

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.450 of 2018

1. Md. Ataullah, Lecturer in Urdu Department, B.P.S. College, Kesarai East Champaran, S/o Md. Kalimuddlah, At- Pakahi, P.O.- Andhara, P.S.- Adapur, Distt- East Champaran.
2. Jag Jiwan Pandit, Principal, R.B. P.I. College, Bairgania, Sitamarhi, S/o Late Asharfi Pandit, At P.O.- Dumarwana, Ward No.20 Bairgania, P.S.- Bairgania, District- Sitamarhi.
3. Dilip Kumar Sinha, Lecturer in Zoology, Dr. I.S.N.R.K.P.L.D. Kishan College, Bariyarpur, Sitamarhi S/o Late Indradeo Narayan Sinha, AtP.O.- Kashi Pakari, P.S.- Rajepur, District- Motihari.
4. Jitendra Singh Lecturer in Botany Department, Y.K.J.M. College, Tariyari, Sheohar, S/o Sri Ram Shobhit Singh, At- Amba Khrd, P.O.- Mohani Mandal, P.S.- Mejarganj, District- Sitamarhi Bihar.
5. Meena Kumari Principal, Surtulasi Inter College, Katihar, W/o Ramprakash Mahto, At- Nayatola, P.O.P.S.- Katihar, District- Katihar.
6. Prabhu Narayan Singh Principal, B.M. College, Barari, Katihar, S/o Jahuri Prasad Singh, AtP.O.- Bharat Khand Saudh, District- Khagaria.
7. Raju Singh Lecturer in Sanskrit Department, B.S. College, Madhuwan, East Champaran, S/o Late Ram Bharosh Singh, At- Narainpur, P.O.- Mughlania, P.S.- Madhuwan, District- East Champaran.
8. Shambhu Prasad Lecturer in Political Science Department, Pt. D.D.U.M. College, Bairgania, Sitamarh S/o Late Hari Narayan Prasad, AtP.O.- Bairgania, P.S.- Bairgania, District- Sitamarhi.
9. Md. Shah Alam Lecturer in Urdu Department, T.Y.K.S. College, Sitamarhi, S/o Md. Farooque Azam, AtP.O.- Bijai, Via- Bhelwa Circle, P.S.- Ghorasahan.
10. Ram Shrestha Bhagat Principal M.K. College, Laxmipur, Madhuwan, Bhutahi, Sitamarhi, S/o Late Ram Vilash Bhagat, Village- Parsa Mahind, P.O.- Haribela, P.S.- Sonbarsa, District- Sitamarhi.
11. Mithilesh Kumar Lecturer in Philosophy Department, R.R. Madhuri Yadav Inter College, Sitamarhi, S/o Late Tej Narain Roy, At- Baburaban, P.O. P.S.- Parihar, District- Sitamarhi.
12. Virendra Singh Lecturer in Economics Department, R.R. College Sheohar, S/o Late Ram Nihora Singh, AtP.O.- Fatehpur, P.S.- Sheohar, District- Sheohar.
13. Lalit Prasad Yadav, S/o Sakratu Lal Yadav, M.S.T.D. Inter College, Ayub Nagar, Balrampur, Katihar, At- Nayatola Navratan Zata, P.O.- Purnia, P.S.- K. Hat, District- Purnia.
14. Arvind Kumar Singh Lecturer in Chemistry Department, Y.K.J.M. College Tariyari Sheohar, S/o Raj Kishor Singh, At- Siras Ram Ray P.O., District- Vaishali.
15. Premchandra Prasad Singh Principal R.Jha College, Sitamarhi, S/o Santan Prasad Singh, At Ward No.6, Nari Khurd, P.O.- Narikhurd, District- Vaishali.



- 16. Vijay Kumar Singh Principal, B.P.S. College, Kesaria, S/o Dev Nandan Singh, At- Jasauli Patti P.O., P.S.- Kotwa, District- East Champaran.
- 17. Uma Shankar Singh Lecturer in History Department, B.P.S. College, Kesaria, East Champaran, At- Darmia, P.O.- Konhia, P.S.- Kesari, District- East Champaran.
- 18. Vijay Kumar Singh Lecturer in Maths Department, B.S. College, Madhuban, S/o Dev Shankar Prasad Singh, At- Manpur, P.O.- Bhatahan, P.S.- Bhatahn, District- Sheohar.
- 19. Birendra Kumar Singh Lecturer in Zoology Department, S/o Pratap Narain Singh, At- Vishunpur Tara, P.O.- Gulwara Madhuban, P.S.- Madhuban, District- East Champaran.

... .. Petitioner/s

Versus

- 1. The State of Bihar through Principal Secretary, H.R.D., Government of Bihar, Patna.
- 2. The Chief Secretary, Government of Bihar, Patna.
- 3. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
- 4. The Special Secretary, Human Resources Department, Government of Bihar, Patna.
- 5. The Director, Senior Secondary Education, Government of Bihar, Patna.
- 6. The Bihar School Examination Board, Patna, through the Chairman, Budh Marg, Patna.
- 7. The Chairman, The Bihar School Examination Board, Patna.
- 8. The Secretary, Bihar School Examination Board, Patna.
- 9. The Director (Educational), Bihar School Examination Board, Patna, through the Chairman, Budh Marg,

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate Mr. Rajeev Kumar Singh, Advocate Mr. Vipin Kumar Singh, Advocate
For the State	:	Mr. M.P. Yadav, GP-23 Mr. Rajesh Kumar Sinha, AC to GP-23
For the BSEB	:	Mr. Ajay Bihari Sinha, Sr. Advocate Ms. Seema Ghazala, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY**



ORAL JUDGMENT**(Per: HONOURABLE THE CHIEF JUSTICE)****Date : 07-02-2024**

The petitioners are lecturers of the erstwhile affiliated intermediate colleges, who challenge the change in service conditions on the intermediate colleges being converted into senior secondary institutions. Their employment was protected, and so was their pay and emoluments. However, their retirement age was brought at par with government employees as distinguished from university teachers, and an additional requirement of obtaining a B.Ed. qualification within a period of three years or within a further period of one year was brought into force; failure of which would entail termination. The petitioners sought interference to the provisions of the notification dated 08.08.2017, produced as Annexure 1, brought out by the Bihar School Examination Board.

2. The learned counsel for the petitioner, Shri Prashant Sinha, pointed out that prior to 1992, the affiliation of colleges, including intermediate colleges, was under Section 59 of the Bihar University Act, 1976. In 1991, an Ordinance was brought into force divesting intermediate education from the collegiate department and bringing it under the stream of higher secondary education. The intermediate courses, rechristened as



(+2) in the higher secondary stream, were placed under the Bihar School Examination Board. The petitioners were appointed between 1983 to 2006 to affiliated intermediate colleges, which, after the Bihar Intermediate Council Act, 1992, was placed under the higher secondary stream of education. The petitioners are aggrieved with the guidelines brought out by the State government produced as Annexure-1. The offending clauses, according to the petitioners, are Clause 5, which made a training qualification mandatory, and Clause 15, which stipulated the age of superannuation at par with the government employees; at sixty years. The petitioners also have a claim for parity of pay with university teachers.

3. The learned counsel relies on **State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees & Ors.; (1995) 4 SCC 507** and **Haryana State Adhyapak Sangh & Ors. v. State of Haryana & Ors.; AIR 1988 Supreme Court 1663** to buttress his contentions.

4. Learned Government Pleader Shri M.P. Yadav, on the other hand, points out that the petitioners were all appointed to affiliated colleges, which are now under the Bihar School Examination Board. The affiliation of the University is no more existing, and there is no question of any parity with



university teachers. Despite intermediate colleges being severed from the collegiate department and placed in the higher secondary stream, the teachers in such colleges were retained, and their pay too was protected. The teachers of Universities were entitled to a higher retirement age only under the University Grants Commission Scheme. The writ petition has to be dismissed is the contention, for which reliance is placed on **The State of Bihar & Ors. v. Mamta Kumari & Ors.; 2010(4) PLJR 318** and **J. Rangaswamy v. Government of Andhra Pradesh & Ors.; (1990) 1 SCC 288.**

5. At the outset, we notice that the training qualification prescribed under Clause 5 has been made mandatory for the untrained teachers working in the secondary and higher secondary schools; which qualification had to be acquired within three years of the implementation of the guidelines. There is nothing stated as to whether the petitioners herein qualified in such training course or even applied for such training course. The three years have expired long back and there is no further averment regarding any termination effected. In fact, the learned counsel tells us, on instructions, that many of the petitioners have retired and others are still continuing.

6. Admittedly, the petitioners were continued even



after the stipulated three years, in the institutions. As has been submitted by the learned Government Pleader, the intermediate colleges or those now deemed to be institutions imparting senior secondary education as provided under Section 39 of the Bihar Intermediate Education Council Act, 1992, are not aided colleges or schools.

7. In the above circumstances, there is no question of the petitioners being granted parity of pay, nor is there any issue regarding the parity in retirement age with university teachers.

8. The petitioners cannot have a claim for pay parity with the university teachers nor insist for a higher retirement age as provided in the Universities as per the University Grants Commission Scheme; when they are not identically situated. There is nothing to show that the petitioners are at par with university teachers, and after 1992, the intermediate education was separated from the collegiate department and placed under the higher secondary stream. The petitioners continued as secondary school teachers, with their pay and position protected. The claim of equal pay and equal terms and conditions cannot be applied on unequals.

9. We find absolutely no reason to entertain the



claim for pay parity either of pay or of retirement age.

10. The next contention raised is with respect to the training qualifications insisted upon under the guidelines. Admittedly, the petitioners have not been terminated as of now, and many have retired from the senior secondary institutions. There was a contention made by the petitioners that they have not been disbursed with the pay. If that is the case, the petitioners being employed in private institutions the prayer for disbursement of pay cannot be agitated in a petition under Article 226 of the Constitution of India.

11. The service of the petitioners with the private institutions is a pure contract of service, for enforcement of which appropriate remedies would have to be taken.

12. **Haryana State Adhyapak Sangh** (supra) was a case in which the Hon'ble Supreme Court declared that pay scales and emoluments of teachers of aided private schools should be in parity with teachers of government schools. As noticed above the petitioners are not employed in aided institutions.

13. **H.P. State Recognised & Aided Schools Managing Committees** (supra) again was with respect to pay parity in recognized aided private schools and those employed



in government schools not applicable to the petitioners employed in private schools.

14. In **J. Rangaswamy** (supra), it was categorically held by the Hon’ble Supreme Court that the qualification prescribed for various posts is within the exclusive domain of the appointing authority, and it is not for the Court to review the stipulation made by the appointing authority. This has no application to the facts of the above case.

15. **Mamta Kumari** (supra) also does not have any application since therein the question was with respect to equivalence of qualification, which again a Division Bench of this Court held is not to be made by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

16. We find absolutely no reason to entertain the writ petition and reject the same.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.02.2024.
Transmission Date	

