

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17709 of 2021

Rajesh Kumar Pandey S/o Shri Bhubnesh Pandey R/o- Village and P.O.-
Bherokhara, P.S.- Tajpur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Magistrate Samastipur, District- Samastipur.
5. The District Education Officer Samastipur, District- Samastipur.
6. The District Programme Officer, (Establishment) Samastipur, District- Samastipur.
7. The Block Development Officer Tajpur, District- Samastipur.
8. The Block Education Officer Tajpur, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrityunjay Kumar, Advocate Mr. Mukesh Kumar Singh, Advocate Mr. Arinjay Kumar, Advocate Mr. Md. Danish Quamar, Advocate
For the Respondent/s	:	Smt. Binita Singh (SC-28)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 22-07-2025

Heard Mr. Mrityunjay Kumar, learned counsel
appearing on behalf of the petitioner and Mrs. Binita Singh,
learned SC-28 for the respondent/s.

2. The petitioner in paragraph no. 1 of the present writ
petition has sought *interalia* following relief(s), which is
reproduced hereinafter:

*"1. For issuance of a writ in the nature of
certiorari or any other appropriate writ/order/direction to
quash the order contained in Memo no.-390 dated-
16.03.2020 issued by the Director, Primary Education,
Government of Bihar, Patna, whereby and whereunder the
representation of the petitioner has been rejected without
considering the facts and circumstances of the case and also*



*without considering the provisions contained under different Rules of Bihar Panchayat Elementary Teacher (Employment and service condition) Rule, 2012 (hereinafter referred to as the Rule, 2012).II. Further, for issuance of a writ in the nature of mandamus or any other appropriate writ/order/direction, to the respondents to consider the petitioner as Graduate Grade Trained Teacher since the date of Notification of the Rule, 2012, i.e. 03.04.2012 in the light of Rule-4 and Rule-18 of the 2012 Rule and accordingly to grant all the consequential benefits including the arrears of differences of salary.And/Or
for any other writ/order/direction as your Lordships may deem fit and proper."*

BRIEF FACTS:

3. The facts lie in a narrow campus that the petitioner was engaged as Panchayat Shiksha Mitra in the year 2005 as per the amended guidelines contained in Memo No. 1458 dated 11.08.2004, which required minimum qualification of Matriculation. Scheme was to achieve the object of education of all the children at less cost. To ensure full enrollment and attendance in primary schools and their management in accordance with the provision of Article 243-G of the Constitution of India, the State enacted Bihar Panchayat Primary Teacher (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as 'Rules 2006').It was amended in the year 2008 by which teachers eligibility efficiency test was introduced.On 26th, August, 2009, Right of Children to free and Compulsory Education (RTE) Act, 2009 (hereinafter referred to as the Act, 2009) was notified. Sub-Section (1) of Section 23 of



RTE Act provided that any persons possessing such minimum qualifications, as laid down by the academic authority, NCTE authorized by the Central Government by notification, shall be eligible for appointment as a teacher. Sub-Section (2) empower the Central Government, if it deems necessary it may by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years. The amendment to Sub-Section (2) clarified that a teacher appointed or in position as on 31.03.2015, who doesn't possess minimum qualifications as laid down under Sub-Section (1), shall acquire such qualification within a period of four year, pushing to March 31, 2019. The NCTE *vide* notification no. 215 dated 23.08.2010 laid down the minimum qualification for the teacher which was subsequently amended *vide* notification no. 158 dated 29.07.2011. The Rules, 2006 became inconsistent with the RTE Act, 2009, was repealed by the Bihar Panchayat Teachers Rules, 2012 (hereinafter referred to as 'Rules, 2012') which came into effect from 03.04.2012.

4. Rules, 2012 provides for three categories of Teachers; Panchayat Shikshak(**Prathmik Shikshak**), of Basic Grade, who were appointed to teach the students from Class-I to Class-V; **Prarambhik** Prakhand Shikshak (Middle School)



appointed to teach students from Class-VI to Class-VIII; and **Pradhanadhyapak** (Headmaster) each of separate grades. The NCTE categorize elementary teachers in two categories as Class I-V and Class VI-VIII with requisite qualification. Rules, 2012 laid down qualification in Rule 5 for the teachers of Class 1 to 5 (**Basic Grade Teachers**) to have minimum qualification of **Intermediate**, technical degree of D.El.Ed. or equivalent in accordance with the provision of the RTE Act, 2009. Similarly, for the teachers of Class VI-VIII prescribes minimum degree of **Graduation** and trained either with D.El.Ed., B.Ed. or equivalent degree. It is admitted that the teachers, who were appointed as Shiksha Mitra after coming into force of Rules, 2006, their status changed as trained and untrained teachers and their service condition was also guided by Rules, 2006.

5. The petitioner has claimed that he was absorbed in Prakhand school (Classes VI to VIII), w.e.f. 01.07.2006 and his status too changed from Shiksha Mitra to Trained Prakhand Shikshak w.e.f. 01.07.2006.

6. After coming into effect of RTE Act, 2009 and NCTE notification No. 215 dated 23.08.2010 and amended notification no. 158 dated 29.07.2011, the petitioner became successful *in-service* training of DPE from IGNOU on



31.08.2010. The petitioner had qualified the test conducted by the S.C.E.R.T. (Human Resources Department) in the year 2010 and was successful. Certificate was awarded to the petitioner in the year 2011 by the S.C.E.R.T. (Human Resources Department.

7. The Central Government granted relaxation to the Government of Bihar under Section 23 (2) of the RTE Act, 2009 vide order dated 23.06.2011 and it has been admitted in paragraph no. 11 of the counter affidavit that appointment of untrained teachers were made till 31.03.2015. Section 23 (3) empowers to prescribe for allowances payable and the terms and conditions of the service. The Rules 15 (a) of Rules, 2012 was amended to provide consolidated pay to graduate trained grade of Rs. 11,000/-. The petitioner is aggrieved that in spite of the specific qualification laid down in NCTE notification dated 23.08.2010 for Classes VI to VIII teachers was treated in Basic Grade (Intermediate) deprive him the pay applicable to Trained Teacher (Graduate Grade) discriminating him with the newly appointed teachers under Rules, 2012, who have the same qualification and after their appointment, they are getting graduate grade trained salary as per Rule, 15 (a) of Rule, 2012. The ground of rejection has been explained in paragraph no. 21 of the counter affidavit that the petitioner is a Basic Grade



Teacher and is entitled for pay attached to the said post even though Rule 4 of Rules, 2012 provides that upgradation of a primary school into a middle school, the petitioner shall continue to function as teacher in the basic grade even absorbed in the middle school having sanctioned posts.

8. The petitioner faced with discrimination for having not paid the grade pay applicable to the Graduate Trained Teacher had earlier filed CWJC No. 20923 of 2013, which was dismissed *vide* order dated 16.01.2015 against which the petitioner had preferred LPA No. 945 of 2015, the Division Bench *vide* order dated 16.01.2015 gave liberty to the petitioner to raise his grievance before the Director, Primary Education. The petitioner filed his detailed representation before the Director, Primary Education, who rejected the representation of the petitioner *vide* order contained in Memo No. 390 dated 16.03.2020.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

9. Learned counsel on behalf of the petitioner submitted that the petitioner was engaged as Panchayat Shiksha Mitra by the Gram Panchayat Raj Bherokhara, Block-Tajpur by appointment letter no. 6 dated 07.05.2005 and his joining was accepted on contract basis for eleven months in the said school



in terms of the guidelines contained in Resolution No. 1458 dated 11.08.2004 having minimum qualification of Intermediate his service was extended for another eleven months by Letter No. 23 dated 02.06.2006. After coming into force of Rules, 2006, he was absorbed as Prakhanda Teacher. He had successfully passed the efficiency/eligibility test held for teaching upto Class-VIII was graduate and he has obtained 68.12% and was teaching in Class VI-VIII. With the enactment of Right to Education Act, 2009 (hereinafter referred to as the 'RTE Act, 2009'), teachers of Elementary school were required to have the requisite qualifications in terms of Section 23 (1) of the RTE Act, 2009.

10. Learned counsel made it clear that the Block Teachers are appointed in the middle school by the Panchayat Samiti and the Panchayat Teachers are appointed in the primary schools by the Gram Panchayat Samiti. Rule 8 of Rules, 2006, prescribes the minimum qualification for block teacher which includes the graduation and B.Ed. degree. The remuneration for the panchayat untrained teachers and a block untrained teachers as well as trained teachers is prescribed in Rule 12. The trained block teacher was entitled to get Rs. 5,000/- per month whereas untrained teachers were entitled to get Rs. 4,000/- per month.



The petitioner also passed the proficiency test and he became entitled for increment.

11. Learned counsel further proceeded to clarify that the petitioner, who was graduate and absorbed in Prakhand school with effect from 01.07.2006 being Prarambhik Teacher became graduate grade teacher in light of Rule 4 and Rule 18 of Rules, 2012 but was treated as Basic Grade Teacher. The provisions of Sub-Rule (V) of Rule 2 of Rules, 2006 defines “**Grade**” to mean grade of Elementary School (Classes I-VIII). He further submitted that in terms of NCTE Notification dated 23.08.2010 as amended in the year 2011, the same qualification has been prescribed in Rules, 2012.

12. Learned counsel submitted that since 04.07.2006, the petitioner was absorbed in the Prakhand School and till date he is engaged as Prakhand Teacher in Class VI to VIII. Learned counsel further submitted that Sub-Rules (i), (ii) and (iii) of Rule 2 of Rules, 2012 defines Primary, Middle School and Elementary Schools.

13. Sub-Rule (vii) of Rule 2 defines Grade. Sub-Rule (i) and (ii) of Rule 3 classifies Prakhand and Panchayat Teachers. Rule 4 cetegorises (i) Basic Grade (ii) Graduate Grade (iii) Middle School Graduate Teachers) (iv) Head master in



Middle School. Rule 5 defines qualification for appointment for Class I-V in Basic Grade as Intermediate Class (VI-VIII) in Prakhanda in Graduate Grade. Rule 7 provides for appointment of graduate teachers in Mathematics and Science, Graduate Social Science and Graduate Language Teachers for direct appointment for two years and after that 50% posts will be filled up directly and rest 50% will be filled up from the promotion of qualified teachers of Basic Grade. Rule 15 (a) of Rules, 2012 provides consolidated pay which was amended vide Resolution No. 1449 dated 23.09.2013 of the Education Department, Government of Bihar, by increasing it to Rs. 11,000 per month for trained teacher (Graduate Grade) of Prarambhik Teachers.

14. Learned counsel further submitted that the respondent no. 3, while passing the impugned order contained in Memo No. 390 dated 16.03.2020 failed to understand that the petitioner was absorbed as Prakhanda Teachers and by misinterpreting Rule 2006, 2012 and RTE Act, 2009 Sections 23 (1) and 23 (2) has totally ignored the requisite qualifications possessed by the petitioner as per the provisions of Rule 5 (i) of Rule, 2012 prescribed for Prakhanda in which he was absorbed. The provisions of Rule 7 of Rules, 2012, also entitles him the graduate grade. Learned counsel further submitted that there



cannot be two yardstick for '*Niyojit Teachers*', who possesses the same qualification, one for those absorbed or appointed as Prakhanda (Block) Teachers as per Rules, 2006 from those who were appointed after coming into force of Rules, 2012. The only classification in grade pay of basic grade and graduate grade is based on the prescribed educational qualification as on the date of coming into force of Rules, 2012 in terms of RTE Act, 2009 and NCTE notification.

15. Learned counsel further submitted that Rule 18 of Rules, 2012 is a saving clause and all the past action has been saved and all the teachers deemed to be appointed according to the provisions of Rules, 2012, which do not distinguish any teachers on the basis of absorption under Rules, 2006 or appointed as per Rules, 2012.

16. In above background, learned counsel submitted that the impugned order contained in Memo No. 390 dated 16.03.2020 has been passed without application of mind and has given no regard to the RTE Act, 2009 and NCTE notification and provisions of Rules, 2012 in particular, without setting out facts or finding and without assigning any reason for such distinction by creating two groups of teachers appointed before Rule, 2012 and after it, without disclosing the relevant rules.



The impugned order contained in Memo No. 390 dated 16.03.2020 being arbitrary and is violative of Articles- 14, 16 and 21 of the Constitution of India is fit to be set aside and quashed. Accordingly, he becomes entitled for the graduate grade pay scale provided by Resolution No. 1530 dated 11.08.2015 applicable to the teachers of Prarambhik / Middle School (Class VI to VIII) and the promotional and financial benefits and other consequential benefits in accordance with Rules, 2012 and Rules, 2020.

SUBMISSION ON BEHALF OF THE RESPONDENT:

17. *Per contra*, learned counsel appearing on behalf of the respondent submitted that the petitioner had been in the basic grade in terms of Rule 2006 and it was only after the enactment of Rule 2012 that appointment of teacher in graduate grade had begun. He has informed that in paragraph no. 11 of the counter affidavit, the appointment of untrained teachers made till 31.03.2015. The contention of the petitioner that since his qualification at the time of appointment was of graduation and later he had also become trained hence he is entitled to be considered as graduate trained teacher and accordingly for consequential benefits is misconceived as absorption of the petitioner had been made against the post of the basic grade



teacher and he is only entitled for salary admissible to basic grade teacher. A teacher having been absorbed on basic grade claiming for being considered as graduate trained teacher on the ground of possessing graduate qualification is baseless and unfounded. The logic behind seeking such relief as claimed for in the present writ petition is solely based on misconception that the 2006 Appointment Rule stood repealed in terms of Rule 18 of Rule 2012 and thus on such erroneous premise, the petitioner is claiming for graduate grade in terms of the provisions incorporated in the Rule 2012.

18. Learned counsel further submitted that if the submission of the petitioner with regard to the repeal of the Rule, 2006, simplicitor, if accepted at its face value then the petitioner will have to be removed from service, since as per the understanding of the petitioner, the Rule, 2006 amended in 2008, is no longer in existence.

19. Learned counsel further submitted that the claim of the petitioner to be considered as graduate trained teacher is simply misconceived as per the appointment Rule, 2006. There was no stipulation for granting any additional / higher scale to persons having qualification higher than the minimum educational eligibility as prescribed in the Rules, 2006. He



further explained that misconceived statement has been made, insofar as, the stand being taken by the petitioner relying upon Rule 4 of the Rule 2012, which provides that in case of upgradation of a primary school into a middle school, the teacher of primary school will become teachers of the respective grades of the middle school, impliedly suggesting that the petitioner, who had been panchayat teacher in the basic grade, would become teacher of graduate grade by virtue of upgradation of the school in terms of the Rule, 2012 is again misinterpretation and misconception on the part of the petitioner.

20. Learned counsel in this regard submitted that the petitioner had admittedly been teacher of the basic grade and even if the school at which the petitioner had been serving had been upgraded as middle school, the petitioner would continue to function at such upgraded middle school as teacher in the basic grade as even in the middle school there are sanctioned posts of basic grade teachers. It is the settled legal position that an employee appointed and working on a particular post /grade would be entitled to the pay attached to the said post and as the petitioner is admittedly continuing as teacher in the basic grade, in no manner, he can claim for graduate grade and for the



emoluments attached to the said graduate grade post on the ground that he possessed graduate qualification required for the post of graduate grade teacher. Such claim of the petitioner is simply misconceived. On a conspectus of the whole issue it would be evident that the order contained in Memo No. 390 dated 16.03.2020, cannot be faulted as the same is a well founded decision with cogent reasons and the present writ petition is fit to be dismissed.

ANALYSIS AND CONCLUSION:

21. Heard the parties.

22. A brief lists of important dates and events has been filed on behalf of the petitioner, which I find to reproduce hereinafter:

20.06.2002	Guidelines for employment of Panchayat Shiksha Mitra was published vide Resolution No. 1079.
2003	Thousands of Panchayat Shiksha Mitra were employed.
18.08.2004	Guidelines, 2002 was amended and advertisement was published vide Resolution No. 1458 dated 11.08.2004.
Anx-2, P-35	Petitioner having qualification of Graduate applied for Panchayat Shiksha Mitra. He had passed graduation in the year 2002.
07.05.2005	Petitioner was employed as Panchayat Shiksha Mitra vide Letter No. 06 dated 07.05.2005.
09.05.2005	Petitioner joined at Nationalised Middle School, Bharokhara, Block-Tajpur, District- Samastipur.
02.06.2006	Services of the petitioner was extended for further 11 months.
01.07.2006	Rules, 2006 was notified.
-----	According to Rule - 20(iii) of the Rules, 2006, services of the petitioner was absorbed as Panchayat Teacher w.e.f. 01.07.2006.



-----	Petitioner has/had been working at Nationalised Middle School (For Class I to VIII), therefore, he was deemed to be appointed as Block Teacher at Block Employment Unit, Tajpur, District-Samastipur.
2007	According to Rule - 12(v) of the Rules, 2006, petitioner and thousands other were sent for two years in-service teachers training course of DPE from IGNOU.
26.08.2009.	RTE Act, 2009 was notified and came into force on 01.04.2010.
-----	Section 23 of RTE Act, provides for requisite qualifications of elementary teachers.
03.07.2009	Rules, 2006 was amended and it was made mandatory to pass Teacher Efficiency Test.
09.11.2009	Petitioner qualified/passed the TET Examination - 2009.
23.08.2010	The NCTE has/had lay-down the minimum qualification for appointment as a teacher in Class I to VIII
31.08.2010	Petitioner completed/passed Teachers training course of DPE from IGNOU, recognized by the NCTE as two year training in Elementary Education.
23.06.2011	The Government of India granted relaxation to the Government of Bihar under Section - 23(2) of the RTE Act, 2009.
03.04.2012	Rules, 2012 was notified.
-----	By way of Rule - 18 of 2012, Rules, 2006 was repealed.
-----	Rule - 11(b)(vii) of Rules, 2012 provides for appointment of both the trained and untrained teachers against both the Basic and Graduate Grade.
-----	Rule - 4 of the Rules, 2012 provides for three (3) Grades of Panchayat Elementary Teachers.
-----	Rule - 5(i) and (ii) of the Rules, 2012 provides for requisite qualifications for Basic Grade and Graduate Grade respectively.
Rule 5(i)	For Basic Grade (untrained), the minimum requisite qualification is/was Senior Secondary Intermediate.
Rule 5(i)	For Basic Grade (Trained), the minimum requisite qualifications is/was Senior Secondary/Intermediate and two year training in Elementary Education (by whatever name known.)
Rule 5(ii)	For Graduate Grade (untrained), the minimum requisite qualification is/was B.A/B.Sc.
Rule 5(ii)	For Graduate Grade (Trained), the minimum requisite qualification is/was B.A./B.Sc. and two



	year training in Elementary Education (by whatever name known.)
	Petitioner having the requisite qualifications of Graduate and TET as well as two years teachers training certificate, he has been considered as Basic Grade Teacher.
	Petitioner and several others submitted their representations for consideration of Graduate Grade Teacher.
23.05.2014	Petitioner has passed Enrichment Programme.
16.01.2015	Petitioner and some others also filed CWJC No. 20923 of 2013 and the same was dismissed.
18.09.2018	Petitioner and some others filed L.P.A. No. 945 of 2015 and the same was disposed of with direction to the Director, Primary Education to consider the grievance of the petitioner.
28.03.2019	Petitioner and others submitted representation.
30.03.2019	The State Government has taken decision vide Resolution contained in Memo No. 455, dated 30.03.2019 in the light of Order/Judgment passed by this Hon'ble Court to provide the benefits of trained teacher since the date of passing the DPE Course.
16.03.2020	The Director, Primary Education has passed/issued the impugned order.
01.04.2022	The Education Department, Government of Bihar has clarified that the DPE with 6 months enrichment programme is equivalent to the D.El.Ed.
-----	Petitioner has/had all the requisite qualifications for Graduate Grade Trained teacher since the notification of the Rules, 2012 i.e. 03.04.2012 i.e. B.A. (annexure - 2, Page - 35 of writ application) Teacher Efficiency Test (Annexure - 5, Page 38 of writ application) and two years elementary teachers training known as Diploma in Primary Education with six (6) months enrichment programme (Annexure - 8 Series, Page - 16 to 18 of Reply to C.A.), recognized by the NCTE, which is evident from perusal of the order/judgment dated 27.09.2016 passed in L.P.A. No. 1699 of 2013 by this Hon'ble Court and also evident from the decision taken by the Government of Bihar vide Resolution contained in Memo No. 455, dated 30.03.2019, issued by Joint Secretary, Education Department, Government of Bihar, Patna. The petitioner has been continuously working at Nationalized Middle School and also teaching the students of Class I to VIII, even though, he has not been considered as the Graduate Trained Teacher since the date of notification of the Rules, 2012.
-----	Petitioner has been providing the salary of Basic Grade Trained Teacher till date.



-----	The impugned order contained in Memo No. 390 dated 16.03.2020 has been passed/issued on nonets ground and also without any basis and it is based only upon Hypothetical Presumption.
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23. The petitioner has claimed that he was engaged as Panchayat Shiksha Mitra in the year 2005 and he was absorbed as Prakhanda Teacher after coming into force of Rules, 2006. The Rules 2006, 2012 and 2020 were framed in exercise of powers conferred under Article 243-G of the Constitution of India and Sections 22 and 47 read with Section 146 of the Bihar Panchayat Raj Act, 2006. The petitioner became teacher of Elementary School (Middle School) (Prarambhik) and on the date, Rules, 2012 came into force w.e.f. 03.04.2012, he became graduate trained teacher entitled for graduate trained pay-scale.

24. A counter affidavit has been filed on behalf of the respondent no. 3- the Deputy Director, Primary Education, Bihar, in which, Specific ground for rejection can be found in paragraphs no. 13, 14, 15, 16, 19 and 20, which are reproduced hereinafter:

"13. That in this regard it needs to be clarified that the petitioner had been in the basic grade in terms of Rule 2006.

And enactment it was only after the of Rule 2012 that appointment of teacher in graduate grade had begun.

14. That thus in the aforesaid backdrop the contention being made by the petitioner that qualification at since the time his of appointment, was of graduation and later had also become trained hence he was entitled to be considered as graduate accordingly trained for teacher and consequential benefits is simply misconceived as



absorption of the petitioner had been made against the post of the basic grade teacher, hence he is only entitled for salary admissible to basic grade teacher.

A teacher having been absorbed on basic grade claiming for being considered as graduate trained teacher, on the ground of possessing graduate qualification is simply baseless and unfounded.

15. That it is submitted that the logic behind seeking such relief as claimed for in the present writ petition is solely based on the misconception that the 2006 Appointment Rule, stood repealed in terms of Rule 18 of Appointment Rule 2012 and thus on such erroneous premise, the petitioner is claiming for graduate grade in terms of the provisions incorporated in the Rule 2012.

16. That it is submitted that a bare perusal of Hindi version of Rule 18 of Appointment Rule 2012 clearly stipulates a saving clause and as per the said saving clause the petitioner is not entitled for graduate grade scale as no such provision existed in 2006 Rule with regard to graduate grade scale.

19. The claim of the petitioner to be considered as graduate trained teacher is simply misconceived in the appointment Rule 2006 there was no stipulation for granting any additional /higher scale to persons having qualification higher than the eligibility minimum educational as prescribed in Appointment Rule 2006.

20. That the insofar as the stand being taken by the petitioner relying upon Rule 4 of Appointment Rule 2012, which provides that in case of upgradation of a primary school into a middle school, the teacher of primary school will become teachers of the respective grades of the middle school, impliedly suggesting that the petitioner who had been panchayat teacher in the basic grade, would become teacher of graduate grade by virtue of upgradation of the school, in terms of Appointment Rule 2012 is again misinterpretation and misconception on the part of the petitioner.

The petitioner had admittedly been teacher of the basic grade had hence even if the school at which the petitioner had been serving had been upgraded as middle school, the petitioner would continue function at to such upgraded middleschool as teacher in the basic grade as even in the middle school there are sanctioned posts of basic grade."**(emphasis supplied)**

25. The claim of the petitioner has been rejected vide



impugned order contained in Memo No. 390 dated 16.03.2020, primarily on the ground that (i) Rules, 2006 did not provide "Graduate Grade", (ii) it is only after the enactment of Rules, 2012 appointment of teachers in Graduate Grade had begun, (iii) irrespective of provision contained in Rule 4 of Rules, 2012, upgradation of primary schools into middle school, the petitioner would continue to further work at such upgraded Middle School as teacher in "Basic Grade".

26. The main question, which arises for deciding the present writ petition is whether the Rules, 2012 framed under Article 243 (G) of the Constitution of India read with Sections 22, 47 and Section 146 of the Bihar Panchayati Raj Act, 2006 and the service conditions laid down in Rule 15 (a) of Rules, 2012 as per the mandate of Section 23 (3) of the RTE Act, 2009 has an equitable application to provide equal pay to all the 'Niyojit Teachers' in accordance with the requisite eligibility as prescribed in NCTE notifications dated 23.08.2010 and 29.07.2011 and denial of Graduate Trained Grade Pay to the petitioner and like teachers, who were appointed/absorbed after coming into force of Rules, 2006 and before Rules, 2012, in spite of having requisite qualification is in violation of Articles 14, 16 and 21 of the Constitution of India?

LEGISLATIVE BACKGROUNDS



27. The State of Bihar with the object of democratic decentralization, conferred obligation on the Panchayat Raj institutions in accordance with the provisions of Article 243-G of the Constitution of India and in compliance of Act framed Rules, 2006 providing for selection & appointment of teachers and instructors in elementary school situated in the rural area of the State specifically keeping in mind 73rd amendment of Constitution. Some of the relevant Rules of Rules, 2006 for deciding the present writ petition are as under:

28. The **Rule 2** of Rules, 2006 deals with the definition, which is as under:

"2. Definitions-In this rules, unless there is anything repugnant in the subject or context:

(i) "Primary (प्राथमिक) school" means the government or government taken-over schools where at present education is provided upto class-V level.

(ii) "Middle (मध्य) school" means government/government taken over where at present education is provided upto class VII or class VIII level.

(iii) "Elementary (प्रारंभिक) school" means government/government taken over primary and Middle school.

(iv) "Panchayat Elementary (प्रारंभिक) Teacher" means Prakhanda shikshak and Panchayat shikshak to be employed in Elementary schools of the state according to sub-para-3 of this rule.

(v) "Grade" Means grade of Panchayat Elementary Teachers.

(vi) "Department" Means Human Resource Development Department.

(vii) "Panchayat" means local self administration viz: District Board, Panchayat samiti and Gram Panchayat constituted under Article 243 (B) of the constitution of India for rural areas.

(viii) "Gram Panchayat" means Gram Panchayat constituted under Bihar Panchayat Raj Act-2006.

(ix) "Panchayat Samiti" means Block level Panchayat Samiti constituted under Bihar Panchayat Raj Act-2006.

(x) "Training" means two years training from Institutions recognised by N.C.T.E. or B.El-Ed or B.Ed from the recognised institutions.



(xi) "Urdu Unit" means one post of teacher for minimum ten and maximum thirty Urdu reading students admitted in elementary schools.

(xii) "School Education Committee" means committee constituted under School Education Committee Act-2000 for management and supervision of each and every school.

(xiii) "National Council of Teacher Education" means Council for regularising Training Institution and Training system at national level, named as NCTE or else otherwise.

(xiv) "Executive Officer" means executive officer of a Panchayat Samiti."

29. **Rule 8(A)** of Rules, 2006 provides for eligibility for employment of Block Teacher and Panchayat Teacher as under:

"8. For employment.-

(A) Eligibility.- For Block Teacher:

1. Should be citizen of India and habitant of Bihar

2. Should be higher secondary or Intermediate or equivalent examination passed from educational institution recognised by Government.

3. Should be two years training diploma or certificate from training institution recognised by NCTE or B.EL-Ed in Elementary education or B-Ed with Bachelor degree or equivalent qualification. (Emphasis supplied)

Minimum two years certificate (CPed) or equivalent qualification for physical teacher.

But in the first transaction under this rule those candidates who acquired matric or equivalent certificate from school recognised by the government and acquired two years of teacher training certificate from training schools/colleges recognised before commencement of NCTE Act.

For Panchayat Teachers:-

1. Should be citizen of India and habitant of Bihar.

2. Should be higher secondary or Intermediate or equivalent examination passed from educational institution recognised by Government.

3. Should be two years training diploma or certificate from training institution recognised by NCTE or B.EL-Ed in Elementary education or B-Ed with Bachelor degree or equivalent qualification. (Emphasis supplied)

But in the first transaction under this rule those candidates who acquired matric or equivalent certificate from school, recognised by the government and acquired two years of teacher training certificate from training schools/colleges recognised before commencement of NCTE Act."



30. **Rule 12** of Rules, 2006 provides for other service conditions as under:

"12. Other service condition.- (i) Trained Block teachers and panchyat teachers will be employed on fixed pay and they will be paid Rs. 5000/- per month.

(ii) Untrained Block teachers and Panchyat teachers will be employed on fixed pay and they will be paid Rs. 4000/- per month

(iii) Trained Block teachers/panchyat teachers will be entitled for an increase in their fixed pay by Rs. 500/- on every three years on the basis of prescribed calculation and untrained Block teacher/panchyat teachers will be entitled of increment of Rs. 300/- on every three years.

(iv) these teachers will remain employed maximum upto 60 years of age.

(v) Two years of training facility approved by NCTE will be made available to untrained teachers/Those who complete training successfully, will be given fixed pay of trained teachers.

(vi) In service training will be arranged regularly for trained and untrained both teachers in which their participation well essential.

(vii) No other allowance viz. Dearness allowance, house rent allowance, Medical allowance, transportation allowance etc will be payable to panchyat Elementary teachers employed under this rule."

31. **Rule 16** of Rules, 2006 provides for payment of salary, which is as under:

"16. Payment of Salary.- (i) Salary of panchyat elementary teacher will be made through cheque transfer system.

(ii) Panchyat samiti and Gram panchyat will be availed grants as required for the payment of salary of panchyat elementary teachers."

32. To understand the position of teachers appointed/absorbed as per Rule, 2006, the legislative background in respect of qualification of teachers in school can be seen that the National Council for Teachers Education Act, 1993 (hereinafter referred to as the NCTE Act, 1993) provided



the qualification of teachers in school and came out with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 in exercise of power conferred under Clause (d) (i) of Sub-Section (2) of Section 32 read with Section 12 (d) of the NCTE Act, 1993 (73 of 1993). This Act provides separate educational qualification for (1) Elementary, primary(प्राथमिक), upper primary (middle school section)(प्रारम्भिक) (II) Senior Secondary/High School and (III) Senior Secondary/PUC/Intermediate. The Notification No. 238 dated 04.09.2001 is reproduced hereinafter:

"The Gazette of India, Notification No. 238 of September 4, 2001
NCTE (Determination of minimum qualifications for recruitment of teachers in schools) Regulations, 2001.

These Regulations may be called the NATIONAL COUNCIL FOR TEACHER EDUCATION (DETERMINATION OF MINIMUM QUALIFICATIONS FOR RECRUITMENT OF TEACHERS IN SCHOOL) REGULATIONS 2001

They shall come into force on the date of the publication in the Official Gazette

2. Applicability

These Regulations shall be applicable for recruitment of teachers in all formal school established, run or aided or recognized by Central or State Government and other authorities for imparting education at elementary (primary and upper primary / middle school), secondary and senior secondary stages

3. Qualifications for Recruitment

The qualifications for recruitment of teachers in educational institutions mentioned in Section 2 above shall be as given in the First and Second Schedules to these Regulations. The Qualifications prescribed in the First Schedule shall apply for recruitment of teachers for teaching school subjects. The qualifications prescribed in the Second Schedule shall apply for recruitment of teachers for Physical Education.



For recruitment of teachers for co-curricular activities such as work experience, Art Education, etc. Existing qualification or such other qualifications as may be prescribed by the concerned government shall apply.

For promotion of teachers from one level to the next level of teaching, minimum qualification as given in the Schedules for the concerned level would be required.

4. Amendment of Recruitment Rules

The existing recruitment rules may be modified within a period of three years so as to bring them in conformity with the qualifications prescribed in the Schedules. Meanwhile teachers appointed as per the existing recruitment qualifications, subsequent to the issue of these Regulations, will be required to acquire qualifications as prescribed in the Schedules.

5. Power to relax

Where the Council is satisfied, on receipt of reference from the concerned Government, that special circumstances exist warranting relaxation of some of the provisions of the regulations for sometime it may grant relaxation of that provision to such extent and subject to such conditions as it may consider necessary in a just and equitable manner.

6. Interpretation

If any question arises relating to interpretation of these Regulations or equivalence of various teachers' training programmes, decision of the Council shall be final.

First Schedule to the National Council for Teacher Education (Determination of Qualifications for Recruitment of Teachers) Regulations 2001

Recruitment qualifications for recruitment of teachers in educational institutions mentioned in Section 2 of the Regulations

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
I. ELEMENTARY (a) Primary	(i) Senior Secondary School certificate or Intermediate or its equivalent; and (ii) Diploma or certificate in basic teachers' training of a duration of not less than two years. OR Bachelor of Elementary Education (B.El.Ed.) (i) Senior Secondary School



<i>(b) Upper Primary (Middle School Section)</i>	<i>Certificate or Intermediate or its equivalent; and (ii) Diploma or certificate in elementary teachers training of a duration of not less than two years. OR Bachelor of Elementary Education (B.El.Ed.) OR Graduate with Bachelor of Education (B.Ed.) or its equivalent.</i>
<i>II. Secondary/High School</i>	<i>Graduate with Bachelor of Education (B.Ed.) or its equivalent. OR Four years' integrated B.Sc., B.Ed. or an equivalent course.</i>
<i>III Senior Secondary/PUC/Intermediate</i>	<i>Master's Degree in the relevant subject with Bachelor of Education (B.Ed.) or its equivalent. OR Two years' integrated M.Sc.Ed. course or an equivalent course.</i>

Note:
1. For appointment of teachers for primary classes, basic teachers' training programme of 2 years' duration is required. B.Ed. is not a substitute for basic teachers' training programme.
2. Some of the States are having basic teachers training courses of one year duration only, while in some other states students passing secondary level examination are admitted to primary level teacher training courses. Such state may, by 2005, conduct basic teachers training programmes of a duration of not less than two years with admission being open to senior secondary/intermediate pass candidates. In the meantime, candidates who have undergone basic teachers training courses of one year duration or were admitted to such training programmes after passing secondary level examination only may be given employment in concerned states only.

Second Schedule to the National Council for Teacher Education (Determination of Qualifications for Recruitment of Teachers) Regulations 2001.

Qualifications for recruitment of teachers of Physical Education in Educational institutions mentioned in Section 2 of the Regulations.

<i>LEVEL</i>	<i>MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS</i>
<i>I. Elementary</i>	<i>(i) Senior Secondary School</i>



	<i>certificate or Intermediate or its equivalent; and (ii) Certificate in Physical Education (C.P.Ed.) of a duration of not less than two years or its equivalent.</i>
<i>II. Secondary/High School</i>	<i>Graduate with Bachelor or Physical Education (B.P.Ed.) or its equivalent.</i>
<i>III. Senior Secondary (Physical Education as an elective subject)</i>	<i>M.P.E./M.P.Ed. (2 year duration)</i>

1. Some of the states are having certificate in physical education courses of one year duration only, while in some other states students passing secondary level examination are admitted to certificate in physical education courses. Such State may, by 2005, conduct certificate in physical education programmes of duration of not less than two years with admission being open to Senior Secondary/Intermediate pass candidates. In the meantime, candidates who have undergone certificate courses in physical education of one year duration or were admitted to such programmes after passing secondary level examination only may be given employment in the concerned State."

33. Thereafter, the Central Government with an objective to provide free and compulsory education to all children of the age of 6 to 14 years framed the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009)". The RTE Act, 2009, under Section 23 (1), authorized the NCTE as academic authority for laying down the minimum qualifications for a person to be eligible for appointment as a teacher. The NCTE, vide Notification No. 215 dated 23.08.2010 prescribed minimum qualification for appointment of teachers.

34. The detailed qualification is contained in Notification No. 215 dated 23.08.2010 issued by the NCTE is



reproduced hereinafter:

1. Minimum Qualifications.-

(i) Classes I-V (प्रथमिक)

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2- year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 – year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2 – year Diploma in Education (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII (प्रारंभिक)

(a) BA/B.Sc and 2-year Diploma in Elementary Education (by whatever name known)(प्रारंभिक)

OR

BA/B.Sc. with at least 50% marks and 1-year Bachelor in Education (B. Ed)

OR

BA/B.Sc. with at least 45% marks and 1-year Bachelor in Education (B. Ed), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B. El. Ed)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year BA/B.Sc. Ed or B.A. Ed./BSc. Ed.

OR

BA/B.Sc. with at least 50% marks and 1-year B.Ed. (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.



2 Diploma/Degree Course in Teacher Education:- For the purposes of this Notification, a diploma degree course in teacher education recognized by the National Council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education (Special Education) and B.Ed. (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered.

3. Training to be undergone. - A person

(e) with BA/B.Sc. with at least 50% marks and B. Ed qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, an NCTE recognized 6-month special programme in Elementary Education.

(b) with D. Ed (Special Education) or B. Ed (Special Education) qualification shall undergo, after appointment, an NCTE recognized 6-month special programme in Elementary Education.

4. Teacher appointed before the date of this Notification.- The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above,:

(a) A teacher appointed on or after the 3rd September, 2001 ie. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B. Ed qualification, or a teacher possessing B. Ed (Special Education) or D. Ed (Special Education) qualification shall undergo an NCTE recognized 6 month special programme on elementary education.

(b) A teacher of class I to V with B. Ed qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE;

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5 Teacher appointed after the date of this Notification in certain cases.- Where an appropriate Government, or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time)."

35. An amendment was brought in the qualification



vide NCTE Notification No. 158 dated 29 July, 2011, bringing some changes in the nomenclature and specifying qualification for teachers of Classes I to V which is reproduced as under:

"F. No. 61-1/2011/NCTE(N&S). In exercise of the powers conferred by sub-section (1) of the Section 23 of Right Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of the Notification No. S.O. 750(E), dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby makes the following amendments to the Notification No. 215 dated 25th August, 2010 published in the Gazette of India, Extraordinary, Part-III, Section-4, vide F.No. 61-1/2011-NCTE(N&S), dated the 23rd August, 2010, laying down the minimum qualifications for a person to be eligible for appointment as a teacher (hereby referred to as the Principal Notification), namely:-

I) For sub-para (i) of para 1 of the Principal Notification, the following shall be substituted, namely:-

1. Minimum Qualifications:-

(1) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

II) For sub-para (ii) of para 1 of the Principal Notification, the following shall be substituted, namely:-

(ii) Classes VI-VIII

(a) Graduation and 2-year Diploma in Elementary Education (by whatever name known)



OR
Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed.)
OR
Graduation with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE recognition Norms and Procedure) Regulations issued from time to time in this regard.
OR
Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B.El.Ed.)
OR
Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A./B.Sc. Ed. or B.A. Ed./B.Sc.Ed.
OR
Graduation with at least 50% marks and 1-year B.Ed. (Special Education)
AND

(b) Pass in Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

3. Put para 3 of the Principal Notification the following shall be substituted, namely:-

(1) Training to be undergone.- A person-

(a) with Graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard shall also be eligible for appointment to Class I to V up to 1st January, 2012, provided he/she undergoes, after appointments, an NCTE recognized 6-month Special Programme in Elementary, Education;

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment an NCTE recognized 6- month Special Programme in Elementary Education.

(ii) Reservation Policy:

Relaxation up to 5% in the qualifying marks shall be allowed to the candidates belonging to reserved categories, such as SC/ST/OBC/PH (TV)

(IV) For para 5 of the Principal Notification, the following shall be substituted, namely:-

5. (a) Teacher appointed after the date of this notification in certain cases Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

b) The minimum qualification norms referred to in this Notification apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers



referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers."

36. The Central enactment has been upheld by the Apex Court in the case of ***Society for Unaided Private Schools of Rajasthan Vs. Union of India and others*** reported in (2012) 6 SCC 01.

37. Before the above development had taken place, the Rule, 2006 was amended from time to time and after coming into effect of RTE Act, 2009, which required minimum qualification as prescribed under NCTE notifications as referred to hereinabove, the State Government made the provisions for removal of those teachers, who had not possessed requisite qualification and had not passed the Teacher Evaluation Test. The amendment is known as Bihar Panchayat Elementary Teacher (Employment and Service Condition) (Amendment) Rule, 2009 and the same was notified vide Notification No. 1056 dated 03.07.2009 by the Human Resources Development Department, Government of Bihar. The Central Government granted relaxation to the Government of Bihar under Section 23 (2) of the RTE Act, 2009 vide order dated 23.06.2011 and it has been admitted in paragraph no. 11 of the counter affidavit that



appointment of untrained teachers were made till 31.03.2015. The State Government having found that Central Act is binding it repealed Rule, 2006 with "Bihar Panchayat Elementary Teacher (Employment and service condition) Rule, 2012" (hereinafter referred to as the Rule, 2012), which came into force from 03.04.2012. I have taken note of the provisions of this Rule in the submission of the petitioner and, as such, I am only taking note of relevant rules of Rules, 2012.

38. **Rule 2** of Rules, 2012 provides for definition as under:

"2. Definitions.- In this rule, unless there is anything repugnant in the subject or context;

(i) "Primary (प्राथमिक) school" means the government or government taken-over schools where at present education is provided upto class-V level.

(ii) "Middle (मध्य) school" means government/government taken over schools where at present education is provided upto class VIII level.

(iii) "Elementary (प्रारंभिक) school" means government/government taken over primary and Middle schools

(iv) "Panchyat Elementary (प्रारंभिक) Teacher" means Prakhanda Shikshak and Panchyat Shikshak to be employed in elementary schools of the state according to rule 3 of these rules.

vi) "Category" means the category of Panchyat elementary teachers.

vii) "Grade" Means grade of Panchyat, Prakhanda Teachers."

39. **Rule 3** of Rules, 2012 provides for category of panchayat elementary teachers as under:

"3. Category of Panchyat Elementary Teachers.- Panchyat Elementary Teachers will be of following two categories:-

Prakhanda Teachers-

(i) The teachers employed in the middle schools of the block by the Prakhanda Niyojan Samiti of a Block.



Panchayat Teachers-

(ii) The teachers employed in the primary schools of the panchayat by the Panchyat Niyojan Samiti of Panchyats."

40. **Rule 4** of Rules, 2012 for the first time provides for grades of panchayat elementary teachers as under:

4. Grades of Panchyat Elementary Teachers. -The Panchyat elementary teachers will be of the following three grades:-

(i) Basic grade-

(ii) Graduate grade/Graduate teachers of middle schools

(iii) Headmaster grade\ -Headmaster of the middle school.

(In the case of upgradation of a primary school into a middle school, the teachers of primary school will become the teachers of the respective grades of the middle school.)"

41. The minimum qualification for employment in Basic Grade of Panchayat and Prakhanda teachers Classes I-V and Graduate Grade Prakhanda Teachers (Middle School) Classes- VI to VIII has been prescribed in **Rule 5** of Rules, 2012, which is exactly in terms of NCTE notification dated 23.08.2010 same is reproduced hereinafter:

"5. Minimum Qualification for employment.-(i) Classes I-V (Basic grade of Panchyat and Prakhanda teachers)

(a) Senior Secondary (or its equivalent with at least 50% marks and 2-year training in Elementary Education (by whatever name known)

Or

Senior Secondary (or its equivalent) with at least 45% marks and 2- year training in Elementary Education (by whatever name known), in accordance with the National Council for Teacher Education (Recognition, Norms and Procedure), Regulations 2002

Or

Senior Secondary (or its equivalent) with at least 50% marks and 4-Year Bachelor of Elementary Education (B.El.Ed.)

Or

Senior Secondary (or its equivalent) with at least 50% marks and 2-year training in Education (Special Education)

And



(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the Central or State Government.

(ii) Classes VI-VIII(Graduate grade of Prakhanda teachers)

(a) B.A./B.Sc and 2-year training in Elementary Education (by whatever name known)

Or

B.A./B.Sc with at least 50% marks and 1-year Bachelor in Education(B.Ed)

Or

B.A./B.Sc with at least 45% marks and 1-year Bachelor in Education (B.Ed), in accordance with the National Council Teacher Education (Recognition, norms and Procedure) Regulations, 2002 issued from time to time in this regard

Or

Senior Secondary (or its equivalent) with at least 50% marks and 4 (four) Year Bachelor of Elementary Education (B.El.Ed.)

Or

Senior Secondary (or its equivalent) with at least 50% marks and 4 (four) Year B.A./B.Sc Ed./B.A.ed/BSc. Ed.

Or

B.A./B.Sc. with at least 50% marks and 1-year B.Ed. (Special Education)

And

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the Central or State Government.

(c) A diploma/degree course in teacher education recognized by the Central or state government or National council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education (Special Education) and B.Ed (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered.

(d) with D.Ed (Special Education) or B.Ed (Special Education) qualification shall undergo 6-month special programme in Elementary Education training recognised by National Council for Teacher Education after appointment.

(e) A teacher of class I to V appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force.

Possessing B.Ed qualification, or a teacher possessing B.Ed (Special Education) qualification shall undergo an NCTE recognized 6-month special programme on elementary education.

(f) The equivalent degree of technical education (polytechnique, unani education e.t.c.) Physical education the degree of specific oriental language (Maulvi, up shastri) are not valid for appointment on the posts of general teachers. The language specific upadhi/degree (decided by department) given by any voluntary organisation established under any Society or Trust is also not valid for appointment on the posts of teachers."

42. Rule 15 (a) of Rules, 2012 (Unamended) is as



under:

“15. Service Conditions of Niyojit teachers.- (a) Consolidated Pay.-(i) the panchayat elementary teachers will get the consolidated pay as follows:-

- * Trained teachers (basic grade) - 7,000/- per month***
- * Untrained teachers (basic grade) -6000/- per month***
- * Trained teachers (Graduate grade) -8000/- per month***
- * Untrained teachers (Graduate grade)- 7,500/- per month***
- * Trained teachers (H.M. Middle School) – 14000/- per month”***

Rule 15 (a) of Rules, 2012 (Amended) is as under:

“15. Service Conditions of Niyojit teachers.- (a) Consolidated Pay.-(i) the panchayat elementary teachers will get the consolidated pay as follows:-

- * Trained teachers (basic grade) - 10,000/- per month***
- * Untrained teachers (basic grade) -9000/- per month***
- * Trained teachers (Graduate grade) -11000/- per month***
- * Untrained teachers (Graduate grade)- 10,500/- per month***
- * Trained teachers (H.M. Middle School) – 14000/- per month***

43. In the year 2020, Rules, 2012 was repealed and the Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020 (hereinafter referred to as the "Rules, 2020") came into existence. Similarly, in the Bihar Municipal Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020 and in the Bihar District Board Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020, collectively equalled the local bodies teacher Rules, 2020 again under the Constitution of



India and Panchayat Raj Act for appointment, promotion, transfer, disciplinary proceeding and service conditions of the 'Niyojit Teachers' same qualification has been prescribed under Rule 5, which is prescribed by the NCTE notifications. Rule 14 prescribes the Service Condition and as per the Sub-Rule (v) of Rules 15, the headmaster and the teachers will be paid salary fixed from time to time.

44. The Apex Court dealing with the entitlement of Shiksha Mitra duly appointed as per Uttar Pradesh Rules, in the case of *State of U.P. & Anr. vs. Anand Kumar Yadav & Ors.* reported in (2018) 13 SCC 560, has held that the Shiksha Mitra, who were appointed as teachers prior to 23.08.2010, were also required to have qualification in terms of National Council for Teacher Education (Determination of Minimum Qualification for Recruitment of Teacher in School) Regulations, 2001 (the Regulation, 2001), and were appointed on or after 03.09.2001 subject to their undergoing NCTE recognized six months special programme in certain situation and eligibility requirements as prescribed under the said notifications, which also required passing Teachers Eligibility Test (TET) for appointment. The respondents have not denied that the absorption of petitioner as Prakhanda Teacher in any



manner to be against the Rules, 2006 and against the NCTE notification. The Apex Court further clarified that the statutory requirement of minimum qualification for appointment of teachers after the date of Notification No. 215 dated 23.08.2010, in their case relaxation provision could be invoked for a limited period or in respect of persons already appointed in terms of applicable rules relating to qualification, **pre 23.08.2010 notification**, appointment could be regularized as has been clarified in paragraph no. 28, which *inter alia* is reproduced hereinafter:

“28. We are in agreement with the above findings. In view of clear mandate of law statutorily requiring minimum qualification for appointment of teachers to be appointed after the date of the Notification dated 23-8-2010, there is no doubt that no appointment was permissible without such qualifications. Appointments in the present case are clearly after the said date. Relaxation provision could be invoked for a limited period or in respect of persons already appointed in terms of applicable rules relating to qualifications. The Shiksha Mitras in the present case do not fall in the category of pre 23-8-2010 Notification whose appointment could be regularised.”

45. Acquiring *in-service* requisite qualification was unconditional in respect of all the appointments already made before the NCTE notifications and after the NCTE notifications dated 23.08.2010 and 29.07.2011.

46. The State Government appointed 'Trained' and 'Untrained' teachers after coming into force of Rules, 2012, who



were TET qualified and sent the Untrained teachers for **in-service** training and granted them the applicable pay scale of Trained Grade in respect of their minimum qualification of Intermediate (for Basic Grade Teachers) and Graduate Grade Teachers were given grade pay of Graduate Trained from the date they completed their training.

47. On November 2014, NCTE notified National Counsel for Teacher Education (Determination of Minimum Qualifications) for persons to be recruited as education teacher and physical education teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate school or colleges (Regulations), 2014 (hereinafter referred to as “2014 Regulations”). The 2014 regulations were in supersession of all earlier regulations. The Central Government through Ministry of Human Resource Development, Department of School Education and Literacy (hereinafter referred to as “MHRD”) issued Letter on 3rd August 2017 to all the secretaries of the States and Union Territories directing the teachers in government schools must possess minimum qualifications as mandated under the RTE Act and a last chance was given to all such teachers to acquire minimum qualifications by 31st March, 2019 as per the recognition granted by NCTE *vide* order dated



22 September, 2017 for conducting D.El.Ed. Programmes through ODL mode by NIOS through the SWAYAM portal of MHRD for *in-service* Untrained Teachers at Elementary level working in government, government aided and unaided private schools. The said recognition order also reduced duration of diploma from 2 years to 18 months. The MHRD on 16 February, 2018 directed its regional directors to implement D.El.Ed. Course for training of untrained *in-service* Elementary Teachers. The relaxation was granted to the State Government till 2015.

48. The issue relating to the candidate who wanted to become teacher pursuant to an advertisement notice having 18 months D.El.Ed. degree from NIOS, were debarred from taking the competitive examination for appointment of candidates as per the direction of Director, Primary Education was decided by this Court in *Sanjay Kumar Yadav vs. The State of Bihar (CWJC No. 19842 of 2019)*. The conditions stipulated in the Letter dated 11th October, 2017 addressed by the Secretary MHRD to the Secretaries to the State Government to undergo 18 months training of D.El.Ed. (ODL after obtaining the training disqualified to participate in the examination. The writ petition was allowed vide order **dated 21.01.2020**. The order was not challenged by the State of Bihar or by the MHRD. The High



Court of Uttarakhand and the High Court of Tripura in case of ***Sri Raju Nama vs. The State of Tripura by the High Court of Tripura vide its judgment dated 12/13 March 2020*** passed in ***W.P. (C) No. 87 of 2020*** adopted the view of the Patna High Court. The Apex Court in case of ***Jaiveer Singh & Ors. vs. the State of Uttarakhand and Ors.*** reported in ***(2023) SCC Online SC 1584*** in paragraph no. 31 has analysed the provisions of Sections 23 (2) and 23 (3) of the RTE Act, 2009 and had rendered the judgment passed by the Patna High Court in paragraph no. 47 is not a correct law, while considering the judgment, Uttarakhand High Court by making *inter alia* following observations in paragraphs no. 31, 47, 56 and 57 has held as under:

"31. For considering the rival submissions, it will be relevant to refer to Section 23 of the RTE Act, which reads thus:

"23. Qualifications for appointment and terms and conditions of service of teachers.—(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five



years:

[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.]

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed."

"47. Insofar as the High Court of Tripura is concerned, it again relies on the judgment of the High Court of Patna in the case of Sanjay Kumar Yadav (supra). We therefore find that the views taken by both the High Court of Patna and the High Court of Tripura were not correct in law.

56. In view of what has been held by this Court hereinabove, we find that the High Court erred in holding that 18 months Diploma conducted by NIOS through ODL mode is equivalent to the 2 years regular Diploma, particularly so, when there was no material placed on record to even remotely hold that such a qualification was recommended by the Expert Body NCTE. On the contrary, the communication dated 6th September 2019 of NCTE, the directives of MHRD so also the recognition order dated 22nd September 2017 clearly go on to show that the 18 months Diploma was provided as a one time window to the in-service teachers to acquire the minimum qualifications between the 2017 Amendment Act and the outer limit of 1st April 2019. In our considered view, the High Court has totally erred in holding that the 2 years Diploma is equivalent to 18 months Diploma

57. That leaves us with the reliance placed by the learned counsel for NCTE on the judgment of this Court in the case of Ram Sharan Maurya (supra). There can be no doubt that NCTE, as an expert body, has a right to prescribe the minimum qualifications. In the present case itself, by notifications dated 23rd August 2010 and 29th July 2011, NCTE has done so. As already discussed hereinabove, recognition order dated 22nd September 2017 only provides a window for in-service teachers to complete their course prior to 1st April 2019. As such, the said judgment does not apply to the present case." (emphasis supplied)

49. The Hon'ble Supreme Court in case of ***Ram Sharan Maurya v. State of U.P.*** reported in ***AIR 2021***



Supreme Court 954 held that the State Government fixing the qualifying marks in terms of the NCTE to allow the candidates to undergo *in-service* training to obtain minimum eligibility criteria, held it to be appropriate to maintain the standard of education as provided under RTE Act, 2009 holding it binding on the State Government *vide* its judgment dated 18.11.2020. As per Section 23(2) the teachers already appointed before coming into effect of the Act within five years time from the effective date of the notification of the year 2015, the required qualifications prior to 1st April, 2019. The NCTE being the expert body has provided as a one time window to in-service teachers to acquire the minimum qualification between the 2017 amendment and the outer limit of 1st April, 2019 and, in no manner, the NCTE had relaxed the provision of Section 23 (1), which require minimum qualification provided by the authorized expert body, NCTE in terms of resolution dated 23.08.2010 and 29.07.2011 for fresh recruitment.

50. The Apex Court in the case of **Devesh Sharma vs. Union of India & Ors.** reported in (2024) SCC OnLine SC 3096, considering the interest of a large number of teachers of various state *vide* order dated 08.04.2024 granted one more opportunity to be afforded. The Apex Court further held that



“the order shall not be confined to the applicant state only and shall cover all cases which may be pending in different judicial fora in any State or Union territory on the same point of law.”

The observation of the Apex Court in paragraphs no. 8 and 9 as under:

"8. As it appears that a large number of candidates with B.Ed. degree had already been appointed on the basis of eligibility criteria specified by the educational authorities, we do not think it to be equitable to effect their removal. We, accordingly hold that the judgment delivered by this Bench on 11-8-2023 shall have prospective operation. But prospective operation of this judgment shall be only for those candidates who were appointed without any qualification or conditions imposed by any Court of Law to the effect that their appointment would be subject to final outcome of the case which might have had been instituted by them and such candidates were in regular employment without any disqualification and were appointed in pursuance of a notice of advertisement where B.Ed. was stipulated to be valid qualification. Services of only such candidates shall not be disturbed because of this judgment. We make it clear that this benefit is only for the candidates who were appointed prior to the date our judgment was delivered, on 11-8-2023. Mere selection of such candidates or their participation in the process will not entitle them for a benefit under our present order. (Emphasis supplied)

9. Moreover, the candidates having B.Ed. qualification whose appointments we are protecting in this judgment, will have to undergo a bridge course and we direct the educational authorities to device such course, which would be applicable for each state and union territory, within a period of one year from today. This course shall be only for those appointees who have been engaged with B.Ed. degree only in the subject-posts under conditions stipulated in the earlier part of this order. National Council for Teacher Education shall design such course under overall supervision of the Ministry of Education, Union of India. Upon formulation of such course, the same shall be publicly notified and a timeframe shall also be given within which the respective candidates shall participate therein. Failure of any candidate to participate and complete the course within the timeframe to be given by the concerned educational authorities will invalidate the appointment of such



candidate."

51. The Apex Court in its decision in ***State of Bihar & Ors. vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors.*** reported in ***(2019) 18 SCC 301*** in conclusion portion in paragraph no. 107 had made following observation in respect of "***Niyojit Teachers***" for giving better scale:

"The State may consider raising the scales of Niyojit Teachers at least to the level suggested by the Committee, without insisting on any test or examination advised by the Committee. Those who clear such test or examination, may be given even better scales. This is only a suggestion which may be considered by the State."

NCTE AN EXPERT BODY

52. It is well settled principal that the decision by an expert statutory bodies regarding academic matter, which is relating to qualification for admission of students or qualification required by teacher for appointment, salary, promotion and entitlement to a higher pay scale etc. NCTE is an expert body and educational qualification fixed by it shall become binding in respect of recruitment etc.

53. There are several decisions of the Apex Court where educational qualification has been recognised as a valid basis of classification. (I) ***Union of India Through Secretary, Department of Personnel, Public Grievances and Pensions &***



Anr. vs. T.V.L.N Mallikarjuna Rao reported in (2015) 3 SCC 653, (II) *Director of Elementary Education, Odisha & Ors. vs. Pramod Kumar Sahoo* reported in (2019) 10 SCC 674 and (III) *Punjab State Cooperative Milk Producers Federation Ltd. & Anr. vs. Balbir Kumar Walia & Ors.* reported in (2021) 8 SCC 784,. The Apex Court in the case of *T.V.L.N Mallikarjuna Rao (Supra)*, *Pramod Kumar Sahoo (Supra)* and *Punjab State Co-operative Milk Producers Federation Ltd. (Supra)*, wherein, the Apex Court has observed that classification of posts and determination of pay structure comes within the exclusive domain of Executive and Tribunal cannot sit in appeal over wisdom of executive in prescribing certain pay structure and grade in a particular service. The Apex Court upheld the different pay structure based on different educational qualifications.

54. In case of *Pramod Kumar Sahoo (Supra)*, the Apex Court while dealing with grant of Matric trained scale to a teacher holding Intermediate degree by setting aside the order of the tribunal and affirmed by the High Court held that nature of work may be more or less same but the scale of pay may vary on academic qualification or experience, which justifies classification. In this context the Apex Court found that the qualification, which was required as prescribed by the technical body



was Matric Trained and the appellant of the said case in spite of having Intermediate qualification held that merely having higher qualification cannot entitle the pay-scale of Matric Trained. The Apex Court in the said judgment in paragraphs no. 6 to 14 has held as follows:

"6. Before the learned Tribunal, the counsel for the appellant conceded that the Teachers having intermediate qualification are entitled to the scale of pay as is available to Trained Matric Teachers. On the basis of such concession, the learned Tribunal allowed the original application on 19-2-2010.

7. The appellant filed an application, inter alia, on the ground that wrong submission was made by the counsel for the appellant. Such application was dismissed on the ground that the remedy of the appellant was either by filing an application of review or modification but since such application has been filed after two years of the order having been passed by the Tribunal, the same was dismissed on the ground of laches as well as there is no error apparent on the face of the order. Thereafter, the appellant filed the review petition which was dismissed on 22-1-2015. It is thereafter the writ petition was filed which was dismissed vide the order impugned [Director of Elementary Education v. Pramod Kumar Sahoo, WP (C) No. 21130 of 2015, order dated 3-3-2016 (Ori)] in the present appeal.

8. The learned counsel for the appellant submitted that the separate pay scales are provided for Untrained Matric Teachers (Rs 975-25-1, 150-E.B.-30-1660) and for Trained Matric Teachers (Rs 1080-30-1,440-EB-30-1800). Merely because the respondent is intermediate, that is higher qualification than the Matric, does not make him a Trained Teacher. Therefore, the concession given by the State counsel is erroneous concession in law and, does not bind the appellant. Reference was made to Himalayan Coop. Group Housing Society v. Balwan Singh [Himalayan Coop. Group Housing Society v. Balwan Singh, (2015) 7 SCC 373 wherein, this Court held as under:

"32. Generally, admissions of fact made by a counsel are binding upon their principals as



*long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions."*emphasis supplied)

9. *On the other hand, it is argued that since the respondent is possessing higher qualification and is now graduate, therefore, he is entitled to the pay scale meant for Trained Matric Teachers and that State is bound by the concession given by its counsel before the Tribunal.*

10. *We have heard learned counsel for the parties and find that the distinction between Trained Matric Teacher and Untrained Matric Teacher has not been appreciated by the Tribunal and the same error was committed by the High Court as well.*

11. *The concession given by the learned State Counsel before the Tribunal was a concession in law and contrary to the statutory rules. Such concession is not binding on the State for the reason that there cannot be any estoppel against law. The rules provide for a specific grade of pay, therefore, the concession given by the learned State Counsel before the Tribunal is not binding on the appellant.*

12. *The Trained Matric Teacher is the one who has been trained for the purposes of teaching. In the absence of such training, the respondent cannot be said to be a Trained Matric Teacher entitled to the pay scale meant for such teachers. The classification based upon educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification is a valid classification. It has been so held in Shyam Babu Verma v. Union of India [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, wherein this Court held as under:*

"9. ... The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies



classification. The principle of "equal pay for equal work" should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of "equal pay for equal work" to them."

13. The said decision has been quoted by another Bench of this Court in Chhattisgarh Rural Agriculture Extension Officers Assn. v. State of M.P. [Chhattisgarh Rural Agriculture Extension Officers Assn. v. State of M.P., (2004) 4 SCC 646; wherein this Court held as under:

"22. Furthermore, as noticed hereinbefore, a valid classification based on educational qualification for the purpose of grant of pay has been upheld by the Constitution Bench of this Court in State of Mysore v. P. Narasinga Rao [State of Mysore v. P. Narasinga Rao, AIR 1968 SC 349 ."

14. Therefore, we find that the order passed by the Tribunal as affirmed by the High Court is not sustainable in law. Consequently, the appeal is allowed. The original application filed by the respondent is dismissed."

55. The Hon'ble Supreme Court in **Mewa Ram Kanojia vs. All India Institute of Medical Sciences** reported in(1989) 2 SCC 235 dealing with the principal of similar post have recognized educational qualification a valid basis for classification under the same organization:

"5. While considering the question of application of principle of "Equal pay for equal work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of



Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.

*8. There are several decisions of this Court where educational qualifications have been recognised as a valid basis for classification. In **State of Mysore v. P. Narasingh Rao** reported in **AIR 1968 SC 349**, this Court held that higher educational qualifications such as success in SSLC examination are relevant considerations for fixation of higher pay scale for tracers who had passed the SSLC examination and the classification of two grades of tracers in Mysore State, one for matriculate tracers with higher pay scale and the other for non-matriculate tracers with lower pay scale, was held valid. It is pertinent to note that matriculate and non-matriculate tracers both constituted the same service performing the same duties and functions, yet the Court held that higher pay scale prescribed for the matriculate tracers on the basis of higher educational qualification was not violative of Articles 14 and 16 of the Constitution."*

56. Recently, the Apex Court in the Case of **Secretary, All India Sri Sivaji Memorial Society (AISSMS) & Ors. Vs. State of Maharashtra & Ors.** reported in **2025 SSC OnLine SC 689**, while deciding the benefit of revised pay scale under the 6th Central Pay Commission can be made applicable to the teachers, who are presently teaching in Engineering and Technical studies run and managed by the society which is a private body and not under the grant of aid of government dealing with the prescribed qualification of teacher in an engineering institute, which is laid down by the All India Council for Technical Education (AICTE) after considering the provisions of AICTE and based on the provisions held that the



AICTE is an expert body mandated by law to prescribe essential qualification for a teaching post is vested with the statutory duty to decide the matter relating to the technical education. In paragraph no. 17 of the said judgment, the Apex Court *inter alia* held as follows:

"17. As far as such teachers are concerned who were appointed prior to 15.03.2000, we do not see any reason to disturb the findings of the High Court regarding their entitlements under the 6th Pay Commission, etc. All the same, the other half of respondents, who were appointed post the AICTE notification dated 15.03.2000 had come into force, they fall in a different category altogether. These are the teachers who were appointed after 15.03.2000 and were not having Ph.D. qualification though it was mandatory and moreover had also failed to acquire a Ph.D. within seven years as stipulated in the AICTE notification of 2005 as well as their appointment order. At this juncture, we would like to record the submission made at the Bar that one of these respondents i.e., Dr. Madhavi Ajay Pradhan who though was appointed as Assistant Professor on 14.06.2004 (i.e. after 2000 AICTE Notification) has gone ahead and completed her Ph.D. She also cannot be denied the benefit of the Bombay High Court decision presently under challenge before this Court."

57. The Apex Court further in paragraph no. 29 observed that those teachers, who acquire Ph.D. degree, would be at liberty to move application before their respective institution and AICTE for grant of higher pay scale and designation of Associate Professor, shall be considered by them in accordance with law.

58. It has been observed by the Apex Court in paragraph no. 57 in *Jaiveer Singh (Supra)* that the NCTE is an



expert body and the educational qualification fixed by NCTE Notification No. 215 dated 23.08.2010 and amended Notification No. 158 dated 29.07.2011 prescribing 50% marks in Graduation for appointment of teachers itself became binding in respect of all the recruitment made by the State Government before or after the date of the notification. The State Government has admitted that it had sent the untrained teachers for training, who were appointed after coming into force of Rules, 2012 were sent for *in-service* to attain eligibility till the year 2015.

59. In NCTE notification dated 29.07.2011, paragraph 4 (a) provides teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) shall undergo an NCTE recognized six months special programme or elementary education. Paragraph 4 (b) provides special qualification only for teacher of Classes I to V with B.Ed. qualification, who were required to complete a six months special basic teacher course (Special BTC) approved by NCTE, which the Apex Court recently *vide* its judgment dated 08.04.2024 extended for a further period of one year, which has



been made applicable throughout the country including such teachers of State of Bihar. A reference can be made to paragraphs no. 8 and 9 in the case of *Devesh Sharma (Supra)*. Definitely this relaxation relates to the "Untrained" teachers appointed before 11.08.2021.

60. The petitioner is not claiming parity in pay scale, rather, implementation of mandate of RTE Act, 2009 and to give benefit of NCTE notifications in respect of his acquired educational qualification as on 03.04.2012, which entitles him the grade pay applicable to the graduate teachers appointed in Middle School i.e. Prarambhik (Class VI to VIII), which have been given to the like '*Niyojit Teachers*' as discussed in the above paragraph, who have also acquired the requisite qualifications for the Graduate Grade after undergoing in-service training. All the teachers appointed or absorbed after Rules, 2006, Rules, 2012 till Rules, 2020 constitute a cadre of '*Niyojit Teachers*' has been held in *CWJC No. 1942 of 2024 (Pramod Kumar Yadav vs. the State of Bihar & Ors.)*

61. The representation of the petitioner has been rejected by the respondent no. 3 on his misconceived understanding that in the appointment Rule, 2006 there was no stipulation for granting grade of Graduate Teachers and it is only



after Rule, 2012 came into effect that appointment of teacher in Graduate Grade had begun, which I find is just contrary to the steps taken by the State Government in making amendments in Rule 2006 in year 2008 particularly, in the sub-rule (x) of Rule 9 of the Rules, 2006 giving preference to Graduate Teachers, who were appointed as per the provision of Rule 8 (A) to be posted in Middle School. Rule, 2006 prescribes for minimum qualification of Intermediate, but provision of Rule 2 does classify the schools into (i) Primary School (up to Class V level), (ii) Middle School (up to Class VII or Class VIII) and (iii) Elementary School (both Primary and Middle School) and Grade to mean “Grade of Panchayat Elementary Teachers”. For the first time Rules, 2012 came into effect on 03.04.2012, as per Rule 4, it classified three grades as discussed above including the Graduate Grade Teachers. The distinction thus, remained as per the educational qualification prescribed by the NCTE and Rules, 2012. The respondent no. 3 has erred in not appreciating the provision of Rules, 2006, Rules, 2012, RTE Act, 2009 and the NCTE notifications dated 23.08.2010 and 29.07.2011 leading to denial of claim of the petitioner vide impugned order contained in Memo No. 390 dated 16.03.2020.

62. The issue relating to get benefit of higher grade of



pay on improving or acquiring higher qualification in terms of circular came before the Apex Court in case of **Punjab Higher Qualified Teachers' Union vs. the State of Punjab & Ors.** reported in **(1988) 2 SCC 407** in which, the Apex Court observed that the revision of pay of teacher was based on the linking pay to qualification based on the recommendation of '**Kothari Commission**', which strongly expressed that the scale of teacher should be linked to educational qualification. The Apex Court considering its two judgments passed in ***State of Punjab & Anr. v. Kirpal Singh Bhatia & Ors.***, reported in **(1976) 1 SCR 529** and ***Avtar Singh v. Manmohan Singh & Anr.***, **(C.A. 3790/83 decided on September 14, 1984)**, held that the entitlement for higher scale of pay is required to be fixed on the basis of academic qualification and accordingly held that the teachers, who had acquired higher qualification, would be entitled to the revised scale of pay with effect from the date they passed the examination. In this background, the Apex Court observed that all those teachers, who had improved their educational qualification and acquired requisite qualification but denied similar relief on the ground that they did not have requisite professional training, they were also required to be taken for training to entitle them to such higher pay from the



respective dates, the teachers acquired the prescribed qualification. The similar view was reiterated by the Apex Court in the case of ***State of Haryana & Ors. vs. Hem Lata Gupta & Ors.*** reported in ***AIR 2010 SC 629***.

63. In case of **Ram Vijay Kumar & Ors. vs. State of Bihar & Ors.** reported in **(1998) 9 SCC 227**, the Apex Court considered the recruitment of Assistant Teachers in Elementary School/Primary School in the State of Bihar, wherein, the appellant had challenged the selection process and the Apex Court had taken notice of inaction on the part of the State. In a time bound manner, the Apex Court directed to fill-up the post on the basis of selection made pursuant to Advertisement dated 08.10.1991. The untrained Assistant Teachers, who were appointed, were required to undergo training, however, no step was taken by the State Government and later fixed the date for commencement of training from 01.10.1997 and to ensure their training within two years time. The State Government granted graduate trained pay scale to those teachers with effect from the date of completion of their training. In case of ***Kranti Kanak & Ors. Vs. The State of Bihar & Ors.*** passed in ***LPA No.1699 of 2013***, the Division Bench of this Court observed that one cannot suffer on account of lapse on the part of the respondent.



Similar relief was sought in ***CWJC No. 2892 of 2013 (Brajesh Kumar & Ors. vs. the State of Bihar & Ors.)***, which was allowed on 13.05.2015 and against the said order passed by the learned Single judge, the State of Bihar had preferred LPA NO. 1870 of 2015, in which, the Division Bench of this Court, on the same principal, had declined to interfere with the order/judgment dated 13.05.2015 passed by the learned Single Judge by relying on the judgment passed by the Apex Court in case of ***State of Maharashtra vs. Jagannath Achyut Karandhikar*** reported in ***AIR 1989 SC 1133***, and principal laid down by the Hon'ble Justice Chagla in the case of ***All India Groundnut Syndicate Limited -Versus-Commissioner of Income Tax, Bombay City, AIR1954 Bombay 232***.

64. It is well settled that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited. Merely, because the petitioner and like teachers, who were appointed as '***Niyojit Teachers***' before coming into force of Rules, 2012, is not enough to come to the conclusion that they were engaged as Panchayat Shiksha Mitra and they were absorbed in upgraded middle school w.e.f. 01.07.2016 as a basic grade teacher *dehors* the very provisions of Section 23 (3) and the prescribed qualification in terms of Sections 23 (1) and



Section 23(2) of the RTE Act, 2009 and Rules, 2012.

65. In ***Babu Verguese vs. Bar Council of Kerala*** reported in ***(1999) 3 SCC 422***, the Apex Court observed that "*it is a basic principle of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all*". (***Taylor vs. Taylor:(1875) LR (1) CH-D-426, and Nazir Ahmad vs. King Emperor: AIR 1936 PC 253***), the apex Court observed that "*when the power is given to do a certain thing in a certain way, the thing must be done in that way and not in any other manner.*"

66. The Apex Court in the case of ***General Manager, South Central Rly. v. A.V.R. Siddhantti*** reported in ***(1974) 4 SCC 335*** while faced with the validity of decision of the Railway Board in respect of seniority of all the personnel recruited to the Grain Shop Department held that reasonable classification according to some principle, to recognise intelligible inequalities or to avoid or correct inequalities is allowed, but not **mini-classification** which creates inequality among the similarly circumstanced members of the same class or group observed as follows in following paragraphs:-

"21. In the light of the above principles it will be seen that the pivotal question in the present controversy is: Were the three categories after their transfer or direct recruitment, as the case may be, to the GrainShop Department fused into a single



integrated class having the same conditions of service? Or, did they continue dissimilarly — as they started — in three separate compartments?

29. Conscious of the necessity of resolving the problem in a just, practical manner, avoiding a doctrinaire approach, we wanted to have some idea of the nature and magnitude of the impact which the decision of this case might indirectly or incidentally have on the employees who, during the interregnum, got promoted or confirmed on the basis of the impugned directions. We, therefore, indicated at the outset that as a matter of concession, we would be disposed to allow the appellants to produce even at that stage, after due notice to the other side, documentary evidence or material, if any, in their possession or control, which would help substantiate their contention. The opportunity was not availed of by the appellants. There is, therefore, no escape from the conclusion that after their direct recruitment to the Grain Shop Department the personnel coming from sources (ii) and (iii) had shed their genetic peculiarities and become members of the same class or unit governed by the same conditions of service. For the purposes of absorption, seniority, promotion, etc. in regular departments, therefore, they were entitled to be treated alike.

30. The impugned directions of 1957 and 1961, in so far as they pertain to categories (ii) and (iii), are hit by the rule in *Roshan Lal Tandon v. Union of India* [AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 Lab LJ 576] according to which once the persons coming or recruited to the service, from two different sources — in that case promotees and direct recruits — are absorbed into one integrated class with identical service conditions, they cannot be discriminated against with reference to the original source, for the purposes of further promotion to the higher grade. What was said about further promotion in *Roshan Lal Tandon* case is equally applicable to absorption and seniority in the instant case.

31. For the foregoing reasons, we would hold that the discrimination envisaged in the impugned directions dated November 2, 1957 and January 13, 1961, excepting in so far as they pertain to personnel of category (i) is arbitrary and violative of Articles 14 and 16 of the Constitution.

32. In the result we dismiss the appeal with costs throughout and affirm the decision of the High Court except to the extent indicated above."



67. In the case of The State of *Jammu and Kashmir vs. Shri Triloki Nath Khosa & Ors.* reported in (1974) 1 SCC 19, it was held by the Apex Court in paragraphs no. 54 and 57, that classification must be truly founded on substantial differences, which distinguish persons grouped together from those left out of the group and such differential attributes must bear adjust a rational relation to the object sought to be achieved and further that judicial scrutiny can therefore extend only to the consideration whether the classification rest on a reasonable basis and whether it bears nexus with the objective in view and it cannot extend to embark upon a niche to create Mini-Classification based on micro distinction as has been held in paragraphs no. 54 and 57 as under:

"54. In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to Procrustean cruelty or sanctions indolent inefficiency. Necessarily, therefore, an imaginative and constructive modus vivendi between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of "classification" and "differentia", with the by-products of equality among equals and dissimilar things having to be treated differently. The social meaning of Articles 14 to 16 is neither dull uniformity nor specious "talentism". It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly mediocrity for activist and intelligent — but not snobbish and uncommitted — cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for Articles 14 to 16 and the Court's



jurisdiction awakens to deaden such manoeuvres. The soul of Article 16 is the promotion of the common man's capabilities, over-powering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Articles 14 and 16 by the theory of classified equality which at its worst degenerates into class domination.

57. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70 per cent marks could become Chief Engineers and those with 60 per cent alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it."

68. In the case of "**Chandan Banerjee & others Vs. Krishna Prosad Ghosh & others**, reported in (2022) 15 SCC 453, the Hon'ble Supreme Court has reiterated that judicial review in cases where classification is challenged, is limited to a determination of whether the classification is reasonable and bears a nexus to the object sought to be achieved but I find that by creating a Mini-Classification the respondent no. 3 has exceeded his jurisdiction. This Court is also conscious of the fact that at the same time, Courts cannot indulge in a mathematical evaluation on the basis of classification on their own but when there is no nexus between such classification made by the quasi



judicial authority then certainly it can correct in exercise of power of judicial review.

69. In the case of ***Chandan Banerjee (Supra)***, the Hon'ble Supreme Court has summarized the legal position on the issue of classification in the context of public employment in paragraph no.28 of the judgment, which is reproduced below:

"28. The principles which emerge from the above line of precedents can be summarised as follows:

28.1. Classification between persons must not produce artificial inequalities. The classification must be founded on a reasonable basis and must bear nexus to the object and purpose sought to be achieved to pass the muster of [Articles 14](#) and [16](#).

28.2. Judicial review in matters of classification is limited to a determination of whether the classification is reasonable and bears a nexus to the object sought to be achieved. Courts cannot indulge in a mathematical evaluation of the basis of classification or replace the wisdom of the legislature or its delegate with their own.

28.3. Generally speaking, educational qualification is a valid ground for classification between persons of the same class in matters of promotion and is not violative of [Articles 14](#) and [16](#) of the Constitution.

28.4. Persons drawn from different sources and integrated into a common class can be differentiated on grounds of educational qualification for the purpose of promotion, where this bears a nexus with the efficiency required in the promotional post.

28.5. Educational qualification may be used for introducing quotas for promotion for a certain class of persons; or may even be used to restrict promotion entirely to one class, to the exclusion of others.

28.6. Educational qualification may be used as a criterion for classification for promotion to increase administrative efficiency at the higher posts.



28.7. However, a classification made on grounds of educational qualification should bear nexus to the purpose of the classification or the extent of differences in qualifications."

70. The NCTE is an expert body and the Apex Court has held so. Section 23 (1) and 23 (2) provides for the minimum qualification for appointment of teacher. Section 23 (3) leaves it open to the State to prescribe the service conditions and other conditions relating to the teachers to be prescribed by the State. Rule 15 (a) of Rules, 2012 provides the service condition of "**Niyojit Teachers**". A school is defined under Section 2(n) of Section 2 of RTE Act, 2009 to mean "School imparting Elementary Education (Class I to V and Class VI to VII)". It is admitted that petitioner is graduate and is Bachelors in Education (Degree Course). The petitioner was absorbed in upgraded elementary school in Prakhand. Sub-Rule (ii) of Rule 2 defines "Middle School" to mean "Government/Government taken Over, where at present education is provided up to Class VII and Class VIII level" and Sub-Rule (iii) of Rule 2 defines "Elementary School" to mean "Government/Government taken Over Primary Middle School" and Sub-Rule (v) of Rule 2 defines "Grade" to mean "Grade of Panchayat Elementary Teachers". The provision of Rule 8 (A) of Rules, 2006 prescribes eligibility for appointment of Block Teacher either to



be higher secondary or Intermediate or equivalent or should be Bachelor degree with B.Ed. or equivalent. It also provided for in service acquiring requisite teachers training certificate from training school/colleges recognized before commencement of NCTE Act (NCTE notification of the year 2001). The absorption of the petitioner in Prakhand School was after approval of committee. The petitioner was granted initial pay as provided under Rule 12 of Rules, 2006. It was clarified by the Human Resources Department vide Letter No. 1899 dated 10.11.2006 that after absorption of panchayat shiksha mitra, it will not be possible to appoint shiksha mitra after 01.07.2006. The provisions of sub-rule (II) of Rule 4, sub-rule (kha), (ga) of Rule 5 was also amended. Sub-Rule 2 (ka) and (kha) of Rule 8 were also amended making clarification that for any future appointment of teachers, the same has to be done in accordance with the amended provision. Additionally, significant amendments were made to Rule 9, particularly Sub-rule (x), which specifies that in posting graduate teachers to Middle Schools, preference should be given to two science graduates. If qualified science graduates are unavailable, then Intermediate science teachers should be prioritized for such posts. The Shiksha Mitra, who were possessed of graduation degree



preferably were required to be absorbed in Middle School at Prakhanda Level. The petitioner having eligibility of 68 percent marks in B.A. and he was trained had also passed the 'Bihar Elementary School *Patrata Pariksha* 2011' (S.C.E.R.T and B.S.E.B) after submitting requisite fee to the Director, SCERT, Bihar, Patna. The certificate was issued by the Human Resources Department as mandated under sub-section 2 of Section 23 after coming into force of RTE Act, 2009.

71. On coming into force of Rules, 2012 w.e.f. 03.04.2012, in terms of Rule 2 (vi) defines "Category" to mean "the category of Panchayat Elementary Teachers", Rule 2 (vii) defines "Grade" to mean "Grade of Panchayat, Prakhanda Teachers". Rule 3 prescribes for category of Panchayat Elementary Teachers into two categories (i) Prakhanda Teachers-Teachers employed in the Middle School of the Block by Prakhanda Niyojan Samiti of Block (ii) Panchayat Teacher-Teacher employed in the Primary School of Panchayat by Panchayat Niyojan Samiti of Panchayat. Rule 4 provides for "Grade" of Panchayat Elementary Teachers into three grades (i) Basic Grade (ii) Graduate Grade/Graduate Teachers of Middle School and (iii) Headmaster Grade / Headmaster of Middle School. Proviso to Rule 4 stipulates that "*In case of*



upgradation of primary school into middle school, the teachers of primary school will become teachers of respective grades of middle school". Minimum qualification of employment is contained in Rule 5 of Rules, 2012 for three grades of teachers by distinguishing it on the basis of Classes I to V (Basic Grade of Panchayat and Prakhanda Teacher) provides minimum qualification of Senior Secondary or its equivalent with at least 50 percent marks and 2 years training in Elementary Education (whatever name known). The detail qualification has been referred in above paragraph. Classes VI to VIII, Graduate Grade of Prakhanda Teachers, those having B.A./B.Sc. and 2 years training in Elementary Education (by whatever name known) or B.A./B.Sc. with at least 50 percent marks and 1 year Bachelor in Education (B.Ed.). In accordance with National Council Education, recognized to the norm and procedure Regulations, 2002 issued from time to time in this regard, the marks in B.A., B.Sc. has been recommended to be at least 45 percent for the eligibility. Similar other equivalent degree has been prescribed for employment of the teachers in Classes I to V and Classes VI to VIII in accordance with the prescribed qualification in two notifications of the NCTE.

72. Rule 5 further makes distinction between



Classes I to V in respect of those teachers, who were appointed on or after the 3rd September, 2001 i.e. the date on which NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 as amended from time to time, came into force. Possessing B.Ed. qualification or a teacher possessing B.Ed. (Special Education) qualification, shall undergo an NCTE recognized six months special programme of elementary education. The distinction is only in respect of those teachers, who were having B.Ed. degree and were appointed on the basis of minimum qualification of Intermediate to teach Classes I to V and the qualification as prescribed in Sub-Rule (ii) of Rule 5 of Rules, 2012 in respect of those teachers of Classes VI to VIII qualification as prescribed by the NCTE remained the same.

73. Rule 7 relates to employment of Graduate Teachers in Middle School on Subject-wise and in respect of candidates having the prescribed qualification in accordance with Rule 5 will be employed as (i) Graduate Maths and Science Teacher, (ii) Graduate Senior Science Teacher and (iii) Graduate Language Teacher up to eight years from the date of notification of Rules, 2012 . All the post of Graduate Teachers will be filled up from direct Niyojan, after that, 50 percent posts will be filled



up directly and rest 50 percent will be filled up from promotion of the qualified “Niyojit Teachers” of Basic Grade. Rule 7 also makes clear distinction about the qualification, which is required for the teachers of Classes VI to VIII, who were to be appointed w.e.f. 03.04.2012, the date of coming into force of Rules, 2012. Rule 7 also in nowhere makes any distinction with the teachers, who were already having requisite qualification as prescribed under Rule 5 of Rules, 2012. The petitioner had all the educational qualification required before coming into force of RTE Act, 2009 as stated above he had also successfully passed the ***Patrata Priksha*** of year 2010 for which examination was held and the petitioner became successful. Human Resources Department, Government of Bihar gave him certificate in the year 2011.

74. The Hon’ble Supreme court in case of ***Shrilekha Vidyarthi and Others vs. State of U.P. and Others***, reported in ***(1991) 1 SCC 212***, on the aspect of arbitrariness in appointment to the office of Public Prosecutor/Law Officers, *inter alia* held as follows:

"38. After Jaisinghani's case (supra), long strides have been taken in several well-known decisions of this Court expanding the scope of judicial review in such matters. It has been emphasized time and again that arbitrariness is anathema to State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaran-



ted by the Constitution of India. It is, therefore, obvious that irrespective of the nature of appointment of the Government Counsel in the districts in the State of U.P. and the security of tenure being even minimal as claimed by the State, the impugned circular, in order to survive, must withstand the attack of arbitrariness and be supported as an informed decision which is reasonable.

39. No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is Contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision Which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary."

75. In the above factual premises, I am of the view that the interest of the petitioner and like "Niyojit Teachers" as a whole has been defeated, whose absorption/appointment can be traceable to the RTE Act, 2009, which was enacted with an object and reason while acknowledging the role of universal elementary education for strengthening the social fabric of democracy through equal opportunities keeping the underlying objective of Article 21. The avowed objective thereof, is to guarantee fulltime elementary education of satisfactory and equitable quality to every child age between 6 to 14 years, which can be achieved by appointing teachers, who have the minimum qualification stipulated under Section 23 (1) and



relaxation in terms of Section 23 (2) and gives freedom to the State Government under Section 23 (3) to prescribe the salary and the allowances payable to, and the terms and conditions of service of the teachers. In exercise of said power, the service condition has been provided under Rule 15 of Rules, 2012 and Rule 14 of Rules, 2020, which is based on the qualification of the teachers as provided in the NCTE notifications. I find that there is no persuasive reason for treating the petitioner in Basic Grade, which don't stand the taste of scrutiny on the touchstone of Article 14 and the action can be treated discriminatory treatment to equals in the matter of payment of salary based on a hypothetical statutory provision that all the teachers appointed or absorbed as per Rules, 2006 were Basic Grade Teachers leading to preserve discrimination. Whenever classification is held to be impermissible, in such a situation, the Court can exercise its power of judicial review on the touchstone of Article 14.

76. Article 14 permits classification based on reasonable and intelligible differential, i.e. the differential must be on some rational basis, having nexus with the object sought to be achieved. The teachers who are working in primary sections form 'one unit' and the teachers of middle section is of



separate unit and both are imparting education in elementary school from Classes I to VIII forming a homogeneous cadre of '**Niyojit Teachers**' cannot be discriminated by denying equal treatment under the provisions of Rules, 2012 and Rules, 2020 and right granted under Article 14 of the Constitution of India. The denial of Graduate Grade pay to the petitioner and some teachers similarly situated solely on the ground that at the relevant time, when the petitioner was absorbed as per the provision of Rules, 2006, which only provide 'Basic Grade' contrary to the provisions of Sub-Rule (v) of Rule 2 of Rules, 2006, Rule 4 of Rules, 2012, which for the first time, provided grade pay and Rule 5 of Rules, 2012, amounting into a glaring instance of hostile discrimination denial of equal protection by creating an artificial micro-classification.

77. In light of the discussions made hereinabove and law laid down by the Apex Court, **the order contained in Memo No. 390 dated 16.03.2020 is hereby set aside and quashed.**

78. An attention of this Court has been drawn that the State Government *vide* Resolution No. 1530 dated 11.08.2015, which is beneficial in nature and on plain reading of the resolution, it appears that it prescribe pay scale for only Primary



Teachers (Prathmik Shikshak) and trained and untrained Primary, Secondary, Higher Secondary teachers and Librarians. It has completely left out the Middle (Prarambhik) School Teachers (Class VI-VIII) in respect of prescribing pay scale to grant the similar benefit as prescribed to the Primary (Prathmik) Teachers, Secondary Teachers and Higher Secondary Teachers. The relevant part of the said resolution reproduced hereinafter:

“2. वर्तमान में नियोजित शिक्षक एवं पुस्तकालयाध्यक्ष नियत वेतन पर कार्यरत हैं। पंचायती राज संस्थाओं के माध्यम से सभी नियोजित प्रशिक्षित, अप्रशिक्षित प्राथमिक, माध्यमिक, उच्च माध्यमिक शिक्षक एवं पुस्तकालयाध्यक्षों को नियत वेतन के स्थान पर निम्नवत् अनुशंसित वेतनमान देने का निर्णय लिया गया है:-

2.1 प्राथमिक शिक्षक

क्र० सं०	पदनाम	संख्या	वेतनमान्	ग्रेड वेतन
1	2	3	4	5
1	प्राथमिक (Primary) शिक्षक (अप्रशिक्षित)	62031	5200-20200	0
2	प्राथमिक (Primary) शिक्षक (प्रशिक्षित)	245344	5200-20200	2000
3	प्राथमिक (Primary) शिक्षक (स्नातक ग्रेड अप्रशिक्षित)	14000	5200-20200	0
4	प्राथमिक (Primary) शिक्षक (स्नातक ग्रेड प्रशिक्षित)	22739	5200-20200	2400
	कुल शिक्षक (प्रकाशित विज्ञप्ति के विरुद्ध भविष्य में होनेवाली नियुक्ति सहित)	344114		

2.2 माध्यमिक शिक्षक / पुस्तकालयाध्यक्ष

क्र० सं०	पदनाम	संख्या	वेतनमान्	ग्रेड वेतन
1	2	3	4	5
1	माध्यमिक शिक्षक (अप्रशिक्षित)	4463	5200-20200	0
2	माध्यमिक शिक्षक (प्रशिक्षित)	25038	5200-20200	2400
3	पुस्तकालयाध्यक्ष	1900	5200-20200	2400
4	उच्च माध्यमिक शिक्षक (10+2) (अप्रशिक्षित)	3058	5200-20200	0



5	उच्च माध्यमिक शिक्षक (10+2) (प्रशिक्षित)	26774	5200—20200	2800
	कुल शिक्षक (प्रकाशित विज्ञप्ति के विरुद्ध भविष्य में होनेवाली नियुक्ति सहित)	61233		

2.3 प्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुर. तत्कालयाध्यक्ष को 01 जुलाई, 2015 से 5200—20200 के वेतनमान में 5200 का बेसिक वेतन देय होगा, जिस पर प्राथमिक शिक्षक (प्रशिक्षित) को 2000 रुपये, प्राथमिक शिक्षक(स्नातक ग्रेड प्रशिक्षित), माध्यमिक शिक्षक (प्रशिक्षित) एवं पुस्तकालयाध्यक्ष को 2400 रुपये तथा उच्च माध्यमिक (प्रशिक्षित) शिक्षक को 2800 रुपये को ग्रेड पे देय होगा। पूर्व की गयी सेवा के लिए प्रत्येक तीन वर्ष की सेवा के लिए एक वार्षिक वेतन वृद्धि तीन प्रतिशत की दर से देय होगी।

2.4 अप्रशिक्षित प्रारंभिक, अप्रशिक्षित माध्यमिक एवं अप्रशिक्षित उच्च माध्यमिक शिक्षकों को 5200—20200 वेतनमान में 01 जुलाई, 2015 से 5200 का बेसिक वेतन देय होगा, परंतु ग्रेड पे देय नहीं होगा। अप्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों को प्रशिक्षित होने के उपरांत अनुशंसित वेतनमान का ग्रेड पे देय होगा। पूर्व में की गयी सेवा के लिए प्रत्येक तीन वर्ष की सेवा के लिए एक वार्षिक वेतन वृद्धि तीन प्रतिशत की दर से देय होगी।

2.5 प्रशिक्षित एवं अप्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्षों को समय—समय पर राज्य सरकार के कर्मियों के अनुरूप घोषित महंगाई भत्ता, चिकित्सा भत्ता, मकान किराया भत्ता एवं देय वार्षिक वेतन वृद्धि देय होगी।

2.6 अप्रशिक्षित प्रारंभिक, माध्यमिक एवं उच्च माध्यमिक, शिक्षकों को 01 जुलाई 2015 को देय वेतन में कम से कम न्यूनतम 20 प्रतिशत की वृद्धि की जायेगी। जिन मामलों में 20 प्रतिशत से कम वृद्धि निर्धारित होगी, वैसे मामलों में 20 प्रतिशत तक वृद्धि करने के लिए 100 के गुणक में राशि जोड़ी जायेगी, जिसे वैयक्तिक वेतन माना जायेगा। वैयक्तिक वेतन पर महंगाई भत्ता देय नहीं होगा।

2.7 अप्रशिक्षित प्रारंभिक शिक्षक (स्नातक ग्रेड) एवं अप्रशिक्षित माध्यमिक शिक्षकों को विशेष भत्ता के रूप में 1500 रुपये की राशि प्रतिमाह दी जायेगी, जिसपर महंगाई भत्ता देय नहीं होगा। यह राशि इस उद्देश्य से दी जा रही है कि प्राथमिक, प्रखंड शिक्षक, माध्यमिक एवं उच्च माध्यमिक शिक्षक के वेतन में पूर्व की भांति अन्तर रहे।

2.8 नियोजित एवं भविष्य में नियोजित प्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्षों को वे. तनमान के साथ ग्रेड पे की देयता उनकी सेवा के दो वर्ष पूरा होने के उपरांत देय होगी। दो वर्ष की कालाविध में इन्हें अप्रशिक्षित प्रारंभिक, अप्रशिक्षित माध्यमिक, अप्रशिक्षित उच्च माध्यमिक शिक्षकों के अनुरूप वेतनमान देय होगा।

79. The pay scale sanctioned under this Resolution dated 11.08.2015 to all the said teachers both Trained and Untrained was Rs. 5200-20,200/- and the only difference was



with respect to grade pay. For Prathamik Shikshak (Primary) (Trained), grade pay was Rs. 2000/- and for Prathamik (Primary) Shikshak (Graduate Grade Trained), it was fixed at Rs. 2400/- and for Madhyamik Shikshak (Trained), the grade pay was fixed at Rs. 2400/- vide para 2.1 and 2.2 of the resolution. Further Para 2.3 of this Resolution clearly provided that for Prashikshit Prarambhik and Madhyamik teachers the basic pay in the pay scale of Rs. 5200-20200 would be Rs. 5200 w.e.f. 1.7.2015 on which the Grade Pay admissible for Prathamik Shikshak (Prashikshit) would be Rs. 2000, for Prathamik Shikshak (Snatak Grade Prashikshit) it would be Rs. 2400 and for Madhyamik Shikshak (Prashikshit) it would be Rs. 2400. From the above Resolution No. 1530 dated 11.8.2015 it would be evident that in the pay scale of Rs. 5200-20200 (a) Grade Pay of Rs. 2000 is admissible to only one category of teachers being Prathamik Shikshak (Prashikshit) i.e. a trained teacher in basic grade teaching in Prathamik Vidyalaya and (b) Grade Pay of Rs. 2400 is admissible to two categories of teachers being (i) Prathamik Shikshak (Snatak Grade Prashikshit) and (ii) Madhyamik Shikshak (Prashikshit) i.e. trained teachers who are in graduate grade and teaching either in Prathamik Vidyalaya (i.e. for schools upto Standard V) or in Madhyamik Vidyalaya (i.e. for schools



upto Standard VI or VIII) are both entitled for Grade Pay of Rs. 2400. Thus irrespective of the category of school in which a teacher is teaching i.e. either in Prathamik or Madyamik Vidyalaya, if such teacher has an educational qualification of graduate and technical qualification of teachers training then such trained graduate teachers are entitled for Grade Pay of Rs. 2400 and not of Rs. 2000 which is admissible to a teacher teaching only in Prathamik Vidyalaya (not Madyamik Vidyalaya) and having educational qualification of Intermediate only with technical qualification of teachers training and thus falling in basic grade as per Rule 4(i), 11 (kha) and 15(i) of the 2012 Niyamawali.

80. Learned Advocate General, in this regard, in ***CWJC No. 8407 of 2021 (Sudha Trivedy vs. the State of Bihar & Ors.)*** in the presence of the Additional Chief Secretary informed that necessary steps shall be taken to rectify the Resolution No. 1530 dated 11.08.2015, by inserting the teachers of Class VI to VIII in Middle School or Elementary School, who are also entitled for Graduate pay-scale of 'Trained' and 'Untrained', and are equally entitled for the benefit of the Resolution No. 1530 dated 11.08.2015. The discrimination so pointed out will be meted out soon.



81. It is well settled that once right is given to a candidate, obviously the benefit arising out of the same cannot be refused by the State Government, while saying that the appointment of teacher in graduate grade had begun after the enactment of Rules, 2012. The petitioner and like '**Niyojit Teachers**' appointed and working in the Middle School having requisite qualifications of 'Graduate Trained' or its equivalent qualification would be entitled to the pay attached to the said post. It is expected from the welfare State that the liberty which has been left open to them by virtue of Sub-Section 3 of Section 23, should not be denied to the petitioner and like other '**Niyojit Teachers**'. Accordingly, the petitioner is entitled for grade pay of Rs. 2400 in pay-scale of Rs. 5200-20,200/- with effect from 01.07.2015 and also give the benefit granted under Resolution No. 1632 dated 21.06.2017 w.e.f. 01.01.2016 (on notional benefit) and 01.04.2017 (with financial benefit) and is also entitled for fixation of pay as per the pay matrix mentioned therein w.e.f. 01.01.2016 in the same pay-scale of Rs. 5200-20,200/-.

82. At the same time, it has been informed that the State has enacted new Rules, 2020 for Panchayat Raj Institution Teachers. As per the provision of these rules, the benefit of



E.P.F. Scheme has been extended to the teachers w.e.f. 01.09.2010. Further the pay structure of these teachers has been revised w.e.f. 01.04.2021.

83. I direct the Additional Chief Secretary, Education Department to act in an equitable manner by exercising his jurisdiction to give the similar benefit of Graduate Trained grade-pay to all the teachers appointed between 2006 to 2012, having been deprived of the Graduate Trained Grade and all the consequential benefits to protect their constitutional right granted under Articles 14, 16 and 21 of the Constitution of India. The exercise is required to be completed within a period of three months.

84. This order shall be made applicable to all Graduate Trained Teachers appointed in middle school or elementary school (Class VI-VIII) at any level during the period of 2006-2012.

85. In view of the law and discussions made hereinabove, the writ petition is allowed in above terms.

86. There shall be no order as to cost.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	21.02.2025
Uploading Date	22.07.2025
Transmission Date	N/A

