

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.109 of 2022

1. Ram Babu Yadav son of Late Yogeshwar Yadav resident of Village- Khangraitha, via- Arer Hat, Post Office- Nahas Rupauli, Police Station- Bisfi, District- Madhubani, PIN- 847222.
2. Ram Nandan Singh son of Late Baue Lal Singh resident of Mohalla- Radha Krishna Nagar, Ward No.- 20, P.S.- Sadar, Madhubani, PIN- 847211.
3. Ram Nandan Yadav son of Late Gulai Yadav resident of Vill.- Bholirahi, P.O.- Firozgarh, P.S. and Via- Ghoghardiha, Distt- Madhubani, PIN- 847202.
4. Chandra Narayan Mehta son of Late Hriday Narayan Mehta resident of Village- Bhupatti, P.S.- Babubarhi, District- Madhubani, PIN- 847224.
5. Jayant Kumar son of Bhola Sahu resident of Mohalla- Station Road, Raj Nagar, Police Station- Rajnagar, District- Madhubani.
6. Rajdev Prasad son of Mahavir Yadav resident of Mohalla- Bhavani Nagar, Stadium Chowk, P.S.- Sadar, Madhubani, PIN- 847211.
7. Vinay Kumar son of Kishori Yadav resident of Village- Mogalaha, Post Office- Misraulia, Police Station- Babubarhi, District- Madhubani.
8. Mohammad Sohail son of Md. Ubaidullah resident of Vill.- Chandrasenpur, P.O.- Husenpur, P.S. and Via- Rahika, District- Madhubani, PIN- 847238.
9. Tarkeshwar Prasad Yadav son of Late Lakshmi Narayan Yadav resident of Vill.- Navtol, P.O.- Dhanauja, P.S.- Phulparas, Distt- Madhubani, PIN- 847409.
10. Vakil Mahto son of Late Jitan Mahto resident of Village and Post Office- Pirahi, Police Station- Babubarhi, District- Madhubani, PIN- 847224.
11. Surendra Kharga son of Late Sukhdev Kharga resident of Village- Simri, Via- Arer Hat, Police Station- Bisfi, District- Madhubani, PIN- 847222.
12. Mohammad Zaheer son of Abdul Aziz resident of Village- Jatahi, P.O.- Simri Goth, P.S. and Via- Rajnagar, District- Madhubani, PIN- 847235.
13. Krishna Kumar Singh son of Late Matuka Prasad Singh resident of Village- Pachahar, P.O.- Selara, P.S.- Jay Nagar, District- Madhubani, PIN- 847228.
14. Bindeshwar Prasad Singh son of Late Satyadev Prasad Singh resident of Vill.- Chhaurahi, P.S.- Babubarhi, Via- Khajauli, Distt- Madhubani, PIN- 847228.
15. Chandra Deo Yadav son of Late Sita Ram Yadav resident of the applicant Village- Meena Bazar, P.O.- Sapta, P.S.- Rahika, Distt- Madhubani, PIN- 847214.
16. Surendra Kumar Yadav son of Late Aniruddh Yadav resident of Village- Nanpatti, P.O.- Narahiya, P.S.- Phulparas, Distt- Madhubani, PIN- 847108.
17. Ghanshyam Mahto son of Late Bhikhari Mahto resident of Village- Mohanpur, P.O.- Bariyarpur, P.S.- Sitamarhi, Distt- Sitamarhi, PIN- 843302.
18. Arun Kumar Suman son of Adhikari Yadav resident of Village- Dhobiyahi, Post Office- Garha, Police Station- Ladaniyan, District- Madhubani.
19. Mohan Lal Yadav son of Amrit Lal Yadav resident of Village- Tengrar, Via-



Phulparas, P.S.- Khutauna, District- Madhubani, PIN- 847409.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Director (Primary Education), Human Resource Development Department, Government of Bihar, Patna.
5. The District Education Establishment Committee, Madhubani, through its Chairman-cum- District Magistrate, Madhubani.
6. The District Magistrate, Madhubani.
7. The District Education Officer, Madhubani.
8. The District Programme Officer, Establishment in the office of the District Education Officer, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Navendu Kumar, Adv.
For the Respondent/s	:	Mr.Subhash Chandra Mishra (Sc16)
For the State	:	Mr. Madhukar Mishra, AC to SC-16

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 07-03-2022 Learned counsel for the petitioners submits that as per the Bihar Taken Over Elementary School Teachers' Promotion Rules, 1993, it is provided under minimum educational and training qualifications and minimum tenure of service Rule 5 that for promotion to grade-IV trained graduate minimum 08 years of service in Grade -I would be considered in the event of promotion from Grade-I to Grade-IV, in case of non-



availability of teachers in Grade-III and Grade-II.

Learned counsel submits that as teachers in Grade-III and Grade-II would not be available and vacancies in Grade-IV were lying vacant, the petitioners who completed 8 years of service in Grade-I became entitled for promotion to Grade-IV in terms of Rule 5 (2). However, the petitioners were not promoted to Grade-IV immediately after completing 8 years of service and have been promoted subsequently.

In view, thereof, learned counsel submits that a mandamus be issued to the respondents to shift back the date of promotion of the petitioners from the date they completed 8 years of their respective services after appointment in Grade-I.

Learned counsel has relied on a judgment passed by a Coordinate Bench in case of Ramshankar Sah Vrs. The State of Bihar to submit that a mandamus can be issued to shift the date of promotion.

Learned counsel for the petitioners has stated that there are provisions for consideration



for further promotion on completion of 4 years of service. However, the petitioners have not been considered and have not been promoted subsequently.

It goes without saying that the eligibility criteria for promotion is a minimum requirement of service. It does not in any manner right to an individual for promotion soon after he completes 8 years or 4 years of service.

I have considered the submissions, Rule 5 of Rule 1993 provides the minimum educational and training qualification and minimum tenure of service for the purpose of promotion, Rule 4 provides contention for promotion as under:-

“4. Conditions for promotion:- The promotion of a teacher may only be considered on fulfilling the following:-

(1) He fulfills the minimum prescribed period of service for promotion;

(2) He possesses minimum prescribed educational qualification and training for promotion;



(3) There must be a vacancy meant for the category to which he belongs S.C., S.T. or general according to latest rules regarding reservation;

(4) He must be eligible for consideration for promotion on the basis of the seniority list against the available vacancies;

(5) His service is satisfactory.”

Rule 10 provides, let the decision for promotion shall be taken after due consideration by the Establishment Committee against the vacant posts.

Thus, from perusal of the Rules, it is apparent that no person has an indefeasible right for promotion mentioning of minimum educational and training qualification and minimum tenure of service under Rule 5 does not create a right in favour of any individual to be promoted merely because he has acquired the minimum qualification. Law in this regard is well settled that



a person only has a right of consideration for promotion, but he does not have absolute right of promotion. In other words, a mandamus cannot be issued by the Court directing the State to promote an individual immediately upon the vacancies have not been created. Admittedly, the petitioners were promoted vide order dated 28th June, 2012.

In the circumstances, after 10 years, this Court would not deem it appropriate to direct to shift these promotions from 2012 to earlier years when the respective petitioners completed their 8 years of service in Grade-I. Such a direction apart from not being available under the right of consideration for promotion or under the Rules, would also otherwise create an administrative chaos.

So far as, regards the judgment passed by the Coordinate Bench on 10.05.2011 is concerned, I have respectfully considered the law laid down. However, as there is no earlier year vacancy Rule available under the Rule 1993. A direction for retrospective promotion from his earlier date would



be contrary to the Rule of 1993.

In view thereof, I respectfully dis-agree with the judgment as it has not taken into consideration the Rules of 1993 with regard to earlier year vacancies.

Keeping in view thereto, I do not find any case for interference of granting retrospective promotion to the petitioner.

The writ petition is wholly mis-conceived and accordingly dismissed.

(Sanjeev Prakash Sharma, J)

pravinkumar/-

U			
---	--	--	--

