

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.40 of 2025

In
Civil Writ Jurisdiction Case No.13369 of 2024

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1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
 2. The Chief Secretary, Government of Bihar, Patna.
 3. The Additional Chief Secretary, Education Department, Old Secretariat, Bailey Road, Patna-800015.
 4. The Secretary, Education Department, Old Secretariat, Bailey Road, Patna-800015.
 5. The Director, Secondary Education, Education Department, Old Secretariat, Bailey Road, Patna-800015.
 6. The Bihar Public Service Commission, through its Chairman, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
 7. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
 8. The Secretary, Bihar Public Service Commission, Bihar, Patna.
 9. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.

... .. Appellant/s

Versus

Rajiv Kumar Son of Srinarayan Singh, Resident of Village- Bichhiaon P.O.
Bichhiaon P.S.- Sandesh, District- Bhojpur, Roll No.- 468979.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Akash Raj (AC TO GA 5)
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-03-2026

No one appears on behalf of the sole respondent though
notice has been validly served upon him.

I.A. No. 01 of 2025

2. I.A. No. 1 of 2025 is an application for condonation



of delay. The Stamp Reporter has pointed out that there is delay of 100 days in filing this LPA.

3. After hearing the learned counsel for the appellant and going through the averments made in the interim application, we are inclined to condone the delay in filing the present LPA.

4. Accordingly, the delay of 100 days in filing LPA No. 40 of 2025 is condoned.

5. I.A. No. 01 of 2025 stands allowed.

LPA No. 40 of 2025

6. We have already passed an order on 16.03.2026 that the matter will be taken up next week, so that the learned counsel for the appellant will address both on the point of condonation of delay as well as on the merit.

7. Today, learned counsel for the appellant has placed a copy of the judgment dated 08.04.2025 passed by a Division Bench of this Court in L.P.A No. 1030 of 2024, which is taken on record.

8. The present LPA has been filed challenging the order dated 05.09.2024 passed by the learned Single Judge in CWJC No. 13369 of 2024. The writ petition was filed by the respondent Rajiv Kumar seeking for the following relief(s):-

“1. Issuance of Writ, Order, direction in the



nature of Mandamus commanding the Respondents especially Bihar Public Service Commission to publish Supplementary, revised merit list for school teachers in Primary School for Class I to V in connection with Advertisement No. 26 of 2023 dt. 30.05.2023, against the vacancies under Economically Weaker Section (EWS) that could not be filed due to ineligibility/disqualification of provisionally successful candidates for non-passing of the CTET and D.El.Ed. Examination.

II. Issuance of Writ in the nature of Mandamus directing the Respondents to consider the case of the Petitioner in the light of Judgment dt. 18.07.2024 passed in C.W.J.C. No.1151 of 2024 (Dhirendra Kumar and Ors. Versus The State of Bihar and Anrs.).

III. To issue an appropriate writ/order in the nature of Mandamus commanding the Respondents to publish the result of the Petitioner in the fresh Supplementary List and called the Petitioner for documents verification and accordingly, allot respective schools after the publication of the Supplementary/revised merit list for teachers in Primary school for Class I to V against Advertisement No. 26 of 2023 dt. 30.05.2023 under Economically Weaker Section (EWS).

IV. To issuance an appropriate writ, order, direction in the nature of Mandamus commanding the Respondents to consequently, lower down the cut-off date of birth in all the categorizes in the Supplementary/revised merit list for teachers in Primary Schools for Class I to V against Advertisement No. 26 of 2023 dt. 30.05.2023 and publish the revised merit accordingly.

V. To issue an appropriate writ, order, direction in the nature of Mandamus commanding the Respondents not to merge/include the left over vacancy of Advertisement No. 26 of 2023 dt. 30.05.2023 with the future vacancies of teacher recruitment examination.

VI. To issue an appropriate writ, order, direction in the nature of Mandamus commanding the Respondents to furnish the details of the vacancies accrued in Primary Teacher for Class I to V due to the candidature rejection of successful candidates in want



of CTET and D.El.Ed. certificates and for any other reasons.

VII. To hold and declare that the Respondents Bihar Public Service Commission is legally bound to publish the Supplementary/revised merit list for teachers in Primary School for Class I to V in Advertisement No. 26 of 2023 dt. 30.05.2023 and thereafter, on the basis of Supplementary/Revised merit list for teachers, the appointments be made.”

9. When this matter was taken up for the first time on 05.09.2024, learned counsel for the appellant submitted that an identical issue had already been decided by a co-ordinate Bench of this Court vide order dated 18.07.2024 passed in CWJC No. 1151 of 2024 (Dhirendra Kumar & Ors. vs. the State of Bihar & Ors.), and that the co-ordinate Bench, in paragraph no. 56 of the aforesaid judgment, has held as follows:

“56. Accordingly, following directions are deemed appropriate:

(i) The respondent nos. 1, 2, 3 and 4 are directed to identify the number of vacancies that have arisen due to non-appointment of the candidates recommended by the B.P.S.C. as primary teacher for class I-V pursuant to the Advertisement No. 26/2023 for want of requisite qualifications and convey it to the respondent nos. 5, 6 and 7.

(ii) The respondent nos. 5, 6 and 7, on receipt of the above information, shall publish a supplementary result in order of merit from the selection held pursuant to Advertisement No. 26 of 2023, subject to the candidate(s) having secured the cut off marks and meets the cut off date of birth prescribed by the B.P.S.C.”

10. Though the learned counsel appearing for the BPSC sought for some time to examine as to whether the case of the



petitioner is covered by the aforesaid judgment or not and liberty was granted but at the same time, the writ petition was disposed of on the very same date i.e. 05.09.2024, therefore, according to the learned counsel for the State, no opportunity was granted to the learned counsel for the respondents in the writ petition, so as to verify, whether the issue raised in the writ petition is covered by the order dated 18.07.2024 passed in C.W.J.C No. 1151 of 2024 or not.

11. Learned counsel for the appellant-State further submits that the writ petition was disposed of in terms of the order dated 18.07.2024 passed in CWJC No. 1151 of 2025. However, the aforesaid order was challenged by the State of Bihar and Ors., before this Court in L.P.A No. 1030 of 2024 and this Court vide order dated 08.04.2025 set aside the order of the learned Single Judge and came to hold in paragraph nos. 25, 26 and 27 as follows:-

“25. The law operating in the field in this behalf is neither in doubt nor in dispute. There is no legal right to appointment but only of being considered, which is subject to bona fide action on the part of the State. An aspirant has no legal right and the superior Court, in exercise of its judicial power of review, would not ordinarily direct issuance of any writ in the absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. [Refer to **Shankarsan Dash Vs. Union of India : (1991) 3 SCC 47; R.S. Mittal Vs. Union of India : 1995 Supp.(2) SCC 230 and Food Corporation of India & Ors. Vs. Bhanu Lodh &**



Ors. : (2005) 3 SCC 618].

26. It is not incumbent upon the employer to fill all posts but discretion not to appoint, must be exercised judiciously. Courts normally would not interfere with the discretion not to fill up posts but exercise of such discretion should not be arbitrary, capricious or whimsical. [Refer to **Dinesh Kumar Kashyap & Ors. Vs. South East Central Railway & Ors. : (2019) 12 SCC 798].**

27. For the afore-noted reasons, we are of the opinion that it is not a fit case where the impugned judgment could be sustained.”

12. In view of the fact that the writ petition was disposed of in terms of the order dated 18.07.2024 passed in CWJC No. 1151 of 2022, which has been set aside by a Division Bench of this Court in L.P.A No. 1030 of 2024 vide order dated 08.04.2025, the present LPA is also disposed of in similar terms of the order dated 08.04.2025 passed by the Division Bench of this Court in L.P.A No. 1030 of 2024.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.03.2026
Transmission Date	NA

