

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10498 of 2020

1. Samir Sarswat S/o Mariyanus Tigga Resident of Mohalla- East Murli Hill Bairagi Gaya, PS- Kotwali, District- Gaya.
2. Krishna Prakash Nand S/o Rup Narayan Prasad R/o Vill and P.O.- Chhatibagh, PS- Chandauti, District- Gaya.
3. Kunal Ranjan S/o Late Baliram Upadhyaya R/o Vill- Magadh Colony, PO- Magadh Medical, District- Gaya.
4. Aditya Narayan S/o Arvind Kumar Resident of Mohalla- House No- 181 (c), A.P. Colony, PS- Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. DEO, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Shruti Sinha, Advocate
For the Respondent/s : Mr. P.K. Shahi, AG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-08-2023

The above writ petition has been filed by the petitioners, four teachers, challenging the very Rules under which they were appointed. They also claim regular pay scales of basic grade and graduate teachers in the light of Article 14 of the Constitution of India; without prejudice to the creation of a regular professional and permanent cadre for the regular appointment of Teachers Eligibility Test (TET) qualified persons.

2. The petitioners have prayed for an order of quashing of the existing '*Bihar Panchayat Prarambhik Sikshak*



(*Niyojan evam Seva Shart*) *Niyamavali, 2012*' and to appoint TET-qualified Graduate Grade teachers in the various districts.

3. Admittedly, all the petitioners were appointed under the *Niyamavali 2012*, which is challenged by the petitioners. The petitioners contention is that even persons without TET qualifications have been appointed, and this creates discrimination. The petitioners, as we noticed, also seek a permanent cadre in which only TET-qualified persons can be appointed.

4. The learned Advocate General appearing for the State had first pointed out that as per Annexure-A filed along with the counter affidavit in C.W.J.C. No. 10498 of 2020, which is dated 21.08.2020, the Rules of 2012 have been repealed and there is a new Rule enforced. As of now, the very continuance of the petitioners is only since every action taken under the earlier Rules are saved by the new Rule.

5. It is also pointed out that the prayer for equal pay for equal work was rejected by the Hon'ble Supreme Court in ***State of Bihar v. Bihar Secondary Teachers Struggle Committee, (2019) 18 SCC 301.***

6. The writ petition itself is misplaced according to us since the petitioners are not sure as to whether they are challenging the Rules or seeking regularization in sanctioned



posts. If the challenge to the Rules are upheld, necessarily their appointments would also fall to the ground.

7. Regularization and equal pay for equal work have been elaborately considered by the Hon’ble Supreme Court in the cited decision. It was held that any direction to disburse same salary and emoluments to the *Niyojit* teachers would create great imbalance and cause undue strain on budgetary resources. Finding that the State action was not unfair or discriminatory, the measure of creation of a separate cadre was held to be in judicious and optimum utilization of available resources. The Rules, as pointed out by the Advocate General, has been repealed in August 2022, and the present writ petition was filed on 28.12.2020.

8. We find the entire exercise of this writ petition to be misplaced and the petitioners misguided. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.08.2023.
Transmission Date	

