

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21216 of 2011

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Basudeo Prasad Poddar, son of Late Bauku Poddar, resident of Sarvjanik Hanuman Mandir, Naya Tola, Katihar, Ward No. 35, Police Station + District- Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary (Primary Education), Human Resources Development Department, Government of Bihar, Patna
2. The Director (Primary Education) Human Resources Development Department, Government of Bihar, Patna
3. The Regional Deputy Director of Education, Koshi Division, Saharsa, District- Saharsa
4. The District Superintendent of Education, Katihar, District- Katihar
5. The District Education Establishment Committee through its Chairman, Katihar, District- Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Durga Nand Jha, Advocate Mr. Amrendra Kumar, Advocate
For the Respondent/s	:	Mr. Rishiraj Sinha, SC -19 Mr. Akhilesh Kumar Sinha, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 05-07-2018

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. The petitioner is aggrieved by the order dated 13.6.2011, Annexure-1 to the writ petition, whereby the claim of the petitioner for grant of graduate trained scale was denied on the ground that the petitioner has now superannuated.

3. Learned counsel for the petitioner submits that the respondents have granted the benefit of graduate trained scale to many junior persons right from 1988 but the petitioner who had



acquired the eligibility for such benefit was denied and on one or the other pretext his case was not considered.

4. The controversy as to grant of graduate trained scale by preparing combined gradation list or separate gradation list led to a lot of controversy and different contradictory judgments have been rendered by Single Bench or Division Bench and ultimately the matter was referred to the Full Bench in the case of **Ram Nath Prasad Singh Vs. The State of Bihar & Ors.: 2009(3) PLJR 384** and the Full Bench authoritatively decided that for the purpose of promotion as graduate trained there should be separate gradation list of Science and Arts Teacher and for further promotion to the post of Headmaster there should be combined gradation list of graduate trained. The Full Bench noticing the statutory rule of promotion framed by the State Government in exercise of powers under the proviso to Article 309 in the year 1993 directed the authorities to prepare gradation list and to take step for grant of promotion accordingly. The relevant part of the judgment of the Full Bench (paras 5 to 9) is quoted below for ready reference.

“5. Statutory rules viz. The Bihar Taken Over Elementary School Teachers Promotion Rules 1993 (in short, the Promotion Rules 1993), were also framed in exercise of the powers conferred by the provisions of Article 309 of the Constitution of India, by notification dated 9.1.1993 with retrospective



effect from 1.1.1986, which would show that 50% of the total posts are reserved for inter-trained and graduate trained Science teachers alone and that the Science teachers have got separate and independent identity. In Rule 2 of the Promotion Rules 1993, Grades 1 to 8 are defined as under: —

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- (2) ‘Grade’ means scale.
 - (3) ‘Grade-1’ means Matric Trained Basic Scale—(1200-2040)
 - (4) ‘Grade-2’ means Matric Trained Senior Scale—(1400-2600)
 - (5) ‘Grade-3’ means Matric Trained Selection Grade-(1640-2900)
 - (6) ‘Grade-4’ means trained Arts Graduate Scale Rs.(1640-2900) or Trained Science Graduate Scale (1640-2900)
 - (7) ‘Grade-5’ means Trained graduate Senior Scale Rs. (2000-3500)
 - (8) ‘Grade-6’ means Trained graduate Selection Scale Rs. (2200-4000)
 - (9) ‘Grade-7’ means Middle School’s Headmaster basic Scale Rs. (2000-3500).
 - (10) ‘Grade-8’ means Middle School’s Headmaster Senior Scale Rs.2200-4000
- For Grade 4, Arts Graduate Scale and trained Science Graduate Scales are separately shown. With regard to promotion, Rule 4 of the Promotion Rules 1993 states as follows:

4. Conditions for promotion: - The promotion of a teacher may only be considered on fulfilling the following:



- (1) He fulfills the minimum prescribed period of service for promotion;
- (2) He possesses minimum prescribed educational qualification and training for promotion;
- (3) There must be a vacancy meant for the category to which he belongs S.C., S.T or general according to latest rules regarding reservation;
- (4) He must be eligible for consideration for promotion on the basis of the seniority list against the available vacancies;
- (5) His service is satisfactory.”

The minimum educational and training qualifications are mentioned in Rule 5. Availability of posts is stated in Rule 6 and Rule 7 states how the draft seniority list for promotion is to be published. Rule 7 reads as follows: —

“7. Draft of seniority list for promotion:- By the end of the month of January of each year, the draft of the following seniority list, based on the position that existed on 31st of December of the previous year, shall be prepared according to the standard laid down in rule-8 by District Superintendent of Education in the following manner:

(1) Seniority list no.1 (which shall be for promotion to grade-3). In this list, firstly those trained graduate teachers who have completed minimum 12 years of service in grade-2, shall be placed; thereafter those matric trained teachers, who have completed minimum 18 years of service in grade-2 shall be placed;

(2) Seniority list no.2 (which shall be for promotion to Grade-4)—

(i) This list shall be prepared separately for arts and science teachers.

(ii) The teachers shall be placed in this list in the following order:

- (a) Trained graduate working in Grade-3;
- (b) Trained graduate working in Grade-2;



(c) Trained graduate working in Grade-1 and who have completed minimum 8 years of service in Grade-1.

(3) Seniority list no.3 (which shall be for promotion to Grade-6)—

(i) This list shall not be prepared separately for arts and science teachers but for both a consolidated list shall be prepared;

(ii) In this list, firstly those trained Post-graduate teachers who have completed minimum 12 years of service in Grade-5 shall be placed. Thereafter those trained graduate teachers who have completed 18 years of service in Grade-5 shall be placed.

(4) Seniority list no.4 (which shall be for promotion to grade-7 and to grade-8)—

(i) This list shall not be prepared separately for Arts and Science teachers but for both a consolidated list shall be prepared.

(ii) In this list teachers shall be placed in the following order:

(a) Trained Post-graduate teachers working in Grade-6;

(b) Trained post-graduate teachers working in Grade-5;

(c) Post graduate trained teachers working in Grade-4 and who have completed minimum 5 years of service in Grade-4:

Provided graduate trained teachers of SC and ST category shall be placed after post graduate teachers if post-graduate teachers of these categories are not available upto 31st December 1994;

(iii) From this list teachers working in Grade-4 and Grade-5 may be promoted to Grade-7 and teachers working in Grade-6 may be promoted direct to Grade-8.¶

It clearly shows that seniority list No.2 has to be prepared separately for Arts and Science teachers for promotion to Grade 4, whereas for seniority list No.3, which is for promotion to Grade 6, only a



consolidated list shall be prepared. Seniority list No.4 which is for promotion to Grade 7 and 8, is also to be prepared on the basis of a combined list.

6. In CWJC Nos.3475/88, 6594/88 and 1239/91, a Division Bench of this Court by common judgment dated 8.4.1993 held that the notifications issued under Section 8 of the Act provide separate scale for Science teachers and not invalid as the State has jurisdiction to issue executive instructions under Article 162 of the Constitution of India. The writ petitions filed by the Arts teachers for parity with Science teachers irrespective of grade were dismissed. In the said case, the petitioners questioned the promotion of Science teachers as Headmasters as those Science teachers were working in higher grades at the time of promotion. It was further directed that in the vacancies of posts with higher grade available for Art teachers, promotions shall be effected immediately. Such instructions, in the absence of any rule, have also got the force of law. The above decision was upheld on merit by the Supreme Court while dismissing SLP (Civil) - CC 5618/96 on 28.10.1996. Anyway, the notification considered in the above case was replaced by the Promotion Rules 1993 and it made a clear distinction between Science teachers and Arts teachers and proposed that two separate seniority lists for Arts and Science teachers shall be prepared for promotion to Grade 4. A consolidated list has to be created for promotion in Grades 6 to 8.

7. In Naresh Jha's case (supra), it was held that there is no separate cadre created for Arts and Science teachers. Rule 12 of the Bihar Service Code defines that the cadre means the strength of the service or a part of service sanctioned as a separate unit. Therefore, even though promotion rules had been framed and it referred to separate seniority list, it was held that the classification between Arts and Science was not correct. Therefore, it was held that the classification between Arts and Science teachers, in the absence of creation of a separate cadre is arbitrary. It is pertinent to note that the Bihar Taken over Elementary School Teachers Promotion Rules



1993 was not set aside. In fact, the said Rules were not even challenged. The learned single Judge, while referring the matter, noticed that as per Rule 12 of the Bihar Service Code, cadre means the strength of the service or a part of service sanctioned as a separate unit and, therefore, the view appears to be not correct. Rule 12 itself recognised part of service sanctioned as a separate unit as cadre. We have seen that while filling up the vacancies of Science teachers, the Arts teachers cannot be promoted. But to be promoted as Headmasters, seniority in the higher grade alone need be considered as both Arts and Science teachers working in Grade – 4 will get opportunity for promotion as Headmasters. Date of appointment at the entry level cannot be the criteria for promotion to the post of Headmaster. Teachers working in matric scale cannot over-take teachers working in graduate scale for the purpose of promotion as Headmasters. The earlier Government orders before framing the Rules were approved by this Court in the judgment dated 8.8.1997 in CWJC No. 3475 of 1988 and connected cases and approved by the apex Court. In fact, it can be seen that while sanctioning posts, separate scales were given for Arts and Science teachers. It was specifically mentioned that percentage should be maintained for matric trained teachers and graduate trained teachers. Therefore, it is a distinct part/unit of the cadre and there is nothing wrong in having a separate promotion list for Science teachers upto Grade 4. Teachers are required in the schools for teaching Science and they are appointed for that purpose. Both categories will get promotion upto the Grade 4 depending upon the vacancies allotted to the respective category. But after Grade 4, as mentioned in the promotion rule, there can only be a consolidated list. We are of the view that the Promotion Rules 1993 referred above is not unconstitutional. It was not held to be bad in Naresh Jha's case (supra) also. The above judgment is not challenged in any of the writ petitions. The Promotion Rules 1993 was accepted and acted upon in Uma Kant Yahi's case (supra).



8. The learned Advocate General pointed out that in view of the direction of the Division Bench, a consolidated list was prepared without any distinction between Arts and Science teachers and fresh rules were framed (but not implemented) only because of the directions of the Division Bench in Naresh Jha's case (supra) and due to urgency of the matter but subject to the orders of the Court in these cases. In view of the interim order, it has not been finalised. We are of the view that the direction of the Division Bench in Naresh Jha's case (supra), without setting aside the valid Promotion Rules 1993 was not correct. We overrule the same. It is for the Government to make separate lists of qualified teachers for both Science and Arts subjects as per the quota/unit fixed for promotion to Grade 4 and promotions can be made separately depending upon quota fixed for promotion among the Arts and Science teachers. But, after Grade 4, a common seniority list is to be prepared for promotion, so that both Arts and Science teachers could become Headmasters based on such common seniority list as prescribed in the Promotion Rules 1993.

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.”

5. In view of the Full Bench decision, the respondents are required to consider the case of the petitioner and if it is found that the petitioner is entitled to grant of promotion in graduate trained scale in terms of the judgment of the Full Bench in the case of **Ram Nath Prasad Singh Vs. The State of Bihar & Ors.:** **2009(3) PLJR 384** necessary decision would be taken by the respondents to grant the benefit to the petitioner as the respondents cannot deny consideration of the case of the petitioner for promotion saying that the petitioner has now superannuated. The respondents may grant notional promotion and work out the entitlement of the petitioner for pensionary benefits on grant of such promotion. The entire exercise in this regard must be completed by the respondents within a period of four months from the date of receipt/production of a copy of this order.

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

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.07.2018
Transmission Date	

