

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17319 of 2012

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1. Binod Pal S/O Rajvan Pal Assistant Teacher, Middle School, Bharkuriya, Panchayat Berkap, Block- Dehri, District- Rohtas Resident Of Village + P.O- Darihat, District- Rohtas
 2. Sudama Singh S/O Bindeshwari Singh, Assistant Teacher, Middle School, Kastar Bikramganj, Distt- Rohtas Resident Of Village & P.O- Dhangai, Anchal, Bikramganj, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna.
2. The Director, Primary Education, Govt. Of Bihar, Patna.
3. The District Primary Teachers Promotion Committee, Rohtas., Through Its Chairman Cum District Education Officer, Rohtas.
4. The District Education Officer, Rohtas, Distt- Rohtas.
5. District Programme Officer (estt.), Rohtas, Distt- Rohtas.
6. Binod Kumar Mehta, Assistant Teacher, Middle School Rohtas, Distt- Rohtas.
7. Paras Nath Singh, Assistant, Middle School, Karakat, Distt- Rohtas.
8. Jitendra Kumar Singh, Assistant Teacher, Middle School Basgitiya, Bikramganj, Distt- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : None
For the State : Mr. Anwar Karim, AC to GP-10

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 18-09-2018

This matter was listed on different dates for admission.

Unfortunately, no one had appeared on behalf of the petitioners and in order to facilitate counsel for the petitioners to appear and assist the Court, today the case has been listed under the heading “For Dismissal”. Unfortunately, even today no one has appeared on behalf of the petitioners and as such the Court is constrained to decide the writ petition on the basis of the materials available on the record.



2. The present writ petition was filed by the two petitioners for a direction to the respondents to consider their case for grant of Graduate Trained Scale and also to consider their cases for further promotion.

3. The petitioner No. 1 was appointed as Assistant Teacher on 19.01.1996, whereas the petitioner No. 2 was appointed as such on 13.09.1994. Final Gradation list was prepared by the respondents in which the petitioner No. 1 was placed at Sl. No. 558, whereas the petitioner No. 2 was not included in the said gradation list.

4. The grievance of the petitioners in the present writ petition is that the respondent Nos. 6 to 8 appointed subsequent to the petitioners, have been included in the gradation list at Sl. Nos. 80, 85 and 99 and they have been granted Graduate Trained Scale and also considered for grant of promotion as Headmaster but notwithstanding the appointment of the petitioners prior to the appointment of respondent Nos. 6 to 8, the official respondents have adopted pick and choose and granted promotion to the juniors to the petitioners.

5. From the counter affidavit, it appears that the respondents have taken plea that the petitioner No. 1 is Physical Trained Teacher and in view of the judgment of the Division



Bench in **LPA No. 682 of 1995 (Tej Narayan Pathak and others Vs. State)**, teachers having training in physical education is not qualified for grant of Graduate Trained Scale. The respondents have taken plea that the special recruitment in compliance of the Apex Court judgment in Contempt Petition No. 297/2007 is not applicable in the case of the petitioners as the same was one time exercise under the direction of the Apex Court. There is no reference in the counter affidavit about the case of petitioner No. 2 whether the respondents have considered his case for grant of promotion in Graduate Trained Scale in accordance with the existing Rules. The counter affidavit is conspicuously silent on the point.

6. Thus, the respondents are directed to consider the case of the petitioner No. 2 for grant of Graduate Trained Scale in accordance with the Rules.

7. So far as the petitioner No. 1 is concerned, the respondents cannot take the plea that persons appointed in terms of Special Recruitment Rules, 2010 having physical education training are eligible for promotion to the Graduate Trained Scale and the petitioners appointed earlier to the teachers appointed in terms of the direction of the Apex Court, are not entitled to grant of promotion in the Graduate Trained Scale.



8. In the peculiar facts and circumstances, the respondents are directed to grant promotion to the petitioners in the Graduate Trained Scale from the date physical teachers appointed in terms of the direction of the Apex Court in Contempt Petition No. 297 of 2007 have been granted Graduate Trained Scale and grant all consequential benefits. The respondents cannot take plea that physical teachers appointed prior to the direction in the Contempt Petition No. 297/2007 are not entitled and those physical trained teachers appointed after the direction in Contempt Petition No. 297/2007 are entitled to grant of Graduate Trained Scale. Such stand of the respondents does not appeal to reason. Accordingly, they are directed to grant benefit of Graduate Trained Scale from the date physical trained teachers appointed pursuant to the 2010 Special Recruitment Rules have been granted. The case of the petitioner No. 2 has to be examined if he was appointed not as physical trained teacher then he should be granted from the date juniors have been granted such benefits.

9. In the event the case of the petitioner No.2 is found similar to that of petitioner No. 1 as physical trained teacher, the respondents have to grant Graduate Trained Scale from the date teachers appointed pursuant to the direction of the Apex Court in Contempt Petition No. 297 of 2007 have been granted. Final



decision in this regard must be taken by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order.

10. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2018
Transmission Date	

