

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2796 of 2022

-
1. Abdul Baqui Ansari S/o Late Abdul Samad Ansari Resident of Village-Mirpur, P.O. Ankuri, P.S. Goh District- Aurangabad - 824203.
 2. Md. Rashid Ansari Son of Md. Qasim Ansari Resident of-Village - Khutahan P.s. - Haspura Dist. - Aurangabad - 824120.
 3. Md. Ghalib Hassan Son of Md. Khurshid Ansari Resident of - Haspura P.S. - Haspura Dist. - Aurangabad - 824120.
 4. Reyazzuddin Alam Son of - Sarfuddin Alam Resident of-village -Goh P.S. - Goh Dist. - Aurangabad - 824203.
 5. Md. Jamiluddin Ansari Son of - Md. Mohiuddin Ansari Resident of-Village-Amjharsharif P.S. - Haspura Dist. - Aurangabad - 824120
 6. Md. Shahnawaz Akhtar Son of Abdul Sattar Ansari Resident of - House No. - 53 Khutahan, P.S. - Haspura Dist. - Aurangabad - 824120.

... .. Petitioner/s

Versus

1. The State of Bihar Through Additional Chief Secretary, Education Department, Bihar, New Secretariat, Patna.
2. The Director Primary Education, Bihar, New Secretariat, Patna.
3. The Chairman Bihar, Public Service Commission, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Md. Shahnawaz Ali, Advocate
For the Respondent/s	:	Mr.Pawan Kumar (A.C. To A.G.)
For the BPSC	:	Mrs. P.L. Gautam, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 12-12-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioners have prayed
for following reliefs:-

"(i) For declaring the entire
enactment being Rule 6(iv) of Notification
No. 07/Misc.-45/2017 dated 18.08.2021 and



also Rule (v) (क)(ख) of Notification no. 07/Misc. 45/2017 dated 18.08.2021 issued by Additional Chief Secretary Education Department, Bihar Patna being excess of power and contrary to the provision of the Constitution and various other central enactment as illegal, arbitrary, unconstitutional and ultra-virus and ultra-virus to the constitutional of India as enshrined Part-3 of the Constitution of India and framed ignoring the Principal of Natural Justice, be issued.

(ii) For a direction to the respondent authorities to declare the applicants and similarly situated to the petitioners as valid and fit candidates who those passed out teacher eligibility test in 2013 and they were appointed in 2015 as a teacher in the respective schools of Bihar and reduce the teaching experience from 8 years minimum and to reduce the eligibility criteria of graduation in intermediate only to as per the experience since 2016. So that most of applicants may be applicable to participate for appointment of head master and also for healthy competitions so that the best applicants ought to be appointed in public services for proper teaching and administration and best services shall be provided to the public at large and the Rule (6) rational progressive and in the benefit and betterment of the society following due process of law with equity and equality before law. Therefore the Rule 6(iv) and (v) (क)(ख) is irrational and unconstitutional under Article 14 and 16 of the Constitution of India.

(iii) For a direction to the respondent authorities to frame the Rules for appointment of Urdu TET (Teachers Eligibility Test) passed out Urdu knowing teachers in Urdu Primary and Middle Schools of Bihar, for proper administration of densely populated Urdu knowing region



in Bihar, So that proper teaching and administration be provided to them.

(iv) For a direction to the respondent authorities to relax in the teaching experience and qualification as well with regard to the Urdu knowing teachers who those been appointed keeping in view that they have possessed Urdu Script and language and are coming from a lower base having no capacity to compare with those who have good family backgrounds rather they are unable to get higher degrees from premier institutions, relating the stiff criteria also."

3. On 19.10.2022 following order was passed:-

"First respondent is hereby directed to file an affidavit as to whether State Government before issuing Annexure-1, Rules, whether drafted Rules have been prepared and notified while inviting suggestions or objections from such of those persons whose rights are likely to be affected. In the event of issuance of the aforesaid draft Rules, copy of the same be placed on record. Further how suggestions/objections have been considered.

Re-list this matter on 17.11.2022."

4. Counter affidavit filed on behalf of Respondent

No. 1, Additional Chief Secretary, Education Department,
Government of Bihar.

Para 7 to the counter affidavit reads as under:-

" That thus as per the records it is respectfully submitted that prior to finalizing the "Rule 2021", suggestions or



objections had not been invited."

5. Present petition could be disposed of holding that Notification No. 7/Misc-45/2017 dated 18.08.2021 viz., Draft Rules called "*Bihar Nationalised Primary School Head Teacher (Appointment, Transfer, Disciplinary Action and Service Condition) Rules, 2021*" as Draft Rules. The same cannot be given effect to until and unless Draft Rules is framed and published while inviting objections and suggestions, for the reasons that a class of person/persons rights are likely to be affected in the event of giving effect to Rules, 2021.

6. In view of the admission made by the 1st Respondent in his counter affidavit dated 30.11.2022 in para 7 cited (supra), it is crystal clear that draft Rules have not been published. Therefore, we proceed to hold that Rules, 2021 dated 18.08.2021 is treated as draft Rules. Petitioners were permitted to file their objections/suggestions within a period of eight weeks from the date of receipt of this order. At the same time, the State Government is hereby directed to treat this 18.08.2022 as draft Rules inviting objections/suggestions and the same may be issued in the gazette and also vide publication so as to such of those persons who were not before this Court would be provided an opportunity of filing their suggestions/objections



while fixing time-limit of two months from the date of publication to be made by the State Government. Thereafter, State Government is hereby directed to analyze the suggestions and objections and consider them and proceed to issue final Rules, 2021 at the earliest.

7. With the above observations, present writ petition stands disposed of.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

rakhi

AFR/NAFR	
CAV DATE	NA
Uploading Date	15.12.2022
Transmission Date	NA

