointed from the date of receipt of panel i.e. 08.10.1998 and 25.01.1999 respectively.

15. Regarding Rule 11 of the Special Appointment Rule, 2013 it has been clearly provided that for the purpose of pension, the Contributory Pension Scheme, 2005 shall be applicable to all the teachers appointed under Rule, 2013. It is stated that the State Government vide Finance Department letter no.1964 dated 31.08.2005 has taken a policy decision that after the enforcement of new pension rule, 2005 i.e. after 31.08.2005, the Government Servant appointed after 31.08.2005 shall be allowed the benefits of Contributory Pension Scheme. Therefore, the petitioners who were appointed much after the enforcement of Rule 2005 are not entitled for grant of the benefits of old pension rule. It is also submitted that the claims of the petitioners for the payment of salary from 1998 or 1999 and further claim for their seniority with retrospective effect are misconceived and misplaced. The panel of 1998 and 1999 were already cancelled and the said panel was not restored by the learned writ Court in CWJC No.2994 of 2000.

16. Contesting the response of the State, learned senior counsel representing the petitioners would submit that once the



Letters Patent Appeal preferred by the State was dismissed on 16.12.2004, the State government had no occasion to come out with new Appointment Rules, 2006, particularly when the process of selection pursuant to the said advertisement was under process and during the course of hearing of contempt application, the then Director Secondary Education had given undertaking that after verification of testimonials/certificates the appointment letter will be issued. It is contended that after commencement of selection process, the respondents cannot put some riders to alter the terms and conditions of the advertisement and any action contrary to settled law is contemptuous. It is submitted that the delay in the matter of appointment of the petitioners occurred due to laches on the part of the respondents which cannot be treated as weapons to victimize the petitioners. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Poonamal & Ors. Vs. Union of India & Ors.** reported in (1985) 3 SCC 345, **N.T. Bevinkatti, Etc. Vs. Karnataka Public Service Commission & Ors.** (1990) 3 SCC 157 and a Division Bench judgment of this Court in the case of **Ashok Kumar Vs. the State of Bihar** in C.W.J.C. No.454 of 1992 decided on 16.10.1992. All these judgments have been cited to support their contention that the petitioners who have been appointed pursuant to the selection process initiated in the year 1988 and 1995 cannot be



deprived of their rights by retrospective operation of law i.e. in this case by virtue of New Employment Rules of 2006 and the New pension Scheme of 2005.

CONSIDERATION

17. Having heard learned senior counsel for the petitioners and learned Advocate General assisted by other State Law Officers and upon perusal of the pleadings available on the record, we find that these writ applications are to be decided in the light of their peculiar facts situation. The Hon'ble Supreme Court while passing the order dated 28.08.2012 in the Special Leave to Appeal (Civil) No(s).6369-6376/2005 (Annexure-9) has taken note of the peculiar facts situation of the case in the following words:-

“On 9.3.1988, the Director, Secondary Education, Government of Bihar sent a requisition to the Vidyalaya Sewa Board for sending panels of teachers in Biology, Mathematics and other subjects. An advertisement being 1/88 was published on 30.07.1988 for appointment of Assistant Teachers in the Nationalized Secondary Schools as well as in the Project Schools. The Vidyalaya Sewa Board prepared a panel in 1990 for appointment in Biology subject. On 20.02.1991, the State Government did not approve the panel and cancelled it and demanded a fresh panel. In the meantime, the new reservation policy of the State Government came into force. The Board in continuation of the earlier advertisement No.1/88, issued a fresh advertisement on 29.04.1995. The respondents, who were duly selected pursuant to the said advertisement issued in 1995, have still not been appointed. In the



meantime, the entire process of selection for appointment of teachers in the State of Bihar has undergone a change. Be that as it may, in the peculiar facts and circumstances of these cases, we are not inclined to interfere with the impugned judgment passed by the High Court. The special leave petitions are accordingly dismissed.”

18. I have noticed that initially as regards the panel prepared for the subject of Biology and Mathematics, a vigilance enquiry was held and the panel was cancelled vide letter no.102 dated 20.02.1991, thereafter in 1995 a fresh advertisement took place and fresh panels were prepared in the year 1998 and 1999 but the said panels were not given effect to, the State of Bihar was bifurcated w.e.f. 15.11.2000, in these circumstances while deciding CWJC No.2994, 7732, 8926 and 9259 of 2000 (Annexure-5) the learned writ Court was called upon to examine as to the existence of the vacancies. It was also occasioned because of the intervening circumstances such as coming into force of the Reservation Act of 1991 and the judgment of the Hon'ble Supreme Court in the case of **Indra Sawhney** (supra). There was one more difficulty in finding out the existing vacancies and that was bifurcation of the State of Bihar with effect from 15.11.2000. The learned writ Court having gone through the contentions of the parties in these writ applications had to finally accept the figures given by the State for purpose of deciding those



cases. The learned Writ Court took note of the fact that some more vacancies might have occurred in the meantime and because the earlier number of vacancies have been worked out in the undivided State of Bihar and now a portion thereof has to be allocated to the State of Jharkhand, it is clear that the vacancies have to be re-worked out. Further the learned writ Court held that 30% of the available vacancies have to be left apart for the Assistant Teachers of Primary/Middle Schools and Clerks of the secondary schools. The advertisement was for both the nationalized schools and the project schools. In the ultimate analysis it was held that the State was required to calculate the number of vacancies and consider the case of the petitioners and others similarly situate for their appointment from the panel against those vacancies in accordance with law.

19. A perusal of the judgment of the learned writ Court in CWJC No.2994/2000 and other analogous matters (Annexure-5) would show that in the said writ application these petitioners were not seeking any relief to treat them at par with the other appointees of 1997 in different subjects. They were not even seeking seniority or payment of salary treating them to have been appointed with effect from the date of preparation of select list/panel for the purpose of Assistant Teacher in Biology and Mathematics. The Writ Court observed that even though the petitioners as empanelled candidates do



not have any vested indefeasible right to be appointed from the panel, they certainly have a right to be considered for such appointment. It is in this background that the writ Court issued direction to the respondent – State to consider the case of the petitioners and other similarly situated persons for their appointment after recalculating the number of vacancies.

20. It is a matter of record that the judgment of the learned writ Court (Annexure-5) came to be challenged in the Letters Patent Appeal and after dismissal of the Letters Patent Appeal, in course of hearing of the contempt application before the High Court, the State Government came out with statement that after verification of the testimonial of the candidates, they would be offered appointment letters but at the same time the State Government preferred SLPs before the Hon'ble Supreme Court and during the pendency of the SLPs before the Hon'ble Supreme Court since the year 2005, the State Government came out with some policy decisions.

21. The first policy decision was taken to abolish the old pension scheme and to replace it with a new pension Rules, 2005 which came into force with effect from 01.09.2005. Under the New pension Rules, 2005, the persons appointed after coming into force of the New Pension Rule, 2005 shall be entitled for the benefits of the



contributory pension scheme. The second policy decision came into force when the State Government decided to repeal all the previous rules, resolutions, orders, and instructions in the matter of appointment in the secondary school of the State of Bihar and enforced Bihar District Board, Bihar Municipal Bodies, Secondary and Higher Secondary Teacher's Employment and Service Condition Rules 2006 (referred to as the 'Employment Rules, 2006') vide Department's notification no.11 NI-02-13 (9) part 1226, dated 11.07.2006 and department's notification no.11 NI-02-13/91 (Part) 1227 dated 11.07.2006. By virtue of the Employment Rules, 2006 powers of appointment in Secondary Schools along with the provisions of payment of fixed salary in lieu of salary in time scale to post of teacher were vested in the Panchayati Raj Institutions/Municipal bodies in accordance with provisions of the Employment Rules, 2006. Vide Government Resolution No.1409 dated 05.08.2006, the vacant posts of Assistant Teachers (trained) under the non-plan head were converted into the post of fixed salary and further that all post of Assistant Teacher in regular pay scale falling vacant in future would be converted to fixed salary post under the provisions of Employment Rules, 2006.

22. A perusal of the notification dated 31.05.2013 (Annexure-10) by which Rules 2013 came into force, would show the



reasons as to why and under what circumstances the Department of Education, Government of Bihar had to come out with Rules, 2013. The Rule, 2013 also called Special Rules 2013 was framed because on the one hand the previous rules for appointment of teachers in the secondary schools were already repealed but on the other hand the State Government was required to comply with the orders passed by this Court in CWJC No.2994/2000 and other analogous matters. The Government of Bihar in exercise of its power conferred under Section 15 of Bihar Non Government Secondary School (Taken Over Management and Control) Act, 1981 decided to frame the Special Rules, 2013 with sole intention to take steps for appointment against 329 vacancies in Biology and 312 in Science-Math Subject.

23. The Special Rules, 2013 clearly states in Rule 1(iii) that “ it shall come into force with effect from the date of issue of the notification and shall be valid for appointment in accordance with the orders of the Hon’ble High Court relating to the Advertisement No.01/88 and in its (01/88) series published in the year 1988 and 1995 by the dissolved Vidyalaya Sewa Board and after the present appointment it shall cease to exist automatically.”

24. Rule 5 of the Special Rules, 2013, as quoted above, states that the candidates shall be appointed against newly sanctioned posts from the date of issue of appointment letter. Rule 11 provides



the service condition under which it is specifically stated that the pay-scale of teacher appointment under these rules shall be the same as prescribed for the teachers for the Nationalized Secondary School appointed in regular scale.” This part of Rule 11 demonstrates the intention of the State Government to provide regular scale of pay to these petitioners which they would not have been entitled to under the new Employment Rules of 2006, however for the purpose of pension, the Special Rules, 2013 has made it clear that contributory pension scheme 2005 shall be applicable to all the teachers appointed under these rules. It further provides that newly created posts will cease to exist after falling vacant due to retirement of incumbent or any other reason.

25. After the Special Rules, 2013 (Annexure-10) was notified, the consolidated appointments of the petitioners were notified on 22.06.2013 vide Annexure-11 and 11/1 respectively to the writ application. The petitioners submitted their joining without any protest, but after a year or so they decided to challenge the Rule 5 and 11 of the Special Rules, 2013.

26. Once I notice the two major policy decisions of the State government during the intervening period, it appears to us that the petitioners cannot claim discrimination in the matter of their appointments and the benefits available to them pursuant to such



appointments. These are not the cases falling in the category of cases where during on going selection process a new rule or guideline has been introduced in the matter of on going recruitment process. In my considered opinion in the facts of these cases it cannot be said that the State government came out with any law, norm or guidelines introducing something new in the on going selection process. The petitioners have been appointed following the same process which were in vogue at the time of advertisement, but by virtue of judicial order, however due to the intervening circumstances after recalculation of existing vacancies when they came to be appointed, by virtue of two policy decisions of the State government as mentioned above fresh sanction of posts were required.

27. The reliance placed by the petitioners on the judgment of the Hon'ble Supreme Court in the case of **A.A. Calton** (supra) and other judgments noted above seems to be misplaced inasmuch as the facts situation of these cases are totally different from that of the case of **A.A. Calton** (supra) and other judgments referred above.

28. In the case of **A.A. Calton** (supra) the appointment of one Mr. A.P. Joseph as Principal of Ranikhet Intermediate College, Ranikhet which was a minority institution having the protection of Article 30 of the Constitution in preference to Mr. A.A. Calton came



to be challenged. It was submitted that the Selection Committee had started proceedings for selection in the year 1973, the Committee recommended three persons, the appellant was given third rank in that recommendation. However, the Regional Deputy Director of Education did not approve the said selection. The matter was again remitted to the Selection Committee and on the second occasion the Selection Committee recommended the names of the appellant and respondent no.2 a higher rank. That selection also was disapproved by the Deputy Director. The third recommendation was made by the Selection Committee which was questioned by the appellant before the High Court. The High Court quashed the selection made by the Selection Committee on the third occasion as having been without jurisdiction and directed the Director of Education to make an appointment in accordance with Section 16(F) (4) of the U.P. Intermediate Education Act, 1921 (2 of 1921). Pursuant to the direction of the High Court the Director appointed Mr. A.P. Joseph to the post which was questioned by the appellant leading to filing of the appeal before the Hon'ble Supreme Court. The High Court dismissed the petition. A contention was raised before the High Court by the appellant that the appointment made by the Director was opposed to the relevant provisions of the Act as they stood on the date of the appointment since on that day by reason of the amendment made to



the Act by U.P. Act 26 of 1975 which had come into force on August 18, 1975, the power of the Director to make an appointment had been taken away in relation to minority institutions and in any event the Director could not have appointed respondent no.2 for the post since his selection had been disapproved earlier by the Deputy Director. Both the contentions were rejected by the High Court. In appeal before the Hon'ble Supreme Court, after taking note of Section 16(F) of the Act as it stood prior to August 18, 1975, the Hon'ble Supreme Court found that the amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under Section 16-F of the Act. The Hon'ble Supreme Court found that there was no word in Section 16-F of the Act which may be read as if by necessary intendment which would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16-F(4) is an integrated one. The Apex Court held that at every stage in that process certain rights are created in favour of one or the other of the candidates, therefore, Section 16-F of the Act cannot be construed as merely a procedural provision. It was held that although the Director in the said case exercised that power subsequent to August 18, 1975 on which date the amendment came



into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect.

29. If we compare the facts of the present case with that of the case of **A.A. Calton** (supra) it would appear that in the said case the Hon'ble Apex Court was of the view that the process of selection under Section 16-F of the Act commenced from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then). In the present case, the facts reveal that even though the selection process was initiated in the year 1988 for the first time but the panels prepared therein were cancelled and a fresh advertisement was issued in the year 1995. The fresh panels were prepared but were not given effect to because of intervening circumstances. It is by virtue of the judicial order passed by the learned writ Court that the existing vacancies were recalculated after working out the vacancies keeping in mind the guidelines of the writ Court. It is not a case where there has been any change in the rule governing the selection process. In this case the petitioners who have been appointed by virtue of the selection process initiated in the year 1995 are seeking their rights contending that their appointments cannot be said to have been made on freshly sanctioned post and further that despite their being a change in the policy decision of the government with respect to all the



government servant appointed on or after 01.09.2005 with regard to payment of pension, the same would not apply in the case of the petitioners who have been admittedly appointed after 01.09.2005. In my opinion, the issues raised in the present writ application are quite different and distinct from the case of **A.A. Calton** (supra).

30. In the case of **Smt. Poonamal and others** (supra) the Hon'ble Supreme Court was considering a case where two parallel schemes for payment of family pension to the government servants were in operation. There was pre-liberalization scheme which continued to be in force for those who retired prior to January 1, 1964 or those who did not contribute out of the death-cum-retirement gratuity, roughly styled as non-contributory scheme. The other was the contributory scheme. Both the schemes were incorporated in Rules 54 and 55 respectively of the Civil Services Pension Rules, 1972. On September 22, 1977 the Union of India took a decision by which the pre-condition of contribution of two months' emolument out of death-cum-retirement gratuity was done away with. Since September 22, 1977 the contributory scheme ceased to exist. A very anomalous situation arose because the widows of the government servants who had not agreed to make the contribution in accordance with the 1964 scheme were denied the benefit of pension scheme and this disability continued even after the changes introduced in 1977



when the scheme ceased to be contributory. Such widows moved the Hon'ble Apex Court in writ petitions. Widows similarly situated had also filed writ petition in the High Court of Bombay. A Division Bench of the High Court rejected the writ petition and when the matter came to the Hon'ble Supreme Court, the Hon'ble Supreme Court examined the concept of pension reiterating that the pension is a right not a bounty or gratuitous payment. The Hon'ble Supreme Court held that the payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. The Hon'ble Apex Court referred its own judgment in the case of **Deoki Nandan Prasad V. State of Bihar** reported in (1971) 2 SCC 330, **State of Punjab V. Iqbal Singh** reported in (1976) 2 SCC 1 and **D.S. Nakara V. Union of India** reported in (1983) 1 SCC 305. In the given set of facts the Hon'ble Supreme Court found that since the family pension scheme has become non-contributory effective from September 22, 1977 any attempt at denying its benefit to widows and dependents of government servants who had not taken advantage of the 1964 liberalization scheme by making or agreeing to make necessary contribution would be denial of equality to persons similarly situated and hence violative of Article 14.

31. A bare reading of the judgment in the case of **Smt.**



Poonamal and others (supra) would show that the ratio of the said judgment has no application in the facts of the present case. Further reliance of the petitioners on the case of Ashok Kumar (supra) would also be of no help inasmuch as in the said case the Hon'ble Division Bench of this Court was considering a challenge to the validity of sub-section (3) of Section 4 of the Reservation Act introduced by the State of Bihar by way of Ordinance namely Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes Ordinance 1991 (Bihar Ordinance No.33 of 1991) which provided that a reserved category candidate who is selected on the basis of his merit shall be counted against 50% vacancies of open merit category and not against the reserved category vacancies. On going through the judgment of this Court in the case of Ashok Kumar (supra), it appears to me that when the midst of the selection process the provisions of the ordinance were sought to be applied with retrospective operation, the Hon'ble Division Bench found that it will not apply in the selection process because the same had been on the date on which it was sought to be retrospectively applied. The Hon'ble Division Bench relied upon the judgments of the Hon'ble Apex Court in the case of **State of Gujarat V. Raman Lal Keshav Lal Soni** reported in (1983) 2 SCC 33 = AIR 1984 SC 161 wherein it has been held that “ The Legislature is undoubtedly



competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, either prospective nor retrospective laws can be made so as to contravene Fundamental Rights.” However, the Hon'ble Division Bench relied upon the judgment in the case of **P. Tulsi Das & Ors. Vs. Government of Andhra Pradesh** reported in **AIR 2003 SC 43 (paragraphs 11 to 14)** wherein the Hon'ble Supreme Court has reiterated that there cannot be a retrospective application of laws to deprive a citizen from his rights. Paragraph 23 from the judgment of the Hon'ble Apex Court in the case of **Chairman, Railway Board Vs. C.R. Rangadhamaiah** reported in **(1997) 6 SCC 623** has been quoted by the Hon'ble Division Bench in the case of **Ashok Kumar** (supra), which I quote hereunder:-

*“23. The said decision in **Raman Lal Keshav Lal Soni**⁵ of the Constitution Bench of this Court has been followed by various Division Benches of this Court (See **K.C. Arora v. State of Haryana**⁶; **T.R. Kapur v. Haryana**¹²; **P.D. Aggarwal v. State of U.P.**⁸; **K.Narayanan v. State of Karnataka**⁹; **Union of India v. Tushar Ranjan Mohanty**¹³ and **K. Ravindranath Pai v. State of Karnataka**¹⁴.)”*

“24. In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive



*appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in **Roshan Lal Tandon**³, **B.S. Yadav**⁴ and **Raman Lal Keshav Lal Soni**.”*

32. As stated above, in the present case, there is no amendment of the Rule governing the selection process of the petitioners. The petitioners’ selection has been done following the same procedures which were in existence prior to repeal of the previous laws. The only peculiar facts of the case is that because the previous laws governing the selection of the petitioners had already been repealed and New Employment Rule, 2006 has come into force wherein there was no existing post with fixed pay scale, the State government in order to comply with the order of this Court had to sanction fresh posts in fixed pay scale for which Special Rule, 2013 was brought into. This being the position, even the judgment of the Hon’ble Division Bench in the case of **Ashok Kumar** (supra) will not



be applicable in the present case.

33. In these cases what has fallen for consideration before this Court is that as to whether or not the State government is justified in coming out with Special Rules, 2013 providing for appointment of the petitioners on a newly sanctioned post with an intention to comply with the order of the Court. I have no hesitation in recording that for the purpose of compliance with the order of this Court the State Government had no option but to sanction posts afresh in the subject Biology and subject Mathematics which the government did and thereby paved away for appointment of these petitioners in the regular scale of pay which was available to the teachers of the nationalized secondary schools. In absence of Special Rules, 2013 these petitioners could not have been appointed because after repeal of the previous rules, resolutions, orders and instructions for appointment of teachers in secondary schools of the State of Bihar and upon coming into force of the Employment Rules, 2006, the petitioners could not have been appointed in the regular pay-scale as prescribed for the teachers of the nationalized secondary schools. The government was required to recalculate the entire vacancies due to intervening circumstances and fresh initiatives were required to be taken for appointment of these petitioners in order to comply with the order of this Court. For this purpose the State government sanctioned



329 posts in subject Biology and 312 posts in subject Mathematics. By virtue of Rule 5 of the Special Rules, 2013, the candidates were appointed on the newly sanctioned post from the date of issue of appointment letter. No fault may be found with the Rule 5.

34. Similarly, while prescribing the service condition under Rule 11, the State government simply took note of the existence of the Contributory Pension Scheme, 2005 which was in force on the date of appointment of these petitioners and as the same is applicable to all the employees of the government who were appointed on or after coming into force of New Pension Rules, 2005, it has been provided that these fresh appointees shall be covered under the new Pension Scheme, 2005. As stated above, the New Contributory Pension Scheme, 2005 came into force by virtue of the policy decision of the government and it has been made applicable to all the appointees after cut-off date when the New Rule came into force. No discrimination has been done to the petitioners by pointing out under Rule 11 of the Special Rules, 2013 that the Contributory Pension Scheme, 2005 shall be applicable to all the teachers appointed under the Rules.

35. I am unable to accept the submission of learned senior counsel representing the petitioners that it would be a case of violation of Articles 14 and 16 of the Constitution of India if the



petitioners are not allowed the same benefits under the Old Pension Scheme which have been allowed to the appointees of 1997. Sufficient discussions have been made hereinabove to point out that the case of the petitioners have to be understood in the light of the judgments of the learned writ Court (Annexure-5) wherein considering the various intervening circumstances and factors the learned writ Court had directed to recalculate the entire vacancies against these two subjects and thereafter directed to consider the case of the petitioners. The peculiar facts and circumstances of the case were even noticed by the Hon'ble Supreme Court in its order dated 28.08.2012 (Annexure-9). The contention of the learned senior counsel that the petitioners would derive their right seeking coverage under Old Pension Scheme by virtue of the fact that they are the appointees from 1995 advertisement seems to have lost sight of the fact that the panel prepared by the Vidyalaya Sewa Board for the two subjects in the year 1998 and 1999 respectively were not given effect to and it is only after recalculation of the entire vacancies when under the direction of the judgment of the learned writ Court (Annexure-5) fresh vacancies were calculated, the posts were sanctioned and then a fresh consideration was given to the case of the petitioners, steps could be initiated for their appointment under the Special Rules, 2013. The case of these petitioners thus stands on a different footing and



cannot be treated equally with those who were appointed in other subjects in the year 1997.

36. In result, all these writ applications, being devoid of merit, are hereby dismissed.

(Rajeev Ranjan Prasad, J)

Rajendra Menon, C.J.- I Agree

(Rajendra Menon, CJ)

Arvind/-

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