

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12699 of 2016

1. Kishor Kumar Son of late Keshari Narayan Mahto Resident of Village and P.O. Kawadpur, P.S Surajgarha, District Lakhisarai.
2. Raj Mani Mahto Son of late Surendra Prasad Mahto Resident of Village-Bingama, P.O. Jalalpur, P.S Baghara, District Samastipur.
3. Baldeo Prasad Son of Sri Khari Mandal Resident of Village- Ratanpura, P.O.Dadri Jala, P.S. Sangrampur, District Munger.
4. Deep Rani Sahoo Daughter of Sri H.K. Sahoo Resident of Village and P.O. Korrah, P.S Hazaribagh, District Hazaribagh Jharkhand.
5. Vibha Kumari Daughter of Sri Ram Bilash Roy resident of Village and P.O. Dosut, P.S Waina, District Nalanda.
6. Manoj Kumar Son of Late Chandrashekhar Prasad Sinha resident of Village and P.O. Lauriya, P.S. Lauriya, district West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Deputy Secretary, Education Department , Bihar Patna.
3. The Director, Primary Education Govt. of Bihar, Patna.
4. The Director Training and Research Bihar Patna.
5. The Bihar Public Service Commission through it's Chairman 15 Jawaharlal Nehru Marg Baily Road Patna
6. The Secretary, Bihar Public Service Commission, Jawahar Lal Nehru Marg, Bailey Road Patna-800 001
7. The Joint Secretary-cum-Examination Controller, , Bihar Public Service Commission, Jawahar Lal Nehru

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Adv. Mr. Nikhil Kumar Agrawal, Adv.
For the BPSC	:	Mr. Sanjay Pandey, Adv.
For the State	:	Mr. Sanjay Prasad, AC to AAG-4

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 09-07-2021

Heard Mr. Sanjay Singh, learned counsel appearing on
behalf of the petitioner assisted by Mr. Nikhil Kumar Agrawal, Mr.
Sanjay Prasad, learned counsel appearing on behalf of the State



and Mr. Sanjay Pandey, learned counsel appearing on behalf of the B.P.S.C.

Mr. Sanjay Singh, learned counsel appearing on behalf of the petitioners, at the very outset would submit that petitioners are not pressing the prayer except prayer No. 3. For ready reference, prayer No. 3 is quoted below:

“(iii) For issuance of an appropriate writ directing and commanding the respondents not to disturb the members of the Sub Ordinate Education Service (Primary Branch) (Male) (hereinafter to be referred as “S.E.S.”) including most of the petitioners in any manner either by decreasing the sanctioned strength of the S.E.S. (Primary branch)(Male) cadre by upgrading the posts of the Lecturers of S.E.S. (Primary branch) (Male) cadre of Primary Teachers Training Colleges in the Bihar Education Service (hereinafter to be referred as “B.E.S.”) or by depriving the members of the Lower Sub-ordinate Education Service (hereinafter to be referred as L.S.E.S./L.S.S.) and the S.E.S. (Primary branch) (Male) cadre including the petitioners from the opportunities of promotion or of posting and promotion either on the posts of Lecturers or on the posts of the Principals of the Primary Teachers Education Colleges respectively.”

Mr. Sanjay Singh further submits that petitioners belong to S.E.S cadre. He refers to Annexure-18, a notification, dated 12.02.2014 wherein cadre rules have been framed by the State Government i.e. Bihar Education Service Cadre Rules, 2014 in



exercise of power under proviso to Article 309 of the Constitution of India. He has referred to the Rule 26 and 27 of the Cadre Rules, which are quoted below for ready reference:

- “26. 1. The pay band and grad pay shall be decided by the state government which will be changeable in the light of pay revision from time to time.
2. The posts strength of all the categories shall be the same which shall be decided by the government from time to time.
3. The government may create new posts in the above given categories or may upgrade the posts, may abolish the posts or may reorganise the sub cadre.
4. The officers recruited/ promoted and working prior on the above posts will be considered included in the sub cadre.

27. The officers appointed/promoted and working on the above posts of this sub cadre and having the proscribed qualification of these posts shall give the option for inclusion in this sub cadre.

In case of having no qualification or not giving option for inclusion in this sub cadre or in case of working on deputation basis, they shall be reverted back to their own cadre, if they are appointed on these posts, they shall remain on their posts but they shall not get the benefit of regular promotion in this sub cadre.”

With reference to Clause-IV of Rule 26, learned counsel for petitioners would submits that the officers recruited or



promotion and working prior to framing of 2014 Cadre Rule shall be deemed to be retained in the cadre. He submits that even if in case the incumbent does not hold the prescribed qualification, the incumbent shall not be reverted back to their previous post but they shall not get the benefits of regular promotion in this sub-cadre. He submitted that petitioners are entitled to be retained in S.E.S. cadre under Service Cadre Rule and the benefits available in terms of Rule 26 and 27 of cadre rules 2014 is available as per conjoint reading of Rule 26 and 27.

Mr. Singh also submits that 2014 cadre rules still operational and it has not been amended, substituted or superseded as yet and as such, petitioners are entitled to the benefits under the scheme of 2014 cadre rules, particularly, Rule 27 as quoted above.

Mr. Sanjay Prasad, learned AC to AAG-4 and Mr. Sanjay Pandey, learned counsel appearing on behalf of the B.P.S.C has opposed the prayer of the petitioners on the ground that in view of the subsequent development of advertisement and selection, the present writ application has lost its relevance.

Considering the prayer made by the petitioners, particularly prayer No. iii, the Court is of the considered view that respondents have to take a fresh decision with regard to prayer of the petitioners.



Accordingly, the writ application is disposed of with a direction to the Additional Chief Secretary-cum-Principal Secretary, Education Department to look into the grievances of the petitioners in the light of cadre rules 2014 and the facts that petitioners belong to S.E.S Cadre. Appropriate decision on the representation of the petitioners in this regard shall be taken by the respondents within a period of four months from the date of filing of fresh representation along with copy of this order. In the event the representation of the petitioners is decided positively in favour of the petitioners, all consequential benefits shall be given to the petitioners within the time frame indicated above.

With the aforesaid observation/direction, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

rakhi/Shageer

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	13.07.2021
Transmission Date	

