

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1820 of 2018**

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1. Roushan Kumar Singh, Son of Ramesh Prasad Singh, Resident of Village- Kunwar Tola, Gangjala, Ward No. 18, P.S. and District- Saharsa, Bihar.
2. Jay Shankar Prasad, Son of Upendra Prasad Mandal, Resident of Nagar Parisad Ward No. 2, Vidyapati Muhalla Supaul, District- Supaul, Bihar.
3. Anand, Son of Shivndra Prasad Singh, Resident of Village- Baruari, Ward No. 01, Baruari Garh Baruari, District- Supaul.
4. Ravi Bhushan Prasad, Son of Shukdeo Prasad Sinha, Resident of Manganj Bazar, Ward No. 06, Manganj East, Mangan, District- Supaul.
5. Subrat Kumar Sah, Son of Ganesh Prasad Sah, Resident of Jai Prabha Nagar, Kayasth Tola, Ward No. 29, Saharsa, District- Saharsa.
6. Niranjan Kumar Singh, Son of Bikram Prasad Singh, Resident of Village- Rohuamani Near Post Office, Ward No. 1, Rohuamani, District- Saharsa.
7. Raj Kishor Chaudhary, Son of Prithiwi Chaudhary, Resident of 160 Polytechnic Road, Hatiyagachhi, Ward No. 32, Saharsa, District- Saharsa.
8. Dashrath Sah, Son of Nathuni Sah, Resident of Ward No. 08, Parsarma, Parsarmaparsauni, Parsarma, Supaul, District- Supaul.
9. Shyamal Kishor Kamat, Son of Dhaneshwar Kamat, Resident of Chain Singh Patti, Ward No. 17 Chainsing Patti, Supaul, District- Supaul.
10. Amit Kumar Amar, Son of Guneshwar Prasad, Resident of Manhara, Ward No. 1, Purikh, Saharsa, District- Saharsa.
11. Diwakar Pandit, Son of Vishnudev Pandit, Resident of Village- Kainjari, Post- Kainjari, Bhayasonvarsha, P.S.- Beldaur, Kingri Beldaur, District- Khagariya.
12. Harendra Kumar, Son of Panna Lal Sah, Resident of Dehad Ward No. 07, Dahad Saharsa, District- Saharsa.
13. Prashant Kumar, Son of Prauduman Kumar, Resident of Raghunathrao Knanewale Boys P.G. Hostel, Shree Hanuman Vyayam Prasarak Mandal Amravati, Amravati, Maharashtra.
14. Jitendra Kumar, Son of Pannalal Sah, Dehad, Ward No. 07, Dahad, Saharsa, Dehad, District- Saharsa.
15. Shivnandan Gupta, Son of Parmashwari Gupta, Resident of Tulsiyahi, Bhatauni Ward No. 12, Bhatauni Simri, Bakhtiyarpur, District- Saharsa.
16. Pramod Kumar Jha, Son of Bimal Kumar Jha, Resident of Near Bipasa Road, Kailashpuri Polytechnic Ward No. 34, Saharsa, District- Saharsa.
17. Gangadhar Sah, Son of Hariday Lal Sah, Resident of Ramta Vanshi, Ward No. 07, Ranta Khem, Saharsa, District- Saharsa.
18. Dharmendra Narayan Singh, Son of Mihirendra Narayan Singh, Resident of Patori, Ward No. 03, Patori, Panchgachiya, Satar Kataiya, Saharsa, District- Saharsa.

... .. Petitioner/s

Versus



1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna
2. The Joint Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Magistrate, Saharsha, District- Saharsa.
5. The District Education Officer, Saharsa, District- Saharsa.
6. The District Programme Officer, Saharsa, District- Saharsa.
7. The District Education Officer, Sheikhpura, District Sheikhpura.
8. The District Programme Officer, Sheikhpura, District- Sheikhpura.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Dr. Bipin Chandra, Advocate  
For the Respondent/s : Mr. Samir Kumar, AC to SC-16

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**  
**ORAL ORDER**

4      02-09-2019                      Heard learned counsel for the petitioners and the respondents.

2. The petitioners have filed the present writ application challenging the order of the Director, Primary Education, as contained in Memo No. 1239 dated 29.11.2016.

3. The respondent Director, Primary Education while issuing guidelines to the District Education Officer, Sheikhpura/ the District Programme Officer (Establishment), Sheikhpura has noted that in view of departmental notification no. 940 dated 01.09.2011, Rule 16 the untrained teachers are not entitled to grant of promotion and the Physical trained teachers are also not entitled for grant of promotion. They are not even entitled to grant of graduate trained scale.



4. Learned counsel for the petitioners submits that the guideline issued by the Director, Primary Education (Annexure-5) is totally without jurisdiction and it has absolutely no application to the fact of the case.

Firstly; he submits that the petitioners were appointed as physical trained teacher in the year 2007. Referring to 2006 Rules, he submits that the Rule categorize the trained teacher and the category of trained teacher includes the physical trained teacher. He submits that right from inception the petitioners have been granted trained scale treating them as trained, therefore, the guideline issued in 2011 cannot be applicable in the case of these petitioners, as the prevalent rule at the time of recruitment of the petitioners was 2006 Rules and, therefore, the right and interest of the petitioners, as trained teachers, have to be considered in the light of prevalent 2006 Rules under which the petitioners were appointed as trained teacher.

Secondly; he submits that the guidelines issued by the Director, Primary Education is unconstitutional as minimum two promotions is the constitutional mandate under Articles 14 and 16 of the Constitution of India and there are judgments to that effect. For ready reference the judgment in the case of **Raghunath Prasad Singh Vs. Secretary, Home (Police)**



**Department, Government of Bihar & Ors.**, reported in **1988 (Supp.) SCC 519** and in the case of **State of Tripura & Ors. vs. K.K. Roy**, reported in **(2004) 9 SCC 65**.

6. In view of the discussions made herein above, the Court has absolutely no hesitation in holding that the petitioners were appointed as trained teachers are entitled to trained scale and other benefits as trained teacher for all practical purposes.

7. Accordingly, the order as contained in Annexure-5 shall not apply in the case of the petitioners, who were appointed in terms of 2006 Rules, which recognizes the petitioners as trained teachers.

8. Necessary decision granting promotion as graduate trained scale or Headmaster may be taken by the concerned respondent at the earliest preferably within a period of four months from the date of receipt/production of a copy of this order treating the petitioners as trained teachers with all consequential benefits.

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

**(Anil Kumar Upadhyay, J)**

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