

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11805 of 2017

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1. Sunila Kumari, wife of Chandrashekhhar Choudhary, Village + P.O. - Ghonghour, P.S. - Babubarhi, District - Madhubani.
 2. Poonam Kumari, wife of Bindeshwar Mishra, Village + P.O. - Sagarapur, P.S.- Sakari, District - Madhubani.
 3. Asha Kumari, wife of Premchandra Mishra, Village + P.O. - Sagarapur, P.S.- Sakari, District - Madhubani.
 4. Anita Kumari, wife of Ramashish Thakur, Village + P.O. - Mahinathpur, P.S. - Basopatti, District - Madhubani.
 5. Bibi Tabassum Ara, wife of Abdu Barik, Village - Sugauna, P.O. - Basauli, P.S. - Rahika, District - Madhubani.
 6. Abha Kumari, wife of Nawal Kishore Thakur, Village + P.O. - Gosaintola Kewalpatti, P.S. - Rajnagar, District - Madhubani.
 7. Indu Kumari, wife of Late Sheoji Prasad Gupta, Village - Bhagwanpur, P.O. - Sugauna, P.S. - Rajnagar, District - Madhubani.
 8. Vijaya Devi, wife of Harishchandra Jha, Village + P.O. - Sauratha, P.S. - Rahika, District - Madhubani.
 9. Madhavi Devi, wife of Late Narain Pathak Village + P.O. - Gajhara, P.S.- Ladania, District - Madhubani.
 10. Madhavi Kumari, wife of Baidyanath Jha, Village + P.O. - Loha, P.S. - Kulkahi, District - Madhubani.
 11. Leela Kumari, wife of Chandrakant Sahu, Village + P.O. - Tirhutta, P.S. - Babubarhi, District - Madhubani.
 12. Meena Kumari, wife of Pratap Narain Thakur, Village + P.O. - Barseem, P.S. - Rudrapur, District - Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. That Director, Primary Education, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
4. That District Education Officer, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate
Mr. Ranvijay Singh, Advocate
For the Respondent/s : Mr. Prabhakar Jha, GP-27
Mr. Mukund Mohan Jha, AC to GP-27

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 20-03-2018

Heard learned counsel for the petitioners and State.

2. Vide order dated 17.11.2017 six weeks' time was



granted to the respondents to file counter affidavit, but neither the counter affidavit has been filed nor the grievance of the petitioner has been redressed, under the compelling circumstance, the Court is left with no option, but to decide the present writ application.

3. Petitioners have filed the present writ application for a direction to the respondents to consider their case for promotion to Graduate Trained Scale (Scale-4) and grant the benefit w.e.f. 28.06.2012 with all consequential benefits and also to consider the case of the petitioners for promotion to the post of headmaster considering the seniority of the petitioners.

4. Mr. Sunil Kumar Singh, learned counsel for the petitioners submits that the State Government has framed elementary School Teachers Promotion Rules in 1993 wherein the scheme has been formulated for grant of promotion from one grade to other grade after completion of “Kalabadhi”. Learned counsel submits that the petitioners were promoted as B.A. (Grade-4) scale vide office order on 28.06.2012. He referred to Annexure-2 to indicate that the name of the petitioner figures in the list. He submits that in different phases respondents have issued order granting the benefit of Graduate Trained Scale to many similarly circumstanced teachers, but in the matter of petitioners’ different yardstick was adopted and petitioners were not granted the benefit of Graduate Trained Scale and as such



they have been denied the consequential benefit of Graduate Trained Scale. With reference to different annexures, he further submits that on 17.06.2017, the District Education Officer, Madhubani has published the seniority list of Assistant Teachers for promotion in Graduate Trained Scale where the name of the petitioners figured. Referring to various annexures and averments made in the writ application, he submits that the petitioners have been subjected to hostile discrimination and as such this Court should issue direction to the respondents to extend the similar benefit considering the seniority and eligibility of the petitioners.

5. Since, no counter affidavit has been filed on behalf of the respondents to controvert the averments made in the writ application, the Court on the basis of principle laid down in the case of Smt. Naseem Bano vs. State of U.P. and Others: AIR 1993 SC 2592, is constrained to proceed, particularly, in view of the fact that while granting six weeks time to the respondents, it was indicated in the order that in absence of proper reply, the Court will proceed on the basis of non-traverse.

6. In the aforesaid circumstance, the writ application is disposed of with a direction to the District Education Officer, Madhubani (respondent no.4) to examine the claim of the petitioners as to the seniority and entitlement of the petitioners for grant of



Graduate Trained Scale and further consider the case of the petitioners for promotion to the post of headmaster, in case, similarly circumstanced and junior to the petitioners have been granted the benefit of Graduate Trained Scale and have been considered for promotion to the post of Headmaster by the respondents. Necessary corrective orders must be passed by the respondents to extend the same benefit protecting the interest of the petitioners on account of seniority and eligibility of the petitioners. Final decision in this regard must be taken by the respondents within a maximum period of three months from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2018
Transmission Date	

