

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9731 of 2017

1. Dhananjay Kumar Son of Sri Rudal Parsad, Resident of Village/ Mohallah- Gora, P.O.- Lamipur, P.S.- Sanichari, District- West Champaran Bihar.
2. Suryabal Kumar Son of Sri Rajendra Mahto, Resident of Village/ Mohallah- Bhathuhawa, P.O.- Damrapur, P.S.- Manpur, District- West Champaran Bihar.
3. Raj Kumar Prasad Son of Sri Jang Bahadur Prasad, Resident of Village/ Mohallah- Jai Nagar, P.O.- Khadda Kunjlahi, P.S.- Nautan, District- West Champaran Bihar.
4. Ranjan Kumar Singh Son of Sri Shahilendra Prasad Singh, Resident of Village/ Mohallah- Rulhi, P.O.- Rulhi, P.S.- Majhaulia, District- West Champaran Bihar.
5. Nand Kishor Prasad Son of Sri Badri Prasad, Resident of Village/ Mohallah- Baghambarpur, P.O.- Patjirwa, P.S.- Sri Nagar, District- West Champaran Bihar.
6. Amir Khan Son of Late Khalil Ahmad, Resident of Village/ Mohallah- Mmehnaul Kala, P.O.- Belsandi, P.S.- Matiarra, District- West Champaran Bihar.
7. Vikash Kumar Choebey Son of Sri Satrudhan Choebey, Resident of Village/ Mohallah- Musharwa, P.O.- Musharwa, P.S.- Sathi, District- West Champaran Bihar.
8. Dileep Kumar Son of Sri Manindra Madhu, Resident of Village/ Mohallah- Biranchi No. 3, P.O.- Damrapur, P.S.- Manpur, District- West Champaran Bihar.
9. Pappu Kumar Singh Son of Sri Surya Singh, Resident of Village/ Mohallah- Mohaddi Bankatwa, P.O.- Ratanmala, P.S.- Majhauliya, District- West Champaran Bihar.
10. Amerika Sah Son of Sri Raghubir Sah, Resident of Village/ Mohallah- Madhopur, P.O.- Madhopur, P.S.- Majhauliya, District- West Champaran Bihar.
11. Nand Kishor Prasad Son of Sri Maharaj Prasad, Resident of Village/ Mohallah- Diulia, P.O.- Jagdishpur, P.S.- Nautan, District- West Champaran Bihar.
12. Akhilesh Kumar Son of Sri Nageshwar Sah, Resident of Village/ Mohallah- Jaitiya, P.O.- Jaitiya, P.S.- Chanpatiya, District- West Champaran Bihar.
13. Sachhidanand Kumar Son of Sri Shyam Narayan Prasad, Resident of Village/ Mohallah- Chanpatiya, P.O.- Chanpatiya, P.S.- Chanpatiya, District- West Champaran Bihar.
14. Abdul Majid Son of Shan Mohammad Miyan, Resident of Village/ Mohallah- Rani Pakri, P.O.- Pipra Pakri, P.S.- Bettiah Muffassil, District- West Champaran Bihar.
15. Ravi Shankar Kumar Mishra Son of Sri Sidheshwar Mishra, Resident of Village/ Mohallah- Kehunia, P.O.- Kehunia, P.S.- Shikarpur, District- West Champaran Bihar.



16. Akanksha Daughter of Sri Manoj Kumar Singh, Resident of Village/ Mohallah- New Colony, P.O.- Bagaha- I, P.S.- Bagaha, District- West Champaran Bihar.
17. Ayesha Zakia Daughter of Mohammad Ali, Resident of Village/ Mohallah- Nayatola Mohammad Nagar, P.O.- Bettiah, P.S.- Nagar Thana Bettiah, District- West Champaran Bihar.
18. Vijay Kumar Yadav Son of Sri Uma Shankar Yadav, Resident of Village/ Mohallah- Bankatwa Bagaha, P.O.- Bagaha, P.S.- Bagaha, District- West Champaran Bihar.
19. Dipu Kumar Son of Sri Sudama Sah, Resident of Village/ Mohallah- Gandhi Nagar, P.O.- Bagaha, P.S.- Bagaha, District- West Champaran Bihar.
20. Rajesh Kumar Nishad Son of Sri Gudar Mukhiya, Resident of Village/ Mohallah- Lakshmipur, P.O.- Nautan, P.S.- Nautan, District- West Champaran Bihar.
21. Nand Kishor Pandit Son of Sri Chandrika Pandit, Resident of Village/ Mohallah- Balwatia, P.O.- Sukul Pakar, P.S.- Sugauli, District- East Champaran Bihar.
22. Dharmendra Kumar Pandey Son of Sri Braj Kishore Pandey, Resident of Village/ Mohallah- Bahuarwa, P.O.- Bahuarwa, P.S.- Majhauriya, District- West Champaran Bihar.
23. Sanjay Kushwaha Son of Sri Bindwasini Kushwaha, Resident of Village/ Mohallah- Singhpur, P.O.- Singhpur, P.S.- Sathi, District- West Champaran Bihar.
24. Pintu Sharma Son of Sri Sita Ram Sharma, Resident of Village/ Mohallah- Jamadar Tola, P.O.- Siswa Basantpur, P.S.- Chautarba, District- West Champaran Bihar.
25. Hiralal Yadav Son of Sri Ram Chandra Yadav, Resident of Village/ Mohallah- Chandraha Bagicha Tola, P.O.- Chandraha, P.S.- Bathubariya, District- West Champaran Bihar.
26. Nitishwar Nath Tiwari Son of Late Janardan Tiwari, Resident of Village/ Mohallah- Tikuliya Chauk, Chanpatiya, Ward No.- 10, P.O.- Chanpatiya, P.S.- Chanpatiya, District- West Champaran Bihar.
27. Dil Hasan Son of Salim Miyan, Resident of Village/ Mohallah- Tikuliya, P.O.- Tikuliya, P.S.- Chanpatiya, District- West Champaran Bihar.
28. Modassir Nazar Son of Ragib Hussain, Resident of Village/ Mohallah- Beldar Patti Road, Ward No.- 8, P.O.- Chanpatiya, P.S.- Chanpatiya, District- West Champaran Bihar.
29. Rajesh Kumar Thakur Son of Sri Chokat Thakur, Resident of Village/ Mohallah- Panheriya Tola, Ward No.- 14, P.O.- Pokhariya Rai, P.S.- Chanpatiya, District- West Champaran Bihar.
30. Om Prakash Son of Sri Yamuna Mahto, Resident of Village/ Mohallah- Sahutola Ward No.- 17, P.O.- Jaitiya, P.S.- Chanpatiya, District- West Champaran Bihar.
31. Prakash Kumar Gupta Son of Sri Dharmnath Prasad Gupta, Resident of Village/ Mohallah- Gandhi Nagar, Ward No.- 18, P.O.- Bagaha, P.S.- Bagaha, District- West Champaran Bihar.



32. Vikas Kumar Son of Sri Ravikant Singh, Resident of Village/ Mohallah-
Pipra, P.O.- Bakulhar Math, P.S.- Chanpatiya, District- West Champaran
Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar Through the Principal Secretary, Education Department,
Government of Bihar, Patna
2. Principal Secretary, Education Department, Government of Bihar, Patna.
3. Director, Secondary Education, Government of Bihar, Patna.
4. Deputy Director, Secondary Education, Government of Bihar, Patna.
5. District Magistrate, West Champaran, Bettiah.
6. Deputy Development Commissioner, West Champaran, Bettiah.
7. District Education Officer, West Champaran, Bettiah.
8. District Programme Officer Establishment, West Champaran, Bettiah.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Raju Giri

For the Respondent/s : Mr.Prabhakar Jha-Gp27

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 28-06-2024

1. Total thirty two petitioners have filed the present writ application seeking relief for a direction to the respondent / State to sanction the posts of Secondary School Teachers in the remaining 114 Upgraded High Schools in the district of West Champaran and to make appointment on the said posts from such persons, who have cleared the Secondary / Senior Secondary Teacher Eligibility Test (BSITET), 2011.

2. The brief facts of the case is that the petitioners passed the BSITET, 2011 examination and all of them have done B.Ed.



within five years of passing of the eligibility test. The validity of the BSITET result for the purpose of appointment as Teacher was for a period of seven years. In between 2009 to 2015; 153 Middle Schools were upgraded as High Schools in the District of West Champaran. Out of 153 Upgraded High Schools, only in 39 such schools the posts of Teachers have been sanctioned by the State Government and in the remaining 114 Upgraded High Schools the posts of Teachers have not been sanctioned. In the result, no appointment of Teachers could be made affecting the interest of the students.

3. Learned counsel for the petitioners submits that the District Education Officer, West Champaran, Bettiah vide its letter no. 146 dated 14.11.2016 informed the Principal Secretary, Education Department, Government of Bihar, Patna that 167 posts of High School Teachers are lying vacant in the District of West Champaran and out of 153 Middle Schools, which have been upgraded to High Schools; only in 39 such Upgraded High Schools the posts of Teachers have been sanctioned. Instead of making regular appointments in the High Schools, the State Government is making appointments from amongst the retired school teachers which would be evident from the letter dated 07.12.2016 issued by the Director, Secondary Education,



Government of Bihar, Patna.

4. The petitioners along with similarly situated persons have filed representation before the Secretary, Secondary Education, Government of Bihar, Patna for sanction of the vacant posts of Teachers in 114 Upgraded High Schools so that appointment process could be done in the fifth phase of Teachers appointment itself.

5. On the other hand, learned counsel for the State argued that so far sanction of posts for appointment of Teachers in the High Schools is concerned, it is solely the prerogative of the State Government and it is well settled law that policy matter of the Government cannot made the subject matter of judicial review under Article 226 of the Constitution of India.

6. I have heard learned counsel for the parties. The nature of relief sought for by the petitioners in the present writ application cannot be granted inasmuch as the High Court while exercising jurisdiction under Article 226 of the Constitution of India cannot direct the State Government for creation and / or sanction of posts. The Court cannot direct for creation of posts. Creation and sanction of posts is the prerogative of the Executive or the Legislative authorities and the Court cannot arrogate to itself this purely executive or legislative function and



direct for creation of posts. The Hon’ble Supreme Court has held that the Courts cannot take upon themselves the power of creation of posts in the judgment rendered in the case of Divisional Manager, Aravali Golf Club and Another *versus* Chander Hass and Another reported in (2008) 1 SCC 683.

7. Accordingly, this writ application is dismissed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.07.2024
Transmission Date	NA

