

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2270 of 2024

1. Sandeep Kumar Jha Son of Chandra Mohan Jha, Resident of Village and P.O.- Parsando, P.S.- Haveli Kharagpur, District- Munger (Bihar).
2. Md. Khalik Husain, Son of Md. Hakim Mansoori, Resident of Village- Kushdhar, P.O.-Bishunpur, P.S.- Baghaila, District- Rohtas at Sasaram.
3. Shahema Afrin, Wife of Shahid Aqbal, Resident of Village and P.O.- Biur, P.S. Chainpur, District- Kaimur (Bhabua).
4. Purnima Pal, Wife of Manoj Kumar, Resident of Village and Post- Nauhatta, P.S.- Belaow, District - Kaimur (Bhabua).
5. Bharati Kumari, Wife of Rupkant Kumar Resident of Village and Post- Babhangama, P.S.- Birpur, District - Begusarai (Bihar).
6. Sandeep Kumar Verma, Son of Ashok Kumar Verma, Resident of Village Bari Tola, P.O. and P.S.- Buxar, District- Buxar (Bihar).
7. Abhishek Kumar, Son of Bharat Singh Resident of Village and Post- Akhlaspur Ward No.- 1, P.S.- Bhabua, District - Kaimur (Bhabua).
8. Ranjan Kumar Singh, Son of Rambahadur Singh Resident of Village Kanethi, P.O. Bhachaula, P.S.- Kudra, District- Kaimur (Bhabua).
9. Vikash Kumar, Son of Rajkishore Singh Resident of Village and Post Bikrampur, P.S.- Cheriya Bariyarpur, District Begusarai (Bihar).
10. Deepak Kumar Mandal, Son of Girish Prasad Mandal, Resident of Village West Tola Bholsar, P.O. Ekchari, P.S.- Khalgaoon, District Bhagalpur (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
4. The Director (Secondary Education), Education Department, Government of Bihar, New Secretariat, Vikas Bhawan, Bailey Road, Patna.
5. The Bihar Public Service Commission, through its Chairman, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, Bihar, Patna.
7. The Secretary, Bihar Public Service Commission, Bihar, Patna.
8. The Examination Controller (TRE-2), Bihar Public Service Commission, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nityanand Mishra, Adv. Mr. Alok Abhinav, Adv.
For the State	:	Mr. Ajay Kumar, AC to GP4



For the B.P.S.C. : Mrs. Parul Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :29-05-2024

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the B.P.S.C.

2. Having heard learned counsel for the parties and for the reasons stated in this interlocutory application, this I.A. No. 01/2024 is allowed and the reliefs prayed in this interlocutory application shall also be treated as a part of the relief prayed in the main writ application.

3. That the present writ application is being filed on behalf of the petitioners for the following relief(s):-

“(i) For issuance of a writ in the nature of mandamus directing/commanding the respondents/authorities concerned to grant (5 marks per year and maximum 25 marks) of preference/weightage in the Advertisement No. 27/2023 dated 04.11.2023 (Annexure -P/3) published by the Bihar Public Service Commission (hereinafter referred to as the 'BPSC' (respondent no.5) and upcoming Teacher recruitment examinations to the 'Guest Teacher who has appointed through Resolution issued vide Memo No.51 dated 25.1.2018 (Annexure-1 to this writ application) issued by the then Secretary, Education Department, Government of Bihar, Patna under the order of Hon'ble Governor of Bihar.

(ii) For issuance of writ in the nature of mandamus a directing/commanding the respondents/authorities concerned to follow the Rule no. 6 (Merit List) of the Advertisement No. 27/2023 (Annexure -P/3) published by



the BPSC (respondent no.5) for the appointment as the 'School Teacher' by which (5 marks per year and maximum 25 marks) of preference/weightage given to the employed Teacher on contract basis in Backward Class and Extreme Backward Class Welfare Department but the respondents concerned have not given 5 marks preference/weightage to the petitioners who are Guest Teacher.

(iii) Further for issuance of writ in the nature of mandamus directing/ commanding the BPSC (respondent no.5) to publish supplementary result in favour of the Guest Teacher who are working since 5 and half years.

(iv) Further for issuance of writ in the nature of mandamus directing/ commanding the respondents to regularize the service of the petitioners according to the 'Bihar District Board Secondary and Senior Secondary Teachers' (Employment and Service Condition) Rule, 2006' and 'Bihar Municipal/Local Bodies Secondary and Senior Secondary Teachers' (Employment and Service Condition) Rule, 2006' and not to disturb the service of the petitioners till the age of 60 years i.e. age of retirement like other teachers of the secondary/primary schools of the Government of Bihar and pay the remuneration/salary accordingly.

(v) Further for direction to the respondents concerned not to take steps with respect the petitioners to terminate them from their job.

(vi) Further for direction to the respondents concerned not to make any employment/selection/appointment in place of the petitioners.

(vii) The interlocutory application no.1 of 2024 is filed on behalf of the petitioner for granting stay on Advertisement no. 22/2024 dated 07.02.2024 (TRE-3), published by B.P.S.C. and to grant (5 marks per year to maximum 25 marks) of preference/weightage in the Advertisement no. 22/2024 dated 07.02.2024 (Annexure-P/6) for the guest



teachers.

(viii) For any other relief/reliefs for which the petitioners are entitled to in accordance with law.”

4. The fact of the present case, in short, is that the petitioners are working as ‘Guest Teachers’ in different subjects in different schools of different districts of Bihar and they are residing in the State of Bihar. The Education Department, Government of Bihar, came with a Resolution vide Letter No.9/Bi.Vi.Pa.Sa-09/2015 issued vide Memo No.51 dated 25.01.2018 to appoint/employ 4257 vacant posts of 'Guest Teachers' in different subjects i.e. English, Mathematics, Physics, Chemistry, Zoology and Botany on remuneration @ Rs.1000/- per day maximum Rs.25000/- in a month, in Upgraded Secondary Schools situated in Zila Parishad and Nagar Nikay of the State under Government/Government Takeover/Nationalized Secondary Education Campaign and the said letter was also circulated to all the District Education Officers and other concerned Officers of the State of Bihar (Annexure-P/1 to the writ petition). In pursuance of the Resolution dated 25.01.2018 as contained in Annexure-P/1, the Director Secondary Education, Bihar, Patna (Respondent No.4) issued letter vide Memo No.264 dated 18.05.2018 explaining the conditions for employment/selection of the 'Guest Teachers'.



In view of the Resolution issued vide Memo No.51 dated 25.01.2018, an advertisement was published inviting applications from the eligible candidates and in view of the said advertisement the petitioners, as having B.Ed/M.Ed Qualification, duly applied for the concerned subject teachers as per their qualifications enclosing their requisite educational qualifications and other requisite certificates and subsequently application form receipt was issued to the candidates.

5. Thereafter, on the basis of academic qualification and other qualifications, a merit list was prepared according to the roster as per Letter No.234 dated 26.04.2018 and Letter No.309 dated 12.06.2018 and uploaded on the website and in this regard a notice was issued to all Headmasters/Acting Headmasters of 10+2 High Schools of the concerned District, which was issued with the joint signature of the District Programme Officers and District Education Officers mentioning therein that the merit list is uploaded on website and on the basis of the merit list the concerned candidates whose name was appearing in the merit list and join the respective posts i.e. 'Guest Teacher' in the concerned respective schools within stipulated time as mentioned in the said notice.

6. Thereafter, the petitioners joined the said post and



started discharging their duties to the satisfactions of all concerned even to the satisfaction of the students and after joining the post of respective subject and due to their hard labour towards the students the result of the students of the school become better and progressive. After joining the posts the petitioners were engaged in conducting the Lok Sabha/Vidhan Sabha/Panchayat Election/Examination Centre Duty/Evaluation and in this regard order of appointment of Presiding & Polling Officers was issued for conducting Elections. Several States i.e. Delhi, Haryana, Uttrakhand etc. have adopted the theory of 'Guest Teachers' appointment and after appointment some States have by taking resolutions and by making policy have taken over the service of the 'Guest Teachers' and so far the Uttrakhand State is concerned the service of Guest teachers of Uttrakhand was also taken over in view of the Apex Court Order dated 14.01.2020 passed in S.L.P (Civil) Nos. 428-430 of 2019 (*Rajesh Dhami and others vs. The State of Uttrakhand and Others*) by which the Hon'ble Apex Court directed the State of Uttarakhand to adjust/regularize the Guest Teacher, the State of Bihar should follow and should adopt and regularize the Guest Teacher of the State of Bihar.



7. The Education Department, Govt. of Bihar, had enacted Bihar Municipal Body Secondary and Higher Secondary School Service (Appointment, Promotion, Transfer, Disciplinary Action and Service Conditions) Rules, 2020, vide Notification No. 01-01/2020 (1110) dated 20.08.2020. The Rule No.10(iv) which states to grant 5 marks per year preference/weightage to the 'Guest Teacher' for their work duration. The rule 10 (iv) which states as :-

"भूतपूर्व सैनिकों की विधवा को मेधा अंक में 10 अंकों का अतिरिक्त वेटेज देय होगा। इसी प्रकार, उच्च माध्यमिक विद्यालयों में अतिथि शिक्षक के रूप में न्यूनतम एक वर्ष की अवधि तक कार्य करने वाले अभ्यर्थीगण को मेधा अंक में 05 अंकों का अतिरिक्त वेटेज देय होगा।"

8. The B.P.S.C. has published an Advertisement bearing Advertisement No.27/2023 dated 04.11.2023 in which 70,622 posts of School Teachers under different Govt. Schools have advertised for the selection process. The BPSC has given (5 marks per year and maximum 25 marks) of preference/weightage to the employed Teacher on contract basis in Backward Class and Extreme Backward Class Welfare Department (Annexure-P/3 of the writ petition). In the advertisement no. 22/24 dated 07.02.2024 the same is



mentioned i.e. 5 marks per year and maximum 25 marks of preference/weightage to the employed Teacher on contract basis in Backward Class and Extreme Backward Class Welfare Department, but it is not given to the Guest Teacher. The petitioners have qualified STET Examination. The petitioners have appeared in Advertisement No. 27/2023 for the selection process of School Teacher but the B.P.S.C. has not given preference/weightage of 5 marks per year to the Guest Teacher who are working since more than 5 and half years. Petitioners have filed a joint representation before the concerned authorities for the grant of (5 marks per year and maximum 25 marks) of preference/weightage to the 'Guest Teacher' in Advertisement No. 27/2023 and to publish supplementary result in favour of the Guest Teacher who have worked for more than 5 and half years. The respondents concerned also grant (5 marks per year and maximum 25 marks) of preference/weightage to the 'Guest Teacher' in upcoming Teacher recruitment examinations (Annexure-P/5 (series) to the writ petition). The concerned authority has not heard the petitioners and again published the advertisement no. 22/24 dated 07.02.2024 and no weightage is given to the Guest Teacher.

9. A supplementary affidavit has been filed on behalf



of the petitioners in which it is submitted that the Director (Secondary Education), Education Department, Government of Bihar, Patna, has issued a Letter No. 325 dated 30.03.2024 (Annexure- P/8) with a reference of Departmental Resolution No. 51 dated 25.01.2018 (Annexure-P/1). In view of the said letter, it is directed by the respondent no.4 that the service of 'Guest Teachers' who have been in service in the Higher Secondary Schools of the State under the provision made in Departmental Resolution No. 51 dated 25.01.2018 (Annexure-P/1), should not be continued since 01.04.2024 under any circumstances. Along with this, it is also directed to all the District Education Officers ensure to provide to the (Secondary Education), Education Department, Government of Bihar, Patna a certificate that there is not even a single 'Guest Teacher' in service in your district and send the certificate in this regard to the Education Department by 03.04.2024.

10. A counter affidavit has been filed on behalf of the respondent no. 4 in which it is stated that the petitioners are Guest teachers appointed on temporary basis and fixed remuneration of ₹1000/- per working day with maximum of ₹25,000/- per month, till the Niyojan/employment of teachers in the Government Schools, converted to Government Schools and



Upgraded Higher Secondary Schools under National Secondary Education Abhiyan. It further transpires that the petitioners have approached this Hon'ble Court for grant of relaxation in the nature of award of 5 marks per year, subject to maximum of 25 marks for each year of satisfactory work, as awarded to the contractual teachers working in Backward Class and Extreme Backward Class Welfare Department in advertisement No.27/2023 or to grant regularization to their services.

11. Learned counsel for the State submits that from perusal of the Memo No.51 dated 25.01.2018 (Annexure-1 to the writ petition) it is abundantly clear that the petitioners' services were temporary in nature who were employed with an objective of completing the syllabus in the respective schools in the absence of Niyojit teachers in the schools for reason of vacant positions. It is further clearly mentioned that their service shall be taken only till the Niyojit teachers are employed on the sanctioned posts in the schools. There is no provision prescribed for their service being regularized as their employment was temporary in nature which fact has been specifically mentioned in the Memo No.51 dated 25.01.2018. The petitioners accepted their services as Guest teacher in the schools being fully aware and without any objection to the above mentioned fact.



12. Learned counsel for the State further submits that there is no provision prescribed in the above mentioned Memo No.51 dated 25.01.2018 for grant of grace marks or any other relaxation to such teachers in the appointment process as prayed for by the petitioners. The award of grace marks or relaxation is a policy decision within the domain of the State and no such provision/decision has been brought on record by the petitioners. The schools under control and management of the Education Department is different from the schools under control and management of the Backward and Extremely Backward Class Welfare Department which is apparent from the fact that the posts under these two schools have been advertised separately though under the same advertisement. The posts of school teachers under the Education Department is mentioned at Column-2 of the advertisement whereas the posts under the Backward and Extremely Backward Class Welfare Department is mentioned at Column-3 of the advertisement. The control and management of the schools as above mentioned is done by their respective Departments and the Education Department has no interference in the service of the teachers employed under the Backward and Extremely Backward Class Welfare Department. The Guest teachers engaged as per Memo No.51 dated



25.01.2018 and the teachers working on contract basis in the school under Backward and Extremely Backward Class Welfare Department are two separate class who are being governed by different departments.

13. Learned counsel for the State further submits that there is no question of violation of Article 14 as the two classes are entirely different from each other. The schools in which the petitioners are working as Guest teachers is completely different from the school under management of the Backward and Extremely Backward Class Welfare Department. The petitioners are Guest teachers in schools under the control of Education Department whereas the persons against whom they are claiming parity are contractual teachers working in schools under control and management of Backward and Extremely Backward Class Welfare Department. Hence, there is no question of breach of the equality principle between the two set of classes as enshrined in the Constitution of India. So far the contention of the petitioner that the provision of award of 5 marks of Guest Teachers laid down in the Bihar Municipal Body Secondary and Senior Secondary Teachers (Employment and Service Condition) Rules, 2020 is concerned with the process of Niyojan which has been done away by the enactment of the



Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Condition) Rules, 2023. As per the new Rules, the appointment to the post of school teachers is being done by a competitive examination conducted by the Bihar Public Service Commission (Annexure-R-4/1 of the counter affidavit).

14. Learned counsel for the State further submits that the Rule 19(i) of the Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Condition) Rules, 2023 inter alia mentions that persons appointed under Bihar Zila Parishad Secondary and Senior Secondary Teacher (Appointment and Service Conditions) Rules, 2006 (as amended from time to time), Bihar Zila Parishad Secondary and Senior Secondary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020, Bihar Nagar Nikay Secondary and Senior Secondary Teacher (Appointment and Service Conditions) Rules, 2006 (as amended from time to time), Bihar Nagar Nikay Secondary and Senior Secondary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020, Bihar Panchayat Elementary School (Appointment and Service conditions) Rules, 2012 (as amended from time to time), Bihar



Panchayat Primary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020, Bihar Nagar Elementary Teacher (Appointment and service Conditions) Rules, 2012 (as amended from time to time) and Bihar Nagar Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020 shall not be eligible to make any claim under any provision of these Rules except for the specific provisions made for their appointment in the cadres governed by the State Government under these Rules.

15. Lastly, learned counsel for the State submits that the service conditions of the petitioners have been laid down vide Memo No.51 dated 25.01.2018 and the appointment on the posts of school teachers in various schools of the Education Department is being done as per the Bihar State Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Condition) Rules, 2023 for which advertisement No.26/2023 and 27/2023 have already been issued and the process of appointment has been concluded.

16. A counter affidavit has also been filed on behalf of the B.P.S.C. in which it is stated that there is no provision either in the requisition received from the Departments or in the



advertisement for providing marks to the Guest Teacher. The Respondent Commission is a recommending body and in the matter of appointment or otherwise abides by the rules and regulations framed by the State Government. Thereafter, the Answering Respondent published Advertisement No. 22/2024 dated 07.02.2024 for the post of School Teacher(TRE 3.0) under Education Department and SC & ST Welfare Dept., Govt. of Bihar in accordance with the requisitions received from the abovesaid concerned Departments. The Advertisement No.22/2024 for appointment to the post of School Teacher(TRE 3.0) did not even contain any provision pertaining to grant 5 marks for each 1 year of employment and maximum 25 marks to guest teachers who were earlier under employment in accordance with the requisitions sent by the requisitioning departments. Further, it may not be out of place to state here that the School Teacher Competitive Examination TRE 3.0 was conducted on 15.03.2024 and was later on cancelled vide Notice dated 20.03.2024.

17. Having heard the arguments advanced on behalf of the parties and from perusal of the records, it is clear that Advertisement No.27/2023 dated 04.11.2023 (Annexure-P/3 to the writ petition) published by the B.P.S.C. and the appointment



in the said advertisement has already been concluded, therefore, that prayer of the petitioner is not accepted by this Court to direct the B.P.S.C. to make merit list in the advertisement no. 27/23. It is admitted fact that the petitioners are working as Guest Teacher and the award of the grace marks of relaxation is a policy decision with the domain of the State and no such provision/decision has been taken by the State Government to give the benefit of five marks per year maximum to 25 marks to the Guest Teacher. The management of the Backward and Extremely Backward Classes Welfare Department has given the said grace marks to the contractual teachers not to the Guest Teacher. It is policy matter of the State to grant grace marks to contractual basis teacher not to Guest Teacher that is violation of Article 14 of the Constitution of India.

18. Considering the fact and circumstances of the case, I am of the view that both the contract teachers and the guest teachers are discharging same duties as they are teaching the students in the school and there is no difference between the contract teachers and the guest teachers. In my opinion, the Guest teachers are also entitled to 5 marks for each 1 year of employment and maximum 25 marks as given to the contract teachers. Accordingly, this writ petition is allowed and the State



Government is directed to take final decision to grant of 5 marks for each year of employment and maximum 25 marks to the guest teacher as given to the contract teachers, within one month. The Advertisement no. 22/24 dated 07.02.2024 is hereby stayed.

19. Interlocutory application, if any, shall also stand disposed of.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	17.05.2024
Uploading Date	29.05.2024
Transmission Date	NA

