

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6670 of 2020

1. Hareram Kumar S/o Wakil Yadav Resident of Village and P.O.- Chilmil, P.S.- Muffasil, Dist- Begusarai, Bihar, Pin- 851131.
2. Prabhat Ranjan S/o Ajay Kumar Choudhary At and P.O.- Rampur Jalalpur, P.S.- Dalsing Sarai, Distt- Samastipur, Bihar, Pin- 848114.
3. Simpy Kumari D/o Manoj Singh At and P.O.- Piyariya Gourichak, Fatuha, Alwalpur, P.S.- Fatuha, Dist- Patna, Pin- 803203.
4. Pawan Kumar Pandey S/o Raja Pandey Resident of Village- Lakar, P.O.- Dhobini, P.S.- Lauriya, Dist- West Champaran, Pin- 845453.
5. Trilok Kumar S/o Mahendra Mandal At- Ram Tola, Dhamdaha Madhya, P.O. and P.S.- Dhamdaha, Dist- Purnea, Pin- 854205.
6. Madhurendra Kumar Ravi S/o Kishori Singh Resident of Village- Bakhari, P.O.- Yogivana, P.S.- Bathnaha, Dist- Sitamarhi, Bihar, Pin- 843322.
7. Manoj Kumar S/o Nagendra Prasad Yadav Resident of Village- Majauliya, P.O.- Kumma, P.S.- Sursand, Dist- Sitamarhi, Bihar, Pin- 843331.
8. Manju Kumari W/o Surendra Kumar Resident of Village and P.O.- Bhutahi, P.S.- Sonversa, District- Sitamarhi, Bihar, Pin- 843319.
9. Ritesh Ranjan S/o Bishnudeo Mahto Resident of Village and P.O.- Salauma, P.S.- Bakhari, Dist- Begusarai, Bihar, Pin- 848201.
10. Mamta Kumari D/o Jagdish Mahto Resident of Village- Sita Sadan, P.O.- Suhird Nagar, P.S.- Lohyanagar, Dist- Begusarai, Pin- 851218.
11. Vijendra Kumar Yadav S/o Umesh Yadav Resident of Village and P.O.- Pinjari, P.S.- Barbigha, Dist- Sheikhpura, Pin- 811105.
12. Madan Kumar S/o Jagdhar Rai Resident of Village and P.O.- Amarpur, P.S.- Barauni, Dist- Begusarai, Pin- 851118.
13. Naveen Kumar S/o Ashok Kumar Sharma Resident of Village and P.O.- Murli Dakahwa, P.S.- Shikarpur, Dist- West Champaran, Pin- 845103.
14. Shikha W/o Ajay Kumar Resident of Village and P.O.- B.R. Township, Nagdaha, P.S. and Dist- Begusarai, Pin- 851117.
15. Sumit Kumar S/o Jay Manu Chandravanshi Resident of Village- Chakfarid, P.O.- Singhaul, P.S.- Muffasil, Distt- Begusarai, Bihar, Pin- 851134.
16. Suraj Sharma S/o Yogendra Sharma Resident of Village and P.O.- Ulao, Sharma Tola, P.S.- Muffasil, Dist- Begusarai, Bihar, Pin- 851134.
17. Sumit Kumar S/o Pramod Mahto Resident of Village and P.O.- Chilmil, P.S.- Muffasil, Distt- Begusarai, Bihar, Pin- 851131.
18. Ranjan Kumar S/o Deenanath Ram Resident of Village and P.O.- Ramapoli, Chakra, P.S.- Muffasil, Dist- Siwan, Bihar, Pin- 841226.
19. Ankit Raj S/o Vijay Singh Resident of Village and P.O.- Pinjari, P.S.- Barbigha, Dist- Sheikhpura, Bihar, Pin- 811105.
20. Rahul Kumar S/o Anil Kumar Sharma Resident of Village and P.O.- Rajaura, P.S.- Muffasil, Dist- Begusarai, Bihar, Pin- 851131.



21. Gyan Chandra Kumar S/o Ashok Kumar Resident of Village and P.O.- Binodpur, P.S.- Muffasil, Dist- Begusarai, Pin- 851134.
22. Kumari Anshu Suman D/o Paras Nath Roy Resident of Village and P.O.- Jagdishpur, P.S.- Bhagwanpur, Distt- Begusarai, Bihar, Pin- 851112.
23. Gaurav Kumar Chaurasiya S/o Jayprakash Chaurasiya Resident of Village and P.O. and P.S.- Durgawati, Dist- Kaimur, Bihar, Pin- 821105.
24. Mantosh Kumar S/o Arjun Sharma Resident of Village and P.O.- Seranchak, P.S.- Balia, Dist- Begusarai, Bihar, Pin- 851211.
25. Nitish Kumar S/o Bijendra Prasad Yadav Resident of Village and P.O.- Khajuri, P.S.- Sourbazar, Dist- Saharsa, Bihar, Pin- 852221.
26. Manish Raj S/o Vishwanath Pandey Resident of Village- Bankat Mushahari, P.O.- Ratanmala, P.S.- Majhulia, Dist- West Champaran, Bihar, Pin- 845454.
27. Rinkee Kumari D/o Ram Sagar Bhagat Resident of Village- Azad Chowk Bishnupur, P.O.- Mirzapur, P.S.- Begusarai Town, Dist- Begusarai, Bihar, Pin- 851129.
28. Sujeet Kumar S/o Shekhar Resident of Village and P.O.- Mahsaura, P.S.- Ramgadh Chowk, Dist- Lakhisarai, Bihar, Pin- 811107.
29. Goutam Kumar S/o Jay Nandan Prasad Resident of Village- Ramanagara, P.O.- Gamhariya, P.S.- Suppi, Dist- Sitamarhi, Bihar, Pin- 843315.
30. Sajjan Kumar S/o Namonath Singh At and P.O.- Ibrahimpur Parsauni, P.S.- Phenara, Dist- East Champaran, Bihar, Pin- 845430.
31. Pintu Kumar S/o Inderdev Prasad Resident of Indiranagar, Road No.5, P.S.- Postal Park, Dist- Patna, Bihar, Pin- 800001.
32. Hareram Singhaniya S/o Ishwari Mehta Resident of Village- Jurahi, P.O.- Umga, P.S.- Madanpur, District- Aurangabad, Bihar, Pin- 824208.
33. Ranjana Kumari D/o Ambuj Kumar Mishra Resident of Village- Dudhar, P.O.- Sundarganj, P.S.- Risiap, District- Aurangabad, Bihar, Pin- 824101.
34. Nidhi Kumari D/o Ambuj Kumar Mishra Resident of Village- Dudhar, P.O.- Sundarganj, P.S.- Risiap, District- Aurangabad, Bihar, Pin- 824101.
35. Amardeep Kumar S/o Lal Bahadur Sah Resident of At and P.O.- Nirmali, P.S.- Pipra, District- Supaul, Bihar, Pin- 852131.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Deputy Secretary, Department of Education, Government of Bihar, Patna.
3. The National Council for Teacher Education, a Statutory Body of Government of India represented through its Chairperson Dr. Vineet Joshi having Head Quarters, At G-7, Sector-10, Dwarka, Near Metro Station, New Delhi.
..... Respondents
4. Harsh Kumar Son of Rabindra Lal Resident of Mansagar, P.S.- Char



Pokhari, District- Bhojpur.

5. Chandan Kumar Singh Son of Shashi Bhushan Singh Resident of Bimari, P.S.- Shahpur, District- Bhojpur.
6. Sanjeet Kumar Son of Satya Narayan Mouar Resident of Friends Colony, Katira, P.S.- Nawada, District- Bhojpur.
7. Amiya Bhushan Kumar Son of Narbdeswar Pandey Resident of Baradh, P.S.- Charpokhari, District- Bhojpur

Intervenor-Respondents (Applicants of I.A. No. 1 of 2020)

8. Dileep Kumar Yadav Son of Bisheswar Yadav Resident of Ward No. 09, Kerwar, P.O. and P.S.- Kerwar Bisfi, District- Madhubani (Bihar) Pin- 847222.
9. Sujit Kumar Son of Ramshreshth Singh Resident of Sonaul Sultan, P.O. and P.S.- Sonaul Sultan, District- Sheohar (Bihar) Pin- 843334.
10. Sunil Kumar Yadav Son of Mahendra Yadav Resident of Ward No. 10, Pariharpur, P.O. and P.S.- Pariharpur, District- Madhubani (Bihar) Pin- 847235.
11. Guru Sharan Singh Son of Jagjiban Singh Resident of Madhubani Tol, Nararh (Part in Kaluahi), District- Madhubani (Bihar) Pin- 847226.
12. Mukesh Kumar Son of Satya Narayan Singh Resident of Ward No. 02, P.O. and P.S.- Chatra, Khajauli, District- Madhubani (Bihar) Pin- 847228.
13. Santosh Kumar Singh Son of Rajendra Prasad Singh Resident of Ward No. 02, P.O. and P.S.- Chatra, Khajauli, District- Madhubani (Bihar) Pin- 847228.
14. Nand Kishore Jha Son of Lallu Jha Resident of Ward No. 08, Ghoghardiha, District- Madhubani (Bihar) Pin- 847402
15. Indradeo Kumar Son of Bechan Singh Resident of Pathrahi, District- Madhubani (Bihar) Pin- 847227.
16. Surendra Kumar Son of Brij Nandan Singh Resident of Chandpura, Tharma Sarfuddinpur, Muzaffarpur, (Bihar) Pin- 843118.
17. Mithun Kumar Devnath Son of Gourang Devnath Phulvari Pauakhali, Pawa Khali, Kishanganj, (Bihar) Pin- 855108.

Intervenor-Respondents (Applicants of I.A. No. 3 of 2020)

18. Rakesh Kumar Son of Shambhu Sahani Resident of Village and P.O.- Hussaini, P.S.- Dumariyaghat, District- East Champaran.
19. Manish Kumar Son of Gulabchand Sah Resident of Village- Kasdewra Bangra, P.O.- Kasdewra, P.S.- Maharajganj, District- Siwan.

Intervenor-Respondents (Applicants of I.A. No. 4 of 2020)

20. Abhishek Kumar Son of Mahesh Pandey Resident of - At- Narauli, P.O.- Laund P.S.- Sirdala, District- Nawada , Bihar.
21. Arun Kumar Son of Shree Ram Sharma Resident of - At- Larui bishunpura P.O- Kaniyari- P.S- Kargahar, District- Rohtas , Bihar.
22. Tripti Kumari Sriwastava Wife of Sujit Kumar Verma Resident of - At- D k



- Shikarpur, Ward no.03 Narkatiaganj District- West Champaran , Bihar.
23. Dilshad Ahmad Son of Anwar Ahmad Resident of - At- Balia, P.O- Afzala Balia - P.S- District- Darbhanga , Bihar.
 24. Ranjan Kumar Mishra Son of Surendra Mishra Resident of - At- Shyam sidhap, District- Madhubani , Bihar.
 25. Kanchan Kumar Tandan Son of Paras Nath Tandan Resident of - At- Daxni Ghorasahan, P.O- Ghorasahan, District- East Champaran , Bihar.
 26. Priyanshu Chaudhary Daughter of Sudarshan Chaudhary Resident of - At Chhaparapur, P.O- Narayanpur, District- Bhojpur, Bihar.
 27. Banti Kumar Son of Dilip Singh Resident of - At- Basti P.S- Harnaut , District- Nalanda, Bihar.
 28. Reshma Prabhakar Daughter of Briendra Singh Resident of - At- Chillim, District Gaya , Bihar.
 29. Indralok Kumar Son of Ramnivash Sharma Resident of- At - Ahiai, P.O- Baikunthpur, P.S- Rajapakar, District- Vaishali, Bihar.
 30. Shradha Sivangi Daughter of Ram Sohan Mishra Resident of - At- Goh, P.O- Goh, P.S- Goh, District- Aurangabad , Bihar.
 31. Arvind Kumar Paswan Son of Ram Lakhan Ram Resident of - At- Lohain Ayar District- Bhojpur, Bihar.
 32. Deepak Kumar Dinkar Son of Ramakant Singh Resident of - At- New area Goh, District- Aurangabad, Bihar.
 33. Raju Kumar Son of Yogendra Chaudhary Resident of - At- ward no-12 near Kasturba Gandhi Balika Vidyalay Muzaffara District-Begusarai , Bihar.
 34. Govind Kumar Sah Son of Suresh Sah Resident of - At- Sonkhar Ramnagar District- West Champaran , Bihar.
 35. Kunal Kumar Son of Rajesh Kumar Resident of - At- Bhadseni P.O- Bhadseni Hisua District- Nawada , Bihar.
 36. Saurav Kumar Choudhary Son of Rambabu Choudhary Resident of - At- Rampur Jalalpur Samastipur District- Samastipur , Bihar.
 37. Ashutosh Kumar Son of Suresh Kumar Resident of - Shiv Mandir Murtujiganj , Patna City District- Patna , Bihar.
 38. Anirudh Kumar Singh Son of Yogendra Prasad Singh Resident of - Ward no-03 Chatra District- Madhubani, Bihar.
 39. Santosh Kumar Son of Laxman Singh Resident of - Manari Gachhi Ward No- 22 Balia Lakhminian District- Begusarai , Bihar.
 40. Arti Kumari Wife of Vishwajit Kumar Sharma Resident of - Ward No-05 Narhan District- Samastipur, Bihar.
 41. Sumit Kumar Gupta Son of Ajit Prakash Gupta Resident of - At- Kirtaniya P.O- Mirzachouki , Ammapali District-Bhagalpur , Bihar.
 42. Pradeep Kumar Yadav Son of Gaynand Yadav Resident of - At- Kankhudia, Ward No. 07 District- Araria, Bihar.
 43. Deepak Kumar Son of Jawahar Lal Kushwaha Resident of - Kolashi Srinagar, Ishipur Barhat Pirpainti District- Bhagalpur , Bihar.



44. Md Shakir Son of Md Sagir Uddin Resident of - Amraha,Chakand District-Gaya , Bihar.
45. Shyam Kumar Son of Maheshwar Mahto Resident of - At- Chakdadan Mahua District- Vaishali, Bihar.
46. Ravishankar Kumar Ray Son of Chhedi Ray Resident of - At- Manadaidih Ward-11 Patepur District- Vaishali, Bihar.
47. Akhilesh Kumar Son of Gagandev Singh Resident of - At- Kataru Chak Mahmad P.O- Goraul, District- Vaishali , Bihar.
48. Neha Bishwas Daughter of Pratima Bishwas Resident of - Near Purnea College Chowk Jai Prakash Nagar District- Purnea , Bihar.
49. Rakhi Jha Wife of Pramod Kumar Jha Resident of - At- Bankers Colony Laxmisagar, Padri District- Darbhanga, Bihar.
50. Ritesh Priyadarshi Son of Parmod Kumar Ray Resident of - At- Dighi Kalan District- Vaishali, Bihar.
51. Rekha Kumari Wife of Vijay Kumar Resident of - Bushuwaha Ward No-06 Thana Chauradano District- East Champaran, Bihar.
52. Mukesh Kumar Son of Shree Ashok Kumar Jaiswal Resident of - At-Virta Chauk Ward No- 05 P.O- Ghorasahan District- East Champaran , Bihar.
53. Kriti Lata Daughter of Sikandar Prasad Yadav Resident of- Laxminiya Kanp Ward No-04 sour Bazar Kanp District- Saharsa , Bihar.
54. Durgesh Kumar Son of Ramesh Sah Resident of - At-Malahi Tola Ward No-03 , P.O- Balua Rampurawa District- West Champaran , Bihar.
55. Sangita Kumari Wife of Deepak Jaiswal Resident of -Durga Chawk Murligang District- Madhapura, Bihar.
56. Shambhu Kumar Son of Subhasa Prasad Resident of - At- Dharampur P.O- Hulasganj P.S- Hulasganj, District- Jehanabad , Bihar.
57. Sadhana Kumari Son of Jayprakash Verma Resident of - At- Narayan Bigha, Ghoshi District- Jehanabad , Bihar.
58. Priti Kumari Wife of Vasav Madhup Thakur Resident of - At- Nawalpur Ward No 06 P.S- Nawalpur, District- West champaran , Bihar.
59. Sudhir Kumar Son of Madan Chaudhary Resident of - At- Nawalpur Ward No-06 P.S- Nawalpur, District- West champaran , Bihar.
60. Ashutosh Kumar Son of Visheshwar Prasad Resident of - At- Lauriya Ward No-03, Lauriya District- West Champaran, Bihar.
61. Pushpa Kumari Daughter of Vijay Prasad Soni Resident of - At- Shanti Nagar Ward No-13 Lauriya Bazar District- West Champaran , Bihar.
62. Om Prakash Prasad Son of Surendra Prasad Resident of - At- Mishra Tola Lauriya Pashchim Champaran, Bihar.
63. Subodh Shankar Son of Pandit Bhola Shankar Resident of - Ramdiha Amba Rahui District- Nalanda , Bihar.
64. Ayush Raj Son of Lakshmi Chaudhary Resident of - At- Rasulpur Korigaon, Bhagwanpur, District- Vaishali , Bihar.
65. Mukesh Kumar Singh Son of Ram Prasad Singh Resident of - P.O-



- Kodhobari P.S. Kodhabari , Foudar Palsha , Lohagarha District-Kishanganj , Bihar.
66. Kusum Kumari Wife of Jawahar Kumar Chaudhary Resident of- Ward No-05 Sakrauli Buchauli , Mahisanrh, Mahisaur District-Vaishali , Bihar.
 67. Shiv Kamal Sinha Son of Lalan Prasad Sinha Resident of - At- Amma Bigha , P.O- Fatehpur Sanda District-Arwal , Bihar.
 68. Kanchan Kumar Son of Brahma Prasad Resident of - At- Nimuiya P.O-Nimuiya , Dipahi Dharharwa District- East Champaran , Bihar.
 69. Pramod Kumar Mishra Son of Harendra Mishra Resident of - Madhavan Lamhi District- Varanasi , Uttar Pardesh.
 70. Pinky Kumari Sah Daughter of Rajendra Prasad Sah Resident of - Pauakhali Pothiya Bajar, Pawakhali Poth R.S District-Kishanjanj , Bihar.
 71. Chandrashekhar Kumar Son of Harilal Prasad Yadav Resident of - At- Ward No-05 , Bhawanipur, Jogapatti, District- West Champaran, Bihar.
 72. Raj Kishor Kumar Son of Surendra Prasad Resident of - At- Bhandra pokhar, P.O- Dhurgaon, P.S- Ekangarsarai , District- Nalanda, Bihar.
 73. Manjay Kumar Son of Ramsevak Mahto Resident of - At- Khutti Hasaili, P.O- Jagaili P.S- K.Nagar District- Purnea, Bihar.
 74. Priyanka Jaiswal Daughter pf Ganga Kumar Chaudhary Resident of - Maruf Gang Purani Jail ward no -20 District-Saharsa, Bihar.
 75. Dharmendra Kumar Son of Byas Prasad Resident of- New Area , Near Shitla Mandir, Dehari- on-sone, Dalmianagar District - Rohtas, Bihar.
 76. Aditya Kumar Son of Birendra Prasad Resident of - At- Bankatwa, P.O- Mathiya, P.S Lauriya, District-West Champaran, Bihar.
 77. Vrishti Kumari Daughter of Ram Krit Saran Prabhakar Resident of- Laloo Nagar , West Police Line Jail Road , P.O- Rampur, District -Gaya, Bihar.
 78. Sugandh Kumari Wife of Pappu Kumar Resident of- Koushik Nagar, Near Power House, P.S- Hilsa, District -Nalanda , Bihar.
 79. Md Shahjad Alam Son of Md Hasan Alam Resident of- Balwat, Jama Masjid, Ward No. 11 , Baturbari , District -Araria, Bihar.
 80. Raj Kumar Son of Madan Sah Resident of -At-Singhpur, Sihpur, District-West Champaran, Bihar.
 81. Anil Kumar Son of Ram Prasad Rai Resident of -Shivpur Thana Biraul, Birampur, District -Darbhanga , Bihar.
 82. Sarvjit Singh Son of Yamuna Singh Resident of -Nasej, Nasej ,District-Kaimur(Bhabua), Bihar.
 83. Govinda Singh Son of Rajdeo Singh Resident of -Ward NO- 04, Kshatriya Nagar, District-Aurangabad, Bihar.
 84. Vivek Kumar Thakur Son of Narendra Thakur Resident of -Ward NO-06, Navalapur, District-west champaran, Bihar.
 85. Sunita Kumari Wife of Sanjeet Kumar Yadav Resident of - At- Sadhpur, P.O Jamanpura, P.S- Daudpur, District-Saran, Bihar.
 86. Saroj Kumar Sinha Son of Basant Kumar Sinha Resident of- Kharudah,



- Barmani , Khaurdah, Thakurganj, District-Kishanganj, Bihar.
87. Raj Kishor Kumar Son of Mainekar Yadav Resident of- School Karan Patti, P.S-Purraina, puraina -Gosain, District- West Champaran, Bihar.
 88. Praveen Kumar Son of Babu Sahab Mandal P.S.- Parasa, Parasa, Samastipur, Bihar.
 89. Santosh Singh Son of Bishram Singh Resident of- Mohanpura, P.O-Kusaundhi, Hathua, District-Gopalganj, Bihar.
 90. Md Masoom Reza Son of Md Majidur Rahman Resident of- Bagdahra Ward No-08 , Anchal-Jokihat, Jama masjid tola Bagdahara, District-Araria, Bihar.
 91. Rajesh Kumar Sinha Son of Ashok Kumar Sinha Resident of- P.O-Bhauradah, Poorab Tola Bhauradah, Bahadurganj, District- Kishanganj, Bihar.
 92. Khushwar Jahan Daughter of Nazimuddin Resident of- Budhara P.O- Pothia, Budhra, District- Kishanganj, Bihar.
 93. Ajeet Kumar Son of Mukhdeo Yadav Resident of- Lembua Bahera, Amas, Naugarh, District- Gaya, Bihar.
 94. Arun Kumar Son of Krishna Balabh Singh Resident of -At- Thalu Bigha P.O- Lakhazoar , District- Jahanabad, Bihar.
 95. Badal Kumar Son of Ranjeet Prasad Gupta Resident of- At-Damodarpur, P.O Damodarpur, P.S-Kanti, District-Muzzaffarpur, Bihar.
 96. Abhiram Kumar Son of Ram Vinaya Singh Resident of- At- Sikaria P.S-Paliganj, District Patna, Bihar.
 97. Santosh Kumar Son of Lalan Yadav Resident of- Ward NO- 06, Raghuniya, Kumarkhand, District- Madhepura, Bihar.
 98. Abhay Kumar Son of Raja Ram Pal Resident of- At- Riva, P.O- Akhtiyarpur, P.S- Kargahar, Sasaram, District- Rohtas, Bihar.
 99. Chandan Raj Son of Shree Yadavlal Sah Resident of-Nawalpur, Ward NO-05 , Nawalpur, District- West Champaran, Bihar.
 - 100 Pappu Kumar Prabhakar Son of Bajrangi Yadav Resident of-At-Simuara, P.O-Mednipur Barhiya, P.S-Kurtha, Semuara, District-Arawal, Bihar.
 - 101 Dilip Prakash Ranjan Son of Ram Chandra Safi Resident of-At-Dighyar, P.O-Samaila Lalganj, P.S-Keoti, District-Darbhanga, Bihar.
 - 102 Raushan Kumar Son of Ravindra Singh Resident of-At-Baghnagri, P.O- Azizpur, Saraiya, District- Muzzaffarpur, Bihar.
 - 103 Pradeep Kumar Ray Son of Parmanand Ray Resident of- Gopalpur Darbhanga, Bihar.
 - 104 Kamlendu Kumar Son of Pramod Kumar Resident of-Alipur Bihta, District- patna, Bihar.
 - 105 Prakash Kumar Gupta Son of Ram Ratan Sah Resident of -Rajapakar, P.O- Rajapakar, P.S-Rajapakar, District-Vaishali, Bihar.
 - 106 Ajay Kumar Son of Prem Lal Singh Resident of -Khari Tola, Rupni, District- Kishanganj, Bihar.
 - 107 Manish Kumar Son of Bhupendra Yadav Resident of-Sakarpura, Ward NO-



- . 04 , Sakarpura, District- Madhepura, Bihar.
- 108 Rajesh Ray Son of Ram Shankar Ray Resident of- At-Alipur Mukund, P.O- Hasanpur Bhadwas, P.S-Mahua, District-Vaishali, Bihar.
- 109 Md Nizamuddin Son of Md Sirajuddin Resident of -Baidhnathpur, P.O- Chowk Chama, Amdabad, District- Katihar, Bihar.
- 110 Gourakh Nath Mandal Son of Anandi Prasad Mandal Resident of -At- Kanchanbari Bari P.O- Karhobari , P.S- Karhobari District- kishanganj, Bihar.
111. Vikash Kumar Son of Satyendra Singh Resident of -At-Sansa, P.O- Sansa, P.S Daudnagar, District- Aurangabad, Bihar.
- 112 Md. Shakil Son of Md Ayub Resident of - Ward No- 04, Bagban, District- Begusarai, Bihar.
- 113 Divakar Kumar Son of Upendra Prasad Roy Resident of - Ward No- 07, Kumarkhand District- Madhepura, Bihar.

Intervenor-Respondents (Applicants of I.A. No. 6 of 2020)

- 114 Sunil Kumar Son of Sri Gopaljee Prasad Resident of Village Parsauna, Bakulahar Math, P.S. Bakulhar, District West Champaran.
- 115 Chandan Kumar Son of Sri Awdhesh Prasad Resident of Chapriya Tola, P.S. Rampurwa, District West Champaran.
- 116 InduShankar Prasad Singh Son of Sri Arvind Kumar Resident of Village Lodipur, P.S. Bargaon, District Nalanda.
- 117 Vikash Abhinaw Son of Sri Krishna Bihari Roy Resident of Dharfari, P.S. Dharfari, District Muzaffarpur.

Intervenor-Respondents (Applicants of I.A. No. 7 of 2020)

- 118 Priti Mala D/o Shanti Devi Resident of Kheminichak, ADM Road, Bank Colony-2, P.O.- East Laxmi Nagar, P.S.- Ramkrishna Nagar, District- Patna.
- 119 Prashant Kumar Yadav Son of Chunchun Yadav Resident of Village- Nautoliya (Bindwara), P.S.- Kasim Bazaar, District- Munger.
- 120 Md. Tauqueer Alam Son of Md. Imtiyaz Alam Resident of Village- Chilhania, P.S.- Mahalgaon, District- Araria.
- 121 Prashant Pravir Son of Rajeev Ranjan Resident of Naya Tola, Purani Bazar, Chitranjan Road, P.S.- Lakhisarai, District- Lakhisarai.
- 122 Md. Tabrez Khan Son of Md. Qurban Khan Resident of Village- Kazipur, P.S.- Simri, P.O.- Dumri, District- Buxar.
- 123 Ashish Kumar Joshi Son of Mahesh Kumar Joshi Resident of Village- Barhiya, Near Ganesh Mandir, P.S.- Barhiya, District- Lakhisarai.

Intervenor-Respondents (Applicants of I.A. No. 8 of 2020)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Advocate
Mr.Ashish Giri, Advocate



For the State : Mr.Ashutosh Ranjan Pandey, AAG-15
Mrs. Shilpa Singh, G.A.-12
Ms. Abhanjali, AC to GA-12
For NCTE : Mr. Sunil Kumar Singh, Advocate
For the Intervenors : Mr. P.K.Shahi, Sr. Advocates
Mr. S.S.Sundaram, Advocates
Mr. D.K.Sinha, Sr. Advocates
Mr. Mrigank Mauli, Advocates
Mr. Prince Kumar Mishra, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
C.A.V. JUDGMENT**

Date : 04-11-2020

Heard learned counsel for the parties.

2. The 35 petitioners have filed the present writ petition challenging the decision as contained in letter No. 1677 dated 17.12.2019, Annexure-7 to the writ petition, issued under the signature of the Deputy Secretary, Education Department, Government of Bihar, whereby direction was issued for preparation of separate merit list of D.El.Ed. and B.Ed. candidates for appointment of primary teachers (class-I to V), (Gram Panchayat and Nagar Panchayat) as well as for preferential treatment to D.El.Ed. candidates in the matter of appointment.

3. The writ petition was heard on different dates. On 03.07.2020, the Court noted the submissions of the petitioners and passed the following orders:

“Heard Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioners, Mrs. Shilpa Singh assisted by Ms. Abhanjali, for the State, Mr. Mrigank Mauli, learned counsel appearing for the intervenor-applicant and Mr. Sunil Kumar Singh, appearing for the NCTE. The petitioners are



aggrieved by order dated 17.12.2019 as contained in Annexure-7, whereby the respondents have decided to consider the candidature of D.El.Ed. Candidates for appointment as teacher and only in the absence of D.El.Ed candidates, the candidature of others will be considered. Prima facie, the Court is of the view that the decision to consider the case of D.El.Ed. candidates and only if there is no D.El.Ed. Candidates, the candidature of others will be considered, appears to be violative of Articles 14 and 16 of the Constitution. Under the aforesaid circumstances, the Court is constrained to stay the operation of the order dated 17.12.2019, as contained in Annexure-7 until further orders. Put up this case on 7th September, 2020 to enable the respondents to file counter affidavit.”

4. After the order dated 03.07.2020 interventions petitions have been filed on behalf of the D.El.Ed. Candidates. Considering their interests involved in the subject matter, the interventions applications for impleadment were allowed and they were directed to be added as party respondents vide order dated 08.09.2020 which is quoted below for ready reference:-

“Heard learned counsel for the petitioner and Mr. Y.V.Giri, learned counsel for the petitioner. Mr. P.K.Shahi, Mr. D.K.Sinha, learned senior counsel and Mr. Mrigank Mauli, Mr. S.S.Sundaram have appeared on behalf of the applicant, Mrs. Shilpa Singh for the State and Mr. Sunil Kumar Singh for



the NCTE. The applicants have addressed on the issue of their impleadment as party respondents in the instant writ petition. For the reasons stated in the interlocutory applications for impleading the intervenors as party respondent, all the intervention applications are allowed. Let the intervenors be added as party respondents. Patna High Court CWJC No.6670 of 2020(3) dt.08-09-2020 2/2 I.A. Nos. 1,3,4,6, 7 and 8 of are accordingly allowed and disposed of. In the present writ petition, if so advised, not only the intervenors-respondents but NCTE may also file counter affidavit so that the writ petition may finally be decided. As prayed for, put up this case on 20th of September, 2020 on the top of the list for final adjudication.”

5. The matter was finally heard on 21.09.2020.

Parties have made their exhaustive arguments and they desired to file written notes of argument and as such the court finally concluded the hearing and directed them to file their written notes of argument.

6. One of the submissions of the parties was that appointment of the B.Ed. Candidates, who are eligible for appointment, can only be possible on the basis of separate merit list of B.Ed. when sufficient number of vacancies exist after accommodating the D.El.Ed. Candidates as primary teachers but there will be no vacancy after accommodating D.El. Ed. Candidates. In the aforesaid circumstances



the Court directed the Principle Secretary of the Department to file an affidavit on the following issue:-

1. The number of Vacancy existing, and
2. the candidate available in D.El.Ed. category for selection as Assistant Teacher i.e. those who have cleared T.E.T. Primary Teachers.

The order dated 21.09.2020 is quoted below:

“Heard Mr. Y.V. Giri, learned senior counsel for the petitioners, Mr. Ashutosh Ranjan Pandey, AAG-15, learned counsel for the State assisted by Mrs. Shilpa Singh, G.A., Mr. P. K. Shahi, learned senior counsel assisted by Mr. S.S. Sundram, Advocate, Mr. D. K. Sinha, learned senior counsel, Mr. Mrigank Mauli and Mr. Prince Kumar Mishra, Advocates for the intervenor respondents and Mr. Sunil Kumar Singh, learned counsel for the NCTE. The parties have made their exhaustive argument and they desire to file written notes of argument. The parties are directed to file written notes of argument latest by 19.10.2020. Patna High Court CWJC No.6670 of 2020(4) dt.21-09-2020 2/2 Learned AAG- 15 is directed to file specific personal counter affidavit of the Principal Secretary of the Department with regard to available vacancies for Primary Teacher and the candidate available in D.El.Ed category and B.Ed. category, who have qualified the test for selection as Assistant Teacher in addition to the written notes of argument to assist the Court on the issue of colourable exercise of power i.e. declaring B.Ed candidate eligible for appointment, but indirectly excluding them from the



zone of selection by closing their entry in the selection process until the candidate in D.El.Ed are exhausted for appointment. Hearing concluded, order is reserved.”

7. Although the writ petition is voluminous but for the purpose for deciding the present writ petition necessary facts are set out below:

8. The National Council of Teachers Education (NCTE) way back on 23.08.2010 prescribed minimum eligibility criteria for appointment of teachers. The relevant part thereof is quoted below :-

1. Minimum Qualifications:-

(i) Classes I.V

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

OR

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

OR

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

OR

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

And

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

(ii) Class-VI-VIII



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

OR

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

OR

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

OR

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

OR

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

OR

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

And

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

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

9. The NCTE thereafter issued another regulation by Gazette notification dated 16th December, 2014. They prescribed qualification for appointment of primary teachers (I to VIII). The relevant part of the same is quoted below:-



प्राथमिक तथा उच्च प्राथमिक (कक्षा 1 से कक्षा 8)	निःशुल्क और अनिवार्य बाल शिक्षा का अधिकार अधिनियम 2009 (2009 का 35वां) के खण्ड 23 से उप-खण्ड(1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए जारी की गई राष्ट्रीय अध्यापक शिक्षा परिषद की 23.08.2010 की समय-सीमा पर यथासंशोधित अधिसूचना में यथानिर्दिष्ट न्यूनतम अर्हताएं।
माध्यमिक/हाईस्कूल (कक्षा 9 से कक्षा 10 के लिए)	(क) मान्यताप्राप्त विश्वविद्यालय से स्नातक अथवा स्नातकोत्तर में (अथवा इसके समतुल्य) में कम से कम 50/45 प्रतिशत अंकों सहित स्नातक/स्नातकोत्तर तथा राष्ट्रीय अध्यापक शिक्षा परिषद से मान्यताप्राप्त संस्थान से शिक्षा में स्नातक(बी.एड.)

10. The NCTE again amended and introduced the eligibility condition for appointment of teachers. The relevant part of the gazette notification is quoted below :-

“..... 2. In the said notification in para 3, for sub-para (a), the following sub-para shall be substituted namely:-

“(a) who has acquired the qualification of Bachelor of Education from any NCTE recognized institution shall be considered for appointment as a teacher in Classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognized by the NCTE, within two years of such appointment as primary teacher.”

11. It may not be out of place to mention here that for appointment of teachers the State Government has framed its own rule. The petitioner has enclosed 2012 rules as Annexure-3. The relevant part of the notification dated 3.4.2012 reads as follows:

“.....2. (xi) प्रशिक्षण से अभिप्रेत है, NCTE अधिनियम लागू होने के पूर्व केन्द्र या किसी राज्य सरकार द्वारा मान्यता प्राप्त संस्थानों से अथवा NCTE अधिनियम लागू होने के बाद राष्ट्रीय अध्यापक शिक्षा परिषद से मान्यता प्राप्त संस्थानों से दो वर्षीय प्रशिक्षण अथवा वी. एल. एड. अथवा बी. एड. बी. एड. (विशेष शिक्षा)

.....

5. नियोजन हेतु न्यूनतम योग्यता
प्राथमिक एवं मध्य विद्यालयों में अध्यापन हेतु

(1) कक्षा 1 से 5 — (पंचायत एवं प्रखण्ड शिक्षक के बेसिक ग्रेड)
(क) न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं प्रारंभिक शिक्षाशास्त्र में द्विवर्षीय प्रशिक्षण (जिस नाम से भी जाना जाता हो)



या

न्यूनतम 45 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं प्रारंभिक शिक्षा शास्त्र में द्विवर्षीय प्रशिक्षण (जिस नाम से जाना जाता हो), जो राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता, मानक और क्रियाविधि) विनियम, 2002 के अनुसार प्राप्त किया गया हो।

या

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं 4 वर्षीय प्रारंभिक शिक्षाशास्त्र (B.El.Ed.)

या

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं शिक्षा शास्त्र में द्विवर्षीय प्रशिक्षण (विशेष शिक्षा)

और

(ख) केन्द्र अथवा बिहार राज्य सरकार द्वारा आयोजित शिक्षा पात्रता परीक्षा (टी.ई.टी) में उत्तीर्ण

12. In view of the amendment of the NCTE regulation,

the State Government has prescribed minimum eligibility for appointment of teachers on 22.8.2019 vide Annexure-4. The State Government issued notification indicating therein the minimum qualification. It would be appropriate to quote the notification dated 22.8.2019 which has bearing in this case:

बिहार सरकार
शिक्षा विभाग

अधिसूचना

संचिका संख्या 7/विविध-51/2019...../ राष्ट्रीय अध्यापक शिक्षा परिषद के अधिसूचना संख्या 2461 दिनांक 28.06.2018 द्वारा निःशुल्क एवं अनिवार्य बाल शिक्षा अधिनियम 2009 (2009 का 35) की धारा 23 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और स्कूली शिक्षा और सक्षरता विभाग, मानव संसाधन विकास मंत्रालय, भारत सरकार द्वारा जारी दिनांक 31 मार्च 2010 की अधिसूचना सं. का.आ. 750 (अ). दिनांक 31 मार्च 2010 के अनुसरण में राष्ट्रीय अध्यापक शिक्षा परिषद एतद् द्वारा इस अधिवृत्त की तिथि से पुन अधिसूचना संया फा.स. 61-03/20/2010/एनसीटीई0(एनएंडएस) दिनांक 23 अगस्त 2010 को भारत सरकार के राजपत्र, असाधारण भाग तील अनुच्छेद 4, दिनांक 25 अगस्त 2010 को प्रकाशित अधिसूचना में निम्नलिखित संशोधन करते हुए अधिसूचना जारी की गयी है:-

(1) उपरोक्त अधिसूचना में पैरा 1, उप-पैरा (i) अनुच्छेद (ए) में शब्दों ओर कोष्ठकों के बाद स्नातक तथा प्राथमिक शिक्षा में दो वर्षीय डिप्लोमा (चाहे किसी भी नाम से जाना जाता हो), निम्नलिखित को शामिल किया जाएगा:-

अथवा

50 प्रतिशत अंकों के साथ स्नातक तथा शिक्षा स्नातक (बी0.एड0)

2. उपरोक्त अधिसूचना में पैरा 3. उप-पैरा (ए) के स्थान पर निम्नलिखित उप पैरा होगा:-

(ए) जिसने एनसीटीई द्वारा मान्यता प्राप्त संस्थान से शिक्षा-स्नातक की उपाधि प्राप्त की है उस पर कक्षा 1 से 5 तक पढ़ाने के लिए अध्यापक के रूप में नियुक्ति हेतु विचार किया जाएगा, किन्तु इस प्रकार अध्यापक के रूप में नियुक्त व्यक्ति को प्रथमिक शिक्षक के रूप में नियुक्त होने के दो वर्ष के भीतर एनसीटीई द्वारा मान्यता प्राप्त प्रथमिक शिक्षा में 6 महीने का एक सेतु पाठ्यक्रम (ब्रिज कोर्स) आवश्यक रूप से पूरा करना होगा।

चूँकि NCTE के प्रावधान संपूर्ण भारत में लागू है। अतः इस आलोक में बिहार पांचयत/नगर प्रारंभिक शिक्षक (नियोजन एवं सेवा शर्त) नियमावली 2012 (यथा संशोधित) के



नियम 17 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए उक्त प्रावधानों को वर्ष 2019-20 में शिक्षकों के नियोजन के संबंध में नियमावली के नियम 5 (1) जिसमें कक्षा 1-5 तक के (पंचायत एवं प्रखंड शिक्षक के बेसिक ग्रेड) में नियोजन हेतु न्यूनतम योग्यता प्रावधानित है, में समाहित किया जाता है।

ह0
बिहार राज्यपाल के आदेश से
(अरशद फिरोज)
उप-सचिव, शिक्षा विभाग

13. It may not be out of place to mention here that the State of Bihar took decision to make appointment on the post of primary teachers and issued notification on 5.7.2019. The notification contains detailed programme for appointment to be carried out by the employment unit for appointment of teachers. The relevant part of the guidelines is quoted below:-

(मार्गनिर्देश)

1 - नियोजन हेतु समय तालिका - राज्य के प्रारंभिक विद्यालयों में वर्ष 2019-20 में शिक्षकों के नियोजन की कार्रवाई निम्नलिखित समय तालिका के अनुसार की जायेगी।

क्र०सं०	विवरण	दिनांक
i	जिला शिक्षा पदाधिकारियों एवं जिला कार्यक्रम पदाधिकारियों का राज्यस्तरीय प्रशिक्षण कार्यक्रम	दिनांक- 25.07.2019 तक
ii	रिक्तियों का समेकन	दिनांक-29.07.2019 तक
iii	नियोजन से जुड़े कर्मियों का जिला एवं प्रखण्ड स्तरीय प्रशिक्षण कार्यक्रम	दिनांक- 03.08.2019 से 05.08.2019 तक
iv	जिला द्वारा रोस्टर का अनुमोदन एवं नियोजन इकाईयों को प्रेषण	दिनांक- 16.08.2019 तक
v	सभी नियोजन इकाईयों द्वारा नियोजन हेतु सूचना का प्रकाशन	दिनांक- 20.08.2019 तक
vi	आवेदन पत्र प्राप्ति की तिथि	दिनांक- 26.08.2019 से 25.09.2019 तक
vii	मेधा सूची की तैयारी	दिनांक- 26.09.2019 से 11.10.2019 तक
viii	मेधा सूची का नियोजन समिति द्वारा अनुमोदन	दिनांक- 17.10.2019 तक
ix	मेधा सूची का प्रकाशन	दिनांक- 21.10.2019 तक
x	मेधा सूची पर आपति	दिनांक- 22.10.2019 से 05.11.2019 तक
xi	आपतियों का निराकरण	दिनांक-11.11.2019 तक
xii	मेधा सूची का अंतिम प्रकाशन	दिनांक- 14.11.2019 तक
xiii	जिला द्वारा पंचायत एवं प्रखंड के मेधा सूची का अनुमोदन	दिनांक- 25.11.2019 तक
xiv	नियोजन इकाई द्वारा मेधा सूची का सार्वजनीकरण	दिनांक- 29.11.2019



xv	आवेदन के साथ संलग्न स्वअभिप्रमाणित प्रमाण पत्रों का मूल प्रमाण पत्र से मिलान एवं चयन सूची का निर्माण	दिनांक— 30.11.2019 से 07.12.2019 तक
xvi	नियोजन इकाई द्वारा नियोजन पत्र निर्गत करना	दिनांक— 09.12.2019 से 13.12.2019 तक

2- नियोजन हेतु अर्हता तथा शिक्षक पदों की गणना एवं विवरण – नियोजन हेतु शिक्षक पदों की गणना प्राथमिक कक्षाओं (वर्ग I से v) के लिए अलग तथा उच्च प्राथमिक कक्षाओं (वर्ग vi से viii) के लिए अलग की जायेगी। नियोजन की अर्हता संगत नियामवली –2012 के अनुरूप होगी। उक्त नियामावली के तहत प्रशिक्षित एवं टी0 ई0 टी0 अर्हताधारित अभ्यर्थी ही नियोजन के लिए आवेदन कर सकेंगे। इस संबंध में स्पष्ट करना है कि विभागीय आदेश ज्ञापांक-837 दिनांक-02.07.2019 के आलोक में बिहार प्रारंभिक शिक्षक पात्रता परीक्षा (BETET) 2012 उत्तीर्ण अभ्यर्थियों के उत्तीर्ण प्रमाण पत्र के वैधता की अवधि अगले दो वर्ष के लिए विस्तारित किया गया है।

प्राथमिक कक्षाओं के लिए निम्नांकित तीन विषयों के शिक्षक पद के नियोजन हेतु शैक्षणिक योग्यता निम्नवत होगी-

- (क) सामान्य विषय के शिक्षक- (शैक्षणिक योग्यता-इन्टरमीडियट)
 (ख) उर्दू भाषा के शिक्षक - (शैक्षणिक योग्यता - बिहार मदसा शिक्षा बोर्ड द्वारा प्रदत्त मौलवी अथवा उर्दू योग्यताधारी अभ्यर्थी -50 अंकों के उर्दू में इन्टरमीडियट उत्तीर्ण)
 (ग) बंगला भाषा के शिक्षक - (शैक्षणिक योग्यता - इन्टर में 100 अंकों का बंगला विषय में उत्तीर्ण) एन0 टी0 टी0 ई0 की अधिसूचना दिनांक - 28.06.2018 के अनुसार एन0 सी0 टी0 ई0 द्वारा मान्यता प्राप्त संस्थान से शिक्षा-स्नातक की उपाधि प्राप्त अभ्यर्थी कक्षा I से v तक पढ़ाने के लिए अध्यापक के रूप में नियुक्ति हेतु योग्य माने जायेंगे। किन्तु इस प्रकार अध्यापक के रूप में नियुक्त व्यक्ति को प्राथमिक शिक्षक के रूप में नियुक्त होने के दो वर्ष के भीतर एन0सी0टी0ई0 द्वारा मान्यता प्राप्त प्राथमिक शिक्षा में 6 महीने का एके सेतु पाठ्यक्रम (ब्रिज कोर्स) आवश्यक रूप से पूरा करना होगा।

14. In terms of Annexure-1 applications were invited for appointment of Assistant Teachers in primary schools (I to V). The petitioners and others had submitted application for consideration of their cases for appointment. They have requisite qualification for appointment as primary teacher and they have passed the TET, mandatory for the purpose of appointment as teacher. In some of the districts common merit list was also prepared. The petitioners have brought on record, Annexure-6 series to demonstrate that one common merit list was prepared for appointment of primary teachers which includes D.El. Ed. and B.Ed. It appears from Annexure-6 series that the merit list was prepared on 16.12.2019. The Deputy Secretary of the Department issued letter No. 1677 dated 17.12.2019. In the said decision it was communicated that preference is to be given to the D.El.Ed. candidates and only after exhausting the D.El.Ed. candidates



the remaining vacancy may be filled up by other categories of candidates. This is how the mechanism for preparation of merit list of D.Ed.Ed. and B.Ed. candidates was introduced in the midst of selection process and even in some districts merit list was prepared . The decision contained in Annexure-7 has the effect of nullifying the entire process and de novo preparation of merit list. In the aforesaid background the writ petitioner have approached this Court challenging the decision dated 17.12.2019 as contained in Annexure-7 to the writ petition.

15. Mr. Y.V.Giri, learned senior counsel during the course of hearing highlighted that once the selection process commenced and even merit list was prepared, it was not within the competence of the respondents to nullify the entire selection process and go for de novo preparation of merit list i.e. separate merit list of D.Ed.Ed. and B.Ed. candidates against the provisions of Article 14 of the Constitution. He submits that B.Ed. and D.El.Ed. candidates are all eligible in terms of the recruitment rules as well as in terms of the Regulation of the NCTE and once the candidates are declared eligible, there cannot be two different yardsticks for preparation of merit list particularly when they have cleared the TET for appointment of primary teachers. He submits that class within the class is impermissible under Articles 14 and 16 of the Constitution. In addition thereto, he submitted that once the selection process has commenced, the selection process cannot be



altered in the midway and that too to defeat the right and expectation of the petitioners who are eligible in terms of the NCTE Regulation and Recruitment Rules, 2012 and they have been placed in the combined merit list pursuant to Annexure-1 as evident from Annexure-6 series.

16. On behalf of the State a counter affidavit has been filed wherein the author of Annexure-7 referred that for appointment of primary teachers (I to V) two years D.El.Ed. candidates are more suitable and decision to place differently to D.El.Ed. candidates is reasonable and not arbitrary. The relevant part of the counter affidavit as contained in paras 9 to 14 are quoted below:-

“9. That it is submitted that it was after framing of Rule 2012 (Bihar Panchayat and Service Condition) Rule 2012, wherein the required eligibility for appointment of teachers in class I to V had been provided as Senior Secondary (or its equivalent) with at least 50% marks and 2 years training in elementary education (by whatever name known) with passing of Teacher Eligibility Test, that the NCTE came out with a notification dated 28.06.2018 (Annexure-2 of the writ petition) wherein it had been stated that a graduate with B.Ed. degree may also be considered eligible for appointment on the post of primary teacher (i.e. for imparting education to students of class I to V) provided such candidates with B.Ed. degree undergo a bridge course



of 6 months within two years from the date of appointment.

10. That it would be appropriate to clarify at this stage itself that Diploma in Elementary Education (D.El.Ed.) is a two year certificate teacher training programme, specifically meant and suited for imparting teaching at lower elementary level i.e. for class I to Vth.

Whereas B.Ed. is a bachelor's degree in education designed and meant for imparting education at upper primary and higher secondary level classes i.e. above class Vth.

And the qualification of 2 years Diploma in elementary education is the most suitable qualification compared to B.Ed. for appointment of teachers in class I to Vth.

And as such giving preference to those who have the most befitting qualification while selecting the best cannot be faulted keeping in view the object to be achieved.

11. That it is submitted that in the aforesaid factual backdrop, it had been considered appropriate to give a preferential treatment, to such candidates possessing two years D.El.Ed. qualification in appointment as a teacher in class I to V.

12. That it is submitted that in view of the facts and circumstances as stated above the letter impugned in the connected writ petition had



been issued so as to give ample opportunity to certificate holders (D.El.Ed. ones) in the matter of appointment on the post of teacher in class I to V at the first instance.

It is further submitted that through the impugned letter, candidates possessing B.Ed. degree have not been disqualified rather it has only been clarified that only after giving preferential treatment to the certificates holders (D.El.Ed.), if any seat is left vacant then the case of B.Ed. degree holders would be considered.

13. That it is submitted that prior to the amendment made by the NCTE vide notification dated 28.06.2018 (Annexure-2B), the sole eligibility criteria for seeking appointment as teachers for imparting education in class I to V was Senior Secondary (or its equivalent) with at least 50 % marks with 2 years Diploma in Elementary Education and passing of TET, which is clearly stipulated in NCTE notification dated 23.08.2010 (Annexure-2 of the writ petition) and which had further also been incorporated in Bihar Panchayat Elementary Teacher (Employment and Service Condition) Rule 2012.

It would be noticeable to mention that in the amendment dated 28.06.2018 (Annexure-2B of the writ petition) by the NCTE, the B.Ed. degree holders though have also been considered eligible for appointment as teacher in class I to V, but it is hedged with the condition that they would have to complete



6 months bridge course within two years from the date of appointment.

Thus the appointment of B.Ed. degree holders as teachers in class I to V is still subject to condition, which is not the case with those possessing D.El.Ed. qualification.

14. That thus the clarification so issued through the impugned letter dated 17.12.2019 (Annexure-07) stating that preferential treatment is to be given to the candidates possessing D.El.Ed. qualification in appointment as teacher for class I to V has a rational basis.

It has a reasonable nexus with the object to be achieved as the course and syllabus of D.El.Ed. is specifically designed and, suited for imparting education at lower level classes i.e. in class I to V which is not the case with B.Ed. qualification since it is meant for higher classes, hence the preferential treatment given to D.El.Ed. holders in appointment as teacher for class I to V through the impugned letter dated 17.12.2019 cannot be faulted.”

17. The intervenors in the present case has supported the action of the respondents and, inter alia, submitted that B.Ed. candidates have larger avenues and they can be appointed on the post of teacher on higher post whereas the D.El.Ed. candidates have limited avenues confined to primary teaching and they are most suitable as they are specially trained in child psychology and their appointment would



promote the primary education. As mentioned earlier, the petitioners and the respondents have filed their written notes of argument. For ready reference the written notes of argument filed on behalf of the petitioners and intervenors are quoted hereinafter:

“Written Submission on behalf of the petitioners

- (1) That the writ petitioners are B.Ed. qualified candidates with minimum 50% marks and have also passed TET Examination as recognized by the NCTE. Vide notification dated 28.06.2018 (Annexure- 2 B Page 38) the National Council for Teacher Education made amendment to its earlier rule dated 25.08.2010 (Annexure-2 Page 27) in terms of which those persons who had acquired the qualification of Bachelor of Education from any NCTE recognized institution was eligible for appointment as a teacher in Class 1 to 5 provided the persons so appointed as a teacher was mandatorily required to undergo 6 months bridge course in elementary education recognized by the NCTE within 2 years of such appointment of primary teachers. Thus, in terms of the said amended rule the writ petitioners were eligible for participating for appointment of teacher in Class 1 to 5.
- (2) The said amendment of 2018 was incorporated by the State Bihar Government in its rules called the Bihar Panchayat Primary Education (Planning & Service Condition) Rule, 2012 and Bihar Town Primary Education Selection and Service Condition Rule, 2012 (Annexure-3 Series Page 39). Accordingly, the State of Bihar came up with the advertisement for appointment of primary teacher class 1 to 5 dated 05.07.2019 (Annexure- 1 Page 23) wherein it clearly



reiterated the eligibility criteria as prescribed by the amendment dated 28.06.2018 as contained in Annexure- 2 B, Page 38.

(3) That while the Selection Process began subsequently the deputy Secretary Education Department vide letter dated 17.12.2019 (Annexure- 7 Page 99) changed the criteria for selection by stating that the appointment against the post of teacher will be made from the D.El.E.D. Candidates and only when after their appointment any seats are vacant, the remaining Candidates including like the petitioners who are B.Ed. qualified will be considered for appointment. Indirectly, the B.Ed. Candidates like the petitioners have been disqualified for the present.

(4) That thus, the said action of the Respondents has been challenged by the writ petitioners on the following grounds:-

I. The impugned decision dated 17.12.2019 is beyond jurisdiction and competency of the State Legislature and contrary to the provisions framed by NCTE :-

a. It is submitted that so far as the issue in relation to the competency and jurisdiction of fixing the minimum qualification for appointment of teachers are concerned the same is available only with the National Council For Teacher Education in terms of provisions 12A and 32 of the Nation Council For Teacher Education Act, 1993 read with section 23 of the Right of Children to Free and Compulsory Act, 2009 in terms of power under Entry 66 of List I of Schedule VII of the



Constitution of India and hence law once having been framed by NCTE, the State Government thereafter does not have any jurisdiction to impose any other condition other than what is provided by the regulations of the NCTE.

- b. In the present case the B.Ed. qualified Candidates have been held eligible for appointment to the post of teachers in terms of law so framed by notification dated 28.06.2018 (Annexure- 2 B, Page 38) which has also been incorporated in the Rules so framed by the State Government as contained in (Annexure 3 Series Page 39) as well as in advertisement for the appointment dated 05.07.2019. In all these documents and specially the NCTE Notification, there is no provision for providing any priority or preference for appointment to D.El.E.D. Candidates first and in fact the notification treats the B.Ed. Candidates at par with such D.El.E.D. Candidates for appointment equally.
- c. The impugned order thus, virtually amounts to addition of a new criteria contrary to the qualification and eligibility provided by NCTE which is wholly without jurisdiction and unenforceable in law. The law in this regard has been settled by various pronouncement of the Hon'ble Apex Court where it has been held that the NCTE Regulations will prevail as the



field is occupied and the State cannot make as law contrary thereto. In fact, it has also been held that the State cannot prescribe even a higher standard for qualifications contrary to the NCTE Regulations. It has also been held that no preference can also be granted by the State contrary to the NCTE Regulations. Reference in this regard be made to the following decisions:-

1. (2006) 9 SCC 1 Para 15, 25, 26, 29, 45, 47, 55, 62, 63, 64, 74
 2. (2013) 2 SCC 617 Para 36, 45, 46, 51, 58, 59, 60, 64, 66, 77
 3. (2011) 4 SCC 798 Para 9, 10 & 12 (16).
- d. It is relevant to state that some of the D.El.E.D. Candidates had also challenged the notification dated 28.06.2018 before this Hon'ble Court through CWJC No. 24587 of 2019 (Annexure – I/9, Page 58 of the I.A. filed by Dileep Kumar Yadav & Ors.) wherein they prayed that the D.El.E.D. Candidates should be given preference in the matter of teacher of appointment over persons holding B.Ed. qualifications since they do not have expertise of teaching at primary level for Class I to 5. The said writ petition was dismissed vide order dated 10.12.2019 holding that the eligibility criteria have been recognized by the NCTE which is a policy matter within the domain of Government / NCTE.



e. Thus, it is submitted that the contention of the Respondents that is being raised in the present writ petition was same that was raised in the earlier writ petition which has already been rejected by the order of this Hon'ble Court dated 10.12.2019 in CWJC No. 24587 of 2019 and hence they cannot be permitting reargitate the issue of giving preference which already stands decided against their favour.

II. The decision is violative of Article 14 & 16 of the Constitution of India as creating a Class amongst a Class and treating two similarly situated Candidates differently :-

- a. The NCTE notification dated 28.06.2018, the State Government Rule of 2012 as well the advertisement dated 05.07.2019 treats the B.Ed. qualified and D.El.E.D. Candidates at par with each other as being equally qualified for consideration for appointment to the post of teachers in primary level. None of the rules or the advertisement provides any criteria for giving any preference between such Candidates and all such Candidates having Teacher Education Training Certificate are treated similarly forming one single class for the purpose of appointment.
- b. The impugned order however, has created a class amongst class by giving differential preference to B.Ed. Candidates as compared to the D.El.E.D. Candidates by first considering the case of only D.El.E.D. Candidates for appointment and only thereafter when the vacancy remains considering the



other Candidates. This impugned action thus amounts to treating equals as unequals without any rational basis and hence violative of Article 14 of the Constitution of India and since it deprives the petitioners of equal opportunity for appointment, the same being violative of Article 16 of the Constitution of India as well.

c. The Respondents are treating the petitioners dissimilar on the ground that they are untrained like that of the D.El.Ed. Candidates. This ground is also misconceived as firstly the NCTE in this regulation does not make any distinction between the two classes on basis of being trained or untrained and in fact, has held B.Ed. Candidates qualified who are required to undergo two years training after appointment. Thus, an illusory distinction is being drawn by the State Authority contrary to the rule of NCTE and hence not tenable. Reference in this regard may be made to the following cases :-

1. (2018) 1 SCC 149 Para 7, 8, 17
2. (2003) 2 SCC 349 Para 7, 8, 12

d. In fact, the present petitioners in terms of the 2012 Rules of the State Government itself is treated to be a trained Candidates and not untrained candidate in terms of definition provided by Rule 2(XI) therein at Page 41. In terms of the definition of “Trained” therein it is apparent that all such Candidates who have obtained B.El.Ed. or B.Ed., B.Ed. (Special Education) from the recognized institution are treated to be trained. Thus, the writ petitioners having B.Ed.



from the recognized institute are thus trained Candidates in terms of the rules of the State Government itself and hence there is no distinction between the said two class of people and therefore the discrimination being violative of Article 14 of the Constitution of India.

III. The said decision amounts to introducing new criteria and departure from the terms of advertisement during selection process which is not permissible in law :-

- a. That it is submitted that neither the NCTE Regulations nor the advertisement prescribed any power or scope for the Respondents to make any distinction or preference of any kind between B.Ed. Candidates and D.El.E.D. Candidates but in fact, are to be treated at par for appointment to the post teacher. This criteria of giving first the opportunity of appointment to the D.El.E.D. Candidates and thereafter if any vacancy remains to the B.Ed. Candidates amounts to introduction of a new criteria during Selection Process which is not permissible in law the advertisement was issued on 05.07.2019 without such discrimination or preference however, the rule has been changed by the impugned order dated 17.12.2019 during the selection process itself. It is settled law that the Rules of the game cannot be changed in the middle of Selection Process and hence for this reason also the



impugned order is liable to be quashed. Reference in this regard may be made to the following decisions :-

1. (2007) 9 SCC 497 para 9
 2. (2005) 8 SCC 484 para 4,8,9
 3. (2008) 7 SCC 11 Para 14 to 16
 4. (2009) 4 SCC 555 Para 27, 28, 29, 30, 31
- b. The respondents in order to justify their conduct that the same not being a new criteria, has relied upon Rule 9 (vii & viii) of Rules 2012 at page 39 where it has been stated that the merit lists for trained and untrained candidates will be prepared separately and that the appointment of the trained candidates will be made first and thereafter of the untrained candidates. in relation to the same it is submitted that the reliance by the Respondents to the same wholly misconceived and fit to be rejected. The petitioners are trained teacher and have passed TET Examination.
- c. That as earlier explained even the B.Ed. qualified candidates like the petitioners are considered to be trained within the meaning of Rule 2 (XI) therein and hence they could not be discriminated and has to be consider at par and as such said sub-rule vii & viii not attracted at all and therefore, they ought to prepare a single merit list incorporating both B.Ed. and D.El.Ed. candidates and treating



them at par with each other without any discrimination whatsoever.

- d. That even otherwise it is submitted that these rules are of 2012 and subsequently once the NCTE notification are framed in the year 2018 vide notification dated 28.6.2018 making the B.Ed. candidates equally qualified and not making any distinction between trained and untrained, the said Rule 9 (vii & viii) of the Rule 2012 of the State Government becomes inoperative and unenforceable in terms of Article 254 of the Constitution of India and thus accordingly has to be read down.

IV. The impugned decision also not a decision of the State Government and hence not being a law within the meaning of Article 13 (3) read with Article 166 of the Constitution of India:-

- a. The impugned order dated 17.12.2019 is not a law within the meaning of Article 13(3) read with Article 166 of the Constitution of India as not being decision of the State Government and hence not enforceable. The said order has not been passed on behalf of the Governor of Bihar and thus requirement of Article 166 of the Constitution of India is not fulfilled.
- b. Thus, once it is held that it is not a decision of the State Government, the said decision fails to qualify as a law in terms of Article 13(3) read with Articles 246 & 254 of the Constitution of



India and thus not being enforceable and cannot be given effect to.

5. Conclusion:- In the facts and circumstances of the case it is submitted that the impugned order dated 17.12.2019 is untenable in the eyes of law as no distinction can be made between the writ petitioners and D.El.Ed. candidates for appointment of teachers in primary school pursuant to advertisement dated 05.07.2019 and hence the appointment has to be made by making single merit list considering them equals strictly in terms of the qualification criteria prescribed by the NCTE and any other merit list so prepared making any distinction/discrimination between the two categories of candidates are liable to be struck down.”

On behalf of the other intervenors four sets of written notes of argument have been filed. For ready reference such notes of argument filed on behalf of the NCTE, intervenors applicants represented by Mr. Mrigank Mauli, intervenors applicants namely, Sunil Kumar, Chandan Kumar, Indu Shankar Prasad Singh and Vikash Abhinaw, intervenors duly represented by Mr. P.K.Shahi, senior Advocate, are quoted below as follows:-

Written submission on behalf of Respondent No. 3, NCTE.

1. That the petitioners have prayed for quashing Memo No. 1677 dated 17/12/2019 issued by Deputy Secretary Department of Education, Govt. of Bihar whereby and whereunder for the purpose of appointment of Primary Teachers (Class-I-V) preference will be given to candidates



having 2 years D.El.Ed. qualification and only no such candidates are available candidates having B.Ed. will be recruited.

2. That Diploma in Elementary Education (D.El.Ed.) is a two year professional programme of teacher education. It aims to prepare teachers for the elementary stage of education. The aim of elementary education is to fulfill the basic learning needs of all children in an inclusive School environment bridging social and gender gaps with the active participation of the community.
3. That National Council for Teacher Education vide notification dated 29/07/2011 made amendment in notification dated 23/08/2010 and notified the minimum qualification to be eligible for appointment as teachers (Annexure-A). The minimum qualification for teachers of Class I-V and Classes VI-VIII are different.
4. That National Council for Teacher Education vide Notification dated 28/06/2018 provides that B.Ed. persons appointment as teachers of Class I to V shall mandatorily undergo a six month bridge course in Elementary Education recognized by NCTE within 2 years of such appointment. (Annexure-B)
5. That Bachelor of Education (B.Ed.) programme is a professional course that prepares teachers for upper Primary of middle level (Class VI-VIII) Secretary level (Class IX-X) and Senior Secondary level (Class XI-XII).
6. That since D.E.I.Ed. aims to prepare teachers for the elementary stage of education the Deputy Secretary, Education Department Govt. of Bihar vide Memo No. 1677 dated 17/12/2019 stated that in appointment of Primary



Teacher (I to V) preference will be given to 2 years D.E.L.Ed. course and only when no such candidates are available candidates having B.Ed. will be recruited. But qualification has not changed. (Annexure-C)

It is therefore, prayed that Your Lordships may graciously be pleased to dismiss the writ application. And/ or Pass such other order or orders as may deem fit and proper.

And for this Respondent No. 3 shall ever pray.

Written submission on behalf of the intervenor-respondent represented by Mr. Mrigank Mauli, Advocate.

1. The Petitioner challenges the Memo No. 1677 dated 17/12/2019 claiming that the same amounts to “change of the rules of game” after the publication of the Advertisement. The letter issued to different appointing bodies stated that B.Ed candidates are treated as “trained” only after they undergo 6 months of training and it directed that only when DelEd were not available that BEd Candidates should be selected. It is alleged that the letter giving preference to candidates holding D. El. Ed qualification is in teeth of the Advertisement.
2. It has been contended by the Petitioners once the NCTE notification as well as the Advertisement said that candidates holding Bed Qualification shall be entitled to apply there cannot be any discrimination.

II Bihar Panchayat Primary Teachers (Appointment and Service) Rules 2012 (“the Rules” for Short) mandates preference to Trained Teachers to over Untrained Teachers:



3. After coming into force of the Right of Children to Free and Compulsory Education act,2009 (In Short “RTE Act”) no untrained teacher can be appointed as a teacher.
4. It is stated that in the Case of NiluTripathi &Ors Vs State of Bihar (CWJC No. 5122 of 2018) the Petitioners, who were BEd and were teaching Classes I-V, had raised a grievance with regard to grant of Pay of a Trained Teacher under the Rules. This Hon’ble Court Vide Order dated 27/03.2018 referred the matter to the State for the consideration of the same. Pursuant to the said Order of the High Court that the Director Primary Education passed Order dated 09/10/2018, issued vide Memo No. 1323, and stating that the BEd teachers became trained only after undergoing mandatory training for Six Months – as per Notification of the NCTE as well as the Rules.
5. Thus the B.Ed. Candidates are Untrained Teachers and as per the RTE Act as well as the Notifications issued by NCTE are not suitable for teaching students of Class I-V and become eligible to teach only after they Pass the Mandatory training of 6 Months.
6. Further Rule 11(vii) read With Rule 11 (viii) of the Rules mandates that for each subject there would be a separate list of trained teacher and untrained teacher and while giving appointment trained teachers shall be given preference over untrained teachers
7. Thus Advertisement cannot override the Rules which specifically provides that trained teachers have to be given preference over the untrained teachers in course of appointment.

III. Whether the Impugned Memo Changes “the Rules of the game”?

8. It has been alleged by the Petitioner that the impugned Memo “changes the Rules of the game” when in fact the same is only a



reminder to the appointing authorities of the mandate of Rule 11(vii) and Rule 11(viii) of the Rules and it cannot be said to be a game changer – after publication of the Advertisement.

9. The Supreme Court in the Case of *Rakhi Ray* has stated that all appointments have to be done in accordance with the extant Rules and in the case of *Ashish Kumar* the Supreme Court has held that if the Advertisement contains anything contrary to the Rules then the Advertisement shall give way to the Rules and Rules would override the Advertisement.

● **Rakhi Ray Vs High Curt of Delhi 2010 (2) SCC 637 Para 24**

● **Ashish Kumar Vs State of UP 2018 (3) SCC 55 Para 27**

10. It is further submitted that even otherwise there is no contradiction between the advertisement and the Rules as both allow the Bed candidates to make an application but the Rules gives preference to the DEIEd candidates.

III. The BEd candidates have far more Opportunities and DEIEd candidates are better qualified and trained at the time of appointment.

11. It is submitted that while BEd candidates are entitled to apply as teachers not only for I-V but also for VI-VIII and also for Higher Classes the DEIEd candidates have only one opportunity of making application against the vacancies for teachers of Class I-V.
12. It is for the State to fix the requirement of the appointment and they are the best judge of their requirement and the Courts should refrain from interfering with the same. The fact that they want to give preference to the DEIEd over BEd is a matter of State Policy and the Courts should approach the issue with “Hands Off” approach. The Court in the case of Bihar State Power Holding Corporation vs Md Asif Hussain [LPA No 1416 of 2018] at page 26 did take into



consideration the issue of opportunities and the fact that the qualification that is required as a matter of State Policy

● **Bihar State Power Holding Corporation vs Md Asif Hussain LPA No 1416 of 2018 - 2019 (1) PLJR 718**

13. Further it is submitted that the D. El. Ed. are better qualified candidates for they have the requisite qualification as they have been taught the psychology of the children of the age group in Classes I-V while the B. Ed. candidates are taught how to teach students from Classes VI onwards. The courses and teaching methodology that is imparted is completely different and BEd Candidates will have to be given special training.

14. The training of the B. Ed. candidates costs the State additional expense and hence it is open to the State to give preference to Candidates who are fully trained and would cost the State additional Expense they have to be trained for teaching students and it is open.

IV. Doctrine of Reading Down

15. It is stated that the Doctrine of reading down can be applied only when the provisions of a statute are vague and ambiguous and it is not possible to gather the intention of the legislature from the object of the statute, the context in which the provisions occur and purpose for which it is made, the doctrine of reading down can be applied. To save a statutory provision from being declared as unconstitutional the Court can apply the doctrine of Reading Down. But in the present case there is neither a challenge to the validity of the Rule 11(vii) or Rule 11(viii) of the Rules nor has it even been urged by the Petitioners and in absence thereof the court should not

● **Indian Social Action Forum(Insaaf) vs Union of India 2020 SCC Online 310 Para 20**

16. Further reading down is not permissible where it is negated by the express language of the statute. Reading down is not permissible in



such a manner as would fly in the face of the express terms of the statutory provisions. It is submitted that any violence to the provisions Rule 11(vii) and Rule 11 (viii) would render the provision unworkable and especially considering the fact that the provision was consciously introduced and the same has been done considering the fact that the trained and untrained teachers constitute separate class. There exists 'Intelligible Differentia' between the Classes of Trained and Untrained Teachers.

● ***C.B. Gautam v. Union of India, (1993) 1 SCC 78 Para 36***

17. D. El. Ed. Candidates who have passed TET examination and B.Ed. Candidates who have passed TET examination do constitute separate and different class, they are not homogeneous class as sought to be portrayed by Petitioners

Conclusion

In conclusion it is submitted that the writ court would not interfere with the impugned notification or read down the rules

**Written submission on behalf of the newly added respondents,
Sunil Kumar, Chandan Kumar Indu Shankar Prasad and
Vikash Abhinaw.**

1. That, I am newly added respondents under order dated 08.09.2020 and hence I am well acquainted with the facts and circumstances of the case as well as I have been authorized to file counter affidavit by other respondents mentioned above.
2. That the relief sought is not tenable in the eye of law.
3. That the writ application has been filed on wrong presumption which is evident from advertisement (Annexure 1 page 23) itself which clarifies that the



appointment will be in terms of notification dated 28.06.2018 (Annexure 2 page 27 of the writ petition), according to which appointment is to be made, after amendment, in terms of notification dated 23.08.2018 published on 25.08.2018 which prescribes the qualification as per present amendment i.e. appointment is to be made from the candidates having qualification of Diploma in elementary education (D.El. Ed.) for class 1 to 5 students, which is not being fulfilled by the writ petitioners whereas the same is fulfilled by these intervenor respondents.

4. As per section of the RTI Act, the state government is the appropriate government in relation to a school established within the territory of the state government other than a school established, owned or controlled by the central government.
5. D.El.Ed. course has been specially designed to improve the elementary level teacher work force in the country.
6. D.El.Ed. candidates are specially trained to read the mind and behavior of children from parental development through adolescence, as D.El. Ed. Course includes psychology of child development. The true photo copy of the syllabus of D.El. Ed. Along with its object are annexed herewith and marked as Annexure-A.
7. That the petitioners having qualification of graduation etc. have not been debarred rather they are to be considered if the candidate of D.El.Ed. is not found whereas the present intervenors respondents have got qualification of D.El. Ed.
8. That the two separate lists having different qualification have been prepared and writ petitioners along with others have participated and never challenged the advertisement



which is in terms of order passed by Hon'ble Supreme Court in SLP (C) No. 20/2018 dated 10.05.2018 in which terms notification No. 1713 dated 20.12.2019 (Annexure-9 to writ) has been issued. Non-trained persons cannot be appointed as teachers who may have high qualification for which Rule is very clear that preference should be given to trained persons having qualification as per requirement of different age group of students which have been accepted by different Boards of education of different states such as Manipur, Haryana, Uttarakhand, Tripura etc. to the effect that persons having D.El. Ed. Qualification can only be appointed as primary teachers.

9. That the submissions made itself shows that with well understanding of the advertisement which is in accordance with law the petitioners participated in selection process and hence the petitioners cannot challenge the same.
10. That the annexure-7 only details and prescribes guideline for follow up action as Panchayat Primary School and Municipal Primary School governed by different rules of appointment and qualification from Right of Children to Free and Compulsory Education Act, 2009.

Written argument on behalf of intervenor respondents of I.A. No. 8 of 2020 represented through Mr. P.K.Shahi, Senior Advocate.

PRAYER OF WRIT PETITIONERS:- For quashing of letter bearing no. 1677 dated 17.12.2019 issued under the signature of Deputy Secretary, Department of Education, Government of Bihar whereby and whereunder the State Government has decided to extend preference of those



candidates who have passed D.El. Ed. For employment of teachers in Elementary Classes I to V.It was further made clear that two separate seniority list shall be prepared for the candidates of D.El. Ed. and B.Ed. and in case of non-availability of D.El. Ed. candidates, the employment shall be offered to B.Ed. candidates.

Training Qualification of writ petitioners: B.Ed.

Training Qualification of Intervenors:- D.El. Ed.

Point of Arguments:-

- I. That earlier there was no eligibility of B.Ed. candidates in appointment/employment as primary teachers as per the regulations dated 23.08.2010 of the NCTE. However, subsequently the NCTE introduced the qualification of B.Ed. in eligibility for appointment as Primary Teachers (Class I to V) with condition that such teachers would have to acquire a bridge course of six months in primary education within two years of their appointment vide notification dated 28.06.2018.
- II. That the notification challenged in the aforesaid writ application was not actually imposing a new condition or eligibility criteria for employment of primary teachers in pursuance of the aforesaid advertisement rather the same was an effort to elaborate the conditions as prescribed in the rules and the advertisements.
- III. That admittedly, the qualification of B.Ed. alone was not considered as complete training course for appointment as primary teachers. When the degree of B.Ed. is supplemented with bridge course of six months, it may be considered as complete training qualification for



appointment as primary teachers, whereas D.El.Ed. course is a complete training course/qualification for appointment as primary teachers.

- IV. That the syllabus of D.El. Ed. programme is designed for teaching of children of age group 6 to 14 whereas the B.Ed. programme meant for teaching of students of age group of 15 and above i.e. upper primary and higher secondary level classes and as such the qualification of two years diploma is considered as most suitable qualification for imparting education to the children of Classes I to V.
- V. That as per the notification issued by the Department of Human Resources Development, Central Govt. dated 04.01.2019 it was made clear in paragraph 3 (VI) that the teachers who are not possessing minimum qualification as prescribed by the NCTE would not be considered as trained Teachers till the date they acquired the prescribed qualification (Annexure- R/E of I.A. No. 08 of 2020 page-28).
- VI. That it is a prerogative of the employer to fix priority to those candidates found to be more suitable and efficient to the respective posts.
- VII. That it is also a point of consideration that the scope of D.El. Ed. candidates are confined to the employment as primary teacher for classes I to V only whereas the B.Ed. candidates have a wider scope of employment for even upper classes from Class VI and above.
- VIII. That in this background that the qualification of B.Ed. was not considered as complete training programme for teaching of Class I to V students, B.Ed. degree holders are virtually untrained at the time of appointment for Class I to



V teachers which is contrary to the provisions introduced after amendment made in right to Education Act, 2017 in Section 23(2) of the RTE Act which makes it mandatory to acquire the qualification of training latest by 31.03.2019. As per the aforesaid amendment and guidelines issued by the Central Government, writ petitioners are not eligible to be appointed as Primary Teachers after 31.03.2019 (Annexure –R/F of the I.A. No. 8 of 2020).

- IX. That in the aforesaid background it is stated that consideration of eligibility of writ petitioners having B.Ed. qualification is in contravention of the minimum qualification mandated under the RTE Act, 2009 (as amended upto date).
- X. That the eligibility of writ petitioners for appointment against the post of primary teachers (Class I to V) is in teeth of the guidelines of the State Government contained in letter no. 375 dated 16.08.2017 by which it was clarified that no appointment of untrained teachers is permissible and even the teachers already appointed would not be continued after 31.03.2019, if they do not acquire the training D.El. Ed. by 31.03.2019. (Annexure –R/G of the I.A. No. 8 of 2020).
- XI. That the person appointed as primary teachers on the basis of B.Ed. qualification were not allowed the trained pay scale by the State Government for the reason that their qualification of B.Ed. was not considered as requisite training qualification for employment as primary teachers for Class I to V.
- XII. That it is therefore, submitted that the clarification of the other issued by the Education Department which is under



challenge is rational, lawful and justifiable for employment of teachers of Class I to V. The clarification does not alter the rule of selection but considering D.El.Ed. as most appropriate qualification for teachers of age group 6-14, preference has been accorded to such group of candidates, which is in large public interest.”

18. The State of Bihar through the Principal Secretary of the Department has filed counter affidavit in terms of the order dated 21.9.2020. However, there is no written notes of argument on behalf of the State. In the counter affidavit following facts have been mentioned in para-5. :-

“5. That in the present context it is most respectfully submitted that the deponent after being made aware of the order dated 21.09.2020 passed in the present writ petition, has taken upon himself to examine the matter, so as to apprise this Hon’ble Court with regard to the vacancy status of primary teachers in class I to V and the applications received in this regard of candidates possessing D.El.Ed. and B.Ed. qualification and it was upon careful examination and consideration of the same the following position has transpired:

- (i) It was in due furtherance of the aforesaid order passed by this Hon’ble Court that the required details had been called from all the District Education Officers/District Programme Officer (Establishment) of the State by the Director,



Primary Education vide letter no. 831 dated 23.09.2020.

- (ii) It was after compiling the status reports received from all the 38 districts of the State, the composite status of the vacancies of teachers in class I to V and the applications so submitted by the candidates possessing D.El.Ed. and B.Ed. qualification is as follows:

Total no. of districts	Total no. of employment units	Vacancy position of teachers in class I to V	Total no. of applications received from D.El.Ed. candidates	Total no. of applications received from B.Ed. candidates
38	9077	64446	1274848	1376059

- (iii) It would be very much purposeful to clarify at this stage itself that the aforesaid composite figure of 1274848 (D.El.Ed.) and 1376059 (B.Ed.) are the total number of applications received at the different employment units (9077) under the State.

But it is not the precise number of candidates possessing D.El.Ed. and B.Ed. qualification, for the reason that there had been no restriction for the applicants upon submitting applications for the purpose of employment at more than one employment unit.

In other words, submitting of application by a candidate possessing either of the qualification i.e. D.El.Ed. and B.Ed. simultaneously at more



than one employment unit cannot be ruled out.”

19. From the counter affidavit of the Principal Secretary it is manifest that there are 64,446 vacancies for appointment of teachers in Class 1 to 5; there are altogether 9077 employment units and against the aforesaid vacancy 12,74,848 candidates of D.El.Ed. and 13,76,059 candidates of B.Ed. have submitted their applications since there is no bar in submitting application in one or more employment units and therefore, there is every possibility that candidates have submitted applications in more than one employment units. The Principal Secretary has failed to inform the Court that how many candidates have passed TET, which is mandatory for appointment of Assistant Teacher. In public domain the information available indicates that in 2020 approximately 7058 candidates have cleared the TET for primary teachers.

20. The petitioners and respondents have relied upon various judgments of the Apex Court in support of their contentions.

21. On behalf of the petitioners reliance has been placed on **(2006) 9 SCC 1, (2013) 2 SCC 617, (2011) 4 SCC 798** to contend Annexure-7 is beyond jurisdiction as the respondents-



State cannot tinker with the minimum qualification prescribed by the NCTE as the area is occupied by the NCTE Regulation. The petitioners have also relied upon the judgment reported in **(2018) 1 SCC 149 and (2003) 2 SCC 349** to contend that creating class among the class by differential treatment is violative of Articles 14 and 16 of the Constitution of India. The submission is designed to highlight that the distinction drawn by the State authorities is contrary to Rule of NCTE and unsustainable in the eye of law. Reasonable classification based on intelligible differentia and classification must have rational relation with the object sought to be achieved which is not available in the present case. The petitioners have relied upon the judgments of the Apex Court reported in **(2007) 9 SCC 497, (2015) 8 SCC 484, (2008) 7 SCC 11 and (2009) 4 SCC 555** to contend that once selection process has commenced the respondents are restrained in its jurisdiction to depart from the advertisement and norms of selection once commenced. In addition thereto the petitioners in their written notes of argument have highlighted that the impugned notification as contained in Annexure-7 lacks merit and competence and it is not authenticated in the name of the Governor and as such it cannot be termed as Governmental decision and cannot be said as decision under Article 166 of the



Constitution of India because the notification is not expressed in the name of the Governor.

22. The written notes of argument filed on behalf of the newly added respondents, Sunil Kumar, Chandan Kumar Indu Shankar Prasad and Vikash Abhinaw is, inter alia, on the following issues:-

- I. Diploma in elementary education (D.El.Ed.) is suitable for appointment of teachers of 1 to 5 classes.
- II. The State Government is appropriate Government in relation to a school established within the territory of the State Government other than a school established, owned or controlled by the Central Government.
- III. D.El. Ed. Candidates are specially trained to read the mind and behavior of children and child psychology.
- IV. The B.Ed. candidates' candidature can be considered if the D.El.Ed. candidates are exhausted.

23. It has been highlighted that candidates having B.Ed. degree cannot be appointed as Primary Teacher although they may have higher qualification.

24. In the written submissions of the intervenors represented through Mr. Mrigank Mauli, it has been highlighted



that B.Ed. candidates are not truly trained. In terms of the NCTE Rules they are required to undergo six months training after appointment and therefore, they are in the category of untrained teacher. Secondly, the Annexure-7 is not introducing a change or new modality in the selection process. Reference was placed to the judgment of the Apex Court in the case of **Rakhi Ray Vs. High Court of Delhi, (2010) 2 SCC 637** and **Ashish Kumar Vs. State of UP: (2018) 3 SCC 55**. He also highlighted that B.Ed. candidates have more opportunity, whereas the D.El.Ed. candidates have better qualification in training at the time of appointment. He has placed reliance on the judgment of the Apex Court in the case of **Indian Social Action Forum (Insaaf) Vs. Union of India: (2020) SCC Online 310**. He submitted that the principle on reading down the rules and norms under Annexure-7 is not applicable in the present case. He placed reliance on the judgment of the Apex Court in the case of **Gautam Vs. Union of India (1993) 1 SCC 78**.

25. In the written submissions filed on behalf of the intervenors whose interest was addressed by Mr. P.K.Shahi, Sr. Advocate highlights that B.Ed. alone is not complete training for appointment as primary teachers whereas D.El.Ed. is complete training. The B.Ed. programme is suitable for upper primary



schools and higher secondary and they have to undergo special training for primary teachers and therefore they are not trained for all practical purposes. It is the criteria fixing priority and suitability for upper post and there is no infirmity in the action of the respondents as contained in Annexure-7. It has been highlighted that minimum qualification mandated under the RTE Act, 2009 does not include B.Ed. qualification and thus there is no infirmity in the criteria adopted by the State in the process of selection.

26. From the pleadings of the parties and oral submissions as well as written submissions filed on behalf of the parties, the following issues are required to be adjudicated upon.

- (i) Whether the notification as contained in Annexure-7 is governmental decision within the meaning of Article 166 of the Constitution of India as Article 166 obliges the State to express all executive action of the Government to be taken in the name of Governor, the notification as contained in Annexure-7 is notification of the Department and it is not expressed in the name of the Governor which is evident from the recital part of the notification Annexure-7 ?



- (ii) Whether at the stage when the selection process commenced and combined merit list prepared, the selection criteria can be changed by providing preferential treatment to the D.El.Ed. candidates to the exclusion of B.Ed. candidates?
- (iii) Whether separate merit list of the candidates of B.Ed. and D.El.Ed. is permissible once both categories of candidates have passed TET prescribed for appointment of primary teacher?
- (iv) Whether preferential treatment will amount to exclusion of the B.Ed. candidates and is colourable exercise of power as directly B.Ed. candidates are eligible and indirectly ineligible as they are excluded from the consideration zone until D.El.Ed. candidates are exhausted?

27. From the pleadings of the parties, it is manifest that after Annexure-1, the guideline formulated by the State for the purpose of appointment of teachers in primary schools in 2019-20, the employment unit was required to publish employment notice latest by 20.08.2019, the last date of submission of application was 26.8.2019 to 25.9.2019, the date of preparation of merit list was 26.7.2019 to 11.07.2019.



17.10.2019 was prescribed for approval of merit list. 21.10.2019 was prescribed for publication of merit list. 22.10.2019 was for inviting objection on merit list and 11.11.2019 was prescribed for disposal of objections and finally merit list was required to be published on 14.11.2019. The approval of the merit list at the district level was to be made on 25.11.2019. Publication of the merit list by employment unit was 29.11.2019. 30.11.2019 to 7.12.2019 was fixed for verification of the documents and 9.12.2019 to 30.12.2019 was prescribed for distribution of appointment letters.

28. In the present case on 6.12.2019 merit list was prepared and after the merit list was prepared in terms of Annexure-1, the appointment letter was required to be issued between 9.12.2019 to 13.12.2019 and manifestly after cut-off date in terms of Annexure-1, the Deputy Secretary has issued the impugned letter No. 1677 dated 17.12.2019 altering the rule of the game and after completion of almost all the steps in terms of Annexure-1, the Deputy Secretary of the Department has communicated guideline for preparation of separate merit list for D.El.Ed candidates giving preference to them in appointment of primary teachers of class 1 to 5 and exclusion of B.Ed. candidates who were earlier empanelled in the combined merit list. Thus, the



facts of the present case are admitted that the rule of the game has been changed at the fag end of the selection. The combined merit list has been frustrated and guideline was issued that separate merit list be prepared one for the D.El.Ed. candidates and the other for B.Ed. candidates. The D.El.Ed. candidates has not only been preferred in the matter of selection but preference was to the extent of exclusion of B.Ed. candidates i.e. if the D.El.Ed. candidates are not available only then B.Ed. candidates may be appointed.

29. The submission that B.Ed. candidates are more qualified and, therefore, not suitable for primary education does not appeal to this Court. One cannot shut its eyes to the ground reality. During the last one decade the decline in standard of education in the State of Bihar is a matter of concern for all. The whole world had witnessed it on National Television. The teachers (Niyojit Shikshak) did not correctly answer the names of 7 days of a week and 12 months of a calendar year. It appears that education in the primary school is the most neglected section where deeper scrutiny is required so that the backbone of the education is strengthened. In most of the cases in the learning process the tinny-tots at the primary section are not properly instructed and due to wrong instruction they have to undergo the



process of unlearning and thereafter they have to undertake fresh learning so that they may cope up with their counterparts in other public schools and private schools. Admittedly, when D.El.Ed. and B.Ed. candidates have passed the rigorous of TET then preferential treatment to D.El.Ed. and exclusion of B.Ed. candidates is not reasonable and there is no rational basis for such treatment.

30. Thus, in the facts of the case, the Court is of the considered view that the action of the respondents in nullifying the combined merit list and directing preparation of fresh merit list of D.El.Ed. and B.Ed. candidates and decision to appoint D.El.Ed. only and in the absence of D.El.Ed. consider the case for appointment of B.Ed. candidates does not satisfy the requirement of reasonable classification under Articles 14 and 16 of the Constitution of India.

31. So far as the issue as to competence is concerned, the closure scrutiny of 7th schedule makes it clear that entry Nos. 63 to 66 of the Union list is in relation to vocational, technical and higher education. Entry No. 25 of the concurrent list provides for education excluding medical education and University subject to entry nos. 63 to 66 of the Union list. In addition thereto, the entry 41 of State List talks about State



service, although it is debatable whether the Panchayat Teachers or Nagar Panchayat Teachers are in State service. The Government is not recognizing such teachers as public/State service. Prescribing minimum qualification for a teachers training is one situation whereas prescribing qualification for appointment as teacher in the State run educational institution is concerned, it is different proposition. The employer has the choice to fix suitability and preferential treatment but the decision to extend preferential treatment cannot be understood as exclusion of B.Ed. candidates from the zone of consideration until D.El.Ed. candidates are exhausted. Conceptually it is not a preferential treatment. In the common selection process the candidates who passed the teachers eligibility test are per se discriminated if the State adopts two different yardsticks for those who passed TET for primary teachers. At this juncture it would be relevant to mention here that 2020 teachers eligibility test is indicative of the fact that approximately 80% candidates who took TET have failed TET and those who passed TET necessarily forms one composite class and treating them differently in the matter of selection does not satisfy requirement of reasonable opportunity.



32. Thus, from the above discussions the Court finds that,

- (a) Annexure-7 is not authenticated in the name of the Governor,
- (b) Annexure-7 changed the selection criteria in the midway as direction was issued after Annexure-6 series to grant preference to D.El.Ed. Candidates and prepare separate merit list of D.El.Ed. and B.Ed. candidates instead of combined merit list,
- (c) Annexure-7 creates class within the composite class of TET passed candidates,
- (d) Annexure-7 is colourable exercise of power as it is designed to render B.Ed. candidates ineligible notwithstanding the fact that B.Ed. candidates are eligible for selection but they are ineligible for appointment unless and until list of E.El.Ed. candidates is exhausted,
- (e) the NCTE Regulation, the amended Recruitment Rules, 2012 (Annexure-4) as well as Advertisement, Annexure-1 are consistent on the point of selection of B.Ed. candidates, for appointment of primary teacher (I to V),
- (f) the condition that B.Ed. candidates have to undertake special Bridge Course for six months after appointment is



not a bar in selection and appointment hence judgment in Rakhi Ray: (2010) 2 SCC 637 is not attracted in the present case,

(g) the consistent view of the Apex Court that once the selection process has commenced, subsequent change in the norms are not applicable. Reference in this connection may be made to the judgment of the Apex Court in the cases of (I) Y.V. Rangaih case, AIR 1983 SC 852, (2) P.Mohindran's case: AIR 1990 SC 405, (3) (2008) 3 SCC 512, (4), (2008) 7 SCC 11 and (5) Bishnu Biswas Vs. Union of India: 2014 (2) PLJR (SC) 394.

33. For the aforesaid reason, letter No. 1677 dated 17.12.2019, Annexure-7 to the writ petition is quashed.

34. The writ petition is, accordingly, allowed and disposed of.

35. Consequently, the respondents are directed to complete the selection process on the basis of combined merit list. Henceforth, if the State wishes to grant preferential treatment to D.El.Ed. candidates they have to take a conscious policy decision by prescribing weightage to D.El.Ed. candidates in the process of preparation of merit list for appointment of Assistant Teachers and only after notifying such norms they can undertake



selection process in future by extending preferential treatment to the D.El.Ed. candidates by adopting reasonable and rational criterion.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	AFR
CAV DATE	21.09.2020
Uploading Date	04.11.2020
Transmission Date	

