

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8521 of 2020

1. Devendra Paswan, aged about 36 years, Male, son of Arvind Paswan, Resident of Village- Tetariya, P.S.- Islampur, P.O.- Baray, District- Nalanda
2. Rozy Kumari, aged about 31 years, Female, D/o- Dharmendra Prasad, Resident of Village- Sahebpur Kamal, P.S.- Sahebpur Kamal, P.O.- Sahebpur Kamal, District- Begusarai
3. Santosh Kumar, aged about 33 years, Male, Son of Jitendra Prasad Gupta, Resident of Ward No. 17, East Cabin Road, Hajipur, P.S. and P.O. and District- Khagaria
4. Santosh Kumar, aged about 43 years, Male, Son of Surajdeo Paswan, Resident of Surajpur, P.S. and P.O.- Hulasganj, District- Jahanabad
5. Akhilesh Kumar, aged about 49 years, Male, Son of Laldeo Ram, Resident of Ward No. 2, Dani Vigaha, P.S. and P.O. and District- Aurangabad
6. Mritunjay Kumar Gautam, aged about 33 years, Male, Son of Raj Bahadur Sharma, Resident of Village- Bidhipur, P.S.- Salimpur, P.O.- Karauta, District- Patna
7. Niraj Kumar, aged about 36 years, Male, Son of Ram Prawesh Singh, Resident of Village- Marsua, P.S.- Makhdumpur, P.O.- Kurtha Bazar, District- Jehanabad
8. Rakesh Raman Jha, aged about 38 years, Male, Son of Rambali Jha, Resident of Village- Sanjat, PS.- Bhagwanpur, P.O.- Sanjat, District- Begusarai
9. Amit Kumar, aged about 33 years, Male, Son of Lalan Prasad Singh, Resident of Ward no. 30, Railway Mal Godown, P.S. and P.O. and District- Begusarai
10. Niranjan Bharti, aged about 35 years, Male, Son of Ram Balak Prasad, Resident of Village- Shakti Bigha, P.S.- Narhat, P.O.- Punther, District- Nawada
11. Arbind Kumar, aged about 31 years, Male, Son of Dinanath Rao, Resident of Village- Laukariya, P.S.- Bairiya, P.O.- Laukariya, District- West Champaran
12. Krishna Kumar, aged about 33 years, Male, Son of Rajendra Prasad Yadav, Resident of Village- Basantpur, P.S.- Sathi, P.O.-Singhpur, District- West Champaran
13. Ram Kumar Yadav, aged about 33 years, Male, Son of Khushee Lal Yadav, Resident of Village- Pahipura, P.S.- Saharghat, P.O.- Salempurm, District- Madhubani
14. Sikandar Singh, aged about 32 years, Male, Son of Siswa Kodar, Resident of Village- Siswa Kodar, P.S.- Pahadpur, P.O.- Siswa Bazar, District- East Champaran
15. Ravi Raman Kumar, aged about 30 years, Male, Son of Chandra Mohan Roy, Resident of Village- Emadpur, P.S.- Baligaon, P.O.- Pastara, District- Vaishali



16. Sachin Kumar, aged about 35 years, Male, Son of Tej Narayan Singh, Resident of Village- Gena Tol, P.S.- Kaluahi, P.O.- Kalikapur, District- Madhubani
17. Amit Kumar Yadav, aged about 32 years, Male, Son of Late Basudev Yadav, Resident of Village- Madhiya, P.S.- Basopatti, P.O.- Madhiya, District- Madhubani
18. Usha Kumari, aged about 46 years, Female, Daughter of Deosharan Singh, Resident of Village- Sarouti, P.S. and P.O.- Rampur Chouram, District- Arwal
19. Ratan Kumar, aged about 34 years, Male, Son of Rameshwar Pandit, Resident of Village- Tariyama, P.S.- Simri Bakhitiyarpur, P.O.- Tariyama, District- Saharsa
20. Suman Kumar, aged about 34 years, Male, Son of Navin Kumar Sharma, Resident of Village- Alamnagar, P.S. and P.O.- Alamnagar, District- Madhepura
21. Rakesh Kumar, aged about 34 years, Male, Son of Dayanand Yadav, Resident of Village- Barsam, P.S.- Basnahi, P.O.- Barsam, District- Saharsa
22. Rupesh Kumar, aged about 32 years, Male, Son of Ram Narayan Yadav, Resident of Village- Maheshpur, P.S.- Sour Bazar, P.O.- Samda, District- Saharsa
23. Shashi Prakash, aged about 34 years, Male, Son of Dip Narayan Yadav, Resident of Ward No. 32, Hatiya Gachhi, P.S. and P.O. and District- Saharsa
24. Pinku Kumar, aged about 33 years, Male, Son of Rameshwar Pandit, Resident of Village- Tariyama, P.S.- Simri Bakhitiyarpur, P.O.- Simri Bakhitiyarpur, District- Saharsa
25. Gopal Prasad Gupta, aged about 33 years, Male, Son of Kamal Kishore Sah, Resident of Village- Tulsiyahi, P.S.- Bihara, P.O.- Rahaua, District- Saharsa
26. Mritunjay Kumar Gautam, aged about 36 years, Male, Son of Yogendra Prasad Singh, Resident of Village- Bari Chak, P.S. and P.O.- Gogri, District- Khagaria
27. Mahanand Kanhaya, aged about 33 years, Male, Son of Parmanand Prasad, Resident of Ward No. 9, Usri, P.S. and P.O.- Gogri, District- Khagaria
28. Amardeep Kumar Gandhi, aged about 33 years, Male, Son of Raghunandan Poddar, Resident of Village- Chhoti Chak, P.S. and P.O.- Gori Jamalpur, District- Khagaria
29. Ranjeet Kumar, aged about 34 years, Male, Son of Janki Prasad Singh, Resident of Village- Muskipur, P.S. and P.O.- Gogri Jamalpur, District- Khagaria
30. Rashmi Kumari, aged about 35 years, Female, Daughter of Mahendra Kumar Jha, Resident of Village- Vidha, P.S. and P.O.- Motihari, District- East Champaran
31. Manish Kumar, aged about 30 years, Male, Son of Birendra Chaudhary, Resident of Ward No. 37, Chhota Bariyarpur, P.S.- Chhatauni, P.O.- Motihari Court, District- East Champaran



32. Ramesh Kumar Srivastava, aged about 41 years, Male, Son of Nagendra Prasad Srivastava, Resident of New Gopalpur, P.S. and P.O.- Motehari Town, District- East Champaran
33. Chandan Kumar, aged about 33 years, Male, Son of Baban Singh, Resident of Village- Jamunia, P.S.- Pipra, P.O.- Khairmal, District- East Champaran
34. Ramesh Kumar Verma, aged about 33 years, Male, Son of Diwakar Prasad Verma, Resident of Village- Ward No. 17, Dhaka Road, P.S.- Chhatauni, P.O.- Mathiaya, District- East Champaran
35. Chandan Singh, aged about 35 years, Male, Son of Yogendra Singh, Resident of Bhatiniya, P.S.- Ghorasahan, P.O.- Bhelwa Circle, District- East Champaran
36. Shambhu Prasad, aged about 48 years, Male, Son of Kanhaiya Sah, Resident of Harsidhi, P.S. and P.O.- Harsidhi, District- East Champaran
37. Suresh Kumar, aged about 39 years, Male, Son of Muni Lal Sah, Resident of Village- Barharwa, P.S. and P.O.- Malahi, District- East Champaran
38. Md. Sanaullah, aged about 36 years, Male, Son of Rasul Main, Resident of Ward No. 19, Barwa, P.S.- Lakhura, P.O.- Barwa, District- East Champaran
39. Akbar Khurshid, aged about 32 years, Male, Son of Khurshid Alam, Resident of Village- Sarsaula, P.S.- Lakhaura, P.O.- Barwa, District- East Champaran
40. Pramod Kumar, aged about 34 years, Male, Son of Bhikhari Prasad, Resident of Village- Singasani, P.S.- Ramgarhwa, P.O.- Singasani, District- East Champaran
41. Om Prakash Yadav, aged about 33 years, Male, Son of Lal Babu Yadav, Resident of Lalsaraiya, P.O.- Majhowliya, P.O.- Lalsaraiya, District- East Champaran
42. Samir Kumar Rahul, aged about 38 years, Male, Son of Awadhesh Kumar, Resident of Village- Maheshpur, P.S.- Korha, P.O.- Musapur, District- Katihar
43. Chandan Kumar, aged about 38 years, Male, Son of Ganesh Prasad Choursiya, Resident of Village- Maheshpur, P.S.- Korha, P.O.- Musapur, District- Katihar
44. Amit Kumar, aged about 41 years, Male, Son of Navin Kumar Choudhary, Resident of Village- Mahmaddpur, P.S.- Tarapur, P.O.- Bhagalpura, District- Munger
45. Chandra Bhusan Mishra, aged about 35 years, Male, Son of Shionath Mishra, Resident of Karanpura, P.S.- Kuchikote, P.O.- Karwati Bazar, District- Gopalganj
46. Pradeep Kumar, aged about 32 years, Male, Son of Om Prakash Gupta, Resident of Kashyap Nagar, New Police Line, P.S. and P.O.- Ara (Bhojpur), District- Nawada
47. Ushma Kumari, aged about 30 years, Female, Daughter of Ashok Kumar, Resident of Village- Ojha Bigha, P.S.- Arwal, P.O.- Baidrabad, District- Arwal



48. Dinesh Singh, aged about 33 years, Male, Son of Chandradeo Singh, Resident of Krishnapur, P.S.- Nokha, P.O.- Jabra, District- Rohtas
49. Pramod Saw, aged about 36 years, Male, Son of Ramnandan Saw, Resident of Village- Barma, P.S.- Kutumba, P.O.- Ankupa, District- Aurangabad
50. Ashok Kumar Choudhary, aged about 40 years, Male, Son of Ramu Choudhary, Resident of Village- Chakdah, P.S.- Rajnagar, P.O.- Madhubani, District- Madhubani
51. Lal Kumar Roy, aged about 35 years, Male, Son of Mahendra Roy, Resident of Village- Bhaptiyahi, P.S.- Laukahi, P.O.- Bhaptiyahi, District- Madhubani
52. Amod Kumar Roy, aged about 35 years, Male, Son of Prithichand Roy, Resident of Village- Mohanpur, P.S.- Chapram, P.O.- Balliahai, District- Saharsa
53. Pawan Kumar, aged about 36 years, Male, Son of Bhuaneshwar Sahu, Resident of Village- Lagma, P.S.- Simri Bakhitiyarpur, P.O.- Tariyama, District- Saharsa
54. Dilip Kumar, aged about 35 years, Male, Son of Natheshwar Ram, Resident of Village- Fatehpur, P.S. and P.O.- Fatehpur, District- Nalanda
55. Prem Pradeep Kumar, aged about 33 years, Male, Son of Jageshwar Prasad, Resident of Village- Jagadishpur, P.S.- Nalanda, P.O.- Nirpur, District- Nalanda
56. Sabir Hussain Ansari, aged about 30 years, Male, Son of Mahboob Alam, Resident of Village- Chandila, P.S.- Maker, P.O.- PIR Maker, District- Saran
57. Nazroodin Ansari, aged about 35 years, Male, Son of Rahmat Ali, Resident of Village- Chandila, P.S.- Maker, P.O.- PIR Maker, District- Saran
58. Sudhanshu Shekhar, aged about 30 years, Male, Son of Bhupendra Sah, Resident of Village- Tariyama, P.S.- Simari Bakhitiyarpur, P.O.- Tariyama, District- Saharsa
59. Abhishek Kumar, aged about 32 years, Male, Son of Arun Kumar Jaiswal, Resident of Village- Choti, P.S.- Bypass, P.O.- Bari Pahari, District- Patna
60. Rajesh Kumar, aged about 36 years, Male, Son of Badyanath Sah, Resident of Village- Madhubani, P.S.- Sadar, P.O.- Patahi, District- Muzaffarpur
61. Arun Kumar Yadav, aged about 33 years, Male, Son of Rajendra Prasad Yadav, Resident of Village- Talva Pokhar, P.S.- Kotwa, P.O.- Talva Pokhar, District- East Champaran
62. Munna Kumar, aged about 32 years, Male, Son of Dinanath Prasad, Resident of Village- Bhatnahiya, P.S.- Darpa. P.O.- Narkatiya, District- East Champaran
63. Chandra Shekhar Kumar, aged about 33 years, Male, Son of Ashok Kumar Singh, Resident of Village- Gajra Chatar, P.S.- Narhat, P.O.- Jamura, District- Nawada
64. Vishwajit Kumar Sinha, aged about 41 years, Male, Son of Radhika Raman Sinha, Resident of Village- Lala Toli Korar, P.S., P.O.-, District- Chapra



65. Alok Ranjan Shrivastav, aged about 39 years, Male, Son of Yogendra Shrivastav, Resident of Village- Chota Telpa (Lala Toli), P.S.- Chapra, P.O.- Chapra, District- Chapra
66. Prince Ranjan, aged about 39 years, Male, Son of Rampravesh Yadav, Resident of Village- Chota Telpa Lala Toli, P.S.- , P.O.- , District- Chapra
67. Sant Kumar Sahni, aged about 34 years, Male, Son of Yugal Sahni, Resident of Village- Krishnawara, P.S.- Patepur, P.O.-, District- Vaishali
68. Kumar Nandani Nandan Yadavesh, aged about 44 years, Male, Son of Brahmadeo Prasad Yadav, Resident of Village- Usri, P.S.- Gogri, P.O.- Gogri, District- Khagaria
69. Dinbandhu Prabhakar, aged about 44 years, Male, Son of Upendra Prasad, Resident of Village- Dalhatta Chowk, P.S.- Munger, P.O.- Munger, District- Munger
70. Sanjay Kumar Mandal, aged about 39 years, Male, Son of Jyotish Mandal, Resident of Village- Garhinav Toliya, P.S.- Naya Ram Nagar, P.O.- Nawagarhi, District- Munger
71. Gayanendra Kumar, aged about 36 years, Male, Son of Sadanand Prasad Singh, Resident of Village- Ithari, P.S.- Naya Ram Nagar, P.O.- Ithari, District- Munger
72. Ajit Kumar Das, aged about 39 years, Male, Son of Ramchandra Das, Resident of Village- Bhagwanpur, P.S.- Patiepur, P.O.- Malpur, District- Vaishali
73. Sonu Kumar, aged about 33 years, Male, Son of Jay Prakash Gupta, Resident of Village- Piro, P.S.- Piro, P.O.- Piro, District- Bhojpur
74. Shatrughan Prasad Yadav, aged about 32 years, Male, Son of Ramsugarat Singh, Resident of Village- Naurangia, P.S.- Lakhaura, P.O.- Semarahia, District- East Champaran
75. Rajesh Kumar Prasad, aged about 33 years, Male, Son of Sukadeo Prasad, Resident of Village- Bairiyadih, P.S.- Harsidhi, P.O.- Bairiyadih, District- East Champaran
76. Santosh Kumar, aged about 33 years, Male, Son of Beshlal Ram, Resident of Village- Ghordihan, P.S.- Nokha, P.O.- Shrikhinda, District- Rohtas
77. Niraj Kumar, aged about _____ years, Male, Son of Paras Prasad, Resident of Village- Ariaon, P.S.- Kirsna Brahm, P.O.- Ariaon, District- Buxar
78. Kishori Sah, aged about 48 years, Male, Son of Jagu Sah, Resident of Village- Salehpur, P.S.- Bishambharpur, P.O.- Salehpur, District- Gopalganj
79. Santosh Kumar Verma, aged about 42 years, Male, Son of Ram Keshwar, Resident of Village- Sabnima, P.S.- Athmal Gola, P.O.- Sabnima, District- Patna
80. Shankar, aged about 32 years, Male, Son of Kishori Pandit, Resident of Village- Belaganj Kumhar Tola, P.S.- Belaganj, P.O.- Belaganj, District- Gaya
81. Dinesh Kumar, aged about 36 years, Male, Son of Raghunath Sah, Resident of Village- Nayagaon, P.S.- Shyampur Bhatahan, P.O.- Shyampur



Bhatahan, District- Shivohar

82. Gautam Kumar Singh, aged about 34 years, Male, Son of Jageshwar Prasad Singh, Resident of Village- Bhadaura, P.S.- H. Khargpur, P.O.- Bahadaura, District- Munger
83. Bhavishay Kumar, aged about 32 years, Male, Son of Chandradeo Mandal, Resident of Village- Marar, P.S.- Morkahi, P.O.- Marar, District- Khagaria
84. Praveen Kumar, aged about 36 years, Male, Son of Arun Kumar Verma, Resident of Village- New Tola, P.S.- Morkahi, P.O.- Marar, District- Khagaria
85. Dilip Kumar, aged about 39 years, Male, Son of Bhim Prasad, Resident of Village- Naknuppa, P.S.- Sherghati, P.O.- Bar Husainganj, District- Gaya
86. Sadanand Kumar, aged about 40 years, Male, Son of Basudeo Thakur, Resident of Village- Dehad, P.S.- Sonbarsa, P.O.- Dehad, District- Saharsa
87. Md. Shakil, aged about 30 years, Male, Son of Md. Samid, Resident of Village- Kawakol, P.S.- Kawakol, P.O.- Kawakol, District- Nawada
88. Sonu Kumar, aged about 31 years, Male, Son of Shankar Roy, Resident of Village- Sarangpur, P.S._____, P.O.- Sarangpur, District- Samastipur
89. Rajesh Kumar, aged about 34 years, Male, Son of Satya Narayan Yadav, Resident of Village- Lakshmipur, P.S.- Khajauli, P.O.- Datur, District- Madhubani
90. Rajesh Kumar Yadav, aged about 43 years, Male, Son of Om Prakash Yadav, Resident of Village- Gogri Jamalpur ward no. 15, P.S._____, P.O.- Jamalpur Gogri, District- Khagaria
91. Ranjana Kumari, aged about 30 years, Female, Daughter of Mahavir Prasad Bhagat, Resident of Village- Triveni Ganj, P.S.- Triveni Ganj, P.O.- Triveni Ganj, District- Supaul
92. Shambhu Kumar, aged about 38 years, Male, Son of Mathura Yadav, Resident of Village- Numar, P.S.- Barhat, P.O.- Numar, District- Jamui
93. Santosh Kumar Sah, aged about 35 years, Male, Son of Vijay Prasad Sah, Resident of Village- Kamalpur, P.S._____, P.O.- Kunauli, District- Supaul
94. Amit Kumar, aged about 32 years, Male, Son of Ram Prasad Mahto, Resident of Village- Sonpatahi, P.S.- Babubarhi, P.O.- Sonpatahi, District- Madhubani
95. Binod Kumar, aged about 39 years, Male, Son of Maheshwar Yadav, Resident of Village- Numar, P.S.- Barhat, P.O.- Numar, District- Jamui
96. Kumari Sweta, aged about 38 years, Female, Daughter of Rajendra Singh, Resident of Village- Mohaddiganj, P.S.- Sasaram, P.O.- Sasaram, District- Rohtas
97. Sweta Kumari, aged about 35 years, Female, Daughter of Ramashish Singh, Resident of Village- Birana, P.S._____, P.O.- Sikathi, District- Buxar
98. Amar Kumar Singh, aged about 32 years, Male, Son of Kamala Singh, Resident of Village- Amaraiyan, P.S.- Kudra, P.O.- Amaraiyan, District- Kaimur



99. Laxmi Yadav, aged about 30 years, Female, Son of Choudhary Yadav, Resident of Village- Madhiya, P.S.- Basopatti, P.O.- Madhiya Kamalawari, District- Madhubani
100. Suraj Kumar Singh, aged about 32 years, Male, Son of Shakti Prasad Sinha, Resident of Village- Baisa, P.S.- Bahadurpur, P.O.- Bishanpur, District- Kishanganj
101. Sandeep Kumar Singh, aged about 30 years, Male, Son of Ashok Kumar, Resident of -Dinara, P.S.- Dinara, P.O.- Dinara, District- Rohtas
102. Pramod Kumar, aged about 34 years, Male, Son of Siv Parsan Singh, Resident of -Jigna, P.S.- Dinara, P.O.- Jigna, District- Rohtas
103. Jag Narayan Tiwari, aged about 33 years, Male, Son of Gupteshwar Tiwari, Resident of -Dhani, P.S.- Dhani, P.O.- Kesh, District- Bhojpur
104. Suryabal Kumar, aged about 31 years, Male, Son of Rajendra Mahto, Resident of -Bhatuhawa, P.S.- Manpur, P.O.- Damrapur, District- West Champaran
105. Ashok Kumar Giri, aged about 36 years, Male, Son of Mukhdev Giri, Resident of -Govindganj, P.S._____, P.O._____, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
4. The Chairman, Bihar School Examination Board, Patna.
5. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Dinu Kumar, Advocate
For the State/R1-3	:	Mr. Madhaw Prasad Yadav, GP 23 with Mr. Sanjay Kumar, AC to GP 23
For the BSEB/R4-5	:	Mr. Gyan Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-02-2021

Heard Mr. Dinu Kumar, learned counsel for the
petitioners; Mr. Madhaw Prasad Yadav, learned Government



Pleader 23 along with Mr. Sanjay Kumar, learned Assistant Counsel to Government Pleader 23, for the State, and; Mr. Gyan Shankar, learned counsel for the Bihar School Examination Board.

2. The petitioners have moved this Court praying for the following reliefs:

- “A. For commanding the respondents to add/amalgamate the sanctioned post of teacher of **33,916** under different subjects of Secondary/Senior Secondary Schools which has been sanctioned by the government on 21.04.2020 as contained in **Annexure 10** in the sixth phase of selection of teachers.*
- B. Also for commanding the respondents to fill up the vacant sanctioned post from successful candidates of Secondary teacher eligibility Test, 2011 only thereafter consider the appearing candidates in the Secondary/ Senior Secondary Examination who has not passed STET exam which is going to be held between **09.09.2020 to 21.09.2020**.*
- C. For commanding the respondents to appoint first to the petitioners and similarly situated other candidates, who have passed BSITET examination in 2012 against the sanctioned post of Social Science teachers which was lying vacant since 21.06.2017 and subsequently sanctioned post on 14.05.2020 which is evident from Annexure 10.*
- D. Also necessary relief/reliefs, order/orders, direction/directions for the petitioners are entitled in the eye of law.”*

3. Learned counsel for the petitioners submitted that



the State Government has itself come up with a detailed schedule with regard to filling up of the vacancies, but they are not implementing the same. Further, it was submitted that a co-ordinate Bench in CWJC No.20095 of 2019 and its analogous cases *vide* order dated 18.02.2020, has directed that the vacancies up to June, 2019 shall be made available for teachers, who had qualified the Bihar State Teachers Eligibility Test (hereinafter referred to as the 'STET') in 2012. Learned counsel submitted that the State has not come up with any reason as to why it has not proceeded with such recruitment. Learned counsel submitted that the Court has wide and sufficient power under Article 226 of the Constitution of India to direct the authorities to go ahead and complete such recruitment of teachers.

4. Learned counsel for the State submitted that the State has chalked out a programme and, accordingly, it would proceed, but the Court may not interfere in the matter as basically, there is no vested right of the petitioners and further, their right will only accrue for consideration of their candidature, but the Court may not direct that the State recruit the teachers, that too, in a fixed time-frame. Further, with reference to the reliefs claimed in the writ petition, learned



counsel relied upon the Hon'ble Supreme Court's decision in ***P Suseela and Others v University Grants Commission and Others*** (Civil Appeal Nos. 2891 of 2015 and others arising out of SLP (Civil) Nos.36023-36032 of 2010) and analogous cases [reported as (2015) 8 SCC 129] wherein, by judgment dated 16.03.2015, *inter alia*, as per learned counsel, it has been held at paragraph 15 (of the court version) that a vested right would arise only if any of the persons have been actually appointed on the post of Lecturer/Assistant Professors and further, it has been held that merely because an additional eligibility condition in the form of a National Eligibility Test is laid down, it does not mean that any vested right of the candidates is affected.

5. Learned counsel, thus, submitted that the stage has not yet been reached, for considering such issues for the present, and once the State takes a positive decision with regard to how much recruitment it can make, based on other valid and germane considerations, *viz.* the financial burden etc. and the compelling need for making such recruitment, the Court would not interfere in the matter. It was further submitted that the stand taken by the petitioners that they would lose because the validity of their STET qualification acquired in 2012 would end, is



premature for the reason that the State had already extended life of the panel for two years and if it is felt that the said persons would lose because of the process not being completed, the State Government may take a decision on the issue and only if it goes against the interest of the petitioners, they may move the appropriate forum, but the same cannot be a ground at present, because it is merely presumptive at this stage and the Court may not interfere only on such presumption, as sought to be so done by the petitioners.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds that just because a programme and schedule was drawn up by the State Government, the same *per se* cannot be said to be binding so as to compel the State to go ahead with the recruitment and complete the process. It is for the State to decide, *inter alia*, the quantum of recruitment, when exactly to undertake such recruitment, and most importantly, basing such decision taking into account the relevant aspects, including the financial resources of the State Government. Thus, the Court, on an overall assessment, does not find that present is a fit case to exercise its prerogative and discretionary jurisdiction under Article 226 of the Constitution.



7. It is apposite, at this juncture, to consider some relevant judicial pronouncements apropos the issues raised herein. The Hon'ble Supreme Court, in ***S S Balu v State of Kerala***, (2009) 2 SCC 479, held:

'12. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See Pitta Naveen Kumar v. Raja Narasaiah Zangiti [(2006) 10 SCC 261: (2007) 1 SCC (L&S) 92].) The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus. (See Batiarani Gramiya Bank v. Pallab Kumar [(2004) 9 SCC 100: 2004 SCC (L&S) 715].) In Shankarsan Dash v. Union of India [(1991) 3 SCC 47: 1991 SCC (L&S) 800: (1991) 17 ATC 95] a Constitution Bench of this Court held: (SCC pp. 50-51, para 7)

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."



(emphasis supplied)

8. Relying on the aforesaid extract from ***S S Balu*** (*supra*), a learned Single Judge of the Jharkhand High Court, in ***Ranjeet Kumar v State of Jharkhand, 2012 SCC OnLine Jhar 2102***, opined:

‘(xvi) *It has been held by the Hon'ble Supreme Court in the case of S.S. Balu v. State of Kerala [(2009) 2 SCC 479: 2009 (122) FLR 54 (SC).], at paragraph 12 as under:*

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In view of the aforesaid decision, there is no right vested even in a candidate, who is forming part of the select list, to be appointed. It has been further held by the Hon'ble Supreme Court that State as an employer has a right to fill up all the posts or not to fill them up. In fact, in the opinion of this Court, it is a prerogative power vested in the State either to fill up the posts or not to fill them up and as per Service Jurisprudence there is no corresponding ‘right’ or ‘duty’ of the word “power”. There is several prerogative “powers” of the State, which have no corresponding “legal obligations” or “a right” vested in any person. One of them is either to fill up all the posts, which are vacant or to fill them up partly. All this depends upon the public need; administrative exigencies or looking to the availability of infrastructure or looking to the budgetary provisions. Above all, even if other factors are positive, then also it is a prerogative power of the State not to fill up all the vacancies, despite there being enough infrastructure etc. This power, vested in the State, cannot be labelled as a “public duty” to fill up all the vacancies. Citizens may be capable of holding those posts; they may be more helpful to the State; their ability may be very useful to the public at large, had they been appointed on the posts of Sub Inspector, Sergeant, Company Commander, but, the State has all power not to appoint them and not to



fill up all the vacancies. There is no legal obligation on the part of the State that whatever vacancies are falling vacant, they must be filled up immediately. Article 16 of the Constitution of India never creates any right to the citizens that at one stretch or in one go, all the vacancies must be filled up. It may be a strategic method of the State that if phase-wise public posts are filled up, they may get better candidates because they have studied latest technology or latest knowledge had been gathered by them, otherwise all the Police Inspectors will be employed having no knowledge of latest technology. There may be a circumstance, which has been kept in mind by the State that if the posts of Sub Inspector are filled up in a phase-wise manner, the new candidates who are even fresh graduates having forensic science degrees may apply. It is not obligatory on the part of the State to disclose its mind. The thinking process is a complex phenomenon of the State. High Court in its power, under Article 226 of the Constitution of India Cannot go beyond the thinking process of the State and, therefore, it is technically known as “policy decision”, which in the political science, is known as “the exclusive power of the State”. Neither the policy decision can be altered by this Court nor this Court can issue a writ of mandamus to exercise “the exclusive power of the State,” because this power is not a legal obligation at all.’

(emphasis supplied)

9. This Court respectfully concurs with the opinion in **Ranjeet Kumar** (*supra*). Moreover, the applicable position of law is no longer *res integra* in light of the Hon’ble Supreme Court’s ruling in **State of Orissa v Raj Kishore Nanda, (2010) 6 SCC 777**:

‘18. It is the exclusive prerogative of the employer/State Administration to initiate the selection process for filling up vacancies occurred during a particular year. There may be vacancies



available but for financial constraints, the State may not be in a position to initiate the selection process for making appointments. Bona fide decision taken by the appointing authority to leave certain vacancies unfilled, even after preparing the select list cannot be assailed. The courts/tribunals have no competence to issue direction to the State to initiate selection process to fill up the vacancies. A candidate only has a right to be considered for appointment, when the vacancies are advertised and selection process commences, if he possesses the requisite eligibility.'

(emphasis supplied)

10. Needless to state, if and as and when the State authorities proceed in the matter, the petitioners then, *in futuro*, may have an actionable cause if their rights are infringed and/or if any prejudice accrues to and/or there is any discrimination. However, the Court, *in praesenti*, would not act on the premise of a presumption and lay down any guidelines as to what procedure or time-frame the State Government should adopt. In the opinion of the Court, whether recruitment, if at all any, is to be made at the current stage or not, is wholly in the domain of the Executive.

11. In view of the discussions made hereinabove, this writ petition stands disposed off. However, liberty is granted to the petitioners to move before the appropriate forum, in accordance with law, in future, if in the consideration of their candidature for recruitment to the post of teachers under the



State Government, any condition, which adversely impacts the petitioners’ rights, is imposed.

(Ahsanuddin Amanullah, J)

J. Alam/-

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