

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2511 of 2025**

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1. Prakash Kumar S/o Arun Kumar Arun, R/o Village and P.O.- Bangaown, Ward No.- 12, P.S.- Bajpatti, District- Sitamarhi, at present working as Panchayat Teacher at Government Primary School, Kodariya, Block- Runnisaidpur, District- Sitamarhi.
2. Ram Babu Thakur, S/o Sri Rajendra Thakur, R/o Village - Talkhapur, Ward No.- 14, P.O.- Dumra, P.S. - Dumra, District- Sitamarhi, at present working as Block Teacher at Government Rajkiya Middle School, Pandhpakar, Bathnaha, Block- Bathnaha, District - Sitamarhi.
3. Ram Babu Singh, S/o Shivdev Singh, R/o Village P.O.and P.S.- Bathnaha, Ward No.- 07, District - Sitamarhi, at present working as Panchayat Teacher at Government Primary School, Ramnagar, Block - Bathnaha, District Sitamarhi.
4. Nirmala Kumari, W/o Vijay Kumar, R/o Village - Singhbihani, Ward No.- 12, P.S. Sonbarsa, District- Sitamarhi, at present working as Block Teacher at Government Middle School, Narkatiya - 1, Block - Sonbarsa, District - Sitamarhi.
5. Rajesh Ranjan, S/o Hari Narayan Ray, R/o Village - Keshopur, P.O. - Pokharbhira, Ward No.- 01, P.S.- Pupri, District - Sitamarhi, at present working as Panchayat Teacher at Government Primary School, Gangapatti Pokharbhira, Block- Pupri, District- Sitamarhi.
6. Sunil Kumar Chaudhari, S/o Vindeshwar Chaudhari, R/o Village- Jaganpatti, P.O. - Digghi, Ward No.- 08, P.S.- Bathnaha, District- Sitamarhi, at present working as Panchayat Teacher at Government Primary School, Jaganpatti, Block- Bathnaha, District - Sitamarhi.
7. Sunil Paswan, S/o Ram Chandra Paswan, R/o Village and P.O.- Dumra, Ward No.- 35, P.S.-Dumra, District- Sitamarhi, at present working as Panchayat Teacher at Government Primary School, Anharman Tola, Ward No.- 7, Block- Dumra, District - Sitamarhi.
8. Prem Chand Kumar, S/o Sri Khelawan Sahni, R/o Village- Hanuman Nagar, P.O. - Sahiyara, P.S.- Sahiyara, District - Sitamarhi, at present working as Panchayat Teacher at Government Rajkiya Primary School Sahiyara Bathnaha, Block- Bathnaha, District Sitamarhi.
9. Vijay Kumar, S/o Chandeshwar Ray, R/o Village - Dostpur, Ward No.- 12, P.O.- Bariyarpur, P.S.- Bathnaha, District - Sitamarhi, at present working as Panchayat Teacher at Government Rajkiya Primary School, Pandaul, Block- Bathnaha, Block - Bathnaha, District - Sitamarhi.
10. Afshan Firoz, D/o Firoj Ahmad, W/o Ehtesham Arif, R/o Village- Bargachhiya, P.O.- Awapur, P.S.- Pupri, District- Sitamarhi, at present working as Panchayat Teacher at Government Primary School, Bargachhia Awapur BR Toli, Pupri, Block - Pupri, District Sitamarhi.
11. Vijay Sahni, S/o Ram Pragash Sahni, R/o Village- Dhumha Tola, Ward No.- 01, P.O.- Yogwana, P.S.- Sahiyara, District - Sitamarhi, at present working as Block Teacher at Government Middle School Madhubani Got, Bathnaha, Block - Bathnaha, District Sitamarhi.
12. Gajendra Ram, S/o Sukdev Ram, R/o- Village- Pachgachhiya, P.O.- Sirauli, P.S.- Bathanaha, District - Sitamarhi, at present working as Block Teacher at



Government Rajkiya Primary School Bairha, Bathnaha, 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, Runnisaidpur, Block - Runnisaidpur, District - Sitamarhi, through its Member Secretary - Cum - Block Development Officer, Runnisaidpur, District - Sitamarhi.
6. The Block Teacher Employment/Appointment Committee, Bathnaha, Block Bathnaha, District Sitamarhi, through its Member Secretary - Cum - Block Development Officer, Bathnaha, District - Sitamarhi.
7. The Block Teacher Employment/Appointment Committee, Sonbarsa, Block - Sonbarsa, District - Sitamarhi, through its Member Secretary - Cum - Block Development Officer, Sonbarsa, District - Sitamarhi.
8. The Chairman, Block Teacher Employment/Appointment Committee Cum Block Pramukh (Panchayat Samiti), Runnisaidpur, Block - Runnisaidpur, District - Sitamarhi.
9. The Chairman, Block Teacher Employment/Appointment Committee Cum Block Pramukh (Panchayat Samiti), Bathnaha, Block - Bathnaha, District - Sitamarhi.
10. The Chairman, Block Teacher Employment/Appointment Committee Cum Block Pramukh (Panchayat Samiti), Sonbarsa, Block - Sonbarsa, District - Sitamarhi.
11. The Member Secretary, Block Teacher Employment/Appointment Committee -Cum- Block Development Officer, Runnisaidpur, Block- Runnisaidpur, District - Sitamarhi.
12. The Member Secretary, Block Teacher Employment/Appointment Committee Cum Block Development Officer, Bathnaha, Block- Bathnaha, District - Sitamarhi.
13. The Member Secretary, Block Employment/Appointment Committee Teacher -Cum- Block Development Officer, Sonbarsa, Block - Sonbarsa, District- Sitamarhi.
14. The Block Education Officer, Runnisaidpur, Block- Runnisaidpur, District - Sitamarhi
15. The Block Education Officer, Bathnaha, Block Bathnaha, District - Sitamarhi.
16. The Block Education Officer, Sonbarsa, Block - Sonbarsa, District- Sitamarhi.



17. The Block Education Officer, Pupri, Block - Pupri, District- Sitamarhi.
18. The Block Education Officer, Dumra, Block Dumra, District- Sitamarhi.
19. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj Bathnaha West, Block Bathnaha, District - Sitamarhi.
20. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj Baura Bajitpur, Block Pupri, District - Sitamarhi.
21. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj- Digghi, Block- Bathnaha, District - Sitamarhi.
22. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj- Bhasar Machhuha North, Block- Dumra, District Sitamarhi.
23. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj- Sahiyara, Block - Bathnaha, District - Sitamarhi.
24. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj- Pandaul @ Panthpak, Block- Bathnaha, District- Sitamarhi.
25. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj- Gangti, Block - Pupri, District - Sitamarhi.
26. The Member Secretary, Panchayat Teacher Employment Committee -Cum-Secretary, Gram Panchayat Raj- Bairha Barahi, Block - Bathnaha, District - Sitamarhi.

... ... Respondent/s

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**Appearance :**

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

For the State : SC-18.

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

**Date : 28-08-2025**

Heard Mr. Mrityunjay Kumar, learned counsel

along with Mr. Mukesh Kumar Singh and Mr. Arinjay Kumar, learned counsel appearing on behalf of the petitioners and learned SC-18 for the State.

2. The petitioners in paragraph no. 1 of the present



writ petition have sought, *inter alia*, following relief(s), which is reproduced hereinafter:-

*"For issuance of a writ in the nature of Mandamus or any other appropriate writ/order/direction to the respondent authorities to consider and grant time bound promotion to the petitioners upon completion of twelve (12) years satisfactory service on the post of Basic Grade Trained Block / Panchayat Teacher to the next pay scale of Graduate Grade Trained Teacher since the due date of promotion with all consequential service benefits including arrear of differences of salary, according to the provisions contained under the Rule 16(ii) of the Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceeding and Service Condition) Rules, 2020.*

*(ii) Further, for any other order / order (s) as your Lordships may find fit and proper under given facts and circumstances of the case."*

3. Altogether twelve writ petitioners have come before this Court claiming that they were appointed between the year 2003 to 2007. The petitioners no.3, 8 and 11 were engaged as Panchayat Shiksha Mitra in the year 2003, while petitioners no. 4, 6, 9 and 12 were also engaged as Panchayat Shiksha Mitra in the year 2005 by the Sukh-Suvidha Committee/Panchayat Employment Committee. The petitioners no. 1, 2, 5, 7 and 10 were appointed as Panchayat Teachers in the year 2007 after coming into force of Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the 'Rules 2006'). The particulars relating to each petitioners contained in Chart is Annexure P/1 to the writ petition. Petitioners have claimed that



the petitioners had obtained the requisite qualification between the year 2011 to 2012 and have sought to be promoted or entitled for financial up-gradation after having completed kalavadhi of 12 years of their continuous service as Primary teachers (Class I - V) from their effective dates of appointment.

#### **ARGUMENT OF THE PARTIES**

4. Learned counsel appearing on behalf of the petitioners submitted that the petitioners no. 1 to 5, 7, 8 and 10 were appointed after coming into force of Rules, 2006, while petitioners no. 4, 6, 9 and 12 were appointed during the period 2003 to 2005 as Panchayat Shiksha Mitra. After coming into force of Rules, 2006, they were absorbed w.e.f. 01.07.2006 and their status changed from Panchayat Shiksha Mitra to Primary Teacher or Prakhand Teacher as per their absorption by the respective employment Unit. Since the petitioners were absorbed as Panchayat teachers (Class I-V) or were appointed after coming into force of Rules, 2006 as Panchayat Teacher having Intermediate degree, they appeared in Evaluation / Efficiency (Dakshta) Test as per the 2009 amendment brought in Rules, 2006. They were also sent for training conducted by State Council for Educational Research and Training (SCERT), Bihar Patna. Some of the petitioners have also qualified TET.



Petitioners fulfill the mandate of RTE Act, 2009 in respect of their qualification as teachers of Class I-V.

5. Learned counsel informs that Rules, 2006 was repealed by the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012 (hereinafter referred to as the 'Rules 2012'). Rule 15 (f) of Rules, 2012 prescribes for pay of Graduate Trained after 12 years of satisfactory service of Prakhand Teachers. They filed several representations before the different respondent authorities requesting them for preparation of seniority list for giving promotion from the effective dates of eligibility of Niyojiti Teachers. Learned counsel further submitted that Rules, 2012 was repealed by the Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2020 (hereinafter referred to as 'Rules, 2020). Rule 16(ii) of the Rules, 2020 also deals with granting time bound promotion to the basic grade panchayat / Block Teachers after completing 12 years of satisfactory service in next pay scale of Graduate Trained teachers. Learned counsel asserted that it is well settled principle of law by the Apex Court that right to be considered for promotion is a fundamental right and denial to same is violation of Articles 14 and 16 of the



Constitution. Learned counsel takes support of an Order / Judgment dated 09.12.2024 passed in C.W.J.C. No. 6391 of 2021 (Sanjay Kumar Vs. The State of Bihar and others) passed by a co-ordinate Bench of this Court in which this Court has directed the concerned authority to complete the entire process of promotion within 90 days from the date of communication of the order. Learned counsel submitted that refusing promotion has deprived the petitioners from the financial upgradation. The petitioners require fair consideration in this regard.

6. *Per contra*, Learned counsel appearing on behalf of the respondents submitted that the matter relating to promotion was considered by a Division Bench of this Court in the case of ***Pramod Kumar Yadav Vs. the State of Bihar & Ors.*** (***C.W.J.C. No. 1942 of 2024***) and he has heavily relied on the argument advanced by the learned Advocate General having been taken note of in Paragraph Nos. 19, 20 and 51, which are reproduced hereinafter:

“19. The learned Advocate General argues that the teachers have been given five options to migrate to the newcadre 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 three cadres. 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 Niyojita Teachers to Exclusive Teachers and fresh recruitment of State School Teachers."*

7. Learned counsel has further placed reliance on paragraph nos. 7 and 8 of the argument advanced on behalf of



the State in the case of ***Sanjay Kumar Vs. the State of Bihar & Ors. (C.W.J.C. No. 6391 of 2021)***, which are reproduced hereinafter:

*"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 judgment 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 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."*

8. 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 in respect of all the Graduate Trained teachers. The present writ petitioners have not given their specific information regarding their service particulars, the writ petition being devoid of merits are fit to be dismissed.

### **ANALYSIS AND CONCLUSION**

9. Heard the parties.

10. The writ petition has been filed by the two



group of teachers, one group constituting Panchayat Shiksha Mitra who were absorbed w.e.f. 01.07.2006 and the other group forming teachers who were directly appointed after coming into force of Rules, 2006. The Panchayat Shiksha Mitra after being absorbed either as Panchayat Teacher (Class 1 to 5) were being governed by the Rules, 2006 till it was in force.

11. The State Government vide Resolution No. 1079 dated 20.06.2002 provided for engagement of Shiksha Mitra for 11 months contract. The scheme came to be repealed by Rules, 2006.

12. The Rules, 2006 was amended in the year 2008. The amendment made mandatory for passing of Teacher Evaluation/Efficiency Test (Dakshta) Examination which was being conducted after every three years. Petitioners no. 1, 2, 5, 7 and 10 who were appointed after coming into force of Rules, 2006 who were untrained were also required to appear in Teacher Evaluation/Efficiency Test (Dakshta) after coming into force of Central Act, the Right to Education Act, 2009 (hereinafter referred to as “RTE Act, 2009”. The State government also made teachers eligibility test mandatory as per the mandate of RTE Act, 2009. The State government in conformity with the Central Act established the State Council



For Educational Research and Training (SCERT), Bihar and the petitioners have claimed that they qualified STET and thereafter they were also sent for in service teachers training course of diploma in primary education (DPE) from Indira Gandhi National Open University (IGNOU). The year of completion has already been given in the detailed chart. It is the case of the petitioners that they had also completed six months bridge course/ enrichment programme of DPE.

13. The Rules, 2006 was repealed by Rules, 2012 which deals with the elementary schools at different level of local bodies. At the panchayat school (Class 1 to 5) and Prakhand School (Classes 6 to 8), the required qualification for panchayat level teacher and Prakhand teachers are same as that has been provided by the NCTE. The panchayat teachers are required to be intermediate / Senior Secondary having at least 50% marks and two years diploma in Elementary Education (by whatever name known) or Senior Secondary with at least 45% marks and two years diploma in elementary education (by whatever name known) in accordance with NCTE Regulation or Senior Secondary with at least 50% marks and four years bachelor of elementary education (B.El.Ed.) and must be passed in Teachers Eligibility Test (TET) to be conducted by the



appropriate Government in accordance with the guidelines framed by the NCTE for the said purpose. Similarly, minimum qualification as per NCTE for Classes 6 to 8 has been provided that the teachers should be BA/B.Sc. and two years diploma in elementary education (whatever name known) or BA/B.Sc. with at least 50% and one year Bachelor in Education (B.Ed.) and also required passing of Teachers Eligibility Test.

14. The Rule 4 of the Rules, 2012 provides three grades of teachers as follow:-

***"Grades of Panchayat Elementary Teachers –***

The Panchayat 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.)

15. The Rule 15 of the Rules, 2012 deals with the service condition of teachers. Rule 15(f)(i) of the Rules, 2012



specifically deals with the provisions of promotion to the Panchayat and Block Teachers. The Rule 15 (f) mandates that the promotion will be given to the employed trained panchayat/prakhand teacher of basic grade from the date of joining and employed untrained teacher from the date of getting trained fixed pay in the next fixed pay (prescribed for graduate trained teachers) after 12 (twelve) years of satisfactory service at prakhand level. The Rule 15(cha), *inter alia*, is reproduced as under:

“( 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।

16. Rule 15 (cha) of 2012 Rules prescribes that 50 percent post of Graduate Teacher shall be filled up from the eligible basic grade Teachers and 50 per cent shall be filled up by direct recruitment. After framing 2012 Niyamawali, Teachers were being recruited by way of direct recruitment on the post of



Graduate Grade Teachers since 2013. However, the vacancies with regard to 50 percent quota of promotion were never filled up. 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.

17. Rule 5 of Rules, 2012 further makes distinction between Classes I to V in respect of those teachers, who were appointed on or after the 3<sup>rd</sup> 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.

18. 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 petitioners have claimed that they had all the educational qualification required as per the provisions of RTE Act, 2009 as stated above and they had also successfully passed the ***Patrata Priksha***. The Human Resources Department, Government of Bihar also gave certificate to them after completion of in service training.

19. 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 Rules, 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.”

20. Rule 14 deals with the Service Conditions and Rule 16 of the Rules, 2020 specifically 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.

21. Thus it appears that the only promotional avenue available to the Graduate Grade Teachers is on the post of Headmaster. Rule 15 (cha) of Rules, 2012 and Rule 16 of Rules, 2020 provides for time bound promotion on completion of service of twelve years.

22. RTE Act, 2009 is a Central Act enacted with the avowed objective to guarantee quality education to the child aged between 6-14 years. 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, 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 not promoting the petitioners or granting them financial upgradation. The action can be treated discriminatory treatment to equals in the matter of payment of salary, in such a situation, the Court can exercise its power of *judicial review* on the



touchstone of Article 14.

23. The Resolution No. 1530 dated 11.8.2015 provides for Grade Pay (a) Grade Pay of Rs. 2000 is admissible to Prathmik 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) Prathmik Shikshak (Snatak Grade Prashikshit) and (ii) Madyamik Shikshak (Prashikshit) i.e. trained teachers who are in graduate grade and teaching in Prathmik Vidyalaya or Primary Classes (i.e. for schools upto Class V). Thus those teachers having 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 Prathmik Vidyalaya which requires minimum educational qualification of Intermediate with technical qualification of teachers training (D.El.Ed) and became entitled for promotion / financial upgradation upon completion of 12 years.

24. The Division Bench of this Court in ***C.W.J.C. No. 1942 of 2024 (Pramod Kumar Vs. The State of Bihar & Ors.)*** while considering the provisions of the Bihar State School Teacher (Appointment, Transfer, Disciplinary Proceedings &



Service Conditions) Rules, 2023, has taken into consideration the status of *Niyojit teachers* appointed before the said Rules in Paragraphs 25, 33, 36 and 46 and observed as under:

*"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 Niyojit 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 Niyojit 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.*

*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 where 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.

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 Niyojite 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*).

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.”*

25. The Division Bench concluded that *Niyojit Teachers* cannot raise a ground of equality to claim equal pay for equal work. The Division Bench further held that *Niyojit Teachers* would definitely be a dying cadre along with the exclusive teachers who will also, in course of time, be replaced by cadre of government teachers.

26. Further, the observation of the Apex Court in paragraph no. 23 of the ***Jaiveer Singh and Others versus State of Uttarakhand and Others reported in 2023 SCC OnLine SC 1584***, finds relevance in the present case also, in view of the fact that the petitioners have claimed their entitlement having all the requisite qualifications before the effective date, i.e. 01.04.2019, 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.”*

27. A coordinate Bench of this Court in ***Sanjay Kumar Vs. The State of Bihar & Ors. (C.W.J.C. No.6391 of 2021)*** was pleased to direct the concerned authority to complete the entire process of promotion within 90 days from the date of communication of the order. “*The action/inaction of respondents is totally illegal, unwarranted, unconstitutional as well-as bad in law as also in facts*”.

28. The Apex Court in the case of ***Panchraj Tiwari Vs. M.P. State Electricity Board and Others***, reported in, (2014) 5 SCC 101, while considering the similar situation where as a result of complete denial of promotions *inter alia* held as under in paragraph no.16:

*“16. Instant is a case where there is complete denial of promotion forever which cannot be comprehended under the constitutional scheme of Articles 14 and 16 of the Constitution of India. In this context, we shall refer to a beautiful discussion on this aspect in S. S. Bola case (supra) at paragraph 153. The relevant portion reads as follows:*

*“153. AB. A distinction between right to be considered for promotion and an interest to be considered for promotion has always been maintained. Seniority is a facet of interest. The rules prescribe the method of*



*recruitment/selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the existing rules. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects chances of promotion of a person relates to conditions of service. The rule/provision in an Act merely affecting the chances of promotion would not be regarded as varying the conditions of service. The chances of promotion are not conditions of service. A rule which merely affects the chances of promotion does not amount to change in the conditions of service. However, once a declaration of law, on the basis of existing rules, is made by a constitutional court and a mandamus is issued or direction given for its enforcement by preparing the seniority list, operation of the declaration of law and the mandamus and directions issued by the Court is the result of the declaration of law but not the operation of the rules per se.”*

*(Emphasis supplied)*

29. The concern of the petitioners is that after completing kalavadhi of 12 years of the continuous service as *Niyojit Teacher* from their effective dates of their appointment, they became entitled for promotion and financial upgradation is based on statutory Provisions of Rules and denial of promotion to them is in violation of Articles 14, 16 and 21 of the Constitution of India. Otherwise also, the petitioners having obtained in service training in terms of the mandate of Sub Section 2 of Section 23 of the RTE Act, 2009 after having



fulfilled required qualifications in terms of NCTE Notifications dated 23.08.2010 and 29.07.2011, they became entitled for requisite remuneration and pay scale from the date of their acquiring requisite academic qualifications by maintaining uniformity in respect of all the teachers of Primary Classes (Class I-V) in terms of Sub Section 3 of Section 23 of RTE Act, 2009. From the facts as narrated above, I find that the statutory Rule 15(cha) of Rules, 2012 and Rule 16 of Rules, 2020 provides for promotion after completing 12 years of service. Thus, non consideration for promotion of the petitioners and like teachers at the relevant time is solely attributable on the part of the Education Department, Government of Bihar and there is no fault on the part of the teachers. The petitioners and like teachers cannot be denied the promotional benefit on account of inaction on the part of the respondent authorities. The Rules, 2012 and Rules, 2020 have been framed by the State Government as per the mandate of Sub Section 3 of Section 23 of RTE Act, 2009. Therefore, the Rules has to be applied in uniform manner and inaction on the part of the State Government can only amount to be in violation of the statutory Rules by deliberately denying promotion to the petitioners and like teachers, such action has been deprecated by the Apex



Court in the case of **Panchraj Tiwary (supra)**.

30. In above background, the petitioners shall be treated to be promoted and the respondents are legally bound to carry on steps for granting promotion in terms of Rules, 2012 and Rules, 2020 to the petitioners and like teachers who had already acquired in service qualification and who are still continuing are entitled for promotion from the due date as per their seniority which is required to be given from the date they had obtained the requisite qualification in terms of RTE Act, 2009.

31. The respondents are directed to first prepare a gradation list of all such teachers and give promotion by working out *inter se* seniority in accordance with law within three months from the date of communication of this order.

32. In light of the discussions made hereinabove and governing Rules and the law laid down by the Apex Court, the writ petition is allowed. There is no order as to costs.

**(Purnendu Singh, J)**

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	27.03.2025
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