

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2354 of 2025

1. Hriday Narayan Bharti, S/o Ram Kalewar Sah, R/o Village Samhauri, P.O. Vishanpur, P.S. Pupri, District - Sitamarhi, at present working as Block Teacher at Government Middle School, Dorpur, Block - Nanpur, District - Sitamarhi.
2. Rinki Kumari, D/o Ashok Jha, W/o Chandan Kumar Mishra, R/o Village - Basant, P.O. Kharka, P.S. Jalley, District Darbhanga, at present working as Block Teacher at Government Middle School, Bhetua, Block - Nanpur, District - Sitamarhi.
3. Rashmi Riva, D/o Ram Nandan Singh, W/o Nishant Shekhar, R/o Mohalla Rasulpur Zilani, Lenin Chowk, Near - Honda Show Room, P.S. Kazi Mohammadpur, District Muzaffarpur, at present working as Block Teacher at Government Middle School Pota Tajpur Kanya, Block- Runni Saidpur, District - Sitamarhi.
4. Hemant Kumar, S/o Mahendra Kumar, R/o Village Malahi, P.S.- Sursand, District - Sitamarhi, at present working as Block Teacher at Government Middle School, Sahasram, Block - Parihar, District Sitamarhi.
5. Nidhi Singh, D/o Arun Kumar Singh, R/o At Madhesara, P.O. Madhesara, P.S. Sonbarsa, District - Sitamarhi, at present working as Block Teacher at Government Middle School, Singrahiya Block - Bathnaha, District - Sitamarhi.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Education Officer, Sitamarhi, District Sitamarhi.
4. The District Programme Officer, Establishment (Education), Sitamarhi, District - Sitamarhi.
5. The Block Teacher Employment/Appointment Committee, Nanpur, Block - Nanpur, District - Sitamarhi, through its Member Secretary-Cum-Block Development Officer, Nanpur, District - Sitamarhi.
6. The Block Teacher Employment/Appointment Committee, Runni Saidpur, Block Runni Saidpur, District Sitamarhi, through its Member Secretary-Cum-Block Development Officer, Runni Saidpur, District - Sitamarhi.
7. The Block Teacher Employment/Appointment Committee, Parihar, Block - Parihar, District - Sitamarhi, through its Member Secretary-Cum-Block Development Officer, Block Parihar, Block - Parihar, District - Sitamarhi.
8. The Block Teacher Employment/Appointment Committee, Bathnaha, Block Bathnaha, District Sitamarhi, through its Member Secretary - Cum - Block Development Officer, Bathnaha, Block - Bathnaha, District - Sitamarhi.
9. The Chairman, Block Teacher Employment/Appointment Committee Cum



Block Pramukh (Panchayat Samiti), Nanpur, Block - Nanpur, District - Sitamarhi.

10. The Chairman, Block Teacher Employment/Appointment Committee Cum Block Pramukh (Panchayat Samiti), Runni Saidpur, Block Runni Saidpur, District Sitamarhi.
11. The Chairman, Block Teacher Employment/Appointment Committee- Cum-Block Pramukh (Panchayat Samiti), Parihar, Block - Parihar, District - Sitamarhi.
12. The Chairman, Block Teacher Employment/Appointment Committee-Cum-Block Pramukh (Panchayat Samiti), Bathnaha, Block Bathnaha, District - Sitamarhi.
13. The Member Secretary, Block Teacher Employment/Appointment Committee-Cum-Block Development Officer, Nanpur, Block - Nanpur, District - Sitamarhi.
14. The Member Secretary, Block Teacher Employment/Appointment Committee-Cum- Block Development Officer, Runni Saidpur, Block Runni Saidpur, District - Sitamarhi.
15. The Member Secretary, Block Teacher Employment/Appointment Committee-Cum-Block Development Officer, Parihar, Block Parihar, District - Sitamarhi.
16. The Member Secretary, Block Teacher Employment/Appointment Committee-Cum Block Development Officer, Bathnaha, Block Bathnaha, District Sitamarhi.
17. The Block Education Officer, Nanpur, Block Nanpur, District Sitamarhi.
18. The Block Education Officer, Runni Saidpur, Block Runni Saidpur, District - Sitamarhi.
19. The Block Education Officer, Prihar, Block Parihar, District Sitamarhi.
20. The Block Education Officer, Bathnaha, Block Bathnaha, District - Sitamarhi.

... ... Respondent/s

with
Civil Writ Jurisdiction Case No. 2712 of 2025

1. Snatak Grade Prasikshit Shikshak Sangh, Bihar through its State President namely Pintu Kumar Singh, Son of Rang Bahadur Singh, having its office at A-477, A.G. Colony, Post Office- Ashiananagar, Police Station- Shastri Nagar, District- Patna.
2. Pintu Kumar Singh, Son of Rang Bahadur Singh, Resident of Village- Lahuara, Police Station- Karaghar, District- Rohtas (Bihar) at present posted as Graduate Grade Teacher in Middle School, Aamgachhi, Block- Jokihat, District- Araria.
3. Shabhu Kumar, Son of Parshusram Singh, Resident of Village- Rampur, Police Station- Suryagarha, District- Lakhisarai, Presently posted das Graduate Grade Teacher in Middle School, Rampur, Block- Suryagarha, District-Lakhisarai.



4. Arvind Kumar, Son of Rajendra Prasad, Resident of Village- Mahadeo Nagar, Police Station- Sheikhpura, District- Sheikhpura, presently posted as Graduate Grade Teachher in Middle School, Kusumbhagh, Kushumbha, Block- Ghat, District- Sheikhpura.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Araria, District- Araria.
5. The District Education Officer, Lakhisarai, District- Lakhisarai.
6. The District Education, Sheikhpura, District- Sheikhpura.
7. The Block Development Officer, Jokihat, District- Araria.
8. The Block Development Officer, Suryagarha, District- Lakhisarai.
9. The Block Development Officer, Ghat Kushubha, District- Sheikhpura.

... ... Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 2354 of 2025)

For the Petitioner/s : Mr. Mrityunjay Kumar, Advocate
Mr. Mukesh Kumar Singh, Advocate
Mr. Arinjay Kumar, Advocate

For the Respondent/s : Mr. Santosh Chandra Bhaskar, AC to GP-11

(In Civil Writ Jurisdiction Case No. 2712 of 2025)

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : AC to GP-16

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 27-02-2025

Heard Mr. Mrityunjay Kumar, learned counsel appearing on behalf of the petitioners in CWJC No. 2354 of 2023; Mr. Arun Kumar, learned counsel appearing on behalf of the petitioners in CWJC No. 2712 of 2025 and Mr. Santosh Chandra Bhaskar, learned AC to GP-11 for the State in CWJC No. 2354 of 2023 and AC to GP-16 for the State in CWJC No.



2712 of 2025.

2. The petitioners in paragraph no. 1 of the CWJC No. 2354 of 2025, have sought *inter alia* following relief(s), which is reproduced hereinafter:

"(i) For issuance of a writ in the nature of Certiorary of any other appropriate writ/order/direction to quash the Order contained in Memo No 1176, dated 24.07.2024 whereby and whereunder the Director, Primary Education, Government of Bihar, Patna, has rejected the Grievance of promotion of all those Panchayat/Block Teachers who have been appointed in pursuance to the Bihar Panchayat Elementary Teacher Rules, 2006 and 2012 without considering the provisions of the relevant Rules as-well-as several orders/directions passed by this Hon'ble Court.

(ii) Further, for issuance of a writ in the nature of Mandamus or any other appropriate writ/order/direction to the respondents to consider and grant the promotion to the petitioners from Graduate Grade Teacher to the Post of Headmaster at Nationalised/Government Middle Schools since the due date of promotion i.e. since the completion of 5 years satisfactory services as trained teacher, with all consequential benefits including the arrears of differences of salary, according to the provisions contained under Rule 5(3) and (16)(i) of the Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceeding and Service Condition) Rule, 2020.

And/or for any other order/order(s) as your Lordships may found fit and proper under given facts and circumstances of the case."

3. The petitioners in paragraph no. 1 of the CWJC No. 2712 of 2025, have sought *inter alia* following relief(s), which is reproduced hereinafter:

"(i) For issuance of a writ in the nature of certiorari setting aside the impugned order bearing Memo No. 1176 dated 24.07.2024 issued



from the level of Respondent Director, Primary Education, Bihar, Patna whereby and where under the representation of petitioners regarding consideration for promotion on the post of Headmaster after completion of 5 years in trained Graduate Grade Teachers in Middle School in term of Clause 15(ch)(iii) of Bihar Panchayat Elementary Teacher (Employment & Service Condition) Rules 2012 under which they have been appointed and even in amended Rule 2020 same procedure for promotion on the post of Headmaster has incorporated in Clause 3(i) of the amended Rule but despite having continued for more than 10 years from Graduate Grade Teachers of Middle School have not been consider for promotion and petitioners had filed C.W.J.C. No. 6952 of 2022 before this Hon'ble Court which was disposed of vide order dated 07.03.2024 with direction to Respondent No. 2 to take decision within 3 months and in compliance to that Respondent No. 2 has pass the impugned order misconstruing the Service Condition Rules 2012 under which petitioners were appointed rather having upon subsequent different Service Rules for different kind of Teachers rejected the claim of petitioners which is not proper in the eye of law.

(ii) For direction upon the Respondent State to take appropriate decision under which promotion on the post of Headmaster in Elementary School Class VI to VIII in view of Service Condition Rule 2012 as amended in Rule 2020 as per criteria prescribed for promotion from the due date as petitioners' are still under the trained Graduate Grade Teachers and have not switched over under Bihar Vishist Teacher Rules 2023 and 2024 under compelling circumstance as under Vishist Teacher Rules previous Service tenure teachers will get lost rather they will be treated as fresh appointees which will prejudice the entire service career of those Graduate Trained Grade Teachers under Rule 2012.

(iii) Any other order/orders for granting any other relief/reliefs for which the petitioners are found entitled to in the facts and circumstances of the case."

4. The issues involved in both the writ applications are similar and at the request of the respective counsels, both are being heard together and are being disposed of by a common



order.

5. Before I proceed to pass order and enumerate the brief facts of the case, I find it proper to quote the observation made by the Division Bench of this Court in ***CWJC No. 1942 of 2024 (Pramod Kumar Yadav vs. the State of Bihar & Ors.)*** and other analogous cases:

"The State has been grappling with the twin issues; of providing standard education to the school going children, and appointment & continuance of the teachers, which issues are inextricably linked with each other and hence, inevitably jinxed by reason of the appointments carried out unscrupulously and on fraudulent certificates. The State has experimented with different modes of selection of teachers; many of which failed, and from its long experience has come out with two new rules, both with the avowed object of maintaining high standard of education; one, by ensuring selection through a written examination, of trained qualified hands and the other, for augmenting the skills of those continuing, by requiring them to undergo a test, with offer of better facilities on qualifying the same. The State walks a tightrope insofar as maintaining an equilibrium in providing such quality education, at the same time ensuring that the present crop of teachers do not loose their livelihood. One of such enactments dealing with the existing Niyojit Teachers, the Bihar School Exclusive Teachers Rules, 2023 (for brevity 'Exclusive Teachers Rules-2023'), is challenged as ultra vires, incompetent and having been enacted within an occupied field; ie: occupied by the existing rules regulating the appointment and service of teachers."

6. The State enacted Bihar Panchayat Primary Teacher (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as 'Rules 2006') and subsequently it was amended in



the year 2008 by which efficiency test was introduced, Right of Children to free and Compulsory Education (RTE) Act, 2009 (hereinafter referred to as the Act, 2009) notifications dated 25.08.2010 and 29.07.2011 came into effect, by which the National Council for Teacher Education (NCTE) required Teacher Eligibility Test (TET) among other, as the minimum qualifications for a person to be eligible for appointment as a teacher in Class I to VII. Thereafter, the Rules, 2006 was repealed by the Bihar Panchayat Teachers Rules, 2012 (hereinafter referred to as 'Rules, 2012') which came into effect from 03.04.2012. The petitioners of both the writ petitions are teachers of Class VI to VIII, who are having minimum qualification of intermediate or are graduate, post graduate and are also having D.El.Ed./B.Ed Degree. Rules, 2012 provides for three categories of Teachers; Panchayat Shikshak, of basic grade, who were appointed to teach the students from Class-I to Class-V; Prakhand Shikshak appointed to teach students from Class-VI to Class-VIII; and Pradhanadhyapak (Headmaster) each of separate grades. Rules, 2012 further laid down qualification in Rule 5, the teachers for Class 1 to 5 i.e. Basic Grade Teachers to have technical degree of D.El.Ed. or equivalent in accordance with the provision of the Act, 2009.



Similarly, the teachers, who were having degree of graduation and those, who were trained either with D.El.Ed. or equivalent degree or B.Ed. Degree, they are graduate teachers in accordance with Rule 5. It is relevant to make clear that the teachers, who were appointed as Shiksha Mitra and after coming into force of Rules, 2006, their service condition was also guided by Rules, 2006 after they were absorbed as per the Government notification. Rules, 2006 provided only for two categories of teachers i.e. "trained" and "untrained" as per the provision of Rule 3 (a) and (b) of Rules, 2006 and those teachers were never designated as basic grade teachers.

8. Petitioners claim that they were appointed as per Rule, 2012 and their case is covered by a decision of a coordinate Bench of this Court passed in ***CWJC No. 6391 of 2021 (Sanjay Kumar vs. the State of Bihar & Ors.)***, wherein, this Court after taking into consideration the entirety of the matter, especially like the case of the petitioners, who have claimed that they have all the requisite qualifications for being appointed as headmaster of the school was disposed of inter alia with following order/directions:

"11. Be that as it may, at this juncture, there is no embargo in granting 50 per cent promotion as per 2012 Rules to the Panchayat Teachers having requisite qualifications.

12. It is unfortunate to note that service



benefit which enjoins a reasonable expectation of promotion after performing considerable period of time in basic grade is denied by the respondents without any reason and in violation of Rule 15 (Ch) of 2012 Rules.

13. *The learned counsel for the State submits that it will take considerable time to prepare the seniority list and the process of determination of reservation.*

14. *On this objection, the Court can only say that for departmental wrong and inaction, a private party cannot suffer. This is a case where the provisions of Articles 14, 16 and 21 of the Constitution of India have been grossly violated.*

15. *In view of such circumstances, the instant writ petition is disposed of directing the respondents to prepare the gradation list along with the prevailing reservation policy of Panchayat Teachers of the concerned block within 1 month from the date of this order. Thereafter, on the basis of the seniority of vacant posts in the 50 per cent promotional quota will be filled up giving effect to such promotion from the date on which the petitioner and others similarly placed candidates are entitled.*

16. *It is made clear that the entire process shall obviously be concluded within 90 days from the date of communication of this order.*

17. *With the aforesaid direction, the instant petition stands disposed of, on contest, however, without costs.”*

9. Learned counsel submitted that, so far as, the present case is concerned, all the petitioners, who are having training degree and they having completed required length of service from the date of completion of their training or on the date of appointment they were trained, became entitled for promotion as per the provision of Rule, 2012 and without giving effect to the same even notionally their right cannot be denied after the petitioners have completed five years of service after coming



into force of Rules, 2020, which is in force in respect of different cadre of teachers. Learned counsel submitted that in this regard, distinction has already been passed by the Division Bench in case of *Pramod Kumar Yadav (Supra)*.

10. Learned counsel further submitted that the respondent/s, in their counter affidavit, have admitted in paragraph no. 12 that the earlier provision of promotion in Rules, 2012 stands amended vide Rules, 2020.

11. Learned counsel further submitted that after following all the due procedures, Petitioner Nos 1, 2, 4 and 5 were selected for appointment as Graduate Grade Untrained Block Teacher and Petitioner No 3 as Graduate Grade Trained Block Teacher and appointment letters contained in Memo No 04, dated-26.11.2014, Memo No-07, dated -26.11.2014, Memo No365, dated 09.12.2013, Memo No-03, dated 18.07.2014 and Memo No-218, dated -26.11.2014 were issued respectively by the concern Member Secretary of the concern Block Teacher Employment Units, District Sitamarhi to the petitioners. It is further submitted that all the petitioners have all the requisite qualifications as provided under the Rule - 5(3) of the Rules, 2020. However, the Respondents are sleeping over the Fundamental Rights of the petitioners. He further submitted that



that the posts of Headmaster of Nationalised/Government Middle Schools have not been advertised under the Advertisement No - 25/2024, dated -01.03.2024 (Annexure P15) and only the posts of Headmaster of Nationalised/Government Primary Schools have been advertised. He further submitted that vide Order/Judgement dated - 09.12.2024 passed in **C.W.J.C. No-6391 of 2021 (Sanjay Kumar V/s The State of Bihar and others)**, this Court was pleased to direct the concern authority to complete the entire process of promotion within 90 days from the date of communication of this order. He further submitted that the action/inaction of respondents is totally illegal, unwarranted, unconstitutional as-well-as bad in law as also in facts.

12. Mr. Arun Kumar, learned counsel appearing on behalf of the petitioners in CWJC No. 2712 of 2015 submitted that since Respondent Director, Primary Education, Bihar, Patna has not properly considered the aspect that those Graduate Level Grade Teachers (Class VI to VII) who have completed the 5 years of service was under legitimate expectation under Service Rules 2012 under which they have been appointed and their further promotional avenues under the Rules was only for promotion on the post of Headmaster after completion of 5



years of serviced, as 50% of the post of Graduate Grade Teachers was to be filled up by way of promotion after completion of 8 years of *Niyojit Teachers* of Panchayat/Prakhand Teacher and now under Bihar Vishist Teacher (Amendment) Rules 2023. The *Niyojit Teachers* who participated and passed the examination conducted by Commission, they are treated as fresh appointee and as such are deprived for benefits of service condition, which has restrained majority of *Niyojit Teachers* to participate in the examination conducted for appointment of Headmaster and in such a manner by virtue of impugned order the promotional avenues of petitioners on the post of Headmaster in Middle School is taken away which is not proper in the eye of law. He further submitted that under Service jurisprudence every employee must have promotional avenues in service career either under Service Rules or by way of personal monitory benefit promotion of ACP/MACP but since there is specific promotional avenues for Graduate Trained Grade Teacher (Class VI to VII) is available under Service Rule 2012 and reiterated in Rule 2020 also that after completion of 5 years of service on the basis of seniority list of Block level they will be considered for promotion on the post of Headmaster on the Middle School. In this background,



the Respondents are legally bound to carry on the promotion in term of Service Rule 2012 under which petitioners have been appointed and still continuing without consideration of promotion to them. He further submitted that by virtue of impugned order passed by Respondent No. 2 it is evident that right of petitioners who are Trained Graduate Grade Teacher (VI to VIII) can not be considered for promotion as per statutory Rule 2012 in spite of they were appointed under said rule and past action has been saved. The action of the respondents in relying upon subsequent different Rules enacted by Respondent State for different kind of teachers cannot deprive the petitioners from consideration for promotion on the post of Headmaster in Middle School. Learned counsel further submitted that pursuant to the Bihar Primary School Head Teacher Rule 2024, Adv. No. 25/2024 was also issued by the Bihar Public Service Commission, Patna for filing up altogether 40247/- (Forty Thousand Two Hundred Fifty Seven Post), posts of Head teacher for Primary School (I to V Class). The petitioners, who are the Graduate Grade Teachers did not apply. Till date altogether about 16 thousand posts of Headmaster of Middle School (Class VI to VIII) are still vacant which can be filled up from *Niyojit Teachers* on the basis of criteria mention in Service



Rule 2012 as also amended Rule 2020 after making seniority list at Block level in respect of all the eligible Graduate Grade Teachers entitled for promotion Respondent authorities have not considered this aspect at all which is discriminatory in the eye of law. He further submitted that from the materials available on record it is also evident that by virtue of impugned order vested right of petitioners to be considered for promotion under statutory Rule, 2020, the action of the respondents in compelling the *Niyojit Teachers* to appear in competitive test in view of subsequent Rules framed by the Respondent State has taken away their vital right of their promotion to which they are entitled as per Rule, 2012 and 2020. The impugned order is bad in eye of law and also for the reason that no prior notice was issued to the *Niyojit Teachers* including petitioners and without giving an opportunity to them to place their case the impugned order contained in Memo No. 1176 dated 24.07.2024 is in gross violation of Principle of Natural Justice is fit to be set aside and quashed.

13. Learned counsels jointly submitted that the action of respondents is violative of Articles - 14, 16 & 21 of the Constitution of India, as well as, violative of Rule 15 (f) of Rules, 2012 and Rule 16 of Rules, 2020. Learned counsel



appearing on behalf of the petitioners in CWJC No. 2712 of 2025, on the above background, has sought quashing of Memo No. 1176 dated 24.07.2024.

14. Per contra, Learned counsel appearing on behalf of the State has reiterated the submission, which was advanced before the co-ordinate Bench in *Sanjay Kumar (Supra)* which is contained in paragraphs no. 7 and 8 of the said judgment, which *inter alia* are as follows:

"7. The Advocate on behalf of the State-Respondents refers to paragraph no. 7 of the supplementary counter affidavit filed on behalf of the Respondent No. 2 wherein it is stated that in view of the judgement passed in SLP No. 30621 of 2011 (Jarnail Singh & Ors. v. Lachhmi Narain Gupta & Ors.) reported in (2018) 10 SCC 396 and other analogous cases and order dated 01.04.2019, passed by the passed in C.W.J.C. No. 14907 of 2018 (Yogeshwar Pandey & Ors. v. The State of Bihar & Ors.) and other analogous cases, the General Administration Department issued a Notification No. 5066, dated 11.04.2019 to the effect that all departments including the regional offices, shall postpone their meeting of the departmental promotion committee as well as promotions given to the posts of State Government or services until further orders.

8. In the same paragraph, it is recorded that the said embargo was relaxed vide a subsequent Memo No. 19300, dated 13th October, 2023. In view of relaxation of previous order dated 11th of April, 2019, the State Government cannot have any objection against granting promotion to the petitioner and similarly situated teachers."

15. Learned counsel submitted that unlike the post of teachers, there can only be one post of headmaster in any



Middle school. The appointment on the post of headmaster is regulated by Bihar Nationalized Elementary Transfer, Disciplinary 2018 School Teacher Proceedings (hereinafter to and Promotion Rules, be referred to as 'Rules, 2018'). Rule 3 of the Rules, 2018 prescribes that the post of headmaster is a district cadre post. Only district cadre teachers and not the local bodies teachers were eligible for appointment on the said post as per Rule 2 (vi) read with Rule 3 of the Rules, 2018. The petitioners do not belong to district cadre. The existing district cadre post of Headmaster could only be handed-over or transferred to local bodies cadre upon exhaustion of the district cadre teachers. He further submitted that in such circumstances, there was no post created or sanctioned for appointment of the local bodies teachers on the post of headmaster as these posts of headmaster were already filled with the district cadre teachers. Moreover, Rule 16 of Rules, 2020 lays down that the administrative department shall issue detailed guidelines with respect to promotion separately.

16. Learned counsel further submitted that paragraphs no. 19 and 20 of the Division Bench judgment passed in *Pramod Kumar Yadav (Supra)*, has take into consideration the argument of the learned Advocate General, which would also be



relevant for proper adjudication of the present case.

17. Learned counsel further submitted that otherwise also writ petitions are fit to be rejected in view of the statements made in the counter affidavit in paragraphs no. 17-21, 23, 24, 25, 26 and 27, which are reproduced hereinafter:

"17. That it is most humbly submitted that it is also pertinent to mention here that simultaneously, several writ petitions as C.W.J.C. No. 21199/2013 (leading case) (filed on 24.07.2013), C.W.J.C. No. 17176/2009, C.W.J.C. No. 7497/2017, C.W.J.C. No. 20667/2014 and other analogous cases were filed before the Hon'ble Patna High Court for extending the benefit of service condition of state government teacher to the teacher of Panchayati Raj Institution on the principle of "Equal pay for equal work" challenging the validity of Rules 6 and 8 of the Bihar Bihar Zila Parishad Secondary and Senior Secondary Teachers (Employment and Service Conditions) Rules, 2006; Bihar Panchayat Primary Teacher (Employment and Service Conditions) Rules, 2006 and Bihar Nagar Primary Teacher (Employment and Service Conditions) Rules, 2006. These cases were disposed on 31.10.2017 whereby the Rules related to appointment and Service conditions of Niyojiti teachers i.e., Rule 6 and 8 of Rules, 2006 were read down.

18. That it is most humbly submitted that the state government preferred appeal before the Hon'ble Supreme Court against the above mentioned judgment dated 31.07.2017. The Hon'ble Supreme Court has allowed the appeal of state government and turned down the judgement of Hon'ble Patna High Court in State of Bihar & Bihar State Teachers Struggle Committee (2019) 18 SCC 301. The outcome of this judgment dated 10.05.2019 was that the Rules pertaining to appointment and service conditions teachers of Panchayati Raj Institutions remained intact.

19. That it is most humbly submitted that however, it is noteworthy that during the pendency of the above mentioned cases, state government has given the proposal to the Hon'ble court that the salary structure of the said Niyojiti teacher can be revised to enhance their salary by 20 percent. It is



also relevant to mention here that the teachers of Panchayati Raj Institutions (PRI) were getting consolidated salary earlier. The state government has taken a policy decision to extend them the benefit of pay scale, including the provision of dearness allowances, medical allowances, allowance house and annual increment vide government resolution no. 1530 dated 11.08.2015. Further, the pay-scale has been revised based on the principle of 7th pay commission recommendation with effect from 01.01.2016.

20. That it is most humbly submitted that after this, the state government has enacted new Rules, 2020 for Panchayati Raj Institution teachers and earlier Rules were devolved. As per the provision of these Rules, the benefit of EPF Scheme has been extended to these teachers with effect from 01.09.2020. Further, the pay structure of these teachers has been revised with effect from 01.04.2021 whereby the salary of these teachers has been enhanced by 15 percent. In this way the state government has enhanced their salary by 20 percent.

21. That it is most humbly submitted that the state government intended to further improve the pay scale and service condition of PRI teachers and accordingly, new Rules for recruitment of school teachers i.e., Bihar State School Teacher (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023 was enacted on 10.04.2023. Here, it is further noteworthy that immediately after 13.10.2023, the Teachers Rules, Bihar 2023 School Exclusive was notified on 26.12.2023 with an objective to bring the teachers employed by the local bodies at par with the School teachers recruited under Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023.

22. That at the cost of repetition it is most humbly submitted that inter alia Rule 3 of the Bihar School Exclusive Teachers Rules, 2023 prescribes creation of a new cadre referred as 'Exclusive teachers'. The Niyojit teachers are required to pass a 'Competency test' under Rule4 and upon passing the test and joining the allotted school thereafter, they shall be called Exclusive teachers. Five opportunities are prescribed to be provided to pass Competency test to the Niyojit teachers which is to be conducted over a period of two years from the date of promulgation of the Rules.

23. That it is most humbly submitted that two rounds of Competency against test prescribed



five rounds have been concluded. Three more Competency test is required to be conducted as per the Bihar School Exclusive Teachers Rules, 2023. A large number of local bodies teachers are appearing, passing and joining as 'Exclusive teacher'.

24. That it is most humbly submitted that now, so far as the overall number of Niyojit teachers in class 1 to 5 are concerned, there were in total 2,62,538 (Two lakh sixty-two thousand five hundred thirty-eight) local bodies teachers employed by the local bodies in class 1 to 5 across the state of Bihar. Out of these, 1,39,010 (One lakh thirty-nine thousand ten only) local bodies teachers of class 1 to 5 have already qualified the Competency test in the first phase of Competency test. A total of 54,840 (Fifty-four thousand eight hundred forty only) local bodies teachers of class 1 to 5 have qualified the Competency test in the second round. Only 68,688 (Sixty-eight thousand six hundred eighty-eight only) local bodies teachers in class 1 to 5 are yet to qualify the Competency test in the remaining three rounds of Competency test.

25. That it is most humbly submitted that therefore, it is apparent that the provisions in relation to the service conditions of the Niyojit teachers are in transit stage at present until the completion of two years from the date of promulgation of Bihar School Exclusive Teacher Rules, 2023 as prescribed during which time, Competency test shall be organized and opportunity is being provided to the Niyojit teachers to avail equal benefits as given to the School teachers recruited under the Bihar State School Teachers (Appointment, Transfer,Disciplinary Proceedings and Service Conditions) Rules, 2023.

26. That it is most humbly submitted that moreover, the Bihar Elementary Schools Head Teachers Rules, 2024 has been notified for appointment to the post of Head teachers from amongst the teachers appointed under Rules, 2020 and Rules, 2023. The post of Head teacher is a separate cadre which has been created with a view to provide additional opportunity to the local bodies teachers.

27. That it is most humbly submitted that thus, in such backdrop of events the guidelines under Rule 16 of the Rules, 2020 were not issued."

18. Adopting the above argument of the learned



Advocate General, learned counsel submitted that as the rules have been framed, no guidelines is required to be issued under Rules, 2020 in view of separate cadre of head teachers and the present writ petitions being devoid of merits are fit to be dismissed.

19. Heard the parties.

20. Before I discuss the merits of the case of the petitioners, I find it apt to reproduce the discussions and conclusions drawn in **Pramod Kumar Yadav (Supra)** in following paragraphs, which *inter alia* are reproduced hereinafter:

"25. With the advent of the RTE Act and also the exemption obtained under Section 23 of the RTE Act, the State had devised the Bihar Elementary Teachers Eligibility Test, 2011, for selecting teachers in the elementary schools from Class-I to VIII. In accordance with the change brought about by the RTE Act, again the Elementary Teachers Rules-2012 was brought out wherein all rules, orders and instructions regarding employment of teachers in elementary schools of rural areas were repealed. The Elementary Teachers Rules-2012 was also brought out under the provisions of the Bihar Panchayat Raj Act. Later to that, by notification dated 11.08.2015, the trained and the untrained Niyojita Primary, Secondary, Higher Secondary Teachers and Librarians were given a pay scale and due fixation as against the consolidated pay applicable to them. In the year 2020 again three rules were brought in; the Bihar Panchayat Elementary School Service (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020; Bihar Municipal Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Condition) Rules, 2020 and the Bihar District Board Secondary and Senior Secondary



School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Condition) Rules, 2020, (collectively called the Local Bodies Teacher Rules- 2020) again under the Constitution of India and the Panchayat Raj Act for appointment, promotion, transfer, disciplinary proceedings and service conditions of the Niyojita Teachers; which repealed the rules of 2012. The definition of teacher as per the Elementary School Service Rules-2020 included Panchayat Elementary Teacher of basic grade (Class-I to V) and Panchayat Elementary Teacher of graduate grade (Class-VI to VIII). The Primary Teacher Rules-2012 as amended in 2014 and 2015 was repealed. These Rules of 2020 have not been repealed under the Exclusive Teachers Rules-2023. Pertinently these Rules were not repealed even under the State School Teacher Rules-2023; which only provided that no new appointments would be made under the earlier Rules which are to be made exclusively under the State School Teacher Rules- 2023.

26. The first contention to be looked at is the ground raised of the present Exclusive Teachers Rule-2023 impinging upon the occupied field, which contention is also raised on the ground that the Local Bodies Teachers Rules- 2020, brought in, sourcing the power from the Constitution and the Bihar Panchayat Raj Act, cannot be repealed by rules brought out under Article 309 of the Constitution of India. We have to immediately notice that there is no challenge to the State School Service Rules-2023 and the new cadre created thereby. The Exclusive Teachers Rules- 2023 is also challenged for the reason of the Niyojita Teachers being put through another evaluation of competence and the Niyojita Teachers would rest contend if they are allowed to continue as such. We are clear in our mind that the rules brought out under Article 309 cannot repeal the statutory rule brought in with specific reference made to the provisions of the Constitution of India and a statute; which it does not attempt. Whether the new rules brought out under Article 309 of the Constitution of India, cover the same area/field and it is in a field occupied by the existing rules brought out under the Constitution of India and the Panchayat Raj Act, is a question to be decided on facts.

33. As we noticed in the narration of the history of appointment & continuance of teachers over the years; earlier there were two set of teachers one government teachers and the other contract teachers; Shiksha Mitras who along with



the new appointments made after 2006, were given better benefits than before, and termed the Niyojit Teachers. Both of them were a class apart as has been found by the Hon'ble Supreme Court in Struggle Committee (supra); not possible of being equated for the purpose of pay parity and service conditions, merely on the principle of 'equal pay for equal work'. The government teachers at that point, were also considered to be a vanishing cadre; the financial stringency of the State Government having motivated them into contractual appointments and then giving them the fixation, in a scale of pay, at a lower standard than that applicable to the government teachers. The experiment was tried out, but failed; as we see from the shifting policy of the Government. The Government has now reviewed the policy and it has been decided to have a cadre of qualified trained teachers appointed, also on the basis of their skills tested at a written examination, as is the intention of the State School Teachers Rules-2023. Here we have to reiterate that the said rule has not been challenged in the present batch of writ petitions. There was a challenge to the same in which an interim order was declined and the interim order survived scrutiny of the Hon'ble Supreme Court in a Special Leave Petition filed by the affected parties.

34. By the State School Teachers Rules-2023, the State intends to fulfill its obligations in providing quality and compulsory education in the elementary schools across the State. While ensuring that, the State was faced with the problem of the existing Niyojit Teachers who had spent considerable time of their lives in the education system of the schools, eking out a livelihood and having gone through a process of evaluation. As is explicit from the rules, there can be discerned a shift in the policy of the State, in doing away with the practice of selection of teachers through the Panchayat Raj Institutions. The earlier experiments of having a different class of teachers, in the contractual segment and then at a lower pay scale, than that of the government teachers had failed in the long run. Despite the failed experiments having eluded the desired objective of quality education, the Welfare State has thought it fit to ensure the sustenance of the Niyojit Teachers and also enable all of them with a semblance of equality, by treating them at par with the State School Teachers; leading to promulgation of the Exclusive Teachers Rules-2023 in addition to the State School Teachers Rules-2023.



35. We have to specifically notice that earlier also after 2006; in 2010 and then in the year 2012, rules were brought out wherein, there was an efficiency test prescribed which entailed termination, when unable to qualify after two attempts. As of now the Exclusive Teachers Rules-2023 does not bring about such a consequence, which we would deal with a little later, after considering the applicability of 'doctrine of occupied field'.

36. We observe that there were two different cadres one of government teachers and the other of Niyojite Teachers; which in the year 2010, despite the intention to treat the government teachers as a vanishing creed; by reason of the one-time special recruitment, the district cadre stood enhanced by more than 32000 appointees. As of now another cadre is created as Exclusive Teachers from the Niyojite Teachers who qualified in a test conducted by the State. Those who do not qualify would be retained as Niyojite Teachers, when the recruitment as per the State School Teachers Rules-2023 and the posting in the new cadre of Exclusive Teachers Rules-2023 are completed. Then, there would exist four separate cadres, the State School Teachers, the Exclusive Teachers, the Niyojite Teachers and the earlier government teachers within whose cadre would also be the teachers under the one-time special recruitment. The Niyojite, the Exclusive and the earlier government teachers, all are at present, a vanishing cadre and what is sought by the new rules is to bring in a structured State School Teachers Cadre in the elementary schools across the State. The field occupied by the different rules are that of the existing Niyojite Teachers and of the separate cadres; the State School Teachers and the Exclusive Teachers, now created. The State School Teachers would be under the State School Teachers Rules-2023, the government teachers, as they were regulated from the inception. The Niyojite Teachers who remain as such would be continued under the Local Bodies Teachers Rules-2020. The Exclusive Teachers Rules-2023 is applicable only to those Niyojite Teachers who opt, sit for and qualify the test prescribed and then join under the said rules, brought out under Article 309 of the Constitution of India, which cannot be said to be in occupied field. It creates a new cadre, a new field, for its application as carved out from the existing cadre of Niyojite Teachers. The statutory rule, i.e: the Local Bodies Teachers Rules-2020 is applicable to



the Niyojit Teachers who were a class separate from the government teachers even earlier to the rules of 2023; judicially recognized by the Hon'ble Supreme Court in Struggle Committee (supra).

(Emphasis Supplied)

37. The only difficulty would be in the case of future appointments which would be regulated by the State School Teachers Rules-2023 which recognizes the teachers earlier appointed under the Panchayat Raj Institutions and Nagar Nikay Institutions as per the earlier rules in Clause-2(XXI) of the said Rules. A new cadre is constituted by Rule-3 for appointment in all the government schools under the control of the Education Department which post of school teachers as per Rule-4 has to be filled by direct recruitment. Rule 19(i) mentions every rule of appointment and regulations, service conditions of school teachers in the State and specifies that none appointed therein can raise a claim under any provisions of the Rules of 2023. Rule 19(ii) also provides that no new appointment can be made after the enactment of State School Teachers Rules-2023 under any of the earlier rules. It is a moot question as to whether the new rule can prohibit appointments under the statutory rule; Local Bodies Teachers Rules-2020, which it does not seek to do. The State School Service Rules-2023 supersedes the procedure for appointment and as pointed out by the learned Advocate General, it is the State who initiates the process of selection, even under Rule 10 of the Local Bodies Teachers Rules-2020; which would now be done under the State School Service Rules-2023.

38. We are definitely of the opinion that the principle of 'doctrine of occupied field' does not apply to the rule brought out under Article 309 of the Constitution of India, specifically to create a cadre of Exclusive Teachers which is also carved out from the cadre of Niyojit Teachers who are continuing under the Local Bodies Teachers Rules-2020. We have to specifically observe that there is no repeal of the said Rules of 2020, by the Exclusive Teachers Rules-2023, more so, because it has to survive even now for continuation of the Niyojit Teachers who do not qualify as Exclusive Teachers.

39. In this context, we have to pertinently notice Rule 3(3) and the proviso to Rule 4 of the Exclusive Teachers Rules wherein apparently there is no conflict; but is incongruous in its operation, by reason of the Committee's recommendation to terminate on failing to qualify in



the test prescribed after three attempts. Rule 3(3) provides for the “Local Bodies” Teachers (alternatively called as Niyojit Teachers) who do not appear in or pass in the competency test as per Rule 4, to remain as ‘Local Bodies’ Teachers. This provision beneficial to those Teachers, is contrary to the earlier scheme of efficiency test; which after two failed attempts would result in the consequence of termination of the failed teacher. The impugned rule does not visit the teachers who fail to qualify in the competency test with the consequence of termination and it even permits the ‘Local Bodies’ Teachers to abstain from writing the test; which puzzles us too, as to why then, there is a challenge made. Those who qualify in the test would have better service conditions, which is only in recognition of their competence and those who fail to qualify and even refuse to attempt the tests, would still be continued in their employment.

46. We cannot countenance the argument especially in the present scenario of increasing emphasis on continuing education in all walks of life; generally, in every professional activity and particularly, in upgrading the standards of teaching, which ensures that the teaching professionals are in sync with the recent developments which is very relevant and significant considering the fact that it is the teachers who mould the future generations of any nation. Elementary education, and its significance cannot be over emphasized as has been observed by the Hon’ble Supreme Court in **Devesh Sharma v. Union of India; 2023 SCC OnLine SC 985**. In this context, we cannot but notice that there is no compulsion on the Niyojit Teachers to sit for the competency test, as was the case earlier in the efficiency test. A Niyojit Teacher could as well opt not to appear for the competency test, in which event, he or she loses the privilege of migration to the cadre of Exclusive Teachers, but still is enabled continuation as a Niyojit Teacher under the Local Bodies Teachers Rules-2020. The opportunity provided to exercise an option to keep away from the competency test without fear of the consequence of a termination commends us, and the emphasis on continuing education reinforces our resolve, to reject the contention. We cannot but observe that the rule only facilitates at least some of the Niyojit Teachers to move ahead in their quest for equivalence with parity of pay and other benefits being conferred on them based on their proved competence through their test qualification.



47. One other contention seriously agitated before us by Shri Naidu, learned Senior Counsel, is with respect to the total lack of career progression and the absolute effacement of their past service, even in the case of a pay fixation as per the Exclusive Teachers Rules-2023. The pay protection only enables their fixation at the entry level as seen at Annexure-A and stagnates their pay till the protected amount is reached, is the argument. In illustration, it is pointed out that a Niyojite Teacher who qualifies to be posted as an Exclusive Teacher, granted the pay protection of Rs. 30,000/- would still have to be fixed at the entry pay of Rs. 25,000/- with pay protection and the further increments would not be granted till the basic pay by passage of time comes to Rs. 30,000/-, which in the case of many of the teachers who are at the fag end of their career would be an impossibility.

48. Learned Advocate General, however, points out that a teacher entitled to pay protection of Rs. 30,000/- would be fixed at Level-8 and be granted the further increments as provided in Annexure-A, Fitment Matrix Table (FMT). As far as career progression, the seniority is fixed as per Rule 7 of the Exclusive Teachers Rules, 2023 with the seniority list drawn up subject wise for each category of teachers namely Primary, Middle, Secondary and Senior Secondary. Promotions are also specified by Rule 9. However, we notice a lacuna in so far as the Local Bodies Teachers Rules-2020 having provided a specific ratio for promotion of Niyojite Teachers. There is no ratio for the newly created cadres; which lacuna would not commend us to set aside the Rule as a whole but would only persuade us to direct the State Government to frame a scheme so that every cadre would have a right to be considered for promotion, based on whatever criteria the State deems reasonable, including that of the proportion of teachers available in the cadres existing after the promulgation of the Rules of 2023.

49. Having dealt with each of the contentions raised by the petitioners, we are of the opinion that the Exclusive Teachers Rules-2023 should be upheld and we do so; but set aside the proviso to Rule 4 & Rule 12 and also issue directions in so far as the prescription to be made of a reasonable ratio ensuring promotional avenues to each of the various cadres. We also direct the State Government to bring out Rules for the purpose of grievance redressal of each of the cadres, preferably in the lines that exist as of now in the Grievance Redressal Rules-2020, as applicable to the teachers



covered by the Local Bodies Teachers Rules-2020; which authority could even be declared and constituted to be an authority to consider and adjudicate upon the grievances raised by each and every cadre of school teachers existing within the State.

50. The learned Senior Counsel appearing for the petitioners had also vehemently argued on the volte-face carried out by the State insofar as the clear assurances, nay promises made before the Hon'ble Supreme Court in **Struggle Committee** (*supra*). References were made to the arguments of the State to negate the claim of 'equal pay for equal work' raised by the Niyojit Teachers at that point of time. The State had contended that post 2006 there would not be any fresh regular appointments in the first category; i.e: the government school teachers and all regular appointments would in future be made only in terms of the 2006 Rules. The original cadre of government teachers, it was asserted by the State would be a cadre without any fresh appointments, thus making it a dying or vanishing cadre. The Hon'ble Supreme Court also noticed the prominence given to the Panchayat Raj Institutions, in accord with the constitutional mandate of enabling decentralization on one hand while on the other raising the number of teachers substantially so as to achieve the national parameters of student teacher ratio as laid down by the RTE Act. The statistics presented by the State also showed that advances were made in appointing sufficient teachers and substantial improvement achieved in enrollment of students and there was appreciable rise in the literacy rate in the last decade. The idea to achieve spread of education to the maximum level was attained and the State had also to a great extent tried to meet the obligations under the RTE Act. The parity or equality was said to be sought to a dying or vanishing cadre and the Hon'ble Supreme Court specifically referred to the dwindling numbers of government teachers while there was a remarkable rise in the number of Panchayat Teachers who are the Niyojit Teachers.

51. The arguments raised before the Hon'ble Supreme Court in **Struggle Committee** (*supra*), according to us does not restrict the State from changing its policies, which is also as a trial-and-error measure. As was noticed by the Hon'ble Supreme Court substantial progress was achieved in the numerical strength of teachers and enrollment of students. However, as argued by the learned Advocate General, the State is not to do mere lip



service to the obligations under the RTE Act and there is an urgent need to achieve standards of education which has an imminent and definite correlation with the quality of teachers. Unless the teaching standards are upgraded the quality of education would not rise and the spirit and tenor of the goals intended by the RTE Act, would not be realized. Mere enhancement of numerical strength would not serve the purpose or achieve the goal; which has resulted in the present change in policy and there is no promise, the State can be held down to, that there would be no revival of the class of government teachers. In fact, there is a complete volte-face by the introduction of the Rules of 2023, both the Exclusive Teachers Rules and the State School Service Rules. The State now intends to create a class of teachers with both training qualification and tested skills, as would be revealed in the competency test/written examination, which will be respectively carried out for conversion of Niyojite Teachers to Exclusive Teachers and fresh recruitment of State School Teachers.

52. We have to reiterate that the first proviso to Rule 3 of the Exclusive Teachers Rules-2023 provides that upon passing the competency test under Rule 4, the Exclusive Teachers would be entitled to avail the salary and other perks entitled to the school teachers appointed under the State School Teachers Rules-2023. Hence, what was sought for by the Niyojite Teachers in the earlier round of litigation which went up to the Hon'ble Supreme Court is realized at this point, at least in the case of those found competent, on qualifying the test prescribed. Here, we have to specifically notice the concluding portion of the decision in **Struggle Committee** (*supra*) at paragraph no. 107, which is extracted hereunder: -

"The State may consider raising the scales of Niyojite 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."

(underlining by us for emphasis)

53. It is an admitted fact that the Niyojite Teachers have been granted a pay scale and enabled decent emoluments as contemplated by the Hon'ble Supreme Court. In the underlined portion of the



above extract while suggesting that the scales of Niyojit Teachers should be raised to enable decent emoluments, without any further test qualification; it was also suggested that the clearance in a test or examination could enable even better scales for such Niyojit Teachers. This is precisely what the State attempts and intends by the Exclusive Teachers Rules-2023.

54. The claim for 'equal pay for equal work' raised by the Niyojit Teachers as against the existing government teachers would be realized with the present rules; with only the obligation on such teachers to pass the competency test which is with the avowed objective of motivating the teachers to continue educating themselves and achieve a standard equivalent to that of the newly recruited teachers under the State School Teachers Rules-2023.

55. The Hon'ble Supreme Court in **Randhir Singh Vs. Union of India; (1982) 1 SCC 618**, held that though the principle of 'equal pay for equal work' is not expressly declared by the Constitution to be a fundamental right; it is still a constitutional goal, but this cannot be applied as an abstract doctrine when either academic qualification or experience based on length of service reasonably sustain the classification of employees in two grades. It was held in **State of Haryana Vs. Jasmer Singh; (1996) 11 SCC 77**, that the principle of 'equal pay for equal work' has no mechanical application in every case. 'Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration' (sic- para 19).

56. This is precisely what is sought to be achieved in the present case and Exclusive Teachers, though would be a dying cadre, they would have parity with the State School Teachers. We cannot but also quote **State of Haryana Vs. Charanjeet Singh ; (2006) 9 SCC 321**, wherein, it was held that 'it is no longer in doubt or dispute that grant of the benefit of the doctrine of 'equal pay for equal work' depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity.' (sic)



57. The volte-face in policy, according to us, is in consonance with the principles enunciated by the Hon'ble Supreme Court in service jurisprudence and also on the principle of application of the doctrine of 'equal pay for equal work'. The State has argued that the change in policy was imminently necessary to ensure the quality of teaching and through it, the quality of education is improved substantially; which is a definite improvement and progression from the numerical strength which was sought to be achieved at the earlier instance. The new policy revives the cadre of government teachers which is based on the experience garnered by the State over the years and with a specific objective in mind. As of now there would be only teachers with pay parity termed as the State School Teachers & the Exclusive Teachers (the government teachers) co-existing with the Niyojit Teachers. There is parity between the State School Teachers and the Exclusive Teachers. Those who continue as Niyojit Teachers would be only those persons who refused to participate in the test or fail to qualify in the test. They cannot raise a ground of equality or claim 'equal pay for equal work'. Niyojit Teachers would definitely be a dying cadre along with the Exclusive Teachers who would also be, in course of time, replaced by the cadre of government teachers, bringing in a unified cadre, having the essential educational qualification as also the training qualification and their skills having been tested in a written examination. In policy matters, as is trite, there can be interference caused by Courts only when there is patent illegality, obvious unreasonableness and brazen arbitrariness; none of which arise in the creation of the new cadre of Exclusive Teachers, by the impugned Rules framed under Article 309 of the Constitution of India.

58. We have already issued directions for the purpose of ensuring career progression in all the cadres. One of the arguments raised was also that when the Exclusive Teachers and Niyojit Teachers retire, automatically the post would be conceded to the State School Service. When our directions are complied with and a ratio employed, necessarily such promotional avenues have to be retained till the cadre of Exclusive Teachers and Niyojit Teachers vanish completely. As far as the promotion to Headmasters, already the Bihar State Senior Secondary School Headmaster (Appointment, Transfer, Disciplinary Proceeding and Service Condition) Rules, 2021, have been



brought into force and the Elementary School Head Teachers would be regulated by the Bihar Elementary School Head Teachers Rules, 2024."

21. The Division Bench, thereafter, has given reason in paragraph nos. 46 to 58 and has finally concluded in paragraph no. 59 *inter alia* as follows:

"59. On the above reasoning, we dispose of the writ petitions with the following directions: -

(i) The proviso to Rule 4 of the Elementary School Teachers Rules-2023 is struck down.

(ii) Rule 12 of the Elementary School Teachers Rules-2023 also is struck down.

(iii) The State shall provide for a grievance redressal mechanism as is provided for the Niyojit Teachers by the Local Bodies Teachers Rules-2020.

(iv) The State shall also provide for career progression and stipulate a ratio in the different cadres so that every person in each of the cadres will be entitled to be considered for promotion, subject to reasonable conditions as laid down by the State."

and finally direction contained in paragraph no. 60,

which *inter alia* are as follows:

"60. We make it clear that the exercise as carried out by the State in continuing the Niyojit Teachers and making regular appointments as Exclusive Teachers would have to comply with the provisions of Section 23 of the RTE Act, 2009."

22. Now coming to the facts of the case of the petitioners of CWJC No. 2354 of 2025 in brief are that



petitioner no. 1, 2, 4 and 5, have completed their training while in service, whereas petitioner no. 3 has already been appointed as trained teacher and as per Rule 15 (f) (3) of Rule, 2012, which provides for promotion of graduate trained teachers on the post of Headmaster of government middle school, which is in consonance with Rule 5 (3), as well as, Rule 16 (1) of Rules, 2020, which also provides for promotion of graduate grade trained teachers on the post of Headmaster in the government middle school. Petitioners are aggrieved that they became entitled for such promotion and in this regard, they have stated their respective positions and entitlement in a tabular form, which has been brought on record by way of 'Annexure P/7 to the writ petition', which is reproduced hereinafter:

Sl. No.	Name of Petitioners	Date of Appointment	Name of Employment Unit	Date of Joining	Date of Passing Teachers Training.
1.	Hriday Narayan Bharti	26.11.2014	Block Teacher Employment Unit, Nanpur, District – Sitamarhi.	06.12.2014	18.09.2019
2.	Rinki Kumari	26.11.2014	Block Teacher Employment Unit, Nanpur, District – Sitamarhi.	03.12.2014	29.03.2019
3.	Rashmi Riva	09.12.2013	Block Teacher Employment Unit, Runni Saidpur, District – Sitamarhi.	06.01.2014	03.01.2011
4.	Hemanta Kumar	18.07.2014	Block Teacher Employment Unit, Sursand, District – Sitamarhi.	07.08.2014	19.01.2019
5.	Nidhi Kumari	26.11.2014	Block Teacher Employment Unit, Sonbarsa, District – Sitamarhi.	28.11.2014	22.04.2016

23. In CWJC No. 2712 of 2025, the petitioners no. 2, 3 and 4 were appointed as Graduate Trained Teachers in Middle



School under the Service Conditions Rule 2012 on 16.07.2014, 19.02.2014 and 04.07.2014 respectively in their respective schools by different employment unit and despite having continued for more than 10 years from Graduate Grade Teachers of Middle School, they have not been considered to be promoted on the post of Headmaster. The petitioners had earlier filed CWJC No. 6952 of 2022, which was disposed of vide order dated 07.03.204 with a direction to Respondent No. 2, the Director, Primary Education, to take decision within three months and in compliance of the same the Respondent No. 2 had passed the impugned order contained in Memo No. 1176 dated 24.07.2024, by not following the Service Conditions Rules, 2012 under which petitioners were appointed till Rule, 2020 came into effect and has also in a most misconceived manner has referred to rules under which the teachers were appointed, rejected the claim of the petitioners to be promoted on the post of Headmaster.

24. The Rule, 2020 came into effect from 25.08.2020 and as per Rule all the past action taken has been saved. Rule 16 of Rule, 2020 provides for promotion and the same is reproduced hereinafter:

*"16. **Promotion.**-(i) Merit list shall be prepared for promotion in the graduate grade of Panchayat Elementary Teacher and*



on the post of Head Master. For this the Committee constituted for appointment at the level of Panchayat Samiti shall be competent authority. The Administrative Department will issue detailed guide line with respect to promotion, separatey.

(ii) Promotion on the next pay scale (Graduate grade) may be granted on the basis of minimum 12 years of continuous satisfactory service from the date of joining on the post of teacher in the basic grade of elementary panchayat teacher cadre or from the date of acquiring of the required training qualification, whichever is later. For this, passing of Assessment (Efficiency Test)/Teacher Eligibility Test shall be essential. The grade of the teacher after promotion will remain as before. ”

25. Before coming into force of Rule, 2020, the State failed to give effect to Rule 15 (cha) of Rules, 2012, which related to promotion as per the terms and conditions contained therein, which *inter alia* is as follows:

“(च) प्रोन्नति— (i) प्रशिक्षण प्राप्त बेसिक ग्रेड के नियोजित नगर शिक्षकों को योगदान की तिथि तथा अप्रशिक्षित रूप से नियोजित नगर शिक्षकों को प्रशिक्षित वेतनमान प्राप्ति की तिथि के आधार पर तैयार वरीयता सूची से 12 वर्षों की संतोषजनक सेवा के बाद अगले नियत वेतन (प्रशिक्षित स्नातक शिक्षकों के लिए विहित) में प्रोन्नति दी जायेगी। प्रोन्नति के फलस्वरूप इस ग्रेड के शिक्षक अपने ही ग्रेड में रहेंगे।

(ii) स्नातक शिक्षकों के 50% पदों पर बेसिक ग्रेड में 8 (आठ) वर्षों की संतोषजनक सेवा पूरी करने वाले स्नातक योग्यताधारी नगर शिक्षकों की प्रोन्नति में सीधा नियोजन किया जा सकेगा।

(iii) प्रशिक्षित स्नातक शिक्षकों में से वरीयता एवं स्नातक ग्रेड में 5 (पाँच) वर्षों की न्यूनतम सेवा के आधार पर तैयार वरीयता सूची से मध्य विद्यालय के नियत वेतन के प्रधानाध्यापक के पद पर प्रोन्नति दी जायेगी।

(iv) प्रोन्नति की कार्रवाई नियोजन समिति के द्वारा की जायेगी। स्नातक ग्रेड में प्रोन्नति के फलस्वरूप पदस्थापन की कार्रवाई भी नियोजन समिति के



द्वारा की जायेगी।

(v) प्रोन्नति के फलस्वरूप स्नातक शिक्षक के लिए निर्धारित नियत वेतन में पूर्व में प्राप्त कुल नियत वेतन में एक वेतनवृद्धि जोड़कर वेतन निर्धारण किया जायेगा।

26. Rule 16 of the Rules, 2020 prescribes that (i) Merit list shall be prepared for promotion in the graduate grade of Panchayat elementary teacher and on post of Headmaster. For this the committee constituted for appointment at the level of panchayat samiti shall be competent authority. The administrative department will issue detailed guidelines with respect to promotion separately and (ii) promotion on next pay scale (graduate grade) may be granted on the basis of minimum 12 years of continuous satisfactory service from the date of joining on the post of teacher in basic grade of elementary panchayat teacher cadre or from the date of acquiring of the required training qualification, whichever is later. For this, passing of Assessment (Efficiency test) / Teachers Eligibility Test shall be essential. The grade of the teacher after promotion will remain as before. Rule 5 (3) of the Rules, 2020 is also relevant at this juncture which prescribes the minimum eligibility in this regard and the same is reproduced hereinafter:

“5(3) All posts of Head Master in Panchayat Elementary Teacher Cadre in Middle School shall be filled by promotion, for which following qualification shall be essential:-

(i) Minimum 05 years of continuous service from the date of joining on the post of graduate grade or Panchayat graduate Cadre or from the date of



acquiring the required training, whichever is later.

(ii) Graduate with minimum 45 % marks.

(iii) Qualified in Assessment (Efficiency Test)/Teacher Eligibility Test.

(iv) As directed Cleanliness Certificate of three years prior to the year of promotion.”

27. No doubt, the case of the petitioners is covered by the judgment passed in *Sanjay Kumar (Supra)* in which the co-ordinate Bench has taken into account each and every aspect and the State as on date is contemplating to file L.P.A. against the judgment and order dated 09.12.2024 passed in CWJC No. 3691 of 2021. Fact remains that no action has been taken under the Rules, 2012, in respect of promotion of teachers, whose case are covered by the judgment dated 09.12.2024 passed in CWJC No. 6391 of 2021. The Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceeding and Service Condition) Rule, 2020 (hereinafter referred to as the 'Rule, 2020) came into effect by repealing the Rule, 2012 w.e.f. 25.08.2020 and thereafter, Rule, namely, Bihar School Exclusive Teachers Rules, 2023 (hereinafter referred to as the 'Rules, 2023') have been framed inviting open competition from all the eligible teachers, as well as, candidates who are having requisite qualification for the post of headmaster.



28. The Rules, 2012, for the first time provided the qualification for basic grade teachers, trained basic grade teachers, graduate teachers and trained graduate teacher. In this respect, learned counsel for the State also informed that after the repeal of Rule, 2006, the status of teachers, who were appointed as per Rule, 2006, are deemed to be basic grade teachers but he has admitted that no provisions of Rule 2006 or Rules, 2012 provides for such categorization of basic grade teachers to include all the teachers appointed as per Rule, 2006 irrespective of their qualification. The query was made specifically from the State counsel taking into consideration the status of teachers under Rule, 2006 after its repeal, whose seniority will be affected, if they are deemed to be considered as basic grade teachers in want of any provision and also in view of order dated 09.12.2024 passed in CWJC No. 6391 of 2021, by which the state has been directed to prepare a gradation list, which can only be prepared by including all the *Niyojit Teachers* including those appointed as per Rule, 2006 w.e.f. 03.04.2012.

29. Rules, 2023 has created new cadre of teachers in the State of Bihar and it has been observed by the Division Bench that teachers, who were appointed either as per Rule, 2006 or Rules, 2012 and subsequently, as per Bihar Panchayat



Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceeding and Service Condition) Rules, 2020 (hereinafter referred to as ‘Rules, 2020’) has been said to be teachers of dying cadre. In above background in the said judgment, the Division Bench has also taken note of the argument advanced by learned Advocate General in paragraphs no. 19 and 20 and further dealt with the question whether the petitioners of the said writ petitions, in any way, have been discriminated so far as, their pay scale is concerned and that aspect of the matter has been dealt with in paragraph nos. 19, 20 and 51 of the said judgment, which *inter alia* are reproduced hereinafter:

“19. The learned Advocate General argues that the teachers have been given five options to migrate to the new cadre of Exclusive Teachers. The existing cadres will be of Niyojit Teachers, Exclusive Teachers and the State School Teachers who would all have promotional avenues, separately. But there can be no discrimination alleged because the emoluments are the same and there is scope for career progression and different rules apply for these different cadres whose sources are different. It is urged that Mohinder Singh Gill (supra) has no application since the counter affidavit does not restrict the rule in any manner. The counter affidavit only indicates the State’s understanding that the proviso to Rule 4 only speaks of recommendations which ultimately has to be considered by the State. The recommendations are also insofar as facilities to be provided to the teachers and their adjustment in various districts and so on and so forth, which cannot at any rate lead to termination.

20. To a specific query by us, whether there is any ratio employed for the purpose of career progression, the learned Advocate General concedes



that there is none and he would advise the State Government to bring in such a ratio, equitably, enabling promotions from all the threecadres. It is also conceded that looking at the repeal & saving in the Exclusive Teachers Rules-2023, it may not be correct, for reason of it having impinged into the occupied field of the Local Bodies Rules-2020. Learned Advocate General would urge that the Government's duty is to provide the children with quality education, especially to those coming from the deprived communities with no means for having a standard education in private schools. There are two crores of children from the lower strata studying in the government schools of Bihar and the attempt of the State is to only ensure that they are given quality education in the primary schools in Bihar. The grounds raised by the petitioners are totally out of sync with the ground realities and has no legal backing. It is reiterated that insofar as the ratio for promotion and providing proper appellate authority, the State would immediately take action and such lacunae as argued by the learned counsel for the petitioners, is no reason to strike down an otherwise valid legislation.

51. The arguments raised before the Hon'ble Supreme Court in Struggle Committee (*supra*), according to us does not restrict the State from changing its policies, which is also as a trial-and-error measure. As was noticed by the Hon'ble Supreme Court substantial progress was achieved in the numerical strength of teachers and enrollment of students. However, as argued by the learned Advocate General, the State is not to do mere lip service to the obligations under the RTE Act and there is an urgent need to achieve standards of education which has an imminent and definite correlation with the quality of teachers. Unless the teaching standards are upgraded the quality of education would not rise and the spirit and tenor of the goals intended by the RTE Act, would not be realized. Mere enhancement of numerical strength would not serve the purpose or achieve the goal; which has resulted in the present change in policy and there is no promise, the State can be held down to, that there would be no revival of the class of government teachers. In fact, there is a complete volte-face by the introduction of the Rules of 2023, both the Exclusive Teachers Rules and the State School Service Rules. The State now intends to create a class of teachers with both training qualification and tested skills, as would be revealed



in the competency test/written examination, which will be respectively carried out for conversion of Niyojit Teachers to Exclusive Teachers and fresh recruitment of State School Teachers.”

30. Observation of the Apex Court in paragraph no. 23 of the *Jaiveer Singh (Supra)* judgment finds relevance in the present case also, which *inter alia* is as follows:

“23. It is thus clear that all such teachers working in either Government/Government Aided/Unaided Private Schools, were required to acquire the minimum qualifications by 31st March 2019 or they would face dismissal from service. It appears that it was decided by the Central Government to provide a window for all such teachers. A perusal of the said communication would reveal that various directions were issued so that lakhs of teachers, who were untrained, get the requisite qualifications prior to 1st April 2019. The communication addressed by the Director, Elementary Education, Uttarakhand dated 8th September 2017 to the Chief Education Officer and District Education Officer, Uttarakhand would further clarify this position.”

31. The validity of Bihar Elementary School Headmaster/teachers Rules, 2024 for short (Rules, 2024) was challenged before this Court vide **CWJC No. 6683 of 2024 (Parivartankari Prarambhik Sikshak Sangh Bihar Regd. Office vs. the State of Bihar & Ors.)**. The vires of the said rules was upheld by the Division Bench by specifically taken note of the fact that none of the provision of Rule 3(2) and 3(3) of the Rules, 2024 appears to be against the mandate of Right to Education Act, 2009. The Division Bench has also observed that



"rules in question only provides more comprehensive mode of recruitment of teachers with higher standards with emphasis laid down improving the quality of teachers." The Division Bench has further clarified in paragraph no. 7 of the said judgment that *"teachers would mean all such teachers including the members of the petitioner/Organization, who were appointed under the earlier Rules between 2006 and 2020 and those appointed under the Bihar State School Teachers (Appointment, Transfer, Disciplinary Action and Conditions of Service) Rules, 2023. This, therefore, gives a uniform treatment to the teachers who were appointed between the period 2006 to 2020 or under the 2023 Rules. The Rules of 2024, therefore, provide an opportunity to the teachers to participate in the selection process conducted for the Head-Teachers, for which no fault could be found in the Rules."*

32. The mandate of law is thus has been made clear by the Division Bench in the case of *Pramod Kumar Yadav (Supra)* and direction has been mandated in *Sanjay Kumar (Supra)* by a co-ordinate Bench and the mechanism to be followed for preparation of gradation list maintaining the seniority of all the teachers appointed under Rule, 2006 (according to the qualification, which they were having on 03.04.2012, including



their qualification in respect of intermediate, graduation, D.El.Ed and B.Ed. as on 11.07.2006) 2012 and 2020 is required to be undertaken in accordance with relevant rules. In view of the clarification made in *Pramod Kumar Yadav (Supra)* that *Niyojit Teachers* constitute a cadre of teachers appointed under Rules, 2006 to 2020, the State has no alternative than to give them promotion under the provisions of Ruls, 2012 and 2020, as and when, they became entitled for the post of Headmaster. The excuse taken by the State that the appointment on the post of Headmaster is regulated by Bihar Nationalized Elementary Transfer, Disciplinary 2018 School Teacher Proceedings (hereinafter to and Promotion Rules, be referred to as 'Rules, 2018'). Rule 3 of the Rules, 2018 prescribes that the post of headmaster is a district cadre post. Only district cadre teachers and not the local bodies teachers were eligible for appointment on the said post as per Rule 2 (vi) read with Rule 3 of the Rules, 2018. The petitioners do not belong to district cadre. The existing district cadre post of Headmaster could only be handed-over or transferred to local bodies cadre upon exhaustion of the district cadre teachers, shall not come in a way in preparation of the gradation list of the teachers in the meantime, which cannot be delayed for any administrative reason in formulating the



guidelines in respect of the promotion.

33. The Additional Chief Secretary, Education Department, has failed to understand that he cannot take the condition as enumerated under rule 9, which relates to promotion in respect of the Bihar School Exclusive Teachers Rules, 2023 in view of the order passed in ***CWJC No. 8513 of 2023 (Pravin vs. the State of Bihar & Ors.)*** and other analogous cases which relates to the teachers aggrieved by the provisions of the Bihar State School Teachers (Appointment, Transfer, Disciplinary Action and Conditions of Service) Rules, 2023 and the rejection of the representation of the petitioners in light of the observation made in *Pravin (Supra)* and other analogous cases, is not sustainable. The fact is that four separate cadres came into existence as has been duly recognized in *Pramod Kumar Yadav (Supra)* being (i) the State School Teachers (ii) the Exclusive Teachers (iii) the *Niyojit Teachers* and (iv) the earlier government teachers within whose cadre would also be the teachers under the one-time special recruitment and further direction has made to join as Exclusive Teachers in paragraph no. 40 of the *Pramod Kumar Yadav (Supra)*, "which is their individual, informed choice". Therefore, in that view also, the order contained in Memo No. 1176 dated



24.07.2024 cannot be sustained having not considered the representation of the petitioners in accordance with law and is hereby set-aside and quashed.

34. Accordingly, in light of discussions made hereinabove and provisions of law, the present writ petition stands disposed of.

35. There shall be no order as to cost.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
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