

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21199 of 2013

1. The Bihar Secondary Teachers Struggle Committee, Munger through its Convener Upendra Rai S/O Ram Sanchi Roy R/O Vill. Jhalkhora, P.S. Karamchatt in the District Of Kaimur
2. Pankaj Kumar Yadav S/O Parshuram Yadav, P.O. Katahara, Sultanganj in the Districtof Bhagalpur
3. Dr. Chandrashekhar Pandey S/O Achyuta Nand Pandey R/O Vill Bath, P.S. Bath in the District of Bhagalpur
4. Sushma Kumari D/O Sri Rajendra Prasad Sahu R/O Vill. Sikanderpur Jamalpur in the district of Munger
5. Nabin Prasad Singh S/O Suchit Prasad Singh R/O Vill - Bhalar, P.S. - Dharhara in the district of Munger
6. Birendra Rai S/O Ram Dular Rai R/O Vill. Itour, P.S. - Charpokhari in the district of Bhojpur
7. Shashidhar Kumar S/O Baleshwar Prasad R/O Vill. - Shankarpur in the district of Munger
8. Pramod Prasad Singh S/O Chhotey Lal Singh R/O Vill. - Pain , P.S. - Sheikhpura in the district of Sheikhpura
9. Brajesh Prasad @ Brajeshwar Prasad S/O Late Satis Prasad R/O Vill. Nayatola Bhikhanpur, P.S. Ishakchak in the district of Bhagalpur
10. Md. Nasrul Jamal S/O Ibadat Hussain R/O Vill. Mirzapur Bardah P.S. Muffasil in the district of Munger
11. Ravi Shankar Rajak S/O Mahendra Rajak R/O Vill. Muzaffarganj P.S. Muzaffarganj, District Munger
12. Anjan Kumar Mishra R/O Mohalla - Mishra Road Bindwara in the district of Munger
13. Ajay Kumar S/O Sri Dwarika Prasad Yadav R/O Vill Itahari, P.S. chanan in the district of Lakhisarai
14. Md. Monazir Husain S/O Md. Sami Ahmad R/O Vill - Marar, P.S Morkahi in the district of Khagaria
15. Sikandra Bhagat S/O Rambriksh Bhagat R/O Vill. Dhankund, P.O. Makaita, P.S. Dhoraiya in the district of Banka

... .. Petitioner/s

Versus

1. The State Of Bihar through its Chief Secretary, Govt. Of Bihar, Patna
2. The Principal Secretary, Human Resources Department Govt. Of Bihar, Patna
3. The Principal Secretary, Finance Department, Government Of Bihar, Patna
4. The Director, Secondary Education, Govt. Of Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 703 of 2017



1. TET-STET Uttrin Niyojit Shikshak Sangh through its Secretary General Anil Kumar Roy having its main office at Punaichak P.S. - Shastri Nagar, District - Patna.
2. Anil Kumar Roy son of Shivjatan Roy resident of Village - Kamra par, P.S. - Athmalgola, District - Patna.
3. Ashok Kumar Sahu son of Sri Arjun Sahu resident of village - Govindpur, P.O. & P.S. - Rosera, District - Samastipur.
4. Pankaj Kumar Verma, son of Sri Surya Narayan Verma, resident of village - Gadopur, P.O. - Manpur, P.S. - N.H. Bagra, District - Samastipur.
5. Vikash Kumar, son of Birendra Sah, resident of village - Mohiuddin Nagar, P.O. & P.S. - Mohiuddin Nagar, District - Samastipur.
6. Jay Prakash Bhagat, son of Bhani Bhagat, resident of village - Maksudpur, P.O. - Kisanpur, P.S. - Warish Nagar, District - Samastipur.
7. Sanjay Kumar Sharma, son of Sri Upendra Sharma, resident of village - Dasut, P.O. - Dasut, P.S. - Hathuyari, District - Samastipur.
8. Pawan Kumar Sharma, son of Paltan Sharma, resident of village - Bahadurpur, P.O. - Bahadurpur, P.S. - Alauli, District - Khagaria.
9. Pramod Kumar, son of Late Bindeshwari Mahto, resident of village - Yamuna Tar, P.O. - Rasidpur, P.S. - Bachhwara, District - Begusarai.
10. Raushan Kumar Jha, son of Abhay Kumar Jha, resident of village & P.O. - Dhaneshpur (South), P.S. - Vidyapatnagar, District - Samastipur.
11. Sanjeev Kumar Jha, son of Kameshwar Jha, resident of village - Chaksaid, P.S. - Patepur, District - Vaishali.
12. Madhurendra Kumar Singh, son of Shiv Ratan Singh, resident of village - Someshwar Nath Colony, P.S. - Hazirpur, District - Vaishali.
13. Pankaj Kumar, son of Late Shiv Shankar Prasad Singh, resident of village - Chakmuni, P.S. - Vaishali, District - Vaishali.
14. Prem Shankar Singh, son of Harinandan Prasad Singh, resident of village - Chhitravli, P.O. - Piroi, P.S. - Goraul, District - Vaishali.
15. Alok Ranjan, son of Satya Narayan Jha, resident of Mohalla - Ward No - 13 Rambhadra, P.S. - Hazipur, District - Vaishali.
16. Sanjeet Kumar, son of Mahendra Prasad Singh, resident of village - Asadpur Maibhra Bathna Mahodat, P.S. - Goraul, District - Vaishali.
17. Md. Nazir Hussain, son of Md. Rahman Azi, resident of Mohalla @ P.O. & P.S. - Desari, District - Vaishali.
18. Ranjeet Kumar, son of Late Ram Sagar Singh, resident of village - Maksaspur Bihat, P.S. - Barauni, District - Begusarai.
19. Sarla Kumari D/o Sadhu Saran Prasad, resident of village & P.O. - Lohra, P.S. - Harnaut, District - Nalanda.
20. Kumar Amitabh, son of Shri Rama Krishna Prasad, resident of village - Bihar Sharif Mugal Kuo, P.O. & P.S. - Soh Sarai, District - Nalanda.



21. Prashant Priyadarshi, son of Mahavir Prasad Singh, resident of village - North of Subdivisional Hospital, Khorampur Road, P.S. - Hilsa, District - Nalanda.
22. Ravi Shankar Singh, son of Jay Nandan Singh, resident of village & P.O. - Dhurgaon, P.S. - Ekangarsarai, District - Nalanda.
23. Rakesh Kumar, son of Devsharan Ram, resident of village - Muraripur, Brahma Sthan, P.S. - Biharsharif, District - Nalanda.
24. Pramod Kumar, son of Nand Kishore Chaudhary, resident of village - Firoji, P.O. - Kako, P.S. - Pali, District - Jehanabad.
25. Bimal Kumar Sinha, son of Shiv Saran Prasad, resident of Mohalla - West Shastri Nagar, P.O. & P.S. - Rampur, District - Gaya.
26. Krishna Prakash Nand, son of Roop Narayan Prasad, resident of village - Chhatybag, P.S. - Chandauti, District - Gaya.
27. Onkar Kumar, son of Janardan Bhagat, resident of village - Hanuman Nagar, P.O. & P.S. - Rampur, District - Gaya.
28. Pankaj Kumar Pandey, son of Awadhesh Pandey, resident of village - Bhat Bigha, P.O. & P.S. - Pampur, District - Gaya.
29. Md. Zaki Ahmad, son of Md. Nurul Hoda Chisty, resident of village - Darpa Tola Pipra, P.O. & P.S. - Darpa, District - East Champaran.
30. Ramvinay Sharma, son of Bangali Thakur, resident of village - Bara Pakahi, P.S. - Lakhaura, District - East Champaran.
31. Santosh Kumar, son of Mohar Lal Prasad Kushwaha, resident of village - Sundrapur, P.O. & P.S. - Kesariya, District - East Champaran.
32. Ranjeet Kumar, son of Sachendra Prasad, resident of Raghapur, P.O. - Gangapipar, P.S. - Chiraiya, District - East Champaran.
33. Jitendra Kumar, son of Bhagirath Prasad Kushwaha, resident of village - Koraiya Jamuniya, P.O. - Koraiya Jamuniya, P.S. - Jharokhar, District - East Champaran.
34. Kumari Namita Kiran, D/o Sri Deepak Pandey, resident of village - Gali No - 6, Near Saphi Devi Sthan, Sri Krishna Nagar, P.S. - Nagar Thana, District - East Champaran.
35. Tarun Kumar, son of Ramkrishan Ram, resident of village - Balua Chak, Gopalpur Motihari, P.O. & P.S. - Motihari Town, District - East Champaran.
36. Ashwini Kumar, son of Ajit Kumar Pandey, resident of Mohalla & P.O. East Pakari, P.S. - Dumriya Ghat, District - East Champaran.
37. Rumit Kumar Raushan, son of Late Bhageshwari Prasad Sinha, resident of village - Thakurwari, North of Dharam Samaj Middle School, Motihari, P.O. - Motihari, P.S. - Chattaunj Motihari, District - East Champaran.
38. Manibhushan Kumar, son of Vishnu Dev Prasad, resident of Village Sri Krishan Nagar Motihari, Near Airtel Tower, P.O. & P.S. & Motihari, District - East Champaran.
39. Dipendra Kumar, son of Brijlal Sah, resident of village - Kurminiya, P.O. - Tikuliya, P.S. - Mahuawa, District - East Champaran.



40. Omprakash Singh, son of Sri Girija Nandan Singh, resident of Mathiya Dhaka Road, Motihari, P.O. - Motihari, P.S. - Chatauni, District - East Champaran.
41. Priya Ranjan Kumar Singh, son of Sri Ram Vinay Singh, resident of village Rupdih, P.S. - Motihari, District - East Champaran.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Education, Government of Bihar, Patna.
4. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 20667 of 2014

Subodh Kumar, Son of Sri Janardan Prasad Singh, Resident of Village & P.O. Shivnar, P.S. Mokama, District - Patna, at present posted as Zila Parishad Secondary Teacher, Rajkiyakrit Kanti Parvati Girls High School, Mahna, Barauni, Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Finance Department, Government of Bihar, Patna
3. The Principal Secretary, Education Department, Government of Bihar, Patna
4. The Director, Secondary Education, Bihar, Patna
5. The Law Secretary, Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 19840 of 2014

1. Priyavart Kumar, S/O Sri Murlidhar Singh, Resident of Village+P.O-Mahathi P.S-Bibhutipur, District-Samastipur
2. Ajit Kumar Paswan S/O Sri Shiv Shankar Paswan, Resident of Village+P.O-Singhiya Ghat,P.S-Bibhutipur, District-Samastipur
3. Mr. Anjani Kumar Jha S/O Sri Jeev Kant Jha R/o Village-Gawpur, P.O-Bhagwatpur,P.S-Sarairanjan,District-Samastipur
4. Manoranjan S/O Late Rampukar Jha, R/o at + P.O - Jhakhara, P.S.- Sarairanjan, district- Samastipur.
5. Raja Ram Mahto, Son of Sri Ram Bahadur Mahto, R/o Village - Khoksaha, P.O- Madhopur, P.S- Bibhutipur, district - Samstipur

... .. Petitioners

Versus



1. The State of Bihar through the Principal Secretary ,Education Department, Government of Bihar Patna
2. The Director (Primary Education), Government of Bihar, Patna.
3. The District Education Officer, Samastipur, District-Samastipur.
4. The District Programme Officer (Establishment), Samastipur, District-Samastipur.
5. The Block Development Officer, Bibhutipur, District-Samastipur.
6. The Block Education Officer, Bibhutipur, District-Samastipur.
7. The Block Development Officer, Sarairanjan, District-Samastipur.
8. The Block Education Officer, Sarairanjan, District-Samastipur.
9. The Panchayat Sevak Cum- Secretary, Panchayat Teacher Employment Unit Gram Panchayat Raj Jhakara ,Block -Sarairanjan, District-Samastipur.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 4151 of 2017

1. Rakesh Kumar, S/o Sri Mahavir Prasad Singh, Resident of Village+P.O.- Kapal, P.S.- Bibhutipur, District- Samastipur.
2. Sanjeev Kumar, S/o Sri Braj Nandan Mahto, Resident of Village+P.O.- Sigiaghat, P.S.- Bibhutipur, District- Samastipur.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 1370 of 2017

1. The Bihar Panchayat Nagar Prarambhik Sikshak Sangh through its Secretary, Anand Kaushal Singh, S/o Sri Abhay Kumar Singh, R/o Village- Giddhaur, P.S.- Giddhaur, District- Jamui.
2. Anand Kaushal Singh, S/o Sri Abhay Kumar Singh, R/o Village- Jamui, Secretary-cum-District- Incharge Bihar Panchayat/ Nagar Prarambhik Sikshak Sangh, Jamui.

... .. Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Education, Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.

... .. Respondents

with



Civil Writ Jurisdiction Case No. 17176 of 2009

-
1. Bihar Madhyamik Shikshak Sangh through its General Secretary Registered Office At Jamal Road, Patna
 2. Mr. Kedar Nath Pandey S/O Late Raj Narain Pandey General Secretary, Bihar Madhyamik Shikshak Sangh R/M Hanuman Nagar, P.S.Kankarbagh, Distt-Patna

... .. Petitioners

VERSUS

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department Government Of Bihar, Patna
3. The Director , Secondary Education Governement Of Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 19301 of 2016

-
1. Banshidhar Brajwashi S/o Sri Nand Kishore Sahani R/o Village - Raksha (South), P.S. - Karja, District - Muzaffarpur, presently working as Prakhanda (Block) Teacher at Elevated Govt. Middle School, Raksha (East), P.S. - Karja, District - Muzaffarpur.
 2. Pawan Kumar S/o Sri Mahendra Kapar R/o Village - Hanuman Nagar, P.S. - Dumra, District - Sitamarhi presently working as Prakhanda (Block) Teacher at Govt. Middle School, Paktola, Dumra, Sitamarhi.
 3. Nilami Pratap Shahi S/o Swaminath Shahi R/o Village - Atwa Kar, P.S. - Hathua, P.O. - Bariraibhan, District - Gopalganj presently working as Prakhanda (Block) Teacher at Elevated Middle School Korarahata, Gopalganj.
 4. Ashok Kumar Chaudhary S/o - Sri Asharfi Chaudhary R/o Village and Post - Bara Bariyarpur, P.S. - Chhatauni, District - East Champaran, Presently working as Prakhanda (Block) Teacher at Govt. Middle School Bariyarpur Balak, East Champaran.
 5. Raushan Kumar S/o - Sri Ramavatar Prasad R/o Village Pranchak, P.S. - Chandi, District - Nalanda Presently working as Panchayat Primary Teacher at Primary School Jaitipur, Nalanda.
 6. Vijay Kumar Singh S/o - Sri Ram Chandra Singh R/o Moglamikarma, P.S. - Navinagar, District - Aurangabad Presently working as Prakhanda (Block) Teacher at Govt. Middle School Moglanikarma, Aurangabad.
 7. Vinay Prabhakar S/o - Ramashraya Prasad Singh R/o Village - Sakulachak, P.S. - Muffasil, District - Nawada presently working as Prakhanda (Block) Teacher at Middle School Raja Bigha, Nawada.
 8. Shaligram Dubey S/o Sri Madan Dubey R/o Village - Dubboley, P.S.- Simri, District - Buxar Presently working as Prakhanda (Block) Teacher at Middle School Manjhwari Gautam, Buxar.
 9. Samrendra Bahadur Singh S/o Sri Balindra Singh R/o Village - Senduar, P.O. - Rampur Bindalal, P.S. - Ekma, District - Saran



Presently working as Prakhand (Block) Teacher at Elevated Middle School Senduar Ekma, Saran.

10. Abhishek Kumar S/o Sri Uma Shankar Prasad R/o Village - Latbasepura, P.S. - Musarigharari, District - Samastipur Presently working as Panchayat Primary Teacher at Primary School Latbaspura, Ward No - 5 Samastipur.
11. Intkhab Raza S/o - Shamim Raza R/o Tinkothiya, Pakki Sarai, P.S. - Mithanpura, District - Muzaffarpur working as Prakhand (Block) at Govt. Middle School, Budhiyavan, Prakhand - Singhwara, District - Darbhanga.
12. Ranjeet Kumar Sharma S/o Sri Mahendra Sharma R/o Village and Post - Aifni, P.S. - Ariyari District Sheikhpura Presently working as Prakhand (Block) Teacher at Elevated Middle School, Kamalbigha, Sheikhpura.
13. Manoj Kumar S/o - Sri Lalan Prasad R/o Village and P.O. Senduari District - Vaishali Presently working as Prakhand (Block) Teacher at Government Middle School Senduari, District - Vaishali.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Human Resource Development, Bihar, Patna.
4. The Principal Secretary, Department of Finance, Bihar, Patna.
5. The Director, Primary Education, Department of Human Resource Development, Bihar, Patna.
6. The Collector, Muzaffarpur.
7. The District Programme Officer, Establishment, Muzaffarpur.
8. The Collector, Sitamarhi.
9. The District Programme Officer, Establishment, Sitamarhi.
10. The Collector, Gopalganj.
11. The District Programme Officer, Establishment, Gopalganj.
12. The Collector, East Champaran.
13. The District Programme Officer, Establishment, East Champaran.
14. The Collector, Nalanda.
15. The District Programme Officer, Establishment, Nalanda.
16. The Collector, Aurangabad.
17. The District Programme Officer, Establishment, Aurangabad.
18. The Collector, Nawada.
19. The District Programme Officer, Establishment, Nawada.
20. The Collector, Buxar.
21. The District Programme Officer, Establishment, Buxar.
22. The Collector, Saran.
23. The District Programme Officer, Establishment, Saran.
24. The Collector, Samastipur.
25. The District Programme Officer, Establishment, Samastipur.
26. The Collector, Darbhanga.
27. The District Programme Officer, Establishment, Darbhanga.
28. The Collector, Sheikhpura.
29. The District Programme Officer, Establishment, Sheikhpura.



30. The Collector, Vaishali.
31. The District Programme Officer, Establishment, Vaishali.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13307 of 2016

1. Dr. Sushil Kumar Singh, Son of late Rameshwar Prasad Singh, R/o Village - Bishanpur Beri, P.O. - Mohiuddinnagar, District - Samastipur, presently posted at +2 Kisan High School Morsand, Pusa, Samastipur
2. Sri Sanjay Kumar, son of Maheshwar Mahto, resident of Village - Chakka, Post - Khanpur, District - Samastipur, presently posted at +2 High School Hansopur, Khanpur, Samastipur.
3. Sri Chandan Kumar, son of Satish Chandra Yaji, resident of Village - Madhodih, P.S. - Ujiarpur, District - Samastipur, presently posted at +2 Sri Ramji Jha Smark Adarsh High School, Chakhabib, Samastipur.
4. Mamta Kumari, daughter of Dinesh Jha, resident of village - Paroriya, P.S. - Ujiarpur, District - Samastipur, presently posted at +2 S.R.J.S.A. High School, Chakhabib, Bibhutipur, Samastipur.
5. Sri Md. Nisar Ahmad, son of Md. Julfikar Ali, resident of Village - Bahrampur Khairaj, P.S. - Mansur Chak, District - Begusarai, presently posted at +2 S.R.J.S.A. High School, Chakhabib, Samastipur.
6. Smt. Gunjan Kumari, daughter of Sri Nand Kishore Singh, resident of Village - Rampur Jalalpur, Post - Dalsinghsarai, District - Samastipur - presently posted at +2 S.R.J.S.A. High School, Chakhabib, Samastipur.
7. Sri Ratnesh Kumar, son of Sri Bhagwan Prasad, resident of Village - Dalsinghsarai, Post - Dalsinghsarai, District - Samastipur, presently posted at +2 S.R.J.S.A. High School, Chakhabib, Samastipur.
8. Sri Rakesh Kumar, son of Sri Ram Priya Sharan, resident of Village - Basopatti, Post - Basopatti, District - Madhubani, presently posted at +2 High School, Sarairanjan, Samastipur.
9. Dr. Niranjana Kumari daughter of late Raj Narayan Chaudhary, resident of Village - Kashipur, Post - Samastipur, District - Samastipur, presently posted at +2 High School Bathua Bujurg, Sarairanjan, Samastipur.
10. Sri Ravindra Mohan Kanth, son of Dashrath Kanth, Resident of Village - Manika, PO - Akhtiyarpur, District - Samastipur, presently posted at +2 High School Bathua Bujurg, Sarairanjan, Samastipur.
11. Smt. Neelam Kumari, daughter of Ajay Kumar Singh, resident of Village - Basopatti, Post - Basopatti, District - Madhubani, presently posted at +2 High School Bathua Bujurg, Sarairanjan, Samastipur.
12. Sri Sujit Kumar Jha, son of Shivchandra Jha, resident of Village - Punjabi Colony Samastipur, Post - Samastipur, District -



- Samastipur, presently posted at +2 Kisan High School, Morsand, Pusa, Samastipur.
13. Sri Jitendra Kumar, son of Ram Narain Mahto, resident of Village - Jagdishpur, Post - Malikaur, District - Samastipur, presently posted at +2 Kisan High School, Morsand, Pusa, Samastipur.
 14. Sri Rakesh Kumar, son of Sri Chandradeo Chaudhary, resident of village - Jhahuri, Post - Virsinghpur, District - Samastipur, presently posted at +2 Kisan High School, Morsand, Pusa, Samastipur.
 15. Sri Rajiv Lochan, son of Sri Rajeshwar Chaudhary, resident of Mohalla - Kashipur, Ward no. 12, District - Samastipur, presently posted at +2 Girl's High School, Kashipur, Samastipur.
 16. Smt. Rishu Kumari, daughter of Braj Kishore Thakur Suman resident of Mohalla - Kashipur, Ward no. 12, District - Samastipur, presently posted at +2 Girl's High School, Kashipur, Samastipur.
 17. Sri Surendra Mohan, son of Ramashray Prasad Sinha, resident of Village - Adarsh Nagar, Road No. 3, P.S. - Samastipur Muffasil, Samastipur, presently posted at +2 Kisan High School, Kashipur, Samastipur.
 18. Dr. Ranvijay Kumar @ Ranjay, son of Sri Bhubneshwar Thakur resident of Village - Madanpur, P.S. - Chakmaheshi, District - Samastipur, presently posted at Tirhut Academy, Samastipur.
 19. Sri Laliteshwar Prasad son of Shambhu Narayan Singh, resident of village + Post - Belsanditara, District - Samastipur, presently posted at +2 S.K. High School, Harishankari, Samastipur.
 20. Sri Ranjeet Kumar son of Satya Narayan Jha, resident of Village - Suryapur, Post - Sarangpur, District - Samastipur, presently posted at + 2 Janta High School Bajitpur Karnail, Morwa, Samastipur.
 21. Sri Md. Tufail Ahmad, son of Md. Nurul Hoda, resident of village - Kabai, Post - Banghara, District - Samastipur, presently posted at + 2 Janta High School Bajitpur Karnail, Morwa, Samastipur.
 22. Sri Shiv Shankar Roy, son of Sri Babu Lal Roy, resident of village - Paharpur, Post - Bajitpur Karnail, District - Samastipur, presently posted at + 2 Janta High School Bajitpur Karnail, Morwa, Samastipur.
 23. Sri Rajesh Kumar Rai, son of Sri Bindeshwari Rai, resident of Village - Kewta, Post - Kewta, District - Samastipur, presently posted at + 2 High School, Andaur, Mihiuddinagar, Samastipur.
 24. Sri Ashok Kumar son of Sri Ram Lakhnan Mahto resident of village + post - Kewta, District - Samastipur, presently posted at + 2 High School, Banghara, Dalsinghsarai, Samastipur.
 25. Sri Archana Kumari Suman daughter of Ravindra Kumar Sinha resident of Village - Mushapur, Post + District - Samastipur, presently posted at + 2 High School, Banghara, Dalsinghsarai, Samastipur.
 26. Smt. Seema Kumari daughter of Sri Ram Narayan Sah resident of village - Shokhara, Ward No. 2, Post - Barauni, District -



- Begusarai, + 2 High School, Banghara, Dalsinghsarai, Samastipur.
27. Sri Jitendra Prasad Singh son of Sri Janak Prasad Singh resident of Village - Nazirpur, Post - Chand Chaur, District - Samastipur, presently posted at + 2 Bidehi Pariyojna Girls High School, Raipur, Ujiyarpur, Samastipur.
 28. Sri Ejaj Hussain son of Sri Sahid Hussain resident of mohalla - Gudri Bazar, Ward No. 21, Post + District - Samastipur, presently posted at + 2 High School, Siropatti, Khatuaha, Khanpur, Samastipur.
 29. Sri Sanjay Kumar son of Sri Satyanarayan Sah resident of Village - Kudhwa Bhatti Chowk, Post + District - Samastipur, presently posted at + 2 High School, Siropatti, Khatuaha, Khanpur, Samastipur.
 30. Jayanti Ranjan son of Sri Chaudhary Ratan Kumar Rai resident of mohalla - Mithapur 'B' Area Near Labour Gaya Line Road, Mithapur, Post + District - Patna, presently posted at + 2 High School, Siropatti, Khatuaha, Khanpur, Samastipur.
 31. Smt. Kumari Kiran Sinha daughter of Ramakant Prasad Singh 'Ravi' resident of village - Belsanditara, Post - Belsanditara, District - Samastipur, presently posted at + 2 J.P.N.S.High School, Narhan, Bibhutipur, Samastipur.
 32. Sri Ganesh Kapoor son of Sri Puran Kapoor resident of Village - Mahisar, Post - Belhi Nilkanth, District - Samastipur, presently posted at + 2 J.P.N.S. High School, Narhan, Bibhutipur, Samastipur.
 33. Sri Purushottam Kumar son of Sri Umakant Singh resident of village - Mahendrapur, Post - Mahendrapur, District - Begusarai, presently posted at + 2 J.P.N.S. High School, Narhan, Bibhutipur, Samastipur.
 34. Sri Rajesh Kumar son of Shobhi Lal Mahto resident of mohalla - Sudha Gachi, Laxmi Sagar, post - Darbhanga, District - Darbhanga, presently posted at + 2 J.P.N.S. High School, Narhan, Bibhutipur, Samastipur.
 35. Sri Laxmi Narayan Singh son of Benkateshwar Prasad Singh resident of village + Post - Patailiya, District - Samastipur, presently posted at + 2 J.P.N.S. High School, Narhan, Bibhutipur, Samastipur.
 36. Sri Vinit Kumar son of Sri Suresh Thakur resident of Village - Meghaul Khodawandpur, Post - Meghaul, District - Samastipur, presently posted at + 2 J.P.N.S. High School, Narhan, Bibhutipur, Samastipur.
 37. Smt. Nilu Kumari daughter of Sri Maheshwar Chaudhary resident of Village + Post - Jhakhra Pataili, District - Samastipur, presently posted at + 2 High School, Shivajinagar, Khajuri, Samastipur.
 38. Sri Ajay Jha son of Sri Kusheshwar Jha resident of village - Gurugram Adarsh Nagar, Post - Dalsinghsarai, District - Samastipur, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
 39. Sri Sanjay Kumar Suman son of Sri Surendra Singh resident of village - Chamtha Number, post - Chamtha Barkhur, District -



- Begusarai, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
40. Ajay Kumar Singh son of Sri Chakradhar Prasad Singh resident of village - Khurhan, Post - Kurhan, District - Madhepura, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
 41. Smt. Nutan Kumari daughter of Sri Rajendra Prasad Singh Resident of Village - Garhsisaiya, P.S. : - Vidyapati Nagar, District - Samastipur, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
 42. Sri Nishi Kant Jha son of Sri Gaya Jha resident of village - Rupauli, Post - Rupauli, P.S. - Ujjiyarpur, District - Samastipur, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
 43. Smt. Indu Kumari daughter of Sri Thakur Dayal Singh resident of village - Vishwanath Nagar, Post + District - Begusarai, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
 44. Sri Umesh Thakur, son of late Nokhe Lal Thakur resident of village - Madhepur, Post - Madhepur, District - Samastipur, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
 45. Smt. Savitri Kumari daughter of Sri Ramanand Yadav resident of mohalla - Quarter No. T/40 Railway Colony, Dalsinghsarai, Post - Dalsinghsarai, District - Samastipur, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.
 46. Sri Pramod Kumar Singh son of Rajendra Prasad Singh resident of village - Maniyarpur Pataili, Post - Banghara, District - Samastipur, presently posted at Vidyapati + 2 High School Mauwajidpur (North), Vidyapati Nagar, Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Joint Secretary to the Government, Education Department, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 12611 of 2012

Keshav Kumar, Son Of Shiva Mangal Choudhur, Resident Of Village- Hanuman Nagar, Post Office- Barharwa Lakhansen, Police Station- Dhaka, District- East Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar



2. The Principal Secretary, Education Department, Government Of Bihar, Patna
3. The Director, Primary Education, Govt. Of Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7497 of 2017

1. Md. Wasim Raza S/o Md. Tullu Hussain Parwasi R/o- Village- Paharpur, P.O.- Pani Kamla, P.S. Ambabad, District- Katihar.
2. Bhanu Pratap Singh S/o Sri Ranveer Singh R/o Village- Power House Road, Rajhata, Vinodpur, P.S. Katihar, District- Katihar.
3. Md. Minhaj S/o Chulhai Amin Ratania khurd, P.O. - Nimoul, P.S. Azam Nagar, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioners : Mr. P.K.Shahi, Sr. Advocate
Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Vishwanath Prasad Singh, Sr. Advocate
Mr. Vishnudeo Narayan, Sr. Advocate
Mr. Dinu Kumar
Mr. S.S.Sundaram
Mr. Sanjeev Kumar
Mr. Rajesh Pd. Singh
Mr. Ravi Kumar Singh
Mr. Rama Kant Singh
Mr. Arvind Kr. Singh
Mrs. Pratibha Kumari
Mr. Manoj Kumar Manoj
Ms. Ritika Rani
Mr. Ritu Raj
Mr. Mritunjay Kumar
Mr. Madhurendra Kumar
Mr. Rajeev Kumar Singh,
Mr. Arvind Kr. Sharma
Miss Kumari Neha
Mr. B.K.Sharma
Mr. Vijay Kumar Vimal
Mr. Manoj Kumar, Advocates

For the State : Mr. Lalit Kishore, Advocate General, Bihar
Mr. Bishwa Bibhuti Kumar Singh, AC to AG
Mr. Ashutosh Ranjan Pandey, AAG-15



Mr. Madhaw Pd. Yadav, GP-23
Mr. Rajesh Kumar Sinha, AC to GP-23
Smt. Shilpa Singh, GA-12

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 31-10-2017

This batch of writ applications have been filed by the petitioners challenging the validity of Rules 6 and 8 of the Bihar Zila Parishad Secondary and Higher Education Teachers (Employment and Service Condition) Rules, 2006 Bihar Panchayat Primary Teacher (Employment and Service Condition) Rules, 2006, Bihar Nagar Primary Teacher (Employment and Service Condition) Rules (hereinafter referred to as ‘the Rules, 2006’)

2. In this batch of writ applications the common issue raised by the petitioners is that the aforesaid Rule is violative of Article 14 of the Constitution of India. It is also violative of Constitutional principles of “equal wages for equal work” which has now assumed status of fundamental right as integral part. It is recognized as concomitant right under Article 14 of the Constitution of India.



3. CWJC No. 21199 of 2013 has been filed by the Bihar Secondary Teachers Struggle Committee and 14 other teachers, CWJC No. 17176 of 2009 has been filed on 8.12.2009 by Bihar Madhyamik Shikshak Sangh through its General Secretary, CWJC No. 7497 of 2017 has been filed by Md. Wazim Raza & ors., CWJC No. 20667 of 2014 has been filed by one Subodh Kumar, Niyojit Secondary Teacher in Nationalised High School, CWJC No. 703 of 2017 has been filed by TET/STET/UTTRIN Niyojit Shikshak Sangh & others Panchayat Teachers appointed as Niyojit Shikshak in the secondary and higher secondary schools, CWJC No. 12611 of 2012 has been filed by Keshav Kumar, Panchayat Primary Teacher, CWJC No. 19301 of 2016 has been filed by Banshidhar Brajwasi and 12 other teachers working in Middle School. CWJC No. 1370 of 2017 has been filed by Bihr Panchayat Nagar Prarambhik Shikshak Sangh and other teachers, CWJC No. 19840 of 2014 has been filed by Priyabrat Kumar and 4 others, CWJC No. 13307 of 2016 has been filed by Sushil Kumar Singh & 45 other teachers appointed in +2 high schools and CWJC No. 4151 of 2017 has been filed by Rakesh Kumar and another teacher.

4. Since in all these writ applications common question of fact and law are involved and as such they have been heard



together and are being disposed of by this common order/judgment.

5. Foundational facts in all the writ applications are similar, I have taken into consideration the facts of CWJC No. 21199 of 2013 as leading case for the purpose of noting the foundational facts and pleadings of the parties. So far as the writ petition filed on behalf of the Niyojit Shikshak of Primary schools are concerned, the question of law involved in this case is also common as in their case also the same Rules 6 and 8 of 2006 Rules have been challenged on the ground of violation of Article 14 of the Constitution of India and they have also prayed for quashing of Rules 6 and 8 and for follow up direction to the respondents to pay 'equal pay for equal work' and in order to avoid repetition of foundational facts, I have not discussed the fact pleaded in the petition challenging the validity of the Rules on behalf of the Primary School Teachers.

6. Writ petitioners have challenged the legality and constitutional validity of Rules 6 and 8 of the Rules notified vide notification dated 11.7.2006. Rules 6 and 8 of the Rules 2006 reads as follows:-

“Rules – 6

नियोजन की प्रक्रिया :-



- (i) नगर निकाय क्षेत्र में अवस्थित राजकीय, राजकीयकृत माध्यमिक विद्यालयों के शिक्षकों के लिए विषयवार रिक्त पदों की सूचना का प्रकाशन जिला में कम से कम 15 दिनों तक किया जायेगा।
- (ii) प्रत्येक जिला मुख्यालय में सरकार द्वारा चिन्हित एक विद्यालय को आदर्श विद्यालय के रूप में विकसित किया जाना है। सरकार द्वारा चिन्हित ऐसे आदर्श विद्यालय इस नियमावली के अधीन आच्छादित नहीं समझे जायेंगे एवं ऐसे आदर्श विद्यालयों में शिक्षकों की नियुक्तियाँ, सेवाशर्त इत्यादि अलग से निर्धारित किये जायेंगे।
- (iii) विहित प्रपत्र (अनुसूची-1) में नगर माध्यमिक एवं नगर उच्चतर माध्यमिक शिक्षक के नियोजन हेतु आवेदन जिला शिक्षा पदाधिकारी के कार्यालय में प्राप्त होंगे तथा तुरंत एक प्राप्ति रसीद दी जाएगी/भेजी जाएगी।
परन्तु नगर पंचायत एवं नगर परिषद में अवस्थित माध्यमिक एवं उच्चतर माध्यमिक विद्यालयों की रिक्त के विरुद्ध आवेदन विहित प्रपत्र (अनुसूची-1) में अवर प्रमण्डल शिक्षा पदाधिकारी के कार्यालय में प्राप्त होंगे।
- (iv) नगर माध्यमिक शिक्षक के लिए पैनल निम्न रूपेण मेधा अंक के आधार पर प्रशिक्षित एवं अप्रशिक्षित अभ्यर्थी का अलग-अलग तैयार किया जाएगा।—
1. मूल योग्यता (स्नातक) का अधिभार अंक,
अथवा स्नातक प्रतिष्ठा का अधिभार अंक, — प्राप्तांक का प्रतिशत
 2. उच्चतर माध्यमिक परीक्षा अथवा इन्टरमिडिएट परीक्षा का अधिभार अंक — प्राप्तांक का प्रतिशत
 3. माध्यमिक परीक्षा का अधिभार अंक — प्राप्तांक का प्रतिशत
 4. बी0एड0 का अधिभार अंक प्राप्तांक का प्रतिशत
- उपरोक्त सभी प्राप्तांक का प्रतिशत को जोड़कर उसमें चार से भाग देने पर जो प्रतिशत प्राप्त होगा, वह उस अभ्यर्थी का मेधा अंक होगा। अप्रशिक्षित अभ्यर्थी के लिए प्राप्तांक के प्रतिशत को जोड़कर तथा तीन से भाग देकर मेधा अंक निकाला जायेगा। परन्तु स्नातक प्रतिष्ठा योग्यताधारी को पाँच अंक अतिरिक्त जोड़ा जायेगा।
- समान अंक प्राप्त होने पर जिनकी जन्म तिथि पहले होगी उन्हें पैनल में उपर रखा जाएगा। समान अंक एवं समान जन्म तिथि होने पर ड्रा ऑफ लॉट के द्वारा पैनल में उपर स्थान निर्धारित होगा।
- (v) नगर उच्चतर माध्यमिक शिक्षक के लिए पैनल निम्न रूपेण मेधा अंक के आधार पर प्रशिक्षित एवं अप्रशिक्षित अभ्यर्थी का अलग-अलग तैयार किया जाएगा —



1. मूल योग्यता (स्नातकोत्तर) का अधिभार अंक – प्राप्तांक का प्रतिशत
2. स्नातक प्रतिष्ठा का अधिभार अंक, अथवा स्नातक का अधिभार अंक – प्राप्तांक का प्रतिशत
3. उच्चतर माध्यमिक परीक्षा, अथवा इन्टरमिडिएट परीक्षा का अधिभार अंक – प्राप्तांक का प्रतिशत
4. माध्यमिक परीक्षा का अधिभार अंक – प्राप्तांक का प्रतिशत
5. बी0 एड0 का अधिभार अंक – प्राप्तांक का प्रतिशत

उपरोक्त सभी प्राप्तांक का प्रतिशत को जोड़कर उसमें पाँच से भाग देने पर जो प्रतिशत प्राप्त होगा, वह उस अभ्यर्थी का मेधा अंक होगा। अप्रशिक्षित अभ्यर्थी के लिए प्राप्तांक के प्रतिशत को जोड़कर तथा चार से भाग देकर मेधा अंक निकाला जाएगा। परंतु स्नातक प्रतिष्ठा योग्यताधारी को पाँच अंक अतिरिक्त जोड़ा जायेगा।

समान अंक प्राप्त होने पर जिनकी जन्म तिथि पहले होगी उन्हें पैनल में उपर रखा जाएगा। समान अंक एवं समान जन्म तिथि होने पर ड्रा ऑफ लॉट के द्वारा पैनल में उपर स्थान निर्धारित होगा।

(vi) पैनल निर्माण हेतु समिति का गठन तथा अनुमोदन :-

प्राप्त आवेदन पत्र के आधार पर पैनल का निर्माण निम्नलिखित समिति के द्वारा किया जायेगा :-

(क) नगर पंचायत/नगर परिषद् के लिए समिति

- (i) नगर पंचायत/नगर परिषद् का अध्यक्ष – अध्यक्ष
- (ii) नगर पंचायत/नगर परिषद् की शिक्षा समिति के एक चयनित सदस्य – सदस्य
(पुरुष अध्यक्ष होने पर चयनित सदस्य महिला होगी)
- (iii) नगर पंचायत/नगर परिषद् के कार्यपालक पदाधिकारी – सदस्य
- (iv) संबंधित अनुमण्डल शिक्षा पदाधिकारी – सदस्य सचिव

उपरोक्त में अगर कोई अनुसूचित जाति/अनुसूचित जनजाति के नहीं हो तो जिला कल्याण पदाधिकारी समिति के अतिरिक्त सदस्य होंगे।

परन्तु नगर पंचायत/नगर परिषद् की शिक्षा समिति द्वारा चयनित सदस्य का कार्यकाल एक वर्ष का होगा।

टिप्पणी – नगर पंचायत/नगर परिषद् की शिक्षा समिति गठित नहीं होने की स्थिति में नगर पंचायत/नगर परिषद् के कार्यपालक पदाधिकारी द्वारा मनोनीत एक अनुमण्डल स्तर का पदाधिकारी सदस्य होंगे।

(ख) नगर निगम के लिए समिति



- (i) नगर निगम के महापौर – अध्यक्ष
- (ii) नगर निगम की शिक्षा समिति के
एक चयनित सदस्य – सदस्य
(पुरुष अध्यक्ष होने पर चयनित सदस्य महिला होगी)
- (iii) नगर निगम के मुख्य कार्यपालक पदाधिकारी– सदस्य
- (iv) संबंधित जिला शिक्षा पदाधिकारी – सदस्य सचिव

उपरोक्त में अगर कोई अनुसूचित जाति/अनुसूचित जनजाति के नहीं हो तो जिला कल्याण पदाधिकारी समिति के अतिरिक्त सदस्य होंगे।

परन्तु नगर निगम की शिक्षा समिति द्वारा चयनित सदस्य का कार्यकाल एक वर्ष का होगा।

टिप्पणी :- नगर निगम की शिक्षा समिति गठित नहीं होने की स्थिति में नगर निगम के मुख्य कार्यपालक पदाधिकारी द्वारा मनोनित एक जिला स्तरीय पदाधिकारी सदस्य होंगे।

- (vii) पैनल तैयार हो जाने पर उसे सार्वजनिक किया जाएगा। एक सप्ताह तक किसी भी प्रकार की आपत्ति दर्ज करने का समय दिया जाएगा। प्राप्त आपत्ति का निराकरण कर पैनल को अन्तिम रूप दिया जायेगा तथा उसे समिति द्वारा अनुमोदित किया जायेगा।
- (viii) अंतिम पैनल के चयनित शिक्षकों को इच्छित विद्यालयों में नियोजन मेधा के आधार पर तैयार पैनल से अनुसूची – II में अंकित प्राथमिकता के अवरोही क्रम में परामर्श (काउन्सिलिंग) के माध्यम से किया जायेगा।
- (ix) विद्यालय चयन के बाद समिति चयनित अभ्यर्थियों के नामों की विषयवार एवं कोटिवार सूची उनके नियोजन हेतु संबंधित नगर निगम के मुख्य कार्यपालक पदाधिकारी/नगर पंचायत एवं नगर परिषद के कार्यपालक पदाधिकारी को भेजेगी जो चयनित विद्यालयों के लिए नियोजन पत्र निर्गत करेंगे। चयनित अभ्यर्थी को नियोजन पत्र (अनुसूची – III) भेजा जायेगा। सहमति पत्र के आधार पर उनका योगदान स्वीकृत किया जायेगा।
- (x) प्रशिक्षित तथा अप्रशिक्षित अभ्यर्थियों के पैनल अलग-अलग तैयार किए जायेंगे। पहले प्रशिक्षित अभ्यर्थियों के पैनल से नियोजन किया जायेगा तथा बचे हुए रिक्त पदों पर अप्रशिक्षित अभ्यर्थियों को नियोजन का मौका दिया जायेगा।
- (xi) यह पैनल एक वर्ष तक प्रभावी रहेगा।



8. **सेवा संबंधी शर्तें :-**

- (i) (क) नगर माध्यमिक शिक्षकों को नियत वेतन के आधार पर नियोजित किया जाएगा।
(ख) नगर माध्यमिक शिक्षक (प्रशिक्षित) के लिए नियत वेतन की राशि प्रतिमाह रूपये 6000/- तथा नगर माध्यमिक शिक्षक (अप्रशिक्षित) के लिए नियत वेतन की राशि प्रतिमाह रूपये 5500/- होगा।
(ग) प्रत्येक तीन वर्षों पर नियोजन कालावधि के बाद मूल्यांकन के आधार पर उनके कुल नियत वेतन में नगर माध्यमिक शिक्षक (प्रशिक्षित) को रूपये 600/- तथा नगर माध्यमिक शिक्षक (अप्रशिक्षित) को 500/- की वृद्धि की जायेगी।
- (ii) (क) नगर उच्चतर माध्यमिक शिक्षक को नियत वेतन के आधार पर नियोजित किया जाएगा।
(ख) नगर उच्चतर माध्यमिक शिक्षक (प्रशिक्षित) के लिए नियत वेतन की राशि प्रतिमाह रूपये 7000/- तथा नगर उच्चतर माध्यमिक शिक्षक (अप्रशिक्षित) के लिए नियत वेतन की राशि प्रतिमाह रूपये 6500/- होगा।
(ग) प्रत्येक तीन वर्षों पर नियोजन कालावधि के बाद मूल्यांकन के आधार पर उनके कुल नियत वेतन में नगर उच्चतर माध्यमिक शिक्षक (प्रशिक्षित) को रूपये 700/- तथा नगर उच्चतर माध्यमिक शिक्षक (अप्रशिक्षित) को रूपये 600/- की वृद्धि की जायेगी।
- (iii) ऐसे नियोजित शिक्षक अधिकतम 60 वर्ष की आयु तक नियोजित रह सकेंगे।
- (iv) अप्रशिक्षित शिक्षकों को राष्ट्रीय अध्यापक शिक्षा परिषद् (NCTE) द्वारा अनुमोदित बी0 एड0 की प्रशिक्षण योग्यता अधिकतम 6 वर्षों के भीतर अपने खर्च पर प्राप्त करना होगा। प्रशिक्षण-योग्यता हासिल करने के बाद शिक्षकों को प्रशिक्षित शिक्षक का नियत वेतन देय होगा। बी0 एड0 प्रशिक्षण अवधि के लिए ही अवैतनिक अवकाश दिया जायेगा। परन्तु सफलतापूर्वक बी0 एड0 प्रशिक्षण पूर्ण होने पर उनका नियोजन अक्षुण्ण रहेगा।
- (v) प्रशिक्षित तथा अप्रशिक्षित शिक्षकों को भी नियमित रूप से सेवाकालीन प्रशिक्षण की व्यवस्था की जायेगी जिसमें उनका भाग लेना अनिवार्य होगा।



(vi) इस नियमावली के अधीन नियोजित शिक्षकों को किसी अन्य प्रकार का भत्ता तथा महंगाई भत्ता, आवास भत्ता, चिकित्सा भत्ता , परिवहन भत्ता आदि देय नहीं होगा।

7. Rule 6 relates to employment procedure whereas Rule 8 prescribes service conditions of the teachers appointed under the Rules.

8. During the pendency of the writ application, the State Government constituted a committee for fixation of pay scale of the Niyojit Teachers appointed under 2006 Rules. The State Government vide resolution No. 1530 dated 11th August, 2015 issued by the Education Department prescribed pay scale and pay grade of the Niyojit Teachers. The relevant Resolution is reproduced here for ready reference.

बिहार सरकार

शिक्षा विभाग।

संकल्प

संचिका संख्या: 11/वि 1-08/2013/1530 पटना, दिनांक – 11 अगस्त , 2015

विषय :- नियोजित प्रशिक्षित, अप्रशिक्षित, प्राथमिक, माध्यमिक , उच्च माध्यमिक शिक्षक एवं पुस्तकालयाध्यक्ष को वेतनमान देने , उसके निर्धारण के संबंध में।

विभिन्न शिक्षक एवं पुस्तकालयाध्यक्ष संगठनों द्वारा नियोजित प्रशिक्षित , अप्रशिक्षित प्राथमिक, माध्यमिक, उच्च माध्यमिक शिक्षक एवं पुस्तकालयाध्यक्ष को वेतनमान देने उसके निर्धारण एवं सेवाशर्त की संरचना करने के संबंध में लम्बी अवधि से मांग की जा रही थी। सरकार द्वारा नियोजित प्रशिक्षित/अप्रशिक्षित प्राथमिक, माध्यमिक , उच्च माध्यमिक शिक्षकों के वेतनमान निर्धारण एवं उनके सेवाशर्त निर्धारण के लिए मुख्य सचिव की अध्यक्षता में गठित समिति के अनुशंसा के आलोक में नियोजित प्रशिक्षित/अप्रशिक्षित प्राथमिक, माध्यमिक, उच्च माध्यमिक शिक्षक एवं पुस्तकालयाध्यक्ष के निर्दिष्ट नियत वेतन को वेतनमान में परिवर्तित करने का निर्णय लिया गया है।



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

2.1 प्राथमिक शिक्षक

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

2.2 माध्यमिक शिक्षक / पुस्तकालयाध्यक्ष

क्र. सं.	पदनाम	संख्या	वेतनमान्	ग्रेड वेतन
1	2	3	4	5
1	माध्यमिक शिक्षक(अप्रशिक्षित)	4463	5200-20200	0
2	माध्यमिक शिक्षक(प्रशिक्षित)	25038	5200-20200	2400
3	पुस्तकालयाध्यक्ष	1900	5200-20200	0
4	उच्च माध्यमिक शिक्षक(10+2)(अप्रशिक्षित)	3058	5200-20200	0
5	उच्च माध्यमिक शिक्षक (10+2) (प्रशिक्षित)	26774	5200-20200	2800
	कुल शिक्षक (प्रकाशित विज्ञप्ति के विरुद्ध भविष्य में होनेवाली नियुक्ति सहित)	61233		

2.3 प्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्ष को 01 जुलाई, 2015 से 5200-20000 के वेतनमान में 5200 का बेसिक वेतन देय होगा, जिस पर प्राथमिक शिक्षक (प्रशिक्षित) को 2000 रुपये, प्राथमिक शिक्षक (स्नातक ग्रेड



प्रशिक्षित), माध्यमिक शिक्षक (प्रशिक्षित) को 2000 रुपये, प्राथमिक शिक्षक (स्नातक ग्रेड प्रशिक्षित), माध्यमिक शिक्षक (प्रशिक्षित) एवं पुस्तकालयाध्यक्ष को 2400 रुपये तथा उच्च माध्यमिक (प्रशिक्षित) शिक्षक को 2800 रुपये का ग्रेड पे देय होगा। पूर्व की गयी सेवा के लिए प्रत्येक तीन वर्ष की सेवा के लिए एक वार्षिक वेतन वृद्धि तीन प्रतिशत की दर से देय होगी।

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

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

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

2.7 अप्रशिक्षित प्रारंभिक शिक्षक (स्नातक ग्रेड) एवं अप्रशिक्षित माध्यमिक शिक्षकों को विशेष भत्ता के रूप में 1000 रुपये प्रतिमाह तथा अप्रशिक्षित उच्च माध्यमिक शिक्षकों को विशेष भत्ता के रूप में 1500 रुपये की राशि प्रतिमाह दी जायेगी, जिसपर महंगाई भत्ता देय नहीं होगा। यह राशि इस उद्देश्य से दी जा रही है कि प्राथमिक, प्रखंड, माध्यमिक एवं उच्च माध्यमिक शिक्षक के वेतन में पूर्व की भाँति अन्तर रहें।

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

2.9 नियोजित अप्रशिक्षित प्रारंभिक, माध्यमिक एवं उच्च माध्यमिक शिक्षकों को उनकी प्रशिक्षण अवधि में उन्हें निर्दिष्ट वेतन देय होगा। इस संबंध में एवं अनुशंसित



वेतनमान के संबंध में आवश्यकतानुसार अधिसूचित नियुक्ति नियमावली में संशोधन किया जाएगा।

2.10 शिक्षा विभाग द्वारा निर्गत संकल्प के आलोक में प्रशिक्षित/ अप्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षक एवं पुस्तकालयाध्यक्ष "U.T.I. retirement benefit pension fund " से अच्छादित होंगे।

3. उपरोक्त अनुशंसित वेतनमान को कार्यान्वित करने पर एक वर्ष में लगभग कुल वित्तीय भार निम्नवत् होगा –

अतिरिक्त वित्तीय भार विवरणी					
क्र. सं.	श्रेणी	लाभान्वित होने वाले नियोजित शिक्षकों संख्या	वेतनमान के आधार पर कुल देय राशि	नियत वेतन पर वर्तमान देय राशि	कुल अतिरिक्त वित्तीय भार (राशि करोड़ में)
1	प्राथमिक शिक्षक	344114	6693.23	4173.21	2520.04
2	माध्यमिक शिक्षक, उच्च माध्यमिक शिक्षक एवं पुस्तकालयाध्यक्ष	61233	1259.30	830.85	428.45
	कुल	405347	7952.55	5004.06	2948.49

4. कार्यरत नियोजित प्रशिक्षित, अप्रशिक्षित शिक्षक एवं पुस्तकालयाध्यक्ष को तथा भविष्य में नियोजित होनेवाले शिक्षक तथा पुस्तकालयाध्यक्ष को उपरोक्त वेतनमान देय होगा। निर्दिष्ट वेतनमान का बजटीय प्रावधान संगत शीर्ष में किया जायेगा। वेतनमान के निर्धारण के संबंध में वित्त विभाग की सहमति से शिक्षा विभाग द्वारा अलग से विस्तृत दिशा-निर्देश निर्गत किया जायेगा।
5. प्राथमिक शिक्षा निदेशालय एवं माध्यमिक शिक्षा निदेशालय अन्तर्गत नियत वेतन के स्वीकृत पद अनुशंसित वेतनमान के पद में परिवर्तित हो जायेंगे। भविष्य में सेवानिवृत्ति, मृत्यु एवं अन्य कारणों से रिक्त पद अनुशंसित वेतनमान के पद में ही रहेंगे।
6. संविधान की 73वीं एवं 74 वीं संशोधन के आलोक में जिला परिषद/नगर निकायों/ पंचायत समितियों/ पंचायतों की भूमिका को दृष्टिपथ में रखते हुए इन पंचायती राज संस्थाओं के माध्यम से प्रशिक्षित/ अप्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्षों का नियोजन किया गया है।

प्रशिक्षित/ अप्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्षों के संवाशर्त अन्तर्गत सेवा निरन्तरता, ऐच्छिक स्थानान्तरण, सेवाकालीन प्रशिक्षण, प्रोन्नति का अवसर, अनुशासनिक प्राधिकार एवं अन्य सेवा शर्तों के निर्धारण हेतु एक समिति का गठन किया जायेगा। वित्त विभाग, शिक्षा विभाग,



- सामान्य प्रशासन विभाग, नगर विकास विभाग, पंचायती राज विभाग के प्रधान सचिव/सचिव एवं प्रधान अपर महाधिवक्ता इस समिति के सदस्य रहेंगे। यह समिति विस्तृत जाँच कर तीन माह के अन्दर अपनी अनुशंसा सरकार को समर्पित करेगी।
7. संकल्प के किसी बिन्दु पर विभेद होने की स्थिति में एतद् संबंधी पूर्व निर्गत मूल आदेशों/परिपत्रों आदि का अवलोकन किया जा सकता है अथवा आवश्यकतानुसार वित्त विभाग से सम्पर्क कर स्पष्टीकरण प्राप्त किया जा सकता है।
8. इस पर सरकार का अनुमोदन प्राप्त है।

बिहार राज्यपाल के आदेश से,

(सुनिल कुमार सिंह)

सरकार के संयुक्त सचिव

ज्ञांपांक : 11 /वि1 -08 /2013 / 1530

पटना, दिनांक - 11 अगस्त, 2015

Sd/-

सरकार के संयुक्त सचिव।

9. The State Government admitted the Niyojit Shikshak in the regular pay scale and grade in terms of memo no. 1530 dated 11th August, 2015 and they were granted the 7th pay revision on the same principle applicable to the pay revision of State Government employees.

10. Mr. P.K.Shahi, learned senior counsel appearing on behalf of the writ petitioners has basically argued that the State cannot adopt discriminatory attitude and grant two different pay scales to teachers imparting instructions in the same nationalized High School/ Project Schools only on the ground that they have been appointed after 2006 Rules qua the teachers appointed prior to framing of the Rules, 2006. Mr. Shahi submitted that the



Secondary School Teachers or +2 Teachers working in the Nationalised Schools are entitled to parity in pay and pay scale in view of the judgment of the Apex Court reported in the case of **State of Punjab Vs. Jagjit Singh :(2017) 1 SCC 148**. Referring to various paragraphs of the aforesaid judgment Mr. Shahi submitted that the aforesaid judgment of the Apex Court is now settled on the point of “equal pay for equal work” and the case of the writ petitioners are squarely covered by the pronouncement of the Apex Court. He submitted that the Apex Court in the aforesaid judgment has laid down the principle applicable for payment of pay/pay scale for discharging the same responsibility. The judgment of the Apex Court was rendered after examining almost all the judgments on the point of “equal wages for equal work” and the Apex Court noticing the multi-faceted concept of “equal pay for equal work” laid down a guideline for granting “equal wages for equal work”. Mr. Shahi has referred to para-42 of the judgment wherein the Apex Court has examined the claim of higher wages under the principle of “equal wages for equal work” by such employees who have performed the same duty and responsibility qua those receiving higher pay scale performing the same responsibility.



11. The relevant part of the discussions of the Apex Court on the point is set out in para-42 which is quoted below.

“42. All the judgments noticed in paragraphs 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of ‘equal pay for equal work’. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them, were against the same post for which a higher pay-scale was being allowed, in other Government departments. Or alternatively, their duties and responsibilities were the same, as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of ‘equal pay for equal work’ was invoked and considered, it would be just and appropriate, to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of ‘equal pay for equal work’. Our consideration, has led us to the following deductions:-

(i) The ‘onus of proof’, of parity in the duties and responsibilities of the subject post with the reference post, under the principle of ‘equal pay for equal work’, lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (Orissa University of Agriculture & Technology v.



Manoj K. Mohanty, (2003) 5 SCC 188, [Union Territory Administration, Chandigarh v. Manju Mathur](#) (2011) 2 SCC 452, the Steel Authority of India Limited v. Dibyendu Bhattacharya: (2011) 11 SCC 122, and the National Aluminum Company Limited v. Ananta Kishore Rout: (2014) 6 SCC 756).

(ii) The mere fact that the subject post occupied by the claimant, is in a “different department” vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of ‘equal pay for equal work’. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (Randhir Singh V. Union of India : (1982) 1 SCC 618, and the D.S. Nakara V. Union of India : (1983) 1 SCC 305).

(iii) The principle of ‘equal pay for equal work’, applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the Randhir Singh case). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (Federation of All India Customs and Central Excise Stenographers V. UOI: (1988) 3 SCC 1991, Mewa Ram Kanojia Vs. All India Institute of Medical Sciences: (1989) 2 SCC 235, Grih Kalyan Kendra Workers’ Union Vs. UOI : (1991) 1 SCC 619 and the S.C. Chandra Vs. The State of Jharkhand: (2007) 8 SCC 279.

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of ‘equal pay for equal work’ (see – the Randhir Singh case¹, [State of Haryana v. Haryana Civil Secretariat Personal Staff Association](#): (2002) 6 SCC 72, and the [Hukum Chand Gupta Vs. ICAR](#) (2012) 12 SCC 666. Therefore, the principle would



not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (Federation of All India Customs and Central Excise Stenographers V. UOI: (1988) 3 SCC 1991) and the State Bank of India Vs. M.R.Ganesh Babu (2002) 4 SCC 556). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work' (State of U.P. v. J.P. Chaurasia:(1989) 1 SCC 121, and the Grih Kalyan Kendra Workers' Union Vs. UOI: (1991) 1 SCC 619) .

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188).

(vii) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria (State of U.P. v. J.P. Chaurasia:(1989) 1 SCC 121).



(viii) If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (Mewa Ram Kanojia Vs. All India Institute of Medical Sciences: (1989) 2 SCC 235, and [Government of W.B. v. Tarun K. Roy \(2004\) 1 SCC347](#)). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post ([Union of India v. Pradip Kumar Dey \(2000\) 8 SCC 580](#), and the [Hukum Chand Gupta Vs. ICAR \(2012\) 12 SCC 666](#)).

(x) A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master ([Harbans Lal V.State of HP \(1989\) 4 SCC 459](#)). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity ([Official Liquidator v. Dayanand \(2008\) 10 SCC 1](#)).

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for



the subject post (the State Bank of India M.R.Ganesh Babu: (2002) 4 SCC 556).

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable ([State of Haryana v. Haryana Civil Secretariat Personal Staff Association](#) (2002) 6SCC 72).

(xiii) The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay- scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities ([State of West Bengal v. West Bengal Minimum Wages Inspectors Association](#): (2010) 5 SCC225).

(xiv) For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable ([Union Territory Administration, Chandigarh v. Manju Mathur](#) (2011) 2 SCC 452).

(xv) There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (the Hukum Chand Gupta case (supra)), when the duties are qualitatively dissimilar.



(xvi) The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (Hukum Chand Gupta case(supra)).

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay for equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply (S.C. Chandra case (supra), and the National Aluminum Company Limited case (supra)).

12. Mr. Shahi with reference to the discussion of the Apex Court judgment (supra) in paragraph 44 submitted that even in the matter of temporary employees designed as work-charged, daily wage, casual, ad hoc, contractual, the Apex Court accepted the principle of "equal pay for equal work" and referred to detailed discussion of principle of 'equal pay for equal work' and submitted that if temporary employees like work-charge, daily wage, casual and ad hoc employees are entitled to 'equal pay for equal work' the Niyojit Shikshak by any standard is entitled to 'equal pay for equal work'. Relevant part of Apex Court judgment is quoted below:



44. We shall first outline the conclusions drawn in cases where a claim for pay parity, raised at the hands of the concerned temporary employees, was accepted by this Court, by applying the principle of 'equal pay for equal work', with reference to regular employees:-

(i) In the *Dhirendra Chamoli Vs. State of U.P.*(1986) 1 SCC637 this Court examined a claim for pay parity raised by temporary employees, for wages equal to those being disbursed to regular employees. The prayer was accepted. The action of not paying the same wage, despite the work being the same, was considered as violative of [Article 14](#) of the Constitution. It was held, that the action amounted to exploitation – in a welfare state committed to a socialist pattern of society.

(ii) In the *Surinder Singh* case²⁰ this Court held, that the right of equal wages claimed by temporary employees emerged, inter alia, from [Article 39](#) of the Constitution. The principle of 'equal pay for equal work' was again applied, where the subject employee had been appointed on temporary basis, and the reference employee was borne on the permanent establishment. The temporary employee was held entitled to wages drawn by an employee on the regular establishment. In this judgment, this Court also took note of the fact, that the above proposition was affirmed by a Constitution Bench of this Court, in the *D.S. Nakara* case (supra).

(iii) In the *Bhagwan Dass* case²¹ this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (- or had remained) engaged, would not make any difference. So also, the manner of selection and appointment would make no difference. And therefore, whether the selection was made on the basis of open competition or was limited to a cluster of villages, was considered inconsequential, insofar as the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered



inconsequential, insofar as the applicability of the principle of 'equal pay for equal work' is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question, was not sustainable because the concerned employees were engaged in a temporary scheme, and against posts which were sanctioned on a year to year basis.

(iv) In the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch V. UOI (1988) 1 SCC 122 this Court held, that under principle flowing from [Article 38\(2\)](#) of the Constitution, Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as, all the other benefits which were being extended to casual workers. It was also held, that the classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates, was not tenable. It was also held, that such an act of an employer, would amount to exploitation. And further that, the same would be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16 of the Constitution.

(v) In [State of Punjab v. Devinder Singh: \(1998\) 9 SCC595](#) this Court held, that daily- wagers were entitled to be placed in the minimum of the pay-scale of regular employees, working against the same post. The above direction was issued after accepting, that the concerned employees, were doing the same work as regular incumbents holding the same post, by applying the principle of 'equal pay for equal work'.



(vi) In the Secretary, State of Karnataka Vs. Umadevi (3) (2006) 4 SCC 1, a Constitution Bench of this Court, set aside the judgment of the High Court, and directed that daily-wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied, to the issue of pay parity – if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned daily-wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

(vii) In [State of Haryana v. Charanjit Singh \(2006\) 9 SCC321](#), a three-Judge bench of this Court held, that the decisions rendered by this Court in [State of Haryana v. Jasmer Singh: \(1996\)11](#), [State of Haryana v. Tilak Raj: \(2003\)6 SCC 123](#), Orissa University of Agriculture & Technology case (supra) , and [Government of W.B. v. Tarun K. Roy \(supra\)](#), laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, that they were performing equal work of equal quality, and all other relevant factors were fulfilled, a direction by a Court to pay such employees equal wages (from the date of filing the writ petition), would be justified.

(viii) In [State of U.P. v. Putti Lal: \(2006\) 9 SCC 337](#), based on decisions in several cases (wherein the principle of ‘equal pay for equal work’ had been invoked), it was held, that a daily-wager discharging similar duties, as those engaged on regular basis, would be entitled to draw his wages at the minimum of the pay-scale (drawn by his counterpart, appointed on regular basis), but would not be entitled to any other allowances or increments.



(ix) In the Uttar Pradesh Land Development Corporation Vs. Md. Khursheed Anwar: (2010) 7 SCC 739 An this Court noticed, that the respondents were employed on contract basis, on a consolidated salary. But, because they were actually appointed to perform the work of the post of Assistant Engineer, this Court directed the employer to pay the respondents wages, in the minimum of the pay-scales ascribed for the post of Assistant Engineer.

13. Referring to various other paragraphs of the said judgment Mr. Shahi submitted that the petitioners are working in the same Nationalised High School, discharging the same responsibility of imparting instruction in secondary school or +2 schools, teaching the same syllabus which is being taught by other teachers appointed prior to commencement of 2006 Rules but the State government has adopted two different pay scales for payment of the teachers appointed prior to 2006 Rules and after 2006 Rules notwithstanding their qualification is same, they are discharging the same duty and responsibility and there is absolutely no difference in the performance of their duty and responsibility. They are doing also the same evaluation work in secondary and +2 examination conducted by the Bihar School Examination Board.. At the time of evaluation, they are treated at par with and paid the same remuneration like the teachers appointed prior to 2006 Rules but artificial distinction has been made by the State Government in



payment of pay and by virtue of rules 6 and 8 of the 2006 Rules they are subjected to fixed remuneration or arbitrary grant of pay/pay scale. He submitted that the “equal pay for equal work” has now assumed status of fundamental right and the State as a model employer is not expected to deny “equal pay for equal work” to the teachers appointed in the same school in the name of ‘Niyojit Teacher’.

14. Mr. Rajendra Prasad Singh, learned senior Advocate appearing on behalf of the petitioners has submitted with reference to various enactment right from 1960 till 2010 to contend that the respondent-State is the employer of the teachers whether teachers of Nationalised School appointed prior to 2006 or thereafter. The State Government decides mode of appointment, service condition, pay scale and as such their action of prescribing two different scales is unconstitutional and violative of Article 14 read with article 39(d) of the Constitution of India. He also relied upon the judgment of the Apex Court reported in **(2017) 1 SCC 148** and submitted that even a temporary and work-charge employee is entitled to “equal pay for equal work” and as such the regular employees like the petitioners cannot be differentiated in any manner in the grant of pay having regard to their qualification, performance of duty like their counterparts appointed prior to



2006. He placed before the Court a comparative statement of pay of the teachers appointed prior to 2006 and the petitioners who were appointed after 2006 Rules. With reference to the tabular chart he submitted that it is most unfortunate scenario that the teachers are paid even less than the peon of the school. He has placed the copy of the acquittance roll of September, 2017 of Ramanand Sharma Smarak Project Girls School, Okari, Jehanabad to demonstrate that the regular teachers are drawing salary of Rs. 56000 and above, peon is drawing gross salary Rs. 37,541/- whereas +2 trained teachers are paid Rs. 20,661/-. He submitted that teachers are paid even less than the peon in the school and it has demoralizing effect and it is not only violation of constitutional principles of “equal pay for equal work” but it is an act of exploitation and denial of right guaranteed under Articles 21 and 23 of the Constitution of India.

15. Mr. Rajendra Prasad Singh has further submitted that Rule 2006 by itself cannot amend or nullify the Bihar Non-Government Secondary School (taking over management and Control) Act, 1981 (hereinafter referred to as Act of 1981). The Act is still holding the field and the status of the school is still the same i.e. Nationalised school. He submitted that after the 73rd and 74th amendment, only amendment has been made in Section 10 of



the Act whereby Section 10 of the unamended Act of 1981 was deleted. There was provision for appointment of teacher in Nationalised schools on the recommendation of Bihar Staff Selection Commission, under the said Section 10 of 1981 Act the rest scheme of the aforesaid Act is still intact. The writ petitioners in CWJC No. 21199 of 2013 has incorporated the details of the status of secondary teachers right from 1960. In the year 1960, the Bihar School Control and Regulation Act, 1960 was framed. Under the said Act the Managing Committee of every High School was authorized to make appointment. In 1972 Bihar High School Service Condition Rule 1972 was framed wherein the Managing Committee of the school was authorized to make appointment of teaching employees.

16. In 1974 in order to regulate the management of the school ordinance was promulgated and the Bihar Secondary School Education Board was empowered to advise the Government in framing of policy. The ordinance was subsequently become Act of 1976. In the year 1980 the State Government took a policy decision to take over the management and control of recognized privately managed schools with effect from 2.10.1980 by way of ordinance of 1980 which become Bihar Non-Government Secondary School (Taking over Management and Control) Act,



1981. The said act is still in existence. Under Section 3 of the said Act, the State Government took over management and control of the schools recognized under the Bihar Secondary Education Board Act, 1974. Section 10 of the said Act provide for constitution of Vidyalaya Seva Board for recruitment of the teachers in Secondary Schools which is amended from time to time.

17. Under the Scheme of the said Act of 1981 in 1983, Service Condition Rules have been framed on 9th June, 1983 under the 1983 Rules provision was made for constitution of Vidyalaya Seva Board and the Board was authorized to recommend for appointment of teachers in the secondary schools. Thereafter Bihar Secondary Teachers Appointment Rule 2004 was framed under the proviso to Article 309 of the Constitution of India. Under the said Rule, Director Secondary Education was empowered to appoint Assistant Teachers in all cadres on the basis of the merit list prepared by the Bihar Staff Selection Commission under the service condition Rules. In the year 2005 amendments have been made in the Rule by introducing Bihar Nationalised Secondary School (Service Condition) Amendment Rule 2005. In 2006 Section 10 of the 1981 Act was amended and deleted on 11.7.2006 by the State Government in purported exercise of power



under Article 243B (12th Schedule) Entry 13 read with Nagar Nigam Adhiniam 473 and 474.

18. Mr. Rajendra Prasad Singh with reference to the decision of the State Government taken way back in the year 1975 submitted that the State Government has consistently maintained the stand that teachers of Government and non-government secondary schools are entitled to the same pay scale. He referred to letter no. 2605 dated 8th July, 1975 wherein the State Government resolved to provide same pay scale to the teachers and non-teaching employees of the non-government schools and as such he submitted that the State Government was maintaining the stand of pay parity of teachers of government or non-government schools but the Rule 2006 introduced arbitrary Scheme whereby the respondents have provided two different pay scales to the teachers working in the same school.

19. Mr. Vishwanath Singh, senior advocate appearing on behalf of the petitioners has drawn our attention to the judgment of the Division Bench of this Court that has decided the issue that Niyojit Teachers are also Government Servant and drawing artificial distinction between the teachers appointed prior to 2006 Rules and thereafter in the matter of grant of pay scale is unconstitutional. He referred to the judgment in LPA No.



249/2016. The other counsels appearing on behalf of the petitioners have more or less reiterated the same argument which was advanced by Mr. P.K. Shahi, Mr. Rajendra Prasad Singh and Mr. Vishwanath Singh, Sr Advocates.

20. Mr. Advocate General appearing on behalf of the State has submitted that after 73rd and 74th amendment, the State Government has framed rule under Article 243G and 243W read with item No. 17 of 11th schedule and item No. 13 of 12th Schedule to the Constitution. He argued that the State is competent to frame Rule in furtherance of 73rd and 74th Constitutional amendments. He has placed reliance on the judgment of the Apex Court in **Civil Appeal No. 2804 of 2013, Ramesh Chandra Shah Vs. Anil Joshi: reported in (2017) 11 SCC 309** and referred to para 23 of the said judgment to contend that doctrine of waiver applies in the instant batch of writ petitions. He has submitted that the petitioners are the beneficiary of 2006 Rules and as such they cannot now challenge the validity of rules 6 and 8 of the said Rules. Para-23 of the aforesaid judgment reads as follows:-

“23. The doctrine of waiver was also invoked in *Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others* (2011) 1 SCC 150 and it was held:

“When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates



with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”

21. Mr. Advocate General next contended that ‘equal wages for equal work’ is not applicable in the instant case. He submitted that the writ petitioners were appointed under the Rules framed by the State in exercise of powers under Articles 243G and 243W in furtherance of entry 17 of Schedule 11 and entry 13 of Schedule 12 of the Constitution of India which is the exclusive domain of the Panchayat raj institution namely, Gram Panchayat and Nagar Panchayat under the Panchayati Raj System. He contended that the teachers appointed prior to 2006 Rules form a different class. They have been appointed on the recommendation of the Vidyalaya seva Board/BPSC/Subordinate Service Selection Board by the Director,



Secondary education whereas these petitioners have been appointed by local self Government and as such, they cannot claim parity of pay scale. Referring to the judgment of the Apex Court in State of Punjab Vs. Jagit Singh (supra) he submitted that the principle of “equal pay for equal work” is not applicable in the instant case and submitted that the employer in the instant case is not the same and they cannot claim parity with those teachers who were declared teachers of a dying cadre. He submitted that rule 2006 has created a different class of teachers and as such Niyojit teachers cannot claim parity of pay scale with Dying Cadre. Mr. Advocate General has relied upon para-45 of the judgment in **Jagjit Singh** (supra) which reads as follows:

“45. We shall now attempt an analysis of the judgments, wherein this Court declined to grant the benefit of ‘equal pay for equal work’ to temporary employees, in a claim for pay parity with regular employees:-

(i) In the Harbans Lal Vs. State of H.P.: (1989) 4 SCC 459, daily-rate employees were denied the claimed benefit, under the principle of ‘equal pay for equal work’, because they could not establish, that the duties and responsibilities of the post(s) held by them, were similar/equivalent to those of the reference posts, under the State Government.

(ii) In the Grih Kalyan Kendra Workers’ Union Vs. UOI: (1991) 1 SCC 619, ad-hoc employees engaged in the Kendras, were denied pay parity with regular employees working under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India, because of the finding



returned in the report submitted by a former Chief Justice of India, that duties and responsibilities discharged by employees holding the reference posts, were not comparable with the posts held by members of the petitioner union.

(iii) [In State of Haryana v. Tilak Raj: \(2003\) 6 SCC 123](#) this Court took a slightly different course, while determining a claim for pay parity, raised by daily-wagers (- the respondents). It was concluded, that daily-wagers held no post, and as such, could not be equated with regular employees who held regular posts. But herein also, no material was placed on record, to establish that the nature of duties performed by the daily-wagers, was comparable with those discharged by regular employees. Be that as it may, it was directed, that the State should prescribe minimum wages for such workers, and they should be paid accordingly.

(iv) [In State of Punjab v. Surjit Singh: \(2009\)9 SCC 514](#), this Court held, that for the applicability of the principle of 'equal pay for equal work', the respondents who were daily-wagers, had to establish through strict pleadings and proof, that they were discharging similar duties and responsibilities, as were assigned to regular employees. Since they had not done so, the matter was remanded back to the High Court, for a re-determination on the above position. It is therefore obvious, that this Court had accepted, that where duties, responsibilities and functions were shown to be similar, the principle of 'equal pay for equal work' would be applicable, even to temporary employees (otherwise the order of remand, would be meaningless, and an exercise in futility).

(vi) It is, therefore apparent, that in all matters where this Court did not extend the benefit of 'equal pay for equal work' to temporary employees, it was because the employees could not establish, that they were rendering similar duties and responsibilities, as were being discharged by regular employees, holding corresponding posts.”



22. Adverting to the submission of Mr. Rajendra Prasad Singh that the teachers are being paid less than the peon in the school, he has submitted that he is not cognizant of the aforesaid fact as the pay statement of the school in question to demonstrate the disparity of pay and payment of less than class IV employees was only served in the Court. He submitted that Niyojit Shikshak working in the High School in this State are paid better salary than the teachers working in different States.

23. Mr. Advocate General further contended that in view of the fact that Niyojit Teachers are recruited under the scheme of 2006 Rules, their claim of “equal pay for equal work” is not maintainable. Referring to paragraph -13 of the supplementary counter affidavit filed by the Director, Secondary Education he submitted that there is difference between two categories of teachers. Para-13 is quoted below for ready reference.

“13. That the comparative difference between the aforesaid two categories of teachers is more apparent from the tabular chart prepared hereinafter:-

Sl.No.	Head	Earlier District Cadre Teacher	Niyojit Teacher
1.	Cadre	District/Division	Respective Panchayat, Block, Nagar Panchayat, Nagar Parishad, Nagar Nigam or Zila Parishad, as the case may be
2.	Status	Employee of State Government	Employee of respective institution of panchayati Raj Institution/ Urban Local bodies/Zila Parishad
3.	Nature of cadre	Dying/diminishing cadre	To continue.



4.	Nomenclature of post	Assistant Teacher	Panchayat Teacher/Prakhand Teacher/ Nagar Teacher/ Zila Parishad Madhyamic Teacher/Nagar Parishad Madhyamic Teacher/Zila Parishad Uchttar Madhyamic Teacher/ Nagar Parishad Uchttar Madhyamic Teacher
5.	Appointing Authority	District Superintendent of Education now District Education Officer/Director, Secondary Education	Respective PRI's/ Urban Local Bodies/Zila Parishad
6.	Mode of Recruitment	BPSC based on competitive examination/ Erstwhile Vidyalaya Seva Board	Based on Marks obtained in academic course and training course.
7.	Rules	बिहार प्रारंभिक विद्यालय नियुक्ति नियमावली 1991 यथा संशोधित 1993/बिहार माध्यमिक विद्यालय शिक्षक नियुक्ति नियमावली	बिहार पंचायत प्रारंभिक शिक्षक (नियोजन एवं सेवा शर्त) नियमावली 2012/बिहार नगर पारंभिक शिक्षक (नियमावली 2012/बिहार जिला परिषद माध्यमिक/उच्चतर माध्यमिक शिक्षक (नियोजन एवं सेवा शर्त) नियमावली 2006 एवं यथा संशोधित बिहार नगर निकाय माध्यमिक/उच्चतर माध्यमिक शिक्षक नियोजन एवं सेवा शर्त) नियमावली 2006 एवं यथा संशोधित
8.	Status of appointment Rules	The said relevant Rules has already repeated	It is in existence.
9.	No. of teachers	Up to 2006 in Primary & Secondary about 1,30,000	After 2006 in Primary & secondary about 4.4 lakhs
10.	Appellate Authority	RDDE/Director, Secondary Education	District Appellate Authority/State Appellate Authority.

24. He submitted that the mode of selection of the petitioners Niyojit Teachers is different from the teachers of the dying cadre and as such they cannot claim “equal pay for equal work”.

25. From the pleadings of the parties and submissions advanced by learned senior counsels appearing for the petitioner and the learned Advocate General, I find that in the instant writ applications basically three issues are involved:



(i) Whether Rules 6 and 8 of Rules 2006 are consistent with Article 14 of the Constitution of India or it is violative of Article 14 of the Constitution.

(ii) Whether the Niyojit Teachers are entitled to equal pay for equal work at par with the teachers appointed in the nationalized school prior to coming into force 2006 Rules or not?

(iii) Whether the writ petitioners are entitled to a direction for fixation of their pay at par with their counterparts teachers appointed in the nationalized school prior to framing of 2006 Rules or not?

26. From reading of the scheme of 2006 Rules, it is seen that the appointment of secondary/higher secondary teachers in Nationalised Schools and the Government Schools in the respective jurisdiction of the Gram Panchayat or Nagar Panchayat was the objective of framing 2006 Rules. In the definition clause the High School is defined as Government and Nationalised school which includes secondary and higher secondary schools. The teachers were also defined as teachers appointed for imparting instruction in secondary or higher secondary level in the nationalized school.

27. From the pleadings of the parties it is also evident that time and again the State Government has framed the condition for



appointment, modality for appointment and the State Government prescribed pay of such teachers, the teachers appointed under the 2006 Rules have all the qualification prescribed for appointment of teachers prior to framing of the Rule in the nationalized school. There is absolutely no pleading that the teachers appointed in the nationalized high school and +2 schools after framing of 2006 Rules are in any manner inferior in qualification or training or there is absolutely no material on the record that they are discharging different duties and responsibilities in the same institution. It is admitted position and it is the rule itself which admits the position that teachers appointed under the 2006 Rules are essentially discharging the duty of imparting instruction in secondary or higher secondary or +2 Nationalised schools and they have all the necessary qualification for appointment as Teacher in fact, same qualification like their counterpart appointed earlier.

28. Mr. Shahi and Mr. Rajendra Prasad Singh have submitted that these teachers are not only qualified to be appointed on the post of teachers but they are discharging the duty of a regular teacher, these teachers have also been subjected to Teachers Eligibility Test and they have passed the aforesaid test and as such one cannot question the quality of the teachers working in the



nationalized school appointed under the process of 2006 Rules as Niyojit Teacher.

29. From the pleadings of the parties I find that at different point of time different rules were applicable for appointment of the teachers before framing of 1983 rules under the Act 1981. The teachers were appointed by the Managing Committee and their services were taken over under the scheme of Section 3 of 1980 Ordinance of 1981 which became Act as discussed above. After framing of 1983 Rules, under Section 9 of 1981 Act, Vidyalaya Seva Board came into existence and appointments were made on the recommendation of the Vidyalaya Seva Board and thereafter the rule was amended and the appointment was to be made through BPSC which was further amended and Bihar Subordinate Staff Selection Board was entrusted with the responsibility of selection of teachers. In the matter of primary schools also selection process was earlier under the control of the Managing Committee of School upto 1976 i.e. The Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 (referred as 1976 Act) and thereafter the District Superintendent of Education was authorized to prepare panel for selection of teachers after approval of RDDE the scheme of selection was amended from time to time and at different point of time different



persons/authorities were authorized to select the teachers and appointments were made on their selection and recommendation including BPSC which was authorized to select and subsequently the responsibility of selection was entrusted to the Bihar Subordinate Staff Selection Board. Notwithstanding the different mechanism for selection of teachers' they were paid the same pay scale and no distinction was drawn in the matter of grant of pay scale on their appointment and posting in the nationalized school.

30. I would like to refer to the judgment of the Apex Court in **Dhirendra Chamoli** case (supra) where the Apex Court in so many words deprecated the denial of 'equal pay for equal work' by drawing a distinction between permanent employee and temporary employee notwithstanding the fact that they were discharging the same work, the Apex Court held out that action of the State is violative of Article 14 of the Constitution as it would amount to exploitation in welfare State committed to socialist pattern society. This aspect of exploitation or denying the 'equal pay for equal work' was noticed by the Apex Court in para-44 of the judgment in the case of **State of Punjab Vs. Jagjit Singh** (supra).

31. From the pleadings of the parties I also find that there is absolutely no distinction between the responsibility, duty and working and qualification of the teachers working in the same



nationalized schools. One cannot ignore the fact that when the Secondary Schools were taken over in 1980, (primary school were taken over in 1976 w.e.f. 1.1.1971) the service of teachers working in those privately managed institutions appointed by the Managing Committee were taken over under the provision of 1980 Ordinance and 1981 Act and 1976 Act (for primary teachers) as discussed above.

32. By framing of 2006 rules the State Government has tried to create a class within the class of national school teachers and coined the name of Niyojan Shikshak, they appointed teachers on fixed remuneration, whereas the State Government granted the benefit of different pay revision to the teachers of nationalized high school, but denied the same to the teachers appointed under 2006 Rules in view of Rule 8 of 2006 Rules. Submission of the learned Advocate General that the teachers appointed under 2006 Rules have derived the benefit under the Rules 2006 and as such they cannot be allowed to raise the grievance of pay parity with their counterparts challenging Rules 6 and 8 of the 2006 Rules is fallacious as a matter of fact I find that they were subjected to exploitative terms due to unemployment and their poor bargaining power.



33. I have gone through the judgment on which Mr. Advocate General relied upon. In my considered view para-23 of the said judgment is not applicable in the instant case. In fact the present case is pure and simple case of exploitation and runs contrary to the concept of decent life as held out to be integral part of Article 21 of the Constitution of India.

34. Decent life by necessary implication connotes life with dignity and one cannot think of leading life without dignity. When teachers are asked to perform the same duty and treated even inferior to the peons of the same school their right to live with dignity is infringed.

35. The submission of Mr. Advocate General that the teachers of the nationalized schools appointed prior to 2006 Rules forms a different class and they are dying cadre and as such the claim of the writ petitioners for equal wages for equal work is not applicable is unsustainable. The judgment of the Apex Court reported in the case of State of Punjab Vs Jagit Singh (supra) is applicable in the case of the petitioners. The concept of waiver is inapplicable in the case of violation of fundamental right. Article 14 is attracted in the instant case as equal wages for equal work is integral part of Article 14 as held out by Apex Court.



36. Adverting to the submission of the Advocate General, with reference to para-13 of the supplementary counter affidavit quoted hereinabove, I do not find any justification permissible for adopting two different pay scales. In para-13 of the supplementary counter affidavit on behalf of the State distinction has been drawn between teachers appointed prior to framing of 2006 Rules and the Niyojit Shikshak appointed after 2006. The distinction was drawn on the basis of Cadre, status, nature of Cadre, Nomenclature of post, appointing authority, mode of recruitment, rules, status of appointment rules, number of teachers and appellate authority. There is absolutely no statement that there is any difference in the nature of job of the erstwhile teachers appointed prior to 2006 rules and the Niyojit Teachers.

37. I would like to note at this stage that the undisputed fact that they are engaged in evaluation of work in the examination of secondary or +2 examination conducted by the Bihar School Examination Board, I have definite reason and material to hold that they are performing the same job, share the same responsibility, confidentiality in discharge of their duties and they cannot be in any manner treated inferior to their counter parts teachers being paid higher salary.



38. The parameters laid down for the test of 'equal pay for equal work' in Jagjit Singh's case (supra) are –

(i) Whether the person claiming equal pay are discharging identical duties, performing the same work like the persons with whom they claimed equality in pay scale?

(ii) Whether they are equal in power, duty, responsibility, sensitivity and similar merit qualification and hierarchy of post or they have higher nature of work, different types of post, duties qualitatively different? or, if the higher pay is objective of ameliorating stagnation or lack of promotional avenue.?

In substance the aforesaid are the determining points for consideration of 'equal pay for equal work'.

39. From the counter affidavit, supplementary counter affidavit and the submission of the Advocate General there is absolutely no submission or pleading that the Niyojit Shikshak are not discharging the identical duties or not performing the same duty. There is no denial that they are in no way inferior to their counterparts appointed prior to 2006 Rules in the matter of their qualification, training, quality, sensitivity, responsibility, etc. There is no case of teachers appointed prior to 2006 Rules that they are performing higher nature of official work or risk, they are qualitatively different or they have been granted such higher pay



scale on account of lack of promotional avenue. Artificial distinction set out in para-13 of the supplementary counter affidavit does not answer the issue raised by the petitioners and the principles laid down by the Apex Court in the **Jagjit Singh's** case (supra). The Apex Court has also noted in the said case that selection by open or limited to cluster is not material or duration of the working also not relevant provided they perform the same duty and they have the same qualification referring to the judgment in the case of **Bhagwan Das** case.

40. In **Jagjit Singh's** case (supra) the Apex Court noted in POaragraph 45 the ground for declinig equal pay for equal work, i.e. (1) if the duty and responsibilities are not similar or equivalent, (2) if duties and responsibilities discharged by the employee holding referene posts are not comparable with post hold by employees claiming equal pay.

41. I am of the considered view that no such ground exist for declining equal pay as the materials on record in this batch of cases to the contrary it is firmly establish that Niyojit Shikshak are discharging same duty and responsibiolity, their qualification and training is also similar, they are imparting instruction in the same school, they are in no way inferior, less meritorious or less sensitive than their counterparts holding referene post but they are



even paid less than the support class-III and IV staff in the same school.

42. I find fallacy in the submission of the Advocate General that Niyojit Teachers are appointed under different scheme and as such not entitled to equal pay for equal work.. In fact, the Apex Court in the case of **Jaipal and others Vs. State of Haryana & others: AIR 1988 SC 1504** has already answered this issue and as such I cannot approve the act of the respondents in granting different pay scale. The relevant part of the judgment in **Jaipal Singh** case in paras 6 and 8 is quoted below.

“6. We have given our anxious consideration to the material placed before us. On a careful analysis of the same we find that the nature of duties and functions performed by instructors are similar to those performed by squad teachers. The functions and duties of both classes of persons are primarily directed to advance the cause of education to bring social awareness among the people in the rural areas and to create interest in various social economic and educational activities. Bringing adults to centre for educating them is a difficult task and to impart education to drop-outs children is not an easy job. One of the main duties of the instructors is to motivate the adults and drop out children to participate in the activities and to motivate them for taking education. The instructors teach four hours a day and thereafter they have to do survey work and motivation work in addition to that the instructors are required to carry



out additional duties which are assigned to them by the Department. This is evident from the circular letter dated 4.3.1987 issued by the Joint Director, Adult Education (Annexure B) to the affidavit of Rajinder Singh petitioner. The letter was circulated to all the instructors of adult and informal education, it reads as under:

"Dear

To bring adults in centres is a very difficult task. This is possible only when our centres are attractive and adults feel happy to come to the centres and forget all their worries after coming to the Centre. Instructors should behave with the adults in such a way that they think him their friend and guide. The adults should be told that by hearing, reading the writing, they can know about the Government Scheme made for their benefit and progress. Every Instructor is supposed to know about all such schemes so that they can guide their students. The Adults should get the guidance from the instructors as to how they can get loans from various banks and cooperative Societies. In the coming year we must equip the instructors with training so that they can fulfil the responsibility given to them.

In a meeting held at Karnal you were told about the facilities being given to widows and old persons. You have to properly propagate the same.

I will be very grateful to you for circulating this letter to all the instructors and supervisors.

Office Dist. Adult Education officer Karnal. Page No. A-d-4/3480-659, Karnal dated 13.3.1981.



One copy of the letter to be circulated to all instructors and supervisors of Adult and Informal Education for necessary action.

Dist Adult Education officer
Karnal 13.2.1987."

The aforesaid duties which are required to be performed by the instructors are in addition to their four hour teaching duty. Further the instructors are required to organise sports like kho-kho, kabadi and athletics, and to participate in the local functions and to motivate affluent villagers to give donations for the adult education scheme. This is evident from a circular letter issued by the District Adult Education officer, Ambala on 12.11.1986 (Annexure to the affidavit of Rajender Singh). Having regard to these facts and circumstances we are of the view that there is no difference in the nature of duties of the instructors and squad teachers and both of them carry out similar work under the same employer. The doctrine of equal work equal pay would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. If the two class of persons do same work under the same employer, with similar responsibility, under similar working conditions the doctrine of 'equal work equal pay' would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a Constitutional obligation to ensure that equal pay is paid for equal work.

8. The respondents' contention that the mode of recruitment of petitioners is different from the mode of recruitment of squad teachers inasmuch as the petitioners are appointed locally while squad teachers were selected by



the subordinate Service Selection Board after competing with candidates from any part of the country. Emphasis was laid during argument that if a regular selection was held many of the petitioners may not have been appointed they got the employment because outsiders did not compete. In our opinion, this submission has no merit. Admittedly the petitioners were appointed on the recommendation of a Selection Committee appointed by the Adult Education Department. It is true that the petitioners belong to the locality where they have been posted, but they were appointed only after selection, true that they have not been appointed after selection made by the Subordinate Service Selection Board but that is hardly relevant for the purposes of application of doctrine of "equal pay for equal work". The difference in mode of selection will not affect the application of the doctrine of "equal pay for equal work" if both the class of persons perform similar functions and duties under the same employer. Similar plea raised by the State of Haryana in opposing the case of supervisors in the case of Bhagwan Dass (supra) was rejected, where it was observed that if the State deliberately chose to limit the selection of candidates from a cluster of a few villages it will not absolve the State for treating such candidates in a discriminatory manner to the disadvantage of the selectees once they are appointed provided the work done by the candidates so selected is similar in nature. The recruitment was confined to the locality as it was considered advantageous to make recruitment from the cluster of villages for the purposes of implementing the Adult Education Scheme because the instructors appointed from that area would know the people



of that area more intimately and would be in a better position to persuade them to take advantage of the Adult Education Scheme in order to make it a success.”

(Emphasis Supplied)

43. Adverting to the submission of learned Advocate General that the petitioners have derived the benefit under 2006 Rules, they cannot now question the Rules 6 and 8 and claim equal pay for equal work. This submission of the learned Advocate General deserves to be rejected as such plea on behalf of the model employer like State is unsustainable as the Apex court time and again reiterated that beggars are not choosers and in a situation where there is no equal bargaining position, the decision of State or its instrumentalities prescribing arbitrary condition in the contract amounts to violation of fundamental right. It is to be noted here that the Apex Court in the case of **Ramana Dayaram Shetty vs The International Airport : AIR 1979 SC 1628** held out that the State cannot discriminate even in the matter of distribution of largess and bounty. The plea of the State that it can grant higher pay scale to the teachers discharging the same duty with same qualification and deny the same to the teachers appointed after 2006 is, in my opinion, arbitrary and unreasonable. The decision of the State in the matter of grant of lower pay scale to the teachers discharging the same responsibility and duty having



same qualification in the same nationalized school does not satisfy the requirement of even reasonable classification. Such decision is in teeth of the law laid down by the Apex Court in **State of Punjab Vs. Jagit Singh** (supra).

44. I have no manner of doubt in holding that the teachers appointed under 2006 Rules cannot be denied the equal pay for equal work on the ground that they have accepted the condition under Rules 6 and 8. We reiterate that courts have always deprecated unconscionable bargaining. The judgment of the Apex Court in **Central Inland Water Transport Corporation vs Brojo Nath Ganguly & Anr : AIR 1986 SC 1571** as one of such judgment where the Apex Court has deprecated such action. The observation in paras 79, 90, 111 are illuminating on this aspect which is quoted below:

“79. Legislation has also interfered in many cases to prevent one party to a contract from taking undue or unfair advantage of the other. Instances of this type of legislation are usury laws, debt relief laws and laws regulating the hours of work and conditions of service of workmen and their unfair discharge from service, and control orders directing a party to sell a particular essential commodity to another.

90. Should then our courts not advance with the times?

Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking



caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. [Article 14](#) of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in [Article 14](#). This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to



situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

111. We would like to observe here that as the definition of "the State" in Article 12 is for the purposes of both Part III and Part IV of the Constitution, State actions, including actions of the instrumentalities and agencies of the State, must not only be in conformity with the Fundamental Rights guaranteed by Part III but must also be in accordance with the Directive Principles of State Policy



prescribed by Part IV. Clause (a) of Article 39 provides that the State shall, in particular, direct its policy towards "securing that the citizens, men and women, equally have the right to adequate means of livelihood." Article 41 requires the State, within the limits of its economic capacity and development, to "make effective provision for securing the right to work". An adequate means of livelihood cannot be secured to the citizens by taking away without any reason the means of livelihood. The mode of making "effective provision for securing the right to work" cannot be by giving employment to a person and then without any reason throwing him out of employment. The action of an instrumentality or agency of the State, if it frames a service rule such as clause (a) of Rule 9 or a rule analogous thereto would, therefore, not only be violative of Article 14 but would also be contrary to the Directive Principles of State Policy contained in clause (a) of Article 39 and in Article 41."

45. The Apex Court has discussed the principles for pay fixation in the case of **Secretary Finance Department Vs West Bengal Service Commission: AIR 1992 SC 1203** and laid down the principle where the court has to interfere to undo injustice. We find that instant is the fit case where the court should step in and issue direction for taking decision to grant equal wages for equal work. We do not find any substance in the submission the learned



advocate general that the source and mode of recruitment of the petitioners and the teachers appointed prior to 2006 are different.

46. I also find that the poor pay scale to the Niyojit Shikshak has adversely affected the academic atmosphere in the state of Bihar. The ill paid teachers without having any promotional prospects cannot be expected to deliver the best. The settled Principle of personal management is that incentive and prospect boost the moral of man force in service. The better salary and prospect in the career is catalyst for the best performance, the teachers in such schools drawing less than the class 4 employee are not good to the institution and the society. It is a matter to introspect and the State Government must rise to the situation and undo the injustice by making payment at par with the other regular teches to the Niyojit teachers. It appears that the poor payment to the teachers appointed under 2006 Rules has adversely affected the recruitment of the best and most competent teachers and probably that is one of reasons that there is mushrooming of coaching Institutes where the students are more attracted then regular teaching in the school. The Court cannot ignore the ground reality.

47. In the totality of the fact situation I am constrained to hold that the judgment of the Apex Court in the case of **Jagjit Singh** (supra) is applicable in the case of the petitioners and Rules 6 and



8 of 2006 Rules are on the face of it runs contrary to Article 14 of the Constitution which prohibits for discrimination and arbitrary pay fixation.

48. After hearing the parties and considering the resolution contained in memo no. 1530 dated 11th August, 2015, I am of the considered view that the grievance of the petitioners challenging the validity of Rules 6 and 8 has now become academic as the State Government in the Education Department has already issued resolution and thus placed the Niyojit teacher in the pay scale of Rs. 5000-200-20200 and grade pay of 2000, trained primary teachers 2400, to graduate trained primary teachers, whereas the trained secondary teachers 5200-20200, grade pay 2400, in the grade pay of 5200-20200 grade pay 2400, trained higher secondary/+2 teachers in the pay scale of 5200-20200, grade pay 2800/-. Thus the effect of Rule 8 prescribing fixed remuneration has been undone by the State Government but with effect from 11th August, 2015.

49. In view of the resolution dated 11th August, 2015, I see no reason to enter into the controversy of validity of Rule 8 of 2006 as the State Government took a conscious decision to convert the Niyojit teacher from fixed salary to prescribed pay scale and grade



pay and thus Rule 8 of the 2006 Rules for all practical purposes have become now redundant.

50. In view of resolution dated 11th August,2015 when the State Gpovernment itself realized their mistake as to payment of fixed salary the Court has to simply examine whether the Niyojit Teachers are entitled to the benefit of regular pay and grade with effect from their appointment under 2006 Rules and also to consider whether the resolution dated 11th August 2015satisfy the principle of ‘equal pay for equal work’

51. The procedure for appointment under Rule 6 is hardly a matter to be examined for the purpose of the prayer of the writ petitioners in this batch of the writ petition. Irrespective of the procedure for selection, the State Government has decided to place the teachers appointed under 2006 Rules which was amended from time to time in the pay scale and pay grade and as such, I find no justification to enter into the legality and constitutional validity of the rule 6 and challenge made by the petitioners in the batch of writ applications.

52. So far as the validity of the Rule 8 of 2006 Rules, I find that the State Government purportedly framed Rule in furtherance of 73rd and 74th amendment of the Constitution and in furtherance of item 17 of schedule 11 and item no. 13 of schedule 12 but in the



totality of the fact situation I am of the considered view that purported exercise was only a colourable exercise of power by the State of Bihar, firstly that in the name of exercising legislative power under Rule 243(b) and 243(W) read with item No. 17 of 11th schedule and item no. 13 of 12th schedule, 2006 Rules have been framed but the State Government has not authorized the local self government to set up schools, elementary, middle, secondary and higher secondary. It has not even authorized the local self government to prescribe the service condition. In the totality of the fact situation, I find that at every stage the State Government is taking decision with regard to prescribing the service condition, fixing qualification, pay scale and the Directorate of Primary Education and secondary education is supervising the entire education system from primary to higher secondary level which is evident from 2006 Rules itself. The rule was framed by the Human Resources Development Department and not by the Panchayati Raj Department. The resolution granting pay scale and pay band to the Niyojit teacher was also issued by the State Government. If I lift the veil I find that the State Government is the real player regulating the entire service conditions of the Niyojit teacher and the petitioners are in fact the employee of the State Government continuing in the Natinalised School. I also find that the action of



the respondents in creating a class of Niyojit teacher for imparting instruction in the same nationalized school on fixed remuneration under Clause 8 of the Rule is a kind of exploitation impermissible under Article 23 of the Constitution.

53. In the aforesaid circumstances, I am of the view that the fixed salary to Niyojit teacher was coined by the respondents in colourable exercise of power as the idea was not to appoint such teaches in project for a limited purpose in the school established by the Panchayat Raj Institution or authorizing them to prescribe the service condition under the scheme of 73rd or 74th amendment of the Constitution but it was a device to appoint regular teachers in the same nationalized school taking advantage of poor bargaining power of job seeker and the problem of unemployment. Such device evolved by the State to appoint teachers as a substitute for the regular teachers and paying them even less than the class IV employees cannot pass the test of rationality and reasonableness under Article 14 of the Constitution.

54. Accordingly, following the judgment of the Apex Court in **Delhi Transport Corporation vs D.T.C. Mazdoor Congress: AIR 1991 SC 101**, I read down Clauses 6 and 8 down as inapplicable, ineffective, inoperative from the date of its very inception as it is arbitrary and unconstitutional and violative of



Article 14 of the Constitution in the case of the petitioners, Niyojit Shikshak who are working in the same nationalized schools, particularly in view of Resolution of the State Government dated 11th August, 2015 when the State itself rectified its mistake and admitted Niyojit Shikshak in pay scale and grade pay. Petitioners have established their case for a direction to the respondents to ensure equal pay for equal work and make payment of salary at par with their counter parts nationalized school teachers/Project school teachers. Principle and the finding in the case of secondary and +2 school would mutatis muandis apply to the case of all primary teachers appointed under 2006 Rules as amended from time to time.

55. Adverting to the claim of the writ petitioners as to equal pay for equal work, I find that the petitioners are performing the same responsibility and duty of imparting instructions in the same nationalized school right from very inception. The teachers appointed as Niyojit teacher are holding the same qualification like their counterparts appointed prior to the framing of 2006 Rules, they are working in the same nationalized school and from the materials available on the record, i.e. the notification issued from time to time prescribing the service condition, fixed pay scale and grant of pay scale and pay band, are indicative of the fact that for



all practical purposes they are continuing as the State Government employees.

56. Mr. Rajendra Prasad Singh has submitted copy of the Resolution dated 21.6.2017 issued by the Deputy Secretary to the Education Department whereby the benefit of revised pay scale to the teachers working in the nationalised schools known as Niyojit Shikshan have been granted the benefit of 7th pay Revision Committee report but on the basis of discriminatory, inadequate rather poor, exploitative and humiliating pay and grade.

57. In view of the judgment in **Jagjit Singh** (supra) particularly paras 57 to 59 this Court is required to consider the case of the writ petitioner treating 'equal pay for equal work' as constitutional obligation.

“57. There is no room for any doubt that the principle of “equal pay for equal work” has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The parameters of the principle have been summarized by us in paragraph 42 hereinabove. The principle of “equal pay for equal work” has also been extended to temporary employees (differently described as work-charge, dailywage, casual, ad-hoc, contractual, and the like). The legal position, relating



to temporary employees, has been summarized by us, in paragraph 44 hereinabove.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage, does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows that his dependents would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:- “7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal



value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.” India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of “equal pay for equal work” constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.”

58. Thus materials on the record are clinching on the point that the Niyojit Teacher are regular teacher working in the nationalised school under the control of the State Government. The State Government has adopted two different pay scale one for the Niyojit Shikshak and the other for the teachers known as regular teachers appointed prior to framing of 2006 rules. Such



discrimination in the pay scale on the basis of artificial distinction is unreasonable.

59. During the course of hearing counsel for the petitioners submitted that these teachers are also doing the same evaluation work of secondary or +2 examination conducted by BSEB, Board and they are paid the same remuneration which is paid to the teachers who are in regular pay scale. Thus, from the materials available on the record, we have no hesitation in holding that these petitioners are entitled to the protection of 'equal pay for equal work' in the light of the judgment of the Apex Court in State of Punjab Vs. Jagit Singh (supra). Accordingly, we hold that the petitioners are entitled to the grant of 'equal pay for equal work'.

60. On 16.10.2017 at 3.30 P.M. on behalf of the on behalf of the Principal Secretary, Education Department a written submission has been filed to supplement the submissions advanced by the Advocate General on behalf of the State on 9.10.2017, paras 1 to 7 of which are quoted below for ready reference.

1. That in the instant matter argument proceeding are completed and order reserved on 09.10.2017, the instant written submission is being filed with a view to supplement the contentions raised in the earlier affidavits in respect of claim raised by the petitioners in this case.



2. That it is stated that at present 3,19,703 teachers in Elementary Education and 37,529 teachers in Secondary & Higher Secondary Education are working under Panchayati Raj institutions and Urban Local Bodies and the State Government provides grants-in-aid to the local bodies for the payment of salary to such teachers and at present the estimated budgetary expenditure is about rs. 8924.48 Crores per annum.

3. That if the teachers appointed by the local bodies are allowed salary at par with teachers of dying cadre of State Government, the estimated budget will come to Rs. 18853.96 crores, for which additional budgetary allocation of rs. 9929.48 crores will be required.

4. That it is relevant to mention here that there are large number of vacancies of teachers from Elementary level to Higher Secondary level which are likely to be filled up in due course. As per available information 1,71,775 vacant posts of teachers in Elementary Education and 38000 vacant posts in Secondary/Higher Secondary Education exist and this way, an additional amount of Rs. 6144.02 crores would be required to meet salary for payment of future recruitments.

5. That in view of aforementioned discussions, it would be evident that an additional budgetary allocation of Rs. 16073.50 crores would be required to meet the expenses likely to be incurred in payment of salary to the working teachers as well as teachers



likely to be recruited in near future under local bodies in addition to the present estimated budgetary expenditure of Rs. 8924.84 crores, which would be apparent from the chart annexed herewith. A photocopy of composite chart is annexed herewith and is marked as Annexure-R in this written submission.

6. That it is relevant to point out here that at present the total budgetary provision on education by the state Government is rs. 25251 crores which is about 16% of total budgetary provision of the State Government and if the prayer of the petitioner of these bunch of writ application would be allowed, the fiscal condition of the State would get adversely affected and further, it would also affect all other duties and functions including welfare programme of the State Government.

7. That in view of the aforementioned facts, the deponent humbly submits that while deciding the issue in question, the aforesaid fact needs to be considered by this Hon'ble Court.

61. On behalf of the Principal Secretary, except financial constraints no other issue has been raised in the written submission filed on 16.10.2017. I am unable to accept the submission of the State on account of budgetary expenditure or financial constraints. The State cannot take a plea of financial constraint to justify arbitrary grant of pay scale and perpetuate discrimination in teeth of Article 14 of the Constitution of India. The Apex Court negated



the plea of financial constraints in **Municipal Council of Ratlam Municipality Vs. Vardhichand & Ors.: (1980) 4 SCC**. Recently the Apex Court has rejected the plea of financial constrain in the case of **Mahatma Gandhi Vs. Bhartiya (2017) 4 SCC 449** wherein it was pleaded that it is not possible to grant equal pay for equal work due to financial constraint. The plea of financial Constraint is not justified for denying the 'equal pay for equal work'.

62. I do not find any merit in the submission of the State that on account of financial burden incurred on granting equal pay for equal work, the Niyojit Teachers are not entitled to equal pay for equal work. The financial constraints is only a camouflage and in any event it cannot be a ground to adopt two pay scale for the teachers working in the same school, discharging same responsibility having the same educational qualification. Even the State Government has real financial constraint as pleaded in the written notes of argument it cannot justify its action of denying equal pay to Niyojit Teacher in view of the fact that even the class IV employees are paid more salary than these petitioners. We hasten to add that on the date when hearing was concluded on 9.10.2017 the learned Advocate General pleaded that he has no instruction on the point that Class IV employees and Class III



employees are drawing higher salary than these petitioners and no tabular chart was made available to him earlier. On 16.10.2017 when the written notes of argument was filed after seven days, we do not find any answer by the State Government on the point of payment of salary to the teachers less than the class III and IV employees and as such we have reason to believe that contention raised on behalf of the petitioners are admitted and in the backdrop of the aforesaid, we find the action of the State Government is not only discriminatory but arbitrary and against all principles of the model employer.

63. If the State cannot discriminate in the matter of distribution of largess and bounty as held in **Ramanna Daya Ram Setty's** case (supra), we are constrain to hold that the plea of the State as to financial constraint is only a camouflage and is not acceptable. We out rightly reject the contention of the State pleaded in the written notes of argument quoted hereinabove.

64. Accordingly, I direct the State Government to grant them the 'equal pay for equal work' from the date of their entry in the service notionally and actual payment with effect from 8.12.2009 when the first writ application in the batch of writ petitions, CWJCNo. 17176 of 2009 was filed.



65. In view of my finding that petitioners Niyojit Shikshak are entitled to 'equal pay for equal work', I have no hesitation in deciding the issue that the petitioners are entitled to a direction for fixation of their pay at par with their counterparts regular teachers. I, accordingly, direct the respondents to revise the pay scale of the petitioners at par with their counterparts regular teachers in the same pay scale and grade pay and work out their entitlement with effect from 8.12.2009, the date of filing of CWJC No. 17176/2009 and also grant benefit of 7th Pay Revision after fixing their pay scale from the date of their entry in service applying the principle of 'equal pay for equal work'.

66. All the writ applications are accordingly, allowed in the following terms:-

(i) Rules 6 and 8 of the 2006 Rules are read down as ineffective from its very inception.

(ii) The petitioners are entitled to "equal pay for equal work"

(iii) The respondents are directed to fix their pay scale like regular teachers of the nationalised school with effect from the initial date of appointment notionally and actual payment with effect from 8.12.2009, the date of filing of CWJC No. 17176 of 2009, in view of the fact that such grant of relief from the date of filing of the writ application was approved by the Apex Court in



the case of **State of Haryana v. Charanjit Singh** discussed in the judgment of Jagjit Singh's case (supra) and I have held that Rule 8 is inoperative, in effective, inapplicable from the date of inception as it is arbitrary and unconstitutional and violative of Article 14 of the Constitution so far as the Niyojit Shikshak are concerned.

(iv) The respondents are also directed to revise the pay scale of the petitioners according to the principles of pay revision under recommendation of the 7th Pay Revision to the Niyojit Shikshak like other regular employees after granting equal pay for equal work notionally from the date of their appointment and actual payment with effect from the date of filing of 1st of the batch of writ petitions, i.e. 8.12.2009.

(v) Such exercise must be completed within a period of three months from today and monetary benefits admissible to the Niyojit Shikshak must be paid to them within a further period of three months.

67. This decision is applicable to all the Niyojit Shikshak irrespective of the fact that they have been appointed in the secondary or +2 or primary school in the nationalized school or other schools in the respective Gram Panchayat or Nagar Panchayat under the scheme of 2006 Rules as amended from time to time.



68. I, accordingly allow all the writ applications in the above terms.

(Anil Kumar Upadhyay, J)

Per: Hon'ble the Chief Justice

I have gone through the detailed judgment authored by my learned Brother Justice Anil Kumar Upadhyay and fully agree with the opinion expressed by him and the conclusions drawn. However, I would like to add certain reasons to justify, allowing the prayer made by the petitioners.

Admittedly, the State Government has prescribed different pay scales for teachers who are before us and who are termed as Niyojit Teachers appointed under the Rules, 2006, they claim parity with the teachers appointed prior to coming into force of Rules, 2006. The justification given by the State Government for having two different pay scales for both these class of teachers are primarily based on the fact that the teachers appointed under the Rules, 2006 are appointed by the Gram Panchayats or the Nagar Panchayats or the Local Self Governance authorities and not by the State Government as was the position prior to 2006. It is the case of the State Government that after Rules, 2006 have



been created, the earlier appointed teachers and their cadres have been declared as a 'Dying Cadre' and, therefore, by creating a separate cadre, known as 'Dying Cadre', it is tried to be established that there are two categories of teachers, who, as indicated in the detailed judgment rendered by Brother Upadhyay, are working in the same school and imparting instructions under the same system of education. Various factual aspects with regard to qualification, training of teachers, work performed by the two so called different cadres, duties discharged by them, their responsibility and the fact that both discharge duties identical in nature in the same institute are all dealt with in detail by Brother Upadhyay. However, I reiterate and confirm these findings, but deem it appropriate to refer to certain principles discussed in various judgments of the Hon'ble Supreme Court not only with regard to the principles of "equal work for equal wages", but the principles governing rule of equality before law and the requirement of Article 14 of the Constitution.

Apart from the judgment, in the case of **State of Punjab v. Jagit Singh: (2017) 1 SCC 148**, recently, the Hon'ble Supreme Court has discussed the principle governing the rule of 'equal pay for equal work' again in the case of **State of Punjab and Ors. v. Senior Vocational Staff Masters Association and**



Ors.: AIR 2017 SC 4072. In the said case, the State of Punjab created a distinction between degree and diploma holder Vocational Lecturers and Vocational Masters by granting a higher pay scale to Lecturers than masters, even though they were treated similarly earlier. When the differential treatment was being granted to the employees of one group, the matter travelled to the High Court and subsequently to the Hon'ble Supreme Court. While considering the principle of 'equal pay for equal work' and the principles governing law of equality, the Hon'ble Supreme Court held that creation of an artificial distinction between persons in the same cadre or class would amount to violation of Article 14 of the Constitution. In the present case before us also, in the cadre of teachers, discharging identical duties without any difference in qualification etc., an artificial distinction is tried to be created by contending that the teachers appointed under the Rules 2006 form a different class from those who were appointed prior thereto, and the Employer for these cadres are different, i.e. in one case it was the State Government whereas in the other it is the Panchayat. According to the Hon'ble Supreme Court, doctrine of equality is dynamic and prohibits distinction which lacks object of achieving equality in matters of employment. It is well settled



in law that Article 14 of the Constitution prohibits class legislation, but does not prohibit reasonable classification.

In this case, the question is as to whether the classification created by the State Government is a reasonable classification or not. In our considered view, it is not so, because the Scheme formulated under the Rules, 2006 indicates that appointment of Secondary and Higher Secondary Teachers, both in the Nationalized Schools and the Government Schools falling within the jurisdiction of the respective Gram Panchayat or the Nagar Panchayat, is to be done under these Rules by the statutory authorities under the Local Self Governance Scheme envisaged under the Constitution. Brother Upadhyay has dealt with this issue in detail and has found that the teachers appointed under the Rules, 2006 have all the qualifications prescribed for appointment of teachers prior to framing of these Rules in the Nationalised School and there is nothing as indicated by him, to which I also agree, to show that the teachers appointed in the Nationalised High School and +2 Schools after framing of the Rules, 2006 are not identical, on the contrary they are found to be similar or rather identical in all respects, i.e. with respect to qualification and training required for appointment, discharge duties and responsibilities etc. In fact, both these class of teachers teach in



the same school, to the same set of students, impart instructions in the same syllabus and subjects prescribed by the statutory Board and the students appear in the same examination conducted by the same statutory Board. If that be the position, it is not known as to how a different class or cadre is created with regard to teachers appointed prior to and after the Rules, 2006 only because the schools are now managed or administered by the Panchayats. This, in our considered view, is not a reasonable classification, on the contrary it amounts to creating an artificial distinction between the two identical set of teachers, who for all practical purposes, can be termed to form a common cadre or a homogeneous class and if we analyze the principles of law laid down by the Hon'ble Supreme Court in the case of **Senior Vocational Staff Masters Association** (Supra), we find that in para 14 and 15 the Hon'ble Supreme Court lays down the following principles:-

14. It is a cardinal principle of law that Government has to abide by rule of law and uphold the values and principles of the Constitution. Respondents herein alleged that creating an artificial distinction between the persons in the same cadre would amount to violation of Article 14 i.e. equality before law and hence, such an act cannot be sustained. The doctrine of equality is a dynamic and evolving concept having many dimensions. Article 14-18 of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination which lacks the object of achieving equality, in matters of employment. It is well settled that though Article 14 forbids class legislation but it does not forbid



reasonable classification. When any rule of statutory provision providing classification is assailed on the ground that it is contrary to Article 14, its validity can be sustained if it satisfied two tests, namely, that the classification was to be based on an intelligible differentia which distinguishes persons or things grouped together from the others left out of the group, and the differentia in question must have a reasonable nexus to object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the Statute or the Rule.

(Emphasis supplied)

15. It is evident that at the time of initial appointment, both the degree holders and the Diploma holders were appointed by a common process of selection where for the engineering trade a degree was required and for the non-engineering trade a diploma was considered as the appropriate qualification. A common advertisement was issued and a common process of selection led to the appointment of all persons who were designated as Vocational Masters. They were appointed on a pay scale higher than the general lecturers. They continued to draw a higher scale till the year 1978 when the pay scale of the general lecturers was brought at par with the pay scale of the Vocational Masters. It is only in the year 1995 that an effort was made by the State Government to create a distinction between the degree holders as vocational lecturers and diploma holders as vocational masters.”

and finally in para 17 Hon'ble Court holds that the principle of equality is also fundamental in formulation of any policy by the State and the same can also be seen on a perusal of the provisions embodies in Part IV of the Constitution which are founded on the requirements of Articles 28, 39, 39-A, 43 and 46. According to the



Hon'ble Supreme Court, these Articles of the Constitution mandates the State and imposes upon them a constitutional obligation to assure a social order, provide justice both social and economic and minimize monetary inequalities. If the case in hand is analyzed in the backdrop of various principles discussed by the Hon'ble Supreme Court in the aforesaid case, we have no hesitation in holding that the act of the State Government in creating a class within a class violates all norms of justice and constitutional requirement.

As far back as in the year 1982 in the case of **People's Union for Democratic Rights and others v. Union of India and others**, [AIR 1982 SC 1473], commonly known as "Asiad" case, the Hon'ble Supreme Court has considered various aspects pertaining to duty of the State under the Constitution which mandates ushering in a new economic order to the working class. Even though the Hon'ble Supreme Court in the said case was discussing the question of forced labour, its prevention and prohibition under Article 23 of the Constitution, but while discussing the principle it is indicated in the said judgment that it is legitimately presumed of the Government that when service is taken or work is extracted from the labour force, it has to be on payment of remuneration which should be at least minimum



wages payable to a class or cadre of employees. While doing so, the Hon'ble Supreme Court observes that the Constitution makers have given to this country a most remarkable document in history which contemplates ushering in of a new social and economic order which has to be enforced for achieving a social purpose and, therefore, every phrase or provision of the Constitution must be interpreted in a manner so as to advance social economic objective of the Constitution. While interpreting and discussing the meaning of word, 'force' as it appears in Article 23 of the Constitution, Hon'ble Supreme Court goes on to say that the word, 'forced' used in Article 23 must be construed to include not only physical or legal force, but also force arising from the compulsion of economic circumstances which leaves no choice of alternative to a person in want and compels him to provide service even though remuneration received for it is less.

The Hon'ble Supreme Court further holds that the State has to act as a model employer and is expected to give wages and salary to its citizen meeting the constitutional mandate and cogent justification for not doing so should be available, exploitation of the working class is prohibited in the Constitution and excuse of financial constraint cannot be accepted in the matter of treating the same set of people or persons in a different manner.



If the act of the State Government in the instant case is analyzed in the backdrop of the aforesaid judgment, we have no hesitation in holding that same cannot be upheld, it does create a separate class in an otherwise homogeneous class on considerations which are not at all reasonable or justifiable.

Again, in the case of **Transport and Dock Workers Union and Others Versus Mumbai Port Trust and Another**, [(2011) 2 SCC 575], Hon'ble Supreme Court had occasion to consider the implication of Article 14 of the Constitution, the principle of 'equal work for equal wages' and after considering the judgment rendered in the case of **People's Union for Democratic Rights** (supra), from para 21 onwards up to para 23 discusses various issues connected therewith in the following manner:

“21. It has been repeatedly held by this Court that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purposes of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well defined class. It is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. In order, however, to pass the test of permissible classification, as has been laid down by the Supreme Court



in the catena of its decisions, two conditions must be fulfilled; (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational relation to the object ought to be achieved by the statute in question, vide Gopi Chand v. Delhi Administration : AIR 1959 SC 609 (see also Basu's 'Shorter Constitution of India, fourteenth edition 2009 page 81).

(Emphasis supplied)

22. Thus the classification would not violate the equality provision contained in Article 14 of the Constitution if it has a rational or reasonable basis. However, the question remains: what is 'rational' or 'reasonable'? These are vague words. What may be regarded as rational or reasonable by one Judge may not be so regarded by another. This could lead to chaos in the law.

23. Should this vagueness or uncertainty be allowed to remain so that Judges may have total freedom or discretion? We think not. The law should be, as far as possible, clear and certain so that people know where they stand and conduct their affairs accordingly. Also, if total freedom is given to Judges to decide according to their own individual notions and fancies the law will run riot. Hence in our opinion an attempt should be made to clarify the meaning of the words 'reasonable' or 'rational'."

From the aforesaid principle laid down by the Hon'ble Supreme Court, it is clear that even though Article 14 of



the Constitution does not prohibit reasonable classification, but it must pass the test of permissible classification and the two conditions, i.e. the classification is founded on an intelligible differentia, and the rational or the objective sought to be achieved is established, there has to be rational or reasonable justification for the classification created. If we analyze the reasonableness of the classification in question canvassed before us and the rational given by the State Government for doing so, we are of the considered view that it does not meet the two cardinal principles of permissible classification as detailed by the Hon'ble Supreme Court in para 21 reproduced hereinabove in the case of **Transport & Dock Workers Union** (supra).

Similarly, the issue was again considered in the case of granting different pay scale to trained and untrained teachers in the State of Bihar itself in the case of **State of Bihar and others Versus Bihar State Plus-2 Lecturers Associations and others**, [(2008) 7 SCC 231] and even though classification of teachers being in the trained and untrained cadre has been upheld by the Hon'ble Supreme Court in the aforesaid case, but in this case also, the Hon'ble Supreme Court goes on to say that Article 14 of the Constitution guarantees equality before law and it prohibits the State from denying two persons or classes of persons identically



situate equal treatment. The Hon'ble Supreme Court says that the persons, who are similarly situated, should be treated equally and Article 14 prohibits classification, a classification has to be reasonable and the reason for the same has to be rational. If it is not found so, it becomes a classification which is arbitrary and cannot be upheld.

If we analyze the act of the State Government in the backdrop of all these legal principles, we find that neither the classification in question is reasonable in nature, nor is any rational justification given or the objective to be achieved is established. That being so, I agree with the conclusions recorded by my learned Brother Upadhyay and approve the same.

Accordingly, the petitions have to be and are, accordingly, allowed.

(Rajendra Menon, CJ)

AFR/NAFR	AFR
CAV DATE	09.10.2017
Uploading Date	31.10.2017
Transmission Date	

Spandey/ Sunil

