

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1030 of 2024

In

Civil Writ Jurisdiction Case No.1151 of 2024

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

... .. Appellant/s

Versus

1. Dhirendra Kumar son of Sambhu Prasad Yadav, Resident of Govindpur, P.O.-Chandan, P.S.-Chandan, District-Banka, Pin-814131.
2. Gunjan Kumar, son of Bhushan Sharma, Resident of Sakulachak, P.O.-Samai P.S.- Muffasil, District- Nawada Pin- 805104.
3. Rathi Kashyap, son of Pankaj Kumar Jha, Resident of Bhatkundi P.O.-Bhatkundi P.S.- Banka, District- Banka Pin- 813109.
4. Abhishek Kumar, son of Surendra Kumar Yadav, Resident of Sultanpur P.O.-Andar P.S.- Andar, District- Siwan Pin- 841231.
5. Ramchandra Das, son of Siyaram Das, Resident of Kalyanpur Basti Purav, P.O.- Mohiuddin Nagar (R.S), P.S- Mohiuddin Nagar, District- Samastipur Pin- 848502.
6. Aman Kumar Gupta, son of Raju Kumar Gupta, Resident of Gopalpur, P.O.-Gopalpur, P.S.- Nayagaon District- Saran Pin-841217.
7. Jay Prakash Kumar, son of Ashok Yadav, Resident of Deohara, P.O.-Deohara, P.S.-Goh, District- Aurangabad, Pin- 824114.
8. Rajeev Ranjan Kumar, son of Ravindra Yadav, Resident of Dihuri, P.O.-Dihuri, P.S.- Goh District- Aurangabad Pin- 824129.
9. Vimal Kumar, son of Krishnadev Prasad Singh, Resident of Inai P.O.- Inai, P.S.- Baheri, District- Darbhanga Pin- 847105.
10. Ravi Kumar, son of Balram Choudhary, Resident of NanhkarJayrampur,



- P.O.- DharampurRatti, P.S.- Bihpur, District- Bhagalpur, Pin- 853201.
11. Diksha, daughter of Sanjeev Krishna, Resident of Koyladewa, P.O.- Koyladewa, P.S- Phulwariya, District- Gopalganj, Pin- 841438.
 12. Divya Kumari, Daughter of Vijay Kumar Thakur, Resident of Bhagwat Parsa, P.O.- Bhagwat Parsa, P.S.- Phulwariya, District- Gopalganj, Pin- 841425.
 13. Saurabh Raj, son of Satendra Prasad Singh, resident of Damribigha P.O- Karpi P.S- Karpi District- Arwal Pin- 804419.
 14. Vishal Kumar, son of Munilal Ray, Resident of Kazichak P.O- Katkaira P.S- Koilwar District- Bhojpur Pin- 802160.
 15. Rahul Kumar Pandey, son of Kusheshwar Pandey, Resident of Gangawaliya P.O- Basahi P.S- Kudra District- Kaimur (Bhabhua) Pin- 821108.
 16. Sudhanshu Kumar, son of Vijaymal Kumar Rai, Resident of Chitragupta Colony Bikramganj P.O- Bikramganj P.S- Bikramganj District- Rohtas Pin- 802212.
 17. Ravi Kumar, son of Umesh Prasad, resident of Banwara P.O- Chiksaura P.S- Chiksaura District- Nalanda Pin- 801302.
 18. Ravi Kumar, son of Ramuday Sharma, Resident of Rajkharsha P.O- Koilbhupat P.S- Mehendiya District- Arwal Pin- 804430.
 19. Akshay Kumar, son of Sonelal Paswan, Resident of Rusulpur Vinu Nagar, P.O- Bhikhanpur P.S- Ahiyapur District- Muzaffarpur Pin- 842004.
 20. Sadhana Yadav, Daughter of Samarath Yadav, Resident of Vishwapalpur, P.O- Baraipar, P.S- Tezibazar, District- Jaunpur Pin- 222144.
 21. Shreekant Kumar, son of Balkrishn Sah, Resident of Berai P.O- Berai P.S- Hathauri District- Muzaffarpur Pin- 843129.
 22. Manish Kumar, son of Sadanand Yadav, resident of Bishanpur P.O- Basaha, P.S- Pipra District- Supaul Pin- 852131.
 23. Shobhit Suman, son of Santosh Kumar Mandal, Resident of Sameli P.O- Sameli P.S- Kursela District- Katihar Pin- 854101.
 24. Yash Manan, son of Anirudh Narayan Resident of Mahavir Mandir Lane, Mahendru P.O- Mahendru P.S- Sultanganj District- Patna Pin- 800006.
 25. Vishal Bharti, son of Dinesh Prasad Mandal, Resident of Tikapatti P.O- Tikapatti P.S- Tikapatti District- Purnea Pin- 854101.
 26. Sonam Kumari, wife of Mannu Kumar, Resident of Katari P.O- Katari P.S- Korma District- Sheikhpura Pin- 811102.
 27. Shahid Khan, son of Shamshad Khan, Resident of Karari P.O- Karari P.S- Durgawati District- Kaimur Pin- 821105.
 28. Mahima Bharti, Daughter of Vidyanshu Kumar, Resident of Paunihasanpur, P.O- Paunihasanpur P.S- Vaishali District- Vaishali Pin- 844123.
 29. Sachit Kumar, son of Lalbahadur Yadav, Resident of Rariyaha P.O- Ghailarh, P.S- Ghailarh District- Madhepura Pin- 852124.



30. Anurag Ranjan, son of Randhir Kumar Tiwari, Resident of Paunihasanpur, P.O- Paunihasanpur P.S- Vaishali District- Vaishali Pin-844123.
31. Moni Kumari, Daughter of Sri Satyendra Sah, Resident of Parmanandpur Lal P.O- Chhitrauli P.S- Mahua District- Vaishali pin- 844126.
32. Md. Shamsad Alam, son of Md. Sajjad Alam, Resident of Marar South, P.O- Marar South, P.S- Murkahi District- Khagaria Pin- 851205.
33. Ravijeet Kumar Jha, son of Umesh Chandra Jha, Resident of Haripur Baxi Tol P.O- Haripur Baxi Tol P.S- Kaluahi District- Madhubani Pin- 847229.
34. Anjani Kumari, Daughter of Subodh Kumar, Resident of Gaway P.O-Gaway, P.S- Sheikhpura District- Sheikhpura Pin- 811105.
35. Dhiraj Kumar, son of Ramanuj Prasad Yadav, Resident of Pachoi P.O- Dema Fatehpur P.S- Khizersarai District- Gaya Pin- 824233.
36. Abhinav Singh, Son of Krishna Mohan Singh, resident of Sultanpur East, P.O- Sultanpur East P.S- Mohiuddin Nagar District- Samastipur Pin- 848501.
37. Anupam Vikash, son of Jay Prakash Ram, Resident of Madhopur P.O- Madhopur P.S- Chandramandih, District- Jamui Pin- 811303.
38. Ajay Patel, son of Aparbal, Resident of OdharaSalempur, P.O- Nainijor, P.S- Raunapar District- Azamgarh Pin- 276122.
39. Golu Kumar Pandey, son of Damodar Pandey, Resident of Hemdapur P.O- Parasia, P.S- Brhampur, District- Buxar Pin- 802111.
40. Ashish Tripathi, son of Ramsagar Tripathi, Resident of ChandupurAmrayan, P.O- Sarai Akil, P.S- Sarai Akil, District- Kaushambi Pin- 212216.
41. Vimlesh Kumar, son of Guna Singh Resident of Lodipur, P.O- Saidabad, P.S- Pali (Kako) District- Jehanabad Pin- 804417.
42. Pramjeet Kumar, son of Hareram Mandal, Resident of Kothra P.O- Kothra, P.S- Hayaghat, District- Darbhanga Pin- 847105.
43. Rekha Kumari, Daughter of Subhash Prasad Singh, Resident of Shankarpur, P.O- Shankarpur, P.S- Roshra, District- Samastipur Pin- 848117.
44. Sarswati Kumari, Daughter of Shravan Kumar Singh, Resident of Rajwara, P.O- Inai, P.S- Baheri, District- Darbhanga Pin- 847105.
45. Ayush Bhushan, son of Anil Kumar, Resident of Kurtha, P.O- Kurtha, P.S- Kurtha, District- Arwal, Pin- 804421.
46. Om Prakash Singh, son of Hridya Narayan Singh, Resident of Devasthapur, P.O- Atrauna, P.S- Itarhi, District- Buxar Pin- 802123.
47. Gaurav Raj, son of Sudhist Narayan Thakur, Resident of Nawalpur, P.O- Mushari, P.S- Kathiya, District- Muzaffarpur, Pin- 843124.
48. Sunny Kumar, son of Arvind Kumar Chaudhary, Resident of Chhajan Hari Ray Tola, P.O- Chhajan Hari Shankar, P.S- Kurhani, District- Muzaffarpur, Pin- 844127.
49. Ashish Raj, son of Dilip Sah, Resident of Kuari, P.O- Kuari, P.S-Kursakanta,



District- Araria, Pin- 854332.

50. Ragni Verma, Daughter of Anil Kumar Verma, Resident of Fakharapur, P.O- Fakharapur, P.S- Arwal, District- Arwal, Pin-804401.
51. Suprita Kumari, Daughter of Ram Chandra Singh, Resident of Rampur, P.O- Inai, P.S- Baheri, District- Darbhanga, Pin- 847105.
52. Md. Shahanshah Ansari, Son of Md. Nishar Ansari, Resident of Vill. -Pratappur, P.O.-Dhandh, P.S. and District-Jamui, State-Bihar, Pin Code- 811307.
53. Dheeraj Kumar Pandey, Son of Himanchal Pandey, resident of -Vill. Bakrahua, P.O.- Deora Bazar, P.S.- Jogiya, District- Siddharth Nagar, State- Uttar Pradesh, Pin Code- 272207
54. Ashutosh Kumar Mishra, Son of Rajesh Kumar Mishra, Resident of Village- Jafrabad, Post office- Eklamisraulia, Police Station/Sub Division. -Rudrapur, District- Deoria, State- Uttar Pradesh, Pin Code- 274204
55. Suman Yadav, Daughter of Dayaram yadav, Resident of - Vill. -Naharpur vijainpur sajhara, P.O.-Rampur bhagan, P.S. -Tarun, Sub-division -Bikapur, District -Faizabad (Ayodhya), State- Uttar Pradesh, Pincode -224203.
56. Bhavesh Kumar, Son of Ram Janki Sah, Resident of Khamhar, Begusarai, P.O.-Rajaura, P.S.- Muffasil thana, District- Begusarai, State-Bihar, Pin Code-851131.
57. Prashant Shrivastava, Son of Pramod Shrivastava, Resident of - Ward No. 2,Sikandarpur Bhandar, P.O. and P.S.- Bhandar, District- Datia, State- Madhya Pradesh, Pin Code- 475335.
58. Md. Tahsin, Son of Md.Reyazuddin, Resident of Vill. and Post- Katesar, P.S Bihta, District-Patna, State-Bihar, Pin Code- 801103.
59. Naveen Kumar Singh, Son of Satyendra Kumar Singh, Resident of Vill.- Barahara, Post- Semraon, Block and P.S.- Charpokhari, District- Bhojpur, State- Bihar, Pin Code- 802203.
60. Vivek Kumar, Son of Amod Thakur, Resident of Vill.- Birar, P.O.- Bela Shantikutir, P.S.- Nanpur, District- Sitamarhi, State- Bihar, Pin Code- 843333.
61. Jitendra Kumar Deepak, Son of Suresh Yadav, Resident of Vill.-Kamat Tola, P.O.- Pakrail, P.S.-Maheshkhunt, S.D.- Gogari, District- Khagaria, State- Bihar, Pin Code- 851213.
62. Md Mahtab Ansari, Son of Md. Zafar Ansari, Resident of Araria Bairgachhi Momin Tola, P.O.- Bairgachhi, P.S.- Bairgachhi Araria, District- Araria, State-Bihar, Pin code- 854311.
63. Ankit Kumar Yadav, Son of Sriram Yadav, Resident of Rehati (Banpurvan), P.O.-Trilochan Mahadev, P.S- Jalalpur, District - Jaunpur, State - Uttar Pradesh, Pin Code -222136.
64. Antima Yadav, Daughter of Ram Prit Yadav, Resident of Vill.-Bistara, P.O.- TaharKishundevpur, P.S.- Kaptanganj, District- Azamgarh, State- Uttar



Pradesh, Pin Code- 276141.

65. Gautam Kumar, Son of Kuwar Pal Singh, Resident of Vill.- Sulkhanpur, Post- Chhachha, S.D.- Bhongaon, District- Mainpuri, State- Uttar Pradesh, Pin Code- 205262.
66. Pavan Kumar, Son of Surajram, Resident of Vill./City- Harpalpur, Ward no.- 11, Galan Road, P.O.-Sarsed, P.S.-Harpalpur, S.D.- Nowgong, District- Chhatarpur, State- Madhya Pradesh, Pin Code- 471111.
67. Abhishek Singh, Son of Sri Shankar Vaksh Singh, Resident of 73, Village- Karaundi, P.O.-Bambhaur, P.S.-Rampur Kalan, District-Sitapur, State-Uttar Pradesh, Pin Code-261206.
68. Rishabh Kumar Modanwal, Son of Shri Ravi Shankar Modanwal, Resident of Vill.- Mahul, P.O.- Mahul, P.S.- Ahiraula, District- Azamgarh, State- Uttar Pradesh, Pin Code-223225.
69. Shubham Gupta, Son of Shri Aditya Kumar Gupta, Resident of Mohalla -Kumharantola Gola Gokarannath, P.O.and P.S.- Gola Gokarannath, District- Lakhimpur Kheri, State-Uttar Pradesh, Pin Code-262802.
70. Dharmendra Kumar, Son of - Krishn pal, Resident of Vill.- Pannaha, Post- Pannaha, P.S. - Marka, District - Banda, State - Uttar Pradesh, Pin code -210125.
71. Zubaida Khatoon, Daughter of - Ali Ahmad, Resident of Vill.- Matloobpur, P.O.- Nugpur, P.S.- Jalalpur, District- Ambedkar Nagar, State- Uttar Pradesh, Pin Code - 224149.
72. Sujata, Daughter of Virendra Pratap, Resident of- C/O Amit Shakya, 121/12 Maharana Pratap Nagar Etah, P.O. and P.S. - Etah, District- Etah, State-Uttar Pradesh, Pin Code- 207001.
73. Prajjwal Gupta, Son of Sri Manoj Gupta, Resident of Meerpara, Nagar Panchayat Hathgaon, ward no 8 Dighwara, Hathgaon P.O. and P.S.- Hathgaon, District-Fatehpur, State-Uttar Pradesh, Pin Code- 212652.
74. Rohit Kesharwani, Son of Shri Subhash Chandra Kesharwani, Resident of- 09 ChaukthaLohraBharatnagarShankargarh Bara Prayagraj, District- Prayagraj, State-Uttar Pradesh, Pin Code-212106.
75. KM Priyanka Yadav, Daughter of Arun Kumar, Resident of Village -Hafijpur, P.O.-Bharamau, P.S.-Rasulabad, District-Kanpur Dehat, State- Uttar Pradesh, Pin code - 209306.
76. Km Payal, Daughter of Shiwaprakash Verma, Resident of Ibrahimpatti Chak Habsapur Ballia, P.O.-Ibrahimpatti Ballia, P.S.-Bhimpura, State- Uttar Pradesh, Pin code - 221716.
77. Kamal Singh, Son of Anil Singh, Resident of Sindhan Kalan, P.O.- SindhanKalan, P.S. - Pailani, District-Banda, State-Uttar Pradesh, Pin code- 210126.
78. Indresh Kumar Maurya, Son of Raghav Prasad Maurya, Resident of Vill.- Nahsapar, Post- Chakdahi, P.S.- Khalilabad, District-Sant Kabir Nagar,



State- Uttar Pradesh, Pin Code-272175.

79. Babita, Daughter of Birendra Chaurasia, Resident of Village- Dharmer, P.O.- Dharmer, P.S.-Mail, District- Deoria, State-Uttar Pradesh, Pin code-274505.
80. Anuj Kumar Singh, Son of Harishchand Singh, Resident of 241, Vill. - HauzKhas, P.O.and P.S.- Zafarabad, District- Jaunpur, State-Uttar Pradesh, Pin Code-222180.
81. Pulkit Sharma, Son of Shri Vinod Kumar Sharma, Resident of Nand ViharPhase-1, Near Saiyyad Chauraha , Melrose Bypass Road Aligarh , District-Aligarh, State-Uttar Pradesh, Pin Code-202001.
82. Jitendra Kumar Kushwaha, Son of Sri Ramkeval Kushwaha, Resident of Vill.-Kusamha Mahuawa, Post-Laxmiganj, P.S.-Ramkola, District-Kushinagar, State-Uttar Pradesh, Pincode-274306.
83. Anjali Mishra, Daughter Of - Mahendra Pratap Mishra Resident of Vill.- Basganv, P.O.-Bhagasa, P.S.- Sarpataha District- Jaunpur, State-Uttar Pradesh, Pin Code- 223102.
84. Abhinav Singh, Son of Suresh Kumar, Resident of House No. 88, sector 6b,Phase 2, Buddhi Vihar Avas Vikas Moradabad, P.O. and P.S.-Majhola, District- Moradabad, State-Uttar Pradesh, Pin code - 244001.
85. Rinkee Pal, Daughter of Shri Ram Pal, Resident of Vill. -Khutahan, P.O.- Khutahan, P.S.-Khutahan, District-Jaunpur, State-Uttar Pradesh, Pin Code-223104.
86. Awadhesh Kumar, Son of Virendra Singh, Resident of Vill.-Khairwa, P.O.- Kopia, P.S.- Bakhira, S.D.- Khalilabad, District- Sant Kabir Nagar, State-Uttar Pradesh, Pin Code- 272175.
87. Suchita Pandey, Daughter of Dinesh Pandey, Resident of Vill. -Siswa Bazar Bijapar Pandey tola, Post - Siswa Bazar, Sub-division- Nichlaur, P.S.- Kothibhar, District - Maharajganj, State- Uttar Pradesh, Pin No.-273163.
88. Saista Bano, Daughter of Sabir Hussain, Resident of Bodh Bigha Mehendiya Arwal, P.O - Jaipur, P.S- Mehendiya, District-Arwal, State - Bihar, Pin code-804428.
89. Manu Kumari, Daughter of Ramesh Kumar, Resident of C1, 589a, Gali No.22, Near Lal Mandir, P.O.- Harsh Vihar, District- North East Delhi, Pin Code-110093.
90. Vivek Tripathi, Son of Sri Onkar Nath Tripathi, Resident of Vill.-Haripur, P.O.-KutirChakkey P.S.- Jalalpur, District-Jaunpur, State-Uttar Pradesh, Pin Code-222146.
91. Sahani Neelam Kumari Dharmraj, Daughter of Dharmraj Sahani, Resident of Vill.-Bibipur, Post-Fatehpur, Taluka-Narja, Mau, State- Uttar Pradesh, Pin Code-275304.
92. Vijay Saurabh Raj Singh, Son of Jitendra Kumar Singh, Resident of Rajput Newari, Post- BhriguAsharam, P.S.-Japlinganj Thana Kotwali Ballia, District- Ballia, State- Uttar Pradesh, Pin Code- 277001.



93. Nitesh Kumar Singh, Son of Ajay Kumar Singh, Resident of Tapni, Janaupur, Ballia ,P.O.- Janaupur, P.S.-Sukhpura, District- Ballia, State- Uttar Pradesh, Pin code -277123.
94. Km Shashi Dubey, Daughter of Pramod Kumar Dubey, Resident of Vill.- Shastri Nagar Chitbaragaon, P.O.and P.S.-Chitbaragaon, District-Ballia, State-Uttar Pradesh, Pin Code-221713.
95. Nitish Kumar Pandey, Son of Ramji Pandey, Resident of Vill.-Bariyarpur, P.O.- Sakarpura, P.S.-Bansdih, District- Ballia, State-Uttar Pradesh, Pin code - 277213.
96. Md Akhlaque Ahmad, Son of Md Ehsan Uddin, Resident of Vill.- RamnagarKharjama, P.O.- kochra, P.S.- Khudaganj, District - Nalanda, State- Bihar, Pin code- 801303.
97. Nirbhay Shankar, Son of Jitendra Singh, Resident of Vill.-Pashchimi English,Post-Bihta, P.S.- Imadpur, Dist.- Bhojpur, State- Bihar, Pin Code- 802209.
98. Nitish Kumar Kushwaha, Son of Satya Narayan Mahto, Resident of Village- Chharapatti, P.O.-Siktiyahi, P.S.-Khutauna, District-Madhubani, State-Bihar, Pin Code-847227.
99. Vikash Kumar, Son of Sanjay Chaudhary, Resident of Village and P.O.- Bhabua, P.S. and S.D.- Bhabua, District-Kaimur, State- Bihar, Pin Code- 821101.
- 100 Nitu Maurya, Daughter of Ramniwas Maurya, Resident of Vill.-Sauli, Post- Pakarahat, P.S.-Pannuganj, District -Sonbhadra, State-Uttar Pradesh, Pin Code-231213.
- 101 Vijay Kumar, Son of Mahesh Sharma, Resident of Village-Mahamadpur, P.O.-Mahamadpur Badal, P.S. -Sakra District -Muzaffarpur State- Bihar, Pin Code-843119.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Advocate General Mr. Ajay, GA-5 Mr. Saurav Kumar, AC to GA-5
For the Respondent/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate Ms. Shristi Singh, Advocate
For the Intervenor	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Prince Kumar Mishra, Advocate Mr. Sanket, Advocate Mr. Navin Kumar Singh, Advocate Mr. Jagjit Roushan, Advocate
For the Commission	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate



**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date : 08-04-2025**

Heard the learned counsel for the parties.

2. The State of Bihar and the Bihar Public Service Commission (*in short the Commission*) and others have challenged the judgment dated 18.07.2024 passed by a learned Single Judge of this Court in C.W.J.C. No. 1151 of 2024, whereby the State of Bihar and the Director of Secondary Education have been directed to identify the number of vacancies that had arisen due to non-appointment of the candidates recommended by the Commission as Primary Teachers for Class-I to V pursuant to Advertisement No. 26/2023 for want of requisite qualifications and convey the same to the Commission and on receipt of such information, the Commission has been directed to publish a supplementary result in order of merit from the selection held pursuant to Advertisement No. 26/2023, subject to



the candidate(s) having secured the cut-off marks and meets the cut-off date of birth prescribed by the Commission.

3. The respondents/applicants had approached the High Court for issuance of a *mandamus* to the Commission to publish a supplementary/revised merit list for teachers in Primary Schools for Class-I to V in Advertisement No. 26/2023, dated 30.05.2023, against the vacancies that could not be filled due to ineligibility/disqualification of provisionally successful candidates for non-passing of the CTET and D.El.Ed. Examinations; to publish the result of the respondents in the fresh supplementary list and call them for document verification and allot respective schools; to lower down the cut-off date of birth in all the categories in the supplementary/revised merit list for teachers in Primary Schools for Class-I to V and for a direction to the appellants not to merge/include the left-over vacancy of Advertisement No. 26/2023 dated 30.05.2023 with the



future vacancy of Teachers' Recruitment Examination.

4. The Commission had published an advertisement, bearing No. 26/2023, dated 30.05.2023, inviting online applications for 1,70,461 posts for appointment of Primary School Teachers for Class-I to V; Secondary School Teachers for Class-IX and X and Senior Secondary School Teachers for Class-XI and XII. For the posts of Primary School Teachers for Class-I to V for general subjects, the number of posts advertised was 67,066 with which the respondents are concerned.

5. The advertisement provided the eligibility criteria that in case of candidates obtaining same marks, age would be given precedence and in case, age will be the same, the alphabetical order would be given the priority.

6. The respondents claimed to possess all the requisite qualifications, but their names were not included in the list of successful candidates, numbering



62,653.

7. At the time of publishing of the result, the cut-off marks and the cut-off date of birth for Primary Teachers for different categories, on the basis of the written examination held on 24.05.2023 and 25.05.2023, was also published.

8. The claim of the respondents before the learned Single Judge was that they had secured qualifying marks as published by the Commission for Primary School Teachers, but their names were not included in the merit list because of the cut-off date of birth fixed by the Commission, in which the respondents were lesser in age than the selected candidates. The grievance of the respondents before the learned Single Judge was that against 67,066 posts advertised under the general subject category, only 62,653 candidates were selected. Apart from this, many of the selected candidates had not joined on account of multiple selection of some of them for different posts and some



were not found to possess the requisite qualification, which vacancy was 4619. Under such circumstances, the respondents had contended, the Commission ought to have published supplementary/additional select list to fill up the vacancies.

9. The selection and appointment of teachers is made under the Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceeding and Service Conditions) Rules, 2023 (*in short the Rules of 2023*).

10. The respondents are not aggrieved by the process of selection as well as the process of appointment adopted by the appellants. They only want that vacant positions, instead of being carried over to the next recruitment process, be filled up with the respondents because they fulfill all criteria.

11. According to Rule 7 of the Rules of 2023, all the candidates were allowed to participate in the selection process on the basis of self-declaration in



relation to the qualification which was required to be verified by the Administrative Department of the Government at the time of appointment.

12. This process, referred to above, was also incorporated in the Advertisement No. 26/2023 (TRE-I).

13. During the course of verification of certificates by the Department, many candidates were found to be ineligible and many recommended candidates did not join because of their selection on multiple posts. Considering this aspect of the matter, the Director of Secondary Education had written a letter to the Commission on 24.10.2023, intimating to him the concurrence of the Department for sending recommendation for the vacancies created due to ineligibility of selected applicants as also for non-joining of teachers who were appointed on multiple posts.

14. This was replied by the Commission *vide* communication dated 26.10.2023 requesting for



preparation of a detailed description regarding the vacancies arising because of the above reasons.

15. A supplementary result was published by the Commission on 10.12.2023 of 467 candidates, but only against the vacancies that had arisen because of the candidates not joining as Primary Teachers because of their selection on multiple posts. No recommendations appear to have been made against the vacancies created on account of candidates not found to be eligible by the Department.

16. It appears from the records that the remaining vacancies of Advertisement No. 26/2023, on which no recommendations were made by the Commission, had been carried forward in Advertisement No. 27/2023 (TRE-II).

17. On the basis of the records available before the learned Single Judge, three kinds of vacancies were identified, viz., (i) the seats remaining vacant because of the Commission recommending lesser



number of candidates which was carried forward in the next advertisement; (ii) the seats remaining vacant because of recommendation of same candidate on multiple posts for which a supplementary result of 467 candidates was published and (iii) the seats remaining vacant because of recommendation of ineligible candidates, which also was carried forward in the next advertisement. The vacancy in the third category could be calculated only after the conclusion of examination against next Advertisement No. 27/2023. Because of this, the supplementary result was published against seats which remained vacant due to recommendation of same candidate on multiple posts only.

18. On behalf of the appellants, it has been submitted that the directions have been issued by the learned Single Judge on the basis of the communication made by the Department, but the fact of the matter is that determination of the cut-off marks and declaration of results are in the domain of the Commission and not



of the Education Department. Rule 7(iv) of the Rules of 2023 prescribe that Commission shall determine the pattern of the examination for which it may consult and take advice from the Department as per requirement, which does not include matters in relation to declaration of result or supplementary result. Rule 7(v) of the Rules of 2023 further prescribes that the discretion to fix cut-off marks for the examination shall vest with the Commission. The Education Department has not been conferred with any such power to tinker with that decision.

19. It has also been contended that even TRE-III also has been announced and the selection process is afoot.

20. The appellants have urged that a recruiting agency cannot be compelled to fill up all available posts in the event of non-availability of persons of desired merit. The employer/recruitment agency has the responsibility of fixing a cut-off position,



which cannot be interfered with, unless it is irrational or is tainted with *mala fides*.

21. On this Court seeking a specific query from the Commission about the writ-petitioners/respondents meeting the qualifying cut-off marks and qualifying cut-off age, it was categorically stated that amongst the writ-petitioners, nobody was in the category of candidates who qualify to be appointed on the basis of cut-off marks and cut-off date of birth.

22. In fact, the Education Department, Govt. of Bihar *vide* its communication dated 22.11.2024 had requested the Commission to provide information in the light of Advertisement No. 26/2023 regarding school teachers for Class-I to V as to the number of candidates whose marks and date of birth were similar to the cut-off marks and cut-off date of birth fixed by the Commission in their category, but their names were not in the merit list. Pursuant to such request, the Commission informed the Department that there are no



such candidates whose marks and date of birth were similar to cut-off marks and cut-off date of birth fixed by the Commission in their category. The writ petitioners though have secured equal marks to the cut-off marks in their respective categories for which candidates senior in age have been recommended.

23. Commenting upon the afore-noted stand of the Commission and the Government, the respondents/writ petitioners have stated that there were existing vacancies which were not carried forward to TRE-III. In fact, the vacancies kept on arising. Even as on date, vacancies exist.

24. However, we have taken into account the categorical statement of the Commission that no respondents/writ petitioners met the cut-off threshold of date of birth, though they had obtained marks equal to the selected candidates. We have also considered that the vacancies were carried forward and two consecutive selection process got activated.



25. The law operating in the field in this behalf is neither in doubt nor in dispute. There is no legal right to appointment but only of being considered, which is subject to *bona fide* action on the part of the State. An aspirant has no legal right and the superior Court, in exercise of its judicial power of review, would not ordinarily direct issuance of any writ in the absence of any pleading and proof of *mala fide* or arbitrariness on the part of the employer. [Refer to ***Shankarsan Dash Vs. Union of India : (1991) 3 SCC 47; R.S. Mittal Vs. Union of India : 1995 Supp.(2) SCC 230 and Food Corporation of India & Ors. Vs. Bhanu Lodh & Ors. : (2005) 3 SCC 618***].

26. It is not incumbent upon the employer to fill all posts but discretion not to appoint, must be exercised judiciously. Courts normally would not interfere with the discretion not to fill up posts but exercise of such discretion should not be arbitrary, capricious or whimsical. [Refer to ***Dinesh Kumar***



Kashyap & Ors. Vs. South East Central Railway & Ors. : (2019) 12 SCC 798].

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

28. The judgment impugned is, thus, set aside.

29. All interlocutory applications also are disposed off in terms of this judgment.

30. The appeal succeeds.

(Ashutosh Kumar, ACJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Praveen-II/-

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