

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.140 of 2020

1. Raghubir Thakur Son of Late Ramdani Thakur Resident of Jalil Nagar, Lalu Chhapra, P.O. and P.S.- Paroo and District- Muzaffarpur at present posted at Middle School Hela Basauta, Saran Amnour, as Prakhanda Teacher.
2. Ram Bilas Prasad Yadav Son of Late Manik Chandra Rai Resident of Village- Jalalpur, P.O.- Astalpur, P.S.- Doriganj and District- Saran, at present posted at Middle School, Basuta, Amnour, Saran as Prakhanda Teacher.
3. Ramayan Rai Son of Mohan Rai Resident of Kotchwara, P.O.- Arbind Nagar, P.S.- Dariyapur, and District- Saran, at present posted at Girl Middle School, Gosakhap, Amnour, Saran at Prakhanda Teacher.
4. Ram Nath Rai Son of Mewalal Rai Resident of Village- Akilpur, P.O.- Wazhiyan, P.S.- Dariyapur, and District- Saran at present posted at Middle School, Umarpur, Amnour, Saran at Prakhanda Teacher.
5. Laxman Sharma Son of Janardan Sharma Resident of Village- Vishunpura, P.O.- Gaura, P.S.- Marauhra and District- Saran at present posted at Middle School, Hela Basauta, Amnour, Saran at Prakhanda Teacher.
6. Laliteshwar Prasad Yadav Son of Mewa Prasad Yadav Resident of Village- Maksudpur, P.O.- Khodaibagh, P.S.- Khaira, Saran at present posted at Middle School Katsa, Amnour, Saran as Prakhanda Teacher.
7. Sona Prasad Rai Son of Maya Rai Resident of Village and P.O.- Maricha, P.S.- Baniapur and District- Saran, at present posted at Middle School, Baidhnath pur, as Prakhanda Teacher.
8. Mokhtar Prasad Son of Jeetlal Mahto Resident of Village and P.O.- Gaura, P.S.- Marauhra and District- Saran at present posted at Middle School, Umarpur, Amnour, Saran at Prakhanda Teacher.
9. Surendra Ram Son of Ramnandan Ram Resident of Village- Chaturpatti, P.O.- Moha Jamma, P.S.- Paroo and District- Muzaffarpur, at present posted at Middle School, Paiga Sadar, Amnour, Saran.
10. Keshewnath Vidhyarthi Son of Late Ramdeo Mahto Resident of Village- Motihan, P.O.- Dighwara, P.S.- Dariyapur and District- Saran at present posted at Adarsh Middle School, Rasulpur, Amnour as Prakhanda Teacher.
11. Pramod Kumar Singh Son of Late Dharamnath Singh Resident of Village- Keowla, P.O. and P.S.- Dariyapur and District- Saran, at present posted at Middle School, Patrahikhurd, Amnour as Prakhanda Teacher.
12. Gang Deyalal Sah Son of Sri Ram Narayan Sah Resident of Village and P.O.- Kewani, P.S.- Garkha and District- Saran, at present posted at Middle School, Rajjupur, Amnour, Saran at Prakhanda Teacher.
13. Chandeshwar Rai Son of Late Sahweer Rai Resident of Village- Brahmpur, P.O. and P.S.- Parsa and District- Saran, at present posted at Middle School, Sahadi, Chhapra, Amnour as Prakhanda Teacher.
14. Balumukund Singh Son of Sri Shyam Sundar Singh Resident of Village- Sargatti, P.O. and P.S.- Garkha, and District Saran at present posted at Middle School, Dumariya, Amnour as Prakhanda Teacher.



15. Harendra Prasad Rai Son of Jaleshwar Rai Resident of Village- Brahmpur, Parsa, P.O. and P.S.- Parsa Amnaur and District- Saran at present posted at Upgrade Middle School, Madhubani Amnaur as Prakhand Teacher.
16. Nand Kishore Rai Son of Ashrafi Rai Resident of Village- Narayanpur, P.O.- Rahempur, P.S.- Garkha and District- Saran and was posted at upgrade Middle School, Permanand Amnaur, Chapra, Saran as Prakhand Teacher but now retired.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department, Bihar, Patna.
2. Additional Secretary, Education Department, Bihar, Patna.
3. Director, Education Department, Bihar, Patna.
4. District Education Officer, Saran.
5. District Programme Officer, Establishment, Saran.
6. Block Development Officer-cum-Block Employment Unit, Amnaur, Saran.
7. Block Education Officer, Amnaur, Saran.
8. Pramukh, Amnaur, Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Devendra Kumar Sinha, Sr. Adv., Mr. Abu Haidar, Adv. Mr. Abu Shajar, Adv.
For the State	:	Mr. Priyadarshi Matri Sharan, AC to AAG-15

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 27-11-2024

The petitioners were appointed as Teachers by the Block Development Officer under the provision of Bihar Teacher Niyojan Rules, 2006, which was subsequently amended in the year 2008. The order of appointment was issued on various dates in the year 2015 and they worked in various Schools from 2015 to 2019. On 16.09.2019, the District Programme Officer passed an order



stating inter alia that the above Rules of 2006 and 2008 has since been amended by a new Recruitment Rules of 2012. In 2012 Rules, the mode of recruitment and the academic qualification of the candidates were changed. The Principal Secretary, Education Department, vide his Letter No. 465, dated 9th July, 2012 directed the Districts to prepare a roster adding the number of vacant posts, wherein recruitment has not been made by the erstwhile Niyojan Board. It is also directed that the candidates, who did not get the opportunity in the year 2006 and 2008 would be inducted in 2012 and a roster would be prepared and on the basis of the roster appointment would be made. It is also directed that after the Elementary Teachers Recruitment Rules, 2012 coming into force, all recruitment, since 2015 would be governed by 2012 Rules. However, the Department inadvertently appointed Backward Class male candidates in place of Backward Class female candidates. Thus, the recruitment was bad in law and quashed.

2. It is submitted by the learned Advocates for the petitioners that the petitioners have challenged the aforesaid order dated 16.09.2019 (Annexure-2). In support of his contention, he refers to Annexure-5 series, which was issued by the Office of Block Development Officer, Amnaur, Saran for appointment of the



petitioners in the Schools, on the basis of the Recruitment Rules of 2008.

3. It is further contended by the learned Senior Counsel on behalf of the petitioners that though they were appointed, they were not paid salary, which prompted them to institute a writ petition bearing C.W.J.C. No. 13444 of 2019. The said writ petition was disposed of with a direction to the District Programme Officer (Establishment), Saran at Chapra to examine the record as to legality and validity of appointment and also the fact that the petitioners are actually working. If on verification of record, it is found that the petitioners have been legally and validly appointed and they have worked, the respondents- District Programme Officer (Establishment) is under obligation to pay entire payment of salary-arrears as well as current to the petitioners. The said order was passed on 5th July, 2019. However, the said order was not complied with by the concerned respondents.

4. The District Programme Officer (Establishment), Saran, respondent no. 5 has been contesting the instant writ petition by filing a counter affidavit stating, inter alia, that the Appointment Letter of the petitioners vide Memo No. 19, dated 28th August, 2015 and Memo No. 60 dated 21st January, 2016 itself disclosed that the appointment and the selection of the petitioners



have been made after following the Rules as existed at the time of appointment and selection of the petitioners as also followed the orders of the learned District Appellate Authority. Subsequently, the District Appellate Authority found that the petitioners would be governed by 2012 Rules, however, they were appointed on the basis of 2006 and 2008 Rules. The said Rules are not applicable on the date of their appointment. Moreover, the petitioners were appointed in the quota of female candidates inadvertently and they cannot take advantage of the inadvertent committed by the Department.

5. I have heard the learned counsels for the parties. It is needless to say that this issue regarding applicability of the Rule was taken up by the respondents and duly considered by the Court in C.W.J.C. No. 13444 of 2019. It is presumed that the Court considered the issue as to whether in the year 2015, 2006 or 2008 Recruitment Rules were applicable or not. On such consideration of factual issues as well as the question relating to applicability of the Rules, the Coordinate Bench of this Court disposed of C.W.J.C. No. 13444 of 2019, directing the respondents to release salary in favour of the petitioners.

6. There is of course, no discussion in the said order relating to applicability of 2012 Rules. However, in the said writ



petition the respondents could have raised the issue denying the claim of the petitioners of having salary, which the respondents did not, the resultant effect of non-disclosure of such defence amounts to constructive res judicata and in the instant writ petition between the same parties, the respondents cannot raise the issue relating to applicability of the subsequent Rules.

7. Considering such aspect of the matter, this Court is of the view that since the petitioners were appointed following the extant Rules relating to appointment of Teachers and they continued their work from 2015 to 2019, they are entitled to be absorbed in their respective posts as Block Teachers with salary and other consequential benefits.

8. The respondents are directed to absorb them within 30 days from the date of this order as well as allow them the salary and other consequential benefits as applicable in accordance with law.

9. Accordingly, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

