

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4577 of 2015

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1. Ajay Kumar Singh, Son of Nag Pujan Singh, resident of Bandhu Barwa, P.S. Ramgadhwa, District- East Champaran.
 2. Deep Narayan Thakur, Son of Ram Chandra Thakur, resident of village- Pakrideyal, District- East Champaran.
 3. Anirudh Kumar, Son of Ambika Jha, resident of village- Srikrishna Nagar, District- Motihari.
 4. Chitranjan Singh, Son of Raj Narayan Singh, resident of village- Gujraul, P.S. Pachpakri, District- East Champaran.
 5. Om Prakash, Son of Bharat Prasad Gupta, resident of Mohalla- Gopalpur, District- Motihari, East Champaran.
 6. Harendra Kumar, Son of Baijnath Prasad, resident of village- Naya Bazar, District- East Champaran.
 7. Ajay Kumar Singh, Son of Chandrika Singh, resident of village- Balmi Nanhkar, P.S. Kalyanpur, District- East Champaran.
 8. Brajesh Kumar Singh, Son of Narendra Kishore Singh, resident of village- Mathiamol, P.S. Lakhaura, District- East Champaran.
 9. Upendra Sahni, Son of Ram Sundar Sahni, resident of village- Akauna, P.S. Chiriya, District- East Champaran.
 10. Upendra Kumar Rai, Son of Ramchandra Rai, resident of village- Narayanpur, P.S. Patahi, District- East Champaran.
 11. Arvind Kumar Srivastava, Son of Madan Prasad Srivastava, resident of village- Chandmari, Akauna, District- Motihari- East Champaran.
 12. Kamlesh Kumar, Son of Rajvanshi Singh, resident of village- Bharvasia, District- East Champaran.
 13. Kaushal Kumar, Son of Lal Kishore Prasad, resident of village- Srikrishna Nagar, Ward No. 31, District- Motihari.
 14. Chandeshwar Prasad, Son of Ram Jivanram, resident of village-



Madpakothi, P.S. Bairangnia, District- Sitamarhi.

15. Umesh Kumar Rai, Son of Harendra Prasad Yadav, resident of village- Naurangia, District- East Champaran.
16. Ram Ayodhya Sahni, Son of Anant Sahni, resident of village- Tikulia, P.S. Pipra, District- East Champaran.
17. Narendra Kumar Sharma, Son of Shiv Pujan Sharma, resident of village- Shantipuri, Motihari, District- East Champaran.
18. Sunil Kumar, Son of Yogendra Prasad, resident of village- Jhitkatia, District- East Champaran.
19. Md. Faroque Ahmad, Son of Ghulam Rashool, resident of village- Murgiatola, P.S. Ramgadhwa, District- East Champaran.
20. Rashmi Kumari, Wife of Mohan Singh, D/o Pirthavi Prasad Singh, resident of village- Sarisawan, P.S. Turkaunia, District- East Champaran.
21. Manoj Kumar Singh, Son of Surendra Prasad Singh, resident of village- Bangra, District- East Champaran.
22. Ravindra Kumar Rao, Son of Kapildev Rao, resident of village- Sirsiya, P.S. Bagha, District- West Champaran.
23. Prem Chand Prasad, Son of Rameshwar Prasad, resident of village- Brahampura, District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary, Department of Education, Government of Bihar, Patna
2. The Director, Primary Education, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Muzaffarpur.
4. The District Education Officer, East Champaran.
5. The District Primary Teacher Promotion Committee, through the District Programme Officer (Establishment), East Champaran
6. Sobha Kumar, Assistant Teacher, Upgraded Middle School, Ratanpur,



- Raxaul.
7. Sanjeev Kumar, Assistant Teacher, Upgraded Middle School, Tilkahani, Ramgadhwa.
 8. Sharma Thakur, Assistant Teacher, Upgraded Middle School, Kaswa, Laukahan, Gogasahan.
 9. Nand Kishore Prasad, Assistant Teacher, Upgraded Middle School, Semra Mauza, Chakig.
 10. Rabindra Prasad, Assistant Teacher, Upgraded Middle School, Pakadiya Tola, Harsidhi.
 11. Basuki Nath Thakur, Assistant Teacher, Upgraded Middle School, Bahuara, Gopising, Katelahari Tola, Tetariya

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raghwanand Mr. Sanjay Kumar, Advocates
For the Respondent/s	:	Mr. Umesh Kumar Mishra, Mr. Anshuman Singh, Advocates Mr. Syed Iqbal Ahmad, SC 20 Mr. Mahendra Pd. Verma, Ac to SC 20

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 23-12-2020

This writ application has been filed on behalf of the petitioners for a direction to the respondent authorities to grant promotions to the petitioners on the post of Graduate Trained Teacher with effect from 31.12.2012 as their juniors (respondent nos.6 to 11) have already been promoted on the post of Graduate



Trained Teachers with effect from said date.

2. They have further prayed to quash the office order contained in Memo Nos.2612 and 2613 dated 28.06.2013 (Annexure 2 and 2/1) issued from the office of District Education Officer, East Champaran, Motihari by which promotion to the post of Graduate Trained Teachers have been granted to the Matric trained teachers including respondent nos.6 to 11 in terms of resolution dated 20.06.2013 of District Primary Teachers Promotion Committee, East Champaran. They have further prayed to quash the final seniority list of Matric Trained Teachers having qualification of BA as contained in Memo No.3158 dated 15.12.2012 issued from the office of District Education Officer, East Champaran and to prepare final seniority list of Matric Trained Teachers having qualification of BA in terms of merit list published by Bihar Public Service Commission in terms of letter no.571 dated 24.08.2012 issued by Directorate Primary Education, State of Bihar and to grant promotion to the petitioners on the post of Graduate Trained Teachers as per their rank in the merit list prepared by Bihar Public Service Commission.

3. Brief fact of the case is that petitioners and respondent nos. 6 to 11 were appointed on the post of Assistant Teachers on



the basis of their selection made by Bihar Public Service Commission in the year 1994. Petitioners and respondent nos.6 to 11 were already Graduate at the time of their appointment. Petitioners and respondent nos.6 to 11 being untrained having higher qualification were initially appointed against sanctioned post of Matric Trained Teacher. Petitioners and respondent nos.6 to 11 completed in-service training and got Matric trained scale with effect from 01.01.2003 having same pay scale.

4. District Education Officer, East Champaran vide memo No.3158 dated. 29.07.2011 prepared final seniority list of 400 Matric trained teachers having qualification of BA including petitioners, however, while preparing the seniority list of Matric trained teachers, having qualification of BA, ignored the merit list of selected candidates published by Bihar Public Service Commission, as a result of which, candidates who were higher in rank became junior in final seniority list of Matric trained teachers including petitioners. The final seniority list was prepared on the basis of date of birth / date of joining.

5. In terms of Rule 8 of Bihar School Teachers Promotion Rules, 2011 the respondent authorities have prepared the list of promotion to the post of graduate trained teachers vide memo nos.2612 and 2613 dated 28.06.2003 (Annexure 2 and 2/1)



issued from the office of District Education Officer, East Champaran which does not include the name of petitioners, whereas, name of respondent nos. 6 to 11, who were juniors to petitioners, find place in the said list.

6. It has been submitted on behalf of the petitioners that while preparing the said promotion list, as contained in Annexure 2 and 2/1, the respondent authorities did not follow the direction, as contained in letter no.592 dated 10.05.2013, issued by the department of Education, Government of Bihar, Patna by which it was directed to follow the letter no.571 dated 24.08.2012 issued by the Directorate for preparation of seniority list, according to which *inter se* seniority, among the teachers appointed under Bihar Primary School Teachers Appointment Rule, 1991 shall be determined as per merit list prepared by Bihar Public Service Commission. It has been submitted that promotion granted to the Matric trained teachers on the post of Graduate (Arts) trained teachers as contained in Annexure 2 and 2/1 has been prepared in contravention of letter dated 10.05.2013 (Annexure 3) and letter dated 24.8.2012 (Annexure 4). Respondent authorities while preparing the final seniority list of Matric trained teachers for the purpose of promotion on the post of graduate trained teachers, merit list of 1994 published



by Bihar Public Service Commission has not been followed and juniors have been promoted and petitioners have been denied promotion.

7. Counter affidavit has been filed on behalf of the private respondent nos.8, 9, 10 and 11 and it has been submitted that on the recommendation of Bihar Public Service Commission, Patna, petitioners and answering respondents were appointed as Assistant Primary teachers in the district of East Champaran in the year 1994. The appointment was made pursuant to advertisement published on 9th October, 1991 by Directorate, Primary Education, Government of Bihar, Patna for appointment to the post of primary teachers and the final result was published on 31.8.1994 for appointment as Assistant Teacher in the district of East Champaran, Motihari and thereafter petitioners and answering respondents were appointed in 1994.

8. Both were Matric untrained and they were imparted in-service training and became trained teachers on 20.6.2005 and as per department office order dated 20.6.2005, both got Matric trained scale from 01.10.2003 vide letter no.790 dated 29.7.2011.

9. It has been submitted that final gradation list was



prepared for the promotion on the post of Graduate Teachers (Arts) and was issued vide memo no.3158 dated 15.12.2012 (Annexure 1) strictly in conformity with Clauses 8, 11 and 12 of the Bihar School Teachers Promotion Rule, 2011. Clauses 11 and 12 deals with the preparation of gradation list and as per Clause 12, seniority is to be determined according to date of attaining specific grade, i.e., Matric trained scale and if the said grade is same then the date of birth will be the next criteria for determination of seniority list. Petitioners and respondents were appointed in 1994 and they joined on various dates. Both got Matric trained scale on 1.10.2003, as such, final gradation list was prepared according to the date of birth.

10. After preparation of final gradation list in conformity with Bihar School Teachers Promotion Rules, 2011, promotion of graduate trained scale is to be made against the available post and as per roster against which, 191 posts were unreserved post, 91 posts were reserved for Scheduled Caste and 9 posts were reserved for Scheduled Tribes which were vacant and promotion on graduate trained scale has been given to the candidates in terms of 2011 Rule vide memo no.2612 and 2613 dated 28.6.2013 (Annexure 2 and 2/1). Petitioners belong to General Category and their name is below serial no.191 of the



final gradation list.

11. Counter affidavit and supplementary counter affidavit have been filed on behalf of respondent nos.4 and 5 stating therein that final gradation list has been prepared for promotions on the post of Graduate Trained Teachers (Arts) and has been issued vide memo no.3158 dated 15.12.2012 (Annexe 1 of writ petition) strictly in consonance with Clause 8, 11 and 12 of the Bihar School Teachers Promotion Rules, 2011.

12. It was further submitted that Clauses 11 and 12 of the Rule deal with mode for preparation of gradation list. Under Clause 12, it has been specifically mentioned that seniority should be determined according to the date of attaining specific grade (Matric Trained Grade) and if the specific grade is same, then the date of birth will be the next criteria for determination of seniority list. No specific provision has been made in the Promotion Rule, 2011 that promotion on Graduate Trained Scale should be in accordance with the merit list published by the BPSC.

13. It was further contended that letter no.571 dated 24.8.2012 (Annexure 4 of the writ petition) is related with providing senior scale and all the writ petitioners have got the same vide memo no.349 dated 5.2.2015. Claim in this writ



petition is with respect to promotion from Matric Trained Scale to Graduate Trained Scale and is not a matter of giving senior scale.

14. It has been further stated that promotion of respondent nos.9 and 11 along with others was given w.e.f. 31.12.2012 vide memo no.2413 dated 28.6.2014 pursuant to direction of this Hon'ble Court dated 11.3.2014 passed in C.W.J.C. No.1875 of 2014. Promotion of respondent no.8 has been given w.e.f. 20.6.2013. During pendency of writ petition, writ petitioners have also been promoted on the post of Graduate Trained Scale vide proceeding of District Promotion Committee dated 27.7.2016 in terms of Promotion Rules, 2011.

15. Supplementary affidavit on behalf of petitioners have been filed stating therein that in other districts of State of Bihar, the authorities have followed the instructions contained in Annexure 4 to the writ petition in the matter of promotion from Matric Trained Scale to Graduate Trained Scale. *Inter se* seniority, as contained in merit list of BPSC has been strictly followed.

16. During pendency of writ petition to the specific query made by this Hon'ble Court by order dated 23.7.2018, affidavit dated 7.9.2018 was filed on behalf of respondent nos.4



and 5 stating therein that Bihar Elementary School Appointment Rule, 1991 was amended by Bihar Elementary School Appointment Rule, 1993 which provided for conducting written examination. Select list was to be prepared by BPSC after following reservation rules on the basis of marks secured in the Main examination. Appointment letters were issued in which it was stipulated that the *inter se* seniority of the teachers, so appointed, will depend upon the merit list as published by Bihar Public Service Commission and same was required to be followed for all future course of action including for the purpose of promotion. It is further stated that since the date of appointment of petitioners and private respondent were the same, i.e., 24.9.1994 and both got Matric trained scale w.e.f. 1.10.2003, final seniority list for Graduate Trained (Arts) was prepared vide letter no.3158 dated 15.12.2012 on the basis of their date of joining at the school, as a result of which, private respondent, whose date of joining had been earlier were ranked higher in the seniority list and admittedly the seniority list was not prepared in terms of merit list of Bihar Public Service Commission, in such circumstances, respondent nos.4 and 5 vide letter no.2257 dated 4.9.2018 sought guideline from the Director of Primary Education.



17. Subsequently, 8th supplementary counter affidavit was filed on behalf of respondent nos.4 and 5 in response to order dated 10.9.2018 in which it was admitted that in terms of Rule 10 and 11 of Bihar Elementary School Appointment Rule, 1991 seniority list was to be prepared on the basis of marks secured in the written examination, as such, merit list of BPSC was required to be followed for the purpose of promotion at the district level but same was not done. It is further stated that if seniority list would have been prepared on the basis of recommendation made by BPSC, the petitioners would have ranked higher compared to the respondents.

18. Heard learned counsel for the petitioners, learned counsel for the State as well as learned counsel for private respondents. In view of subsequent stand taken by State authorities that in promotion from Matric Trained Scale to Graduate Trained Scale, the *inter se* seniority, as per merit list of BPSC should be followed and same was also required to be followed in terms of letter issued by the Director, Primary Education letter no.571 dated 24.08.2012 and letter no.592 dated 10.5.2013 but ignoring said directions, the District Promotion Committee prepared the seniority list erroneously on the basis of date of birth / date of joining which cannot be



countenanced as seniority list has to be prepared on the basis of *inter se* merit as existing in Matric Trained Scale, i.e., pre-promotional seniority list and not on the basis of date of birth or date of joining. There has to be uniformity in preparation of Graduate Trained Teacher seniority list in all districts and in the most of districts, seniority list has been prepared in terms of directions issued by letter no.571 dated 24.08.2012 and letter no.592 dated 10.5.2013 issued by the Directorate, Primary Education Department, however, same was not followed in the district of East Champaran but subsequently they have realized that they have committed error in preparing the seniority list of Graduate Trained Teacher.

19. However, as only petitioners have approached this Court against the preparation of seniority list on the basis of date of birth/date of joining and not on the basis of merit list published by BPSC, i.e., pre-promotional seniority list, the writ petition, as far as it relates to petitioners, is allowed and they are directed to be placed in the seniority list, as determined by the authorities in their comparative chart prepared pursuant to order dated 10.09.2018 filed through 8th supplementary counter affidavit, as contained in Schedule A of the said affidavit. The relief(s) granted is confined to petitioners only.



20. The writ petition is allowed to the extent as indicated
above.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.02.2021
Transmission Date	NA

