

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Letters Patent Appellate Jurisdiction)

L.P.A No. 510 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resource Development, Ranchi.
2. The Director, Directorate of Primary Education, Human Resource Development, Govt. of Jharkhand, Ranchi.
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Chatra.
4. The District Superintendent of Education, Chatra. **Appellants**

Versus

1. Rohit Kumar Gupta, s/o Ramjeevan Sah, r/o Kishanpur, PO & PS-Morgomunda (Madhupur), District-Deoghar, State-Jharkhand.
2. Prabhakar Mishra, s/o Parmeshwar Prasad Mishra, r/o House No.6, Ward No.07, Near High School, Margomunda, PO & PS-Margomunda, District-Deoghar, State-Jharkhand **Respondents**

With

L.P.A No. 513 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resources Development Department, Ranchi.
2. The Director, Directorate of Primary Education, Human Resources Development, Govt. of Jharkhand, Ranchi.
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Dumka
4. The District Superintendent of Education, Dumka **Appellants**

Versus

- Mahesh Kumar, s/o Lalji Mahto, r/o Kodwey, Hazaribagh, PO-Garrikalan, PS-Keredari, State-Jharkhand **Respondent**

With

L.P.A No. 521 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resources Development, Govt. of Jharkhand, Ranchi.
2. The Director of Primary Education, Human Resources Development, Govt. of Jharkhand, Ranchi.
3. Deputy Superintendent Education, Hazaribagh **Appellants**

Versus

1. Rohit Kumar Mehta, aged about 48 years, s/o Hemlal Mehta, r/o Village-Behradih, PO-Behradih, PS-Domchanch, District-Koderma
2. Vijay Kumar, aged about 54 years, s/o Janki Mahto, r/o Village-Basobar, PO & PS-Daroo, District-Hazaribagh
3. Tarkishor Vishwakarma, aged about 40 years, s/o Somar Badhi, r/o Village-Dabri, PO-Dabri, PS-Birni, District-Giridih
4. Nadim Akhtar, aged about 46 years, s/o Nasim Akhtar, r/o Village-Manakdiha, PO-Gadi Bharkattha, PS-Birni, District-Giridih **Respondents**

With
L.P.A No. 522 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resources Development, Govt. of Jharkhand, Ranchi.
2. The Director, Directorate of Primary Education, Human Resources Development Department, Govt. of Jharkhand, Ranchi
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Hazaribagh.
4. The District Superintendent of Education, Hazaribagh.
5. The District Education Officer, Hazaribagh. **Appellants**

Versus

Sanjay Kumar Singh, aged about 43 years, s/o Saryu Singh, r/o Khatiaun, PO-Deochanda & PS-Barhi, District-Hazaribagh **Respondent**

With
L.P.A No. 527 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resource Development, Ranchi.
2. The Director, Directorate of Primary Education, Human Resource Development, Govt. of Jharkhand, Ranchi.
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Dumka.
4. The District Superintendent of Education, Dumka. **Appellants**

Versus

Jhalbal Jha, s/o Meghnath Jha, permanently r/o Village-Ranga, PO & PS-Mohanpur, District-Deoghar, State-Jharkhand and presently residing at Prasad Niwas, Near Indian Ranchi Press, Bilasi, Town-Deoghar, PO, PS & District-Deoghar, State-Jharkhand. **Respondent**

With
L.P.A No. 528 of 2023

1. The State of Jharkhand.
2. The Secretary, Department of Personnel, Rajbhasha and Administrative Reforms, Govt. of Jharkhand, Ranchi.
3. The Director, Primary Education (Directorate of Education), Department of Personnel, Rajbhasha and Administrative Reforms, Govt. of Jharkhand, Ranchi.
4. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Ramgarh.
5. The District Superintendent of Education, Ramgarh.
6. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Pakur.
7. The District Superintendent of Education, Pakur.
8. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Hazaribagh.
9. The District Superintendent of Education, Hazaribagh.
10. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Koderma.

11. The District Superintendent of Education, Koderma.
12. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Godda.
13. The District Superintendent of Education, Godda.
14. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Sahebganj.
15. The District Superintendent of Education, Sahebganj.
16. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Jamtara.
17. The District Superintendent of Education, Jamtara.
18. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Chatra.
19. The District Superintendent of Education, Chatra. **Appellants**

Versus

1. Prakash Prasad Gorain, aged about 49 years, s/o Gopal Gorain, r/o Village-Hethbarga, PO-Barlanga, PS-Barlanga, District-Ramgarh, Jharkhand (829110)
2. Prakash Thakur, aged about 43 years, s/o Nand Lal Thakur, r/o Village-Aurandih, PO-Sangrampur, PS-Bairanga, District-Ramgarh, Jharkhand (829110)
3. Nageshwar Mahtha, aged about 44 years, s/o Jagdish Mahto, r/o Village-Pabra, PO-Pabra, PS-Katkamsandi, District-Hazaribagh, Jharkhand (825319)
4. Subhash Kumar Mahto, aged about 42 years, s/o Mahendra Nath Mahto, r/o Village-Murudih, PO-Sangrampur, PS-Gola, District-Ramgarh, Jharkhand (829110)
5. Abdul Kalam Kazi, aged about 41 years, s/o Md. Idrish Kazi, r/o Villate - Daldali, PO-Barwa East, PS-Govindpur, District-Dhanbad, Jharkhand (828205)
6. Shiw Kumar Rajak, aged about 50 years, s/o late Aklu Rajak, r/o Village-Bejrabad, PO-Charak, PS-Tundi, District-Dhanbad, Jharkhand (828109)
7. Deepak Kumar Singh, aged about 38 years, s/o late Mathura Singh, r/o Village-Chunglo, PO-Gadi Srirampur, PS-Giridih, District-Giridih, Jharkhand (815302)
8. Ajay Kumar Mandal, aged about 42 years, s/o Shiv Shankar Mandal, r/o Village-Gunghasa, PO-Gunghasa, PS-Hariharpur, Gomoh, District-Dhanbad, Jharkhand **Respondents**

With

L.P.A No. 532 of 2023

1. The State of Jharkhand through the Chief Secretary, Govt. of Jharkhand, Project Building, Dhurwa, PO-Dhurwa, PS-Jagannathpur, District-Ranchi
2. The Secretary, School Education and Literacy Development Department, Govt. of Jharkhand, MDI Building, Dhurwa, PO-Dhurwa, PS-Jagannathpur, District-Ranchi
3. The Director, Primary Education, School Education and Literacy Development Department, Govt. of Jharkhand, MDI Building, Dhurwa, PO-Dhurwa, PS-Jagannathpur, District-Ranchi
4. The District Superintendent of Education, Chatra, PO, PS & District-Chatra

5. The District Superintendent of Education, Hazaribagh, PO, PS & District-Hazaribagh
 6. The District Superintendent of Education, Ramgarh, PO, PS & District-Ramgarh
 7. The District Superintendent of Education, Koderma, PO, PS & District-Koderma
 8. The District Superintendent of Education, Giridih, PO, PS & District-Giridih
 9. The District Superintendent of Education, Bokaro, PO, PS & District-Bokaro
 10. The District Superintendent of Education, Dhanbad, PO, PS & District-Dhanbad
 11. The District Superintendent of Education, Dumka, PO, PS & District-Dumka
 12. The District Superintendent of Education, Deoghar, PO, PS & District-Deoghar
 13. The District Superintendent of Education, Jamtara, PO, PS & District-Jamtara
 14. The District Superintendent of Education,,Godda, PO, PS & District-Godda
 15. The District Superintendent of Education, Sahibganj, PO, PS & District-Sahibganj
 16. The District Superintendent of Education, Pakur, PO, PS & District-Pakur
- **Appellants**

Versus

- 1.Sukar Thakur, aged about 45 years, s/o Mallu Thakur, r/o Village-Bandasinga, PO-Belkappi, PS-Gorhar, District-Hazaribagh, State-Jharkhand
2. Md. Reyaz Ansari, aged 41 years, s/o Mustafa, r/o Village & PO-Sheladih, PS-Gorhar, District-Hazaribagh, State-Jharkhand
3. Mukesh Kumar, aged about 46 years, s/o Sri Lakshman Modi, r/o Village-Bandasinga, PO-Belkappi, PS-Gorhar, District-Hazaribagh, State-Jharkhand
4. Rajesh Thakur, aged about 38 years, s/o Sri Dharam Thakur, r/o Village & PO-Barwan, PS-Barkatha, District-Hazaribagh, State-Jharkhand
5. Nakul Mahto, aged about 40 years, s/o Sri Matuk Mahto, r/o Village-Jamnidihi, PO & PS-Barkagaon, District-Hazaribagh, State-Jharkhand
6. Ram Bharos Sahu, aged about 57 years, s/o Prayag Sahu Singh r/o Village-Asarhiya, PO-Karni & PS-Itkhor, District-Chatra, State-Jharkhand
7. Krishna Yadav, aged about 42 years, s/o Sri Doman Yadav, r/o Village-Koni, PO & PS-Itkhor, District-Chatra, State-Jharkhand
8. Vijay Prasad, aged about 41 years, s/o Sri Basudeo Prasad, r/o Village & PO-Shelhara Kala, PS-Chouparan, District-Hazaribagh, State-Jharkhand.

..... **Respondents**

With

L.P.A No. 533 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resource Development Department, Govt. of Jharkhand, Project Bhawan, Dhurwa, Ranchi.

2. The Director, Primary Education (Directorate of Education), Human Resource Development Department, Govt. of Jharkhand, Project Bhawan, Dhurwa, Ranchi
3. The Deputy Commissioner-cum-Chairman, District Education Established Committee, Dhanbad
4. The District Superintendent of Education, Dhanbad
5. The Deputy Commissioner-cum-Chairman, District Education Established Committee, Bokaro
6. The District Superintendent of Education, Bokaro
7. The Deputy Commissioner-cum-Chairman, District Education Established Committee, Ramgarh
8. The District Superintendent of Education, Ramgarh **Appellants**

Versus

1. Nageshwar Prasad Singh, aged about 51 years, s/o Ram Kishun Singh, r/o Village-Behra Kudar, PO -Jhagrahi, PS-Barora, District-Dhanbad, State-Jharkhand
2. Bhubneswar Prasad, aged 52 years, s/o Bahadur Prasad, r/o Village-Baghmara Basti, PO-Baghmara Bazar, PS-Baghmara, District-Dhanbad
3. Narayan Chabdra Mandal, aged about 51 years, s/o Sahdeo Mandal, r/o Village-Koradih, PO-Pradhankhanta, PS-Topchanchi, District-Dhanbad.

..... **Respondents**

With

L.P.A No. 534 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resource Development, Government of Jharkhand, Project Building, Dhurwa, Ranchi
2. The Director, Directorate of Primary Education, Human Resource Development, Government of Jharkhand, Project Building, Dhurwa, Ranchi
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Dumka
4. The District Superintendent of Education, Dumka
5. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Dhanbad
6. The District Superintendent of Education, Dhanbad
7. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Ramgarh
8. The District Superintendent of Education, Ramgarh
9. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Hazaribagh
10. The District Superintendent of Education, Hazaribagh **Appellants**

Versus

1. Ramu Prasad Yadav, aged about 38 years, s/o Basudev Prasad Yadav, r/o Masmohna, PO-Masmohna, PS-Nawalshahi, District-Koderma, State-Jharkhand
2. Shankar Kumar Yadav, aged about 41 years, s/o Raman Yadav, r/o Masmohna, PO-Masmohna, PS-Nawalshahi, District-Koderma, State-Jharkhand
3. Koshal Kumar, aged about 42 years, s/o Deobrat Mandal, r/o Bargo, PO-Bargo, PS-Jarmundi, District-Dumka, State-Jharkhand

4. Dharam Das, aged about 42 years, s/o Raman Das, r/o Selhara, Khurd, PO-Selhara Kala. PS-Chouparan, District-Hazaribagh, State-Jharkhand
 5. Mumtaz Ansari, aged about 37 years, s/o Md. Ashraf Ansari, r/o Nawa Aahar, PO-Boria, PS-Deori, District-Giridih, State-Jharkhand
 6. Md. Imran Ansari, aged about 39 years, s/o Md Siddique Ali, r/o Kadma, PO-Kadma, PS-Kathikund, District-Dumka, State-Jharkhand
 7. Ranjeet Kumar Baranwal, aged about 41 years, s/o Kameshwar Baranwal, r/o Bichgarha, PO & PS-Sarwan, District-Deoghar, State-Jharkhand.
 8. Rajesh Kumar, aged about 42 years, s/o Shambhu Yadav, r/o Ghaghari, PO-Roundhia, PS-Saraiyahat, District-Dumka, State-Jharkhand
 9. Lakshmi Kant Mahto, aged about 40 years, s/o Govardhan Mahto, r/o Village-Pipradih, PO-Shikharjee, PS-Madhuban, District-Giridih, State-Jharkhand.
- Respondents

With

L.P.A No. 536 of 2023

1. The State of Jharkhand through the Principal Secretary, Human Resource Development, Ranchi.
 2. The Director, Directorate of Primary Education, Human Resource Development, Govt. of Jharkhand, Ranchi.
 3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Chatra.
 4. The District Superintendent of Education, Chatra.
- Appellants

Versus

1. Krishana Kumar, s/o Nand Kishore Sahu, r/o Bina Mohalla, PO & PS-Chatra, State-Jharkhand
 2. Hemraj Kumar Thakur, s/o late Badhan Thakur, r/o Village-Tulbul, PO-Tulbul, PS-Rajpur, District-Chatra, State-Jharkhand
- Respondents

With

L.P.A No. 537 of 2023

1. The State of Jharkhand through the Principal Secretary, School Education and Literacy Department, Govt. of Jharkhand, Ranchi, PO-Dhurwa, PS-Jagannathpur, District-Ranchi
 2. The Secretary, School Education and Literacy Department, Govt. of Jharkhand, PO & PS-Dhurwa, District-Ranchi
 3. Director, Primary Education, School Education and Literacy Department, Govt. of Jharkhand, PO & PS-Dhurwa, District-Ranchi
 4. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, PO, PS & District-Hazaribagh.
 5. The District Superintendent of Education, PO, PS & District-Hazaribagh.
- Appellants

Versus

- Sahdeo Yadav, s/o Lalo Yadav, r/o Village-Gaida, PO-Gumobarwadiah, PS-Jai Nagar, District-Koderma, State-Jharkhand
- Respondent

With

L.P.A No. 539 of 2023

1. The State of Jharkhand through Principal Secretary, Human Resource Development, Ranchi.
2. The Director, Directorate of Primary Education, Human Resource Development, Govt. of Jharkhand, Ranchi.
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Dhanbad.
4. The District Superintendent of Education, Dhanbad. **Appellants**

Versus

Niplal Mandal, s/o Kishori Mandal, r/o Village-Bhandaro, Deoghar, PO-Margomunda, PS-Madhupur, State-Jharkhand **Respondent**

With

L.P.A No. 542 of 2023

1. State of Jharkhand through the Principal Secretary, Human Resource Development Department, Govt. of Jharkhand, Project Building, Dhurwa, PO-Dhurwa, PS-Jagannathpur, Ranchi
2. The Director, Directorate at Primary Education, Govt. of Jharkhand, Project Building, Dhurwa, PO-Dhurwa, PS-Jagannathpur, Ranchi
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Giridih, PO & PS-Giridih
4. The District Superintendent of Education, Giridih, PO & PS-Giridih
5. The District Education Officer, Giridih, PO & PS-Giridih
6. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Deoghar, PO & PS-Deoghar
7. The Superintendent of Education, Deoghar, PO & PS- Deoghar
8. The District Education Officer, Deoghar, PO & PS- Deoghar

..... **Appellants**

Versus

1. Sitaram Mahto, aged about 51 years, s/o Rati Mahto, r/o Village-Birani, Tola Manpur Talab, PO-Birani, PS-Nawadih, District-Bokaro
2. Dhaneshwar Mahto, aged 44 years, s/o Dhuja Mahto, r/o-Village-Gunjardih, PO & PS-Gunjardih, District-Bokaro **Respondents**

With

L.P.A No. 543 of 2023

1. State of Jharkhand through the Principal Secretary, Human Resources Development Department, Govt. of Jharkhand, Ranchi.
2. The Director, Directorate of Primary Education, Human Resources Development Department, Govt. of Jharkhand, Ranchi.
3. The Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Hazaribagh.
4. The District Superintendent of Education, Deoghar.
5. The District Education Officer, Deoghar. **Appellants**

Versus

1. Ashok Kumar Pandit, aged about 37 years, s/o Prayag Pandit, r/o Village-Barkattha, PO-Jhingibara, PS-Barkattha, District-Hazaribagh.
2. Shankar Prasad, aged 38 years, s/o Bodhi Mahto, r/o Village-Barkattha, PO-Pesra, PS-Barkattha, District-Hazaribagh.
3. Shibu Kumar Mahto, aged about 39 years, s/o Nemchand Mahto, r/o Village-Kaahato Tola Laiya, PO-Laiya, PS-Mandu, District-Hazaribagh.

..... Respondents

**CORAM : HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

For the Appellant-State	: Mr. Gaurav Raj, AC to AAG-II
For the Respondents	: Mr. Ajit Kumar, Sr. Advocate
	Ms. Tejaswita Safalta, Advocate
	[L.P.A Nos. 510, 513, 521, 522, 527, 528, 532, 533, 534, 536, 537, 539, 542 and 543 of 2023]
	Ms. Sarita Gupta, Advocate
	Mr. Abhijeet Kumar, Advocate
	[L.P.A No. 534 of 2023]

J U D G M E N T

C.A.V on 1st December 2023

Pronounced on 31st January 2024

Per, Anubha Rawat Choudhary, J.

1. Heard the learned counsel for the parties.
2. A batch of 77 writ petitions were disposed of vide common judgment dated 16th February 2022 passed in W.P.(S) No. 2378 of 2019 (*Paras Nath Mandal v. State of Jharkhand*) and other cases. The present 14 appeals arise out of the following writ petitions which were also part of the aforesaid batch of the writ petitions.
3. The case number of the present L.P.A(s) and the corresponding writ petition(s) are as under:
 - i. L.P.A No. 510 of 2023 arising out of W.P.(S) No. 4333 of 2019,
 - ii. L.P.A No. 513 of 2023 arising out of W.P.(S) No. 2710 of 2019,
 - iii. L.P.A No. 521 of 2023 arising out of W.P.(S) No.2660 of 2019,
 - iv. L.P.A No. 522 of 2023 arising out of W.P.(S) No.2678 of 2019,
 - v. L.P.A No. 527 of 2023 arising out of W.P.(S) No. 4383 of 2019,
 - vi. L.P.A No. 528 of 2023 arising out of W.P.(S) No. 3136 of 2019,
 - vii. L.P.A No. 532 of 2023 arising out of W.P.(S) No. 2867 of 2019,
 - viii. L.P.A No. 533 of 2023 arising out of W.P.(S) No. 2879 of 2019,

- ix. L.P.A No. 534 of 2023 arising out of W.P.(S) No. 3106 of 2019,
- x. L.P.A No. 536 of 2023 arising out of W.P.(S) No. 5120 of 2019,
- xi. L.P.A No. 537 of 2023 arising out of W.P.(S) No. 6140 of 2019,
- xii. L.P.A No. 539 of 2023 arising out of W.P.(S) No.3766 of 2019,
- xiii. L.P.A No.542 of 2023 arising out of W.P.(S) No.2871 of 2019
- xiv. L.P.A No. 543 of 2023 arising out of W.P.(S) No. 2577 of 2019.

4. The reliefs as prayed for in various writ petitions are as under: -

(i) L.P.A. No. 510 of 2023 arises out of W.P.(S) No. 4333 of 2019. The petitioners approached the writ Court with the following prayers:

“1. That by the instant writ petition the petitioners pray before this Hon’ble Court to issue necessary direction(s)/order(s)/writ(s) commanding upon the Respondent Authorities to consider the application and candidature of petitioners under the Non-Para category for the remaining vacant seats of Inter Trained Teacher 1 to 5 (Non-Para) and to further consider the candidature of the petitioners for the remaining vacant seats and if the petitioners are found entitled then they shall be given appointment as they had already applied for the aforesaid vacancies at their respective districts in the year 2015.”

(ii) L.P.A. No. 513 of 2023 arises out of W.P.(S) No. 2710 of 2019. The petitioners approached the writ Court with the following prayers:

“1. That by the instant writ petition the petitioner prays before this Hon’ble Court to issue necessary direction(s)/order(s)/writ(s) commanding upon the Respondent Authorities to consider the application of petitioners under the Non-Para category and to allow the petitioner to appear and participate in the counseling process for the selection of Inter-Trained Teacher Appointment 1 to 5 (2015-16) under the Non-Para Teacher Category vacancy as his name has appeared at Sl no. 85 under the Provisional Merit List of Teacher Appointment 1 to 5 (2015-16) Non-Para for district of Dumka published on 15.05.19.”

(iii) L.P.A. No. 521 of 2023 arises out of W.P.(S) No. 2660 of 2019. The petitioners approached the writ Court with the following prayers:

“a. For issuance of an appropriate writ(s)/order(s)/direction(s) in the nature of certiorari for quashing the final merit list (annexure-1) published by the respondent authorities in terms of which the candidates lesser marks than the petitioners have been short listed for selection in the post of Inter Trained Teacher Class-1 to 5, under the para teacher category for the counseling to be held on 03.06.2019 and the names of the petitioner who have higher marks than the said candidates have been left out from the counseling process.

And/ Or

b. For issuance of an appropriate provision in the nature of mandamus commanding upon the respondents authorities to publish a fresh merit list including the names of the petitioners for participating in the counseling for selection in the post of Inter Trained Teacher Class-1 to 5 under Para Category as petitioners have obtained higher marks from the persons who have been selected in the final merit list published on 31.05.2019 for the different district of Hazaribagh.”

(iv) L.P.A. No. 522 of 2023 arises out of W.P.(S) No. 2678 of 2019. The petitioners approached the writ Court with the following prayers:

“1. That the petitioner begs to move before this Hon’ble Court for issuance of an appropriate writ/order/direction directing the concerned Respondent to allow the petitioner to participate in the counseling and accept his joining as on the post of Teachers he obtained higher marks than the other candidates and he discriminated the case of petitioner for participating in the counseling and he are allowing other candidates who obtained lesser marks than the petitioner and his named bears in Data list, so he is entitled to participate in the counseling but Respondents did not allow which action is wholly illegal, malafide and arbitrary as in pursuance of advertisement 01/2015 to fill up posts of inter-trained Teacher (Hindi) advertisement was published in the news-paper and also published in different district for filling up the post of inter trained teachers and petitioner applied in pursuance of vacancies as he was possessing all the requisite qualification for the post of inter trained teacher and Teacher’s Eligibility Test (TET) was held and he was declared successful and he obtained qualifying marks for selection for the post of Teacher and accordingly his name bears in the Data base list but he was not called for participation in the counseling which is elementary stage of joining on the post of teacher but the Authority without following the rules without looking the advertisement they are not allowing the petitioner to participate in the counseling and the case of the petitioner was not considered for the counseling and joining on the post, though he obtained much more marks then the other candidates his name appear in the Data Base list in Hazaribag District so the action of the Concerned Respondents highly discriminatory, arbitrary and malafide and the same is based on violation of principle of natural justice as well as based on Articles 14 and 15 of the constitution of India so the action of concerned respondents are against the rules, law and action is malafide so, petitioner prays for appropriate writ/order/direction as Your Lordships may deem fit and proper for doing conscionable justice to the petitioner.”

(v) L.P.A. No. 527 of 2023 arises out of W.P.(S) No. 4383 of 2019. The petitioner approached the writ Court with the following prayers:

“1. That by the instant writ petition the petitioner prays before this Hon’ble Court to issue necessary direction(s)/order(s)/writ(s) commanding upon the

Respondent Authorities to consider the application and candidature of petitioner under the Non Para category for the remaining vacant seats of Inter Trained Teacher 1 to 5 (Non Para) and to further consider the candidature of the petitioner for the remaining vacant seats and if the petitioner is found entitled then he shall be given appointment as he had already applied for the aforesaid vacancies at district of Dumka in the year 2015.”

(vi) L.P.A. No. 528 of 2023 arises out of W.P. (S) No. 3136 of 2019. The petitioners approached the writ Court with the following prayers:

“a. For issuance of appropriate direction upon the Respondents showing them cause as to why and under what circumstance the Petitioners though shown qualified for counseling scheduled on different dates in different districts have not been entertained and allowed to participate in counseling for their appointment on the post of Inter Trained Teacher in "non-para category" in connection with Advertisements issued by the office of District Superintendent of Education of the District of Pakur, Hazaribagh and Ramgarh.

b. To hold and declare that the petitioners are entitled for appointment on the post of assistant teachers for Class I to V in the category of "Non-Para" despite they being Para Teachers, in as much as, the petitioners fulfil all the criteria laid down under the Jharkhand Primary School Teacher Appointment Rules, 2012 (as amended up to date).

C. For issuance of appropriate direction upon the Respondents to issue letter of appointment to the Petitioners for the post of Intermediate Trained Teacher since the Petitioners being eligible have qualified in the districts of Pakur, Hazaribagh and Ramgarh and were called also for counseling in respective districts but erroneously not allowed to participate in the counseling on the ground that the Petitioners being a para teacher can be considered only in para category and not in non-para category while considering the fact the Division Bench of this Hon'ble Court in L.P.A. No. 186/2017 and L.P.A. No. 199/2017 have settled the issue and further the candidates of Non-Para Category who have been given letter of appointment by other districts but subsequently removed now again been inducted in the light of order of the writ court passed in the light of order given in L.P.A. No. 186/2017 and L.P.A. No. 199/2017.”

(vii) L.P.A. No. 532 of 2023 arises out of W.P. (S) No. 2867 of 2019. The petitioners approached the writ Court with the following prayers:

“a. For issuance of appropriate writ/writs, order/orders, direction/directions and a writ in nature of mandamus commanding upon the Respondents to continue the counseling for appointment of Inter/Graduate Trained Teachers till last existing advertised vacancies in pursuant to order of this Hon'ble Court dated 02.02.2017 passed in W.P. (S) No. 19/2016 (Annexure-6) with other analogous writ petitions, which has been affirmed by Hon'ble Division Bench vide order dated 11.05.2018 passed in

L.P.A. No. 168/2017 (Annexure-7), wherein, there is clear cut direction in Para 19 & 20 of order dated 02.02.2017 that one more counseling be conducted for appointment on the remaining Advertised Vacancy and counseling may continue for more than one day, but again the authorities have arbitrarily stopped the selection process after doing one day counseling though the advertised vacancies are still remained vacant.

b. For issuance of appropriate direction upon the Respondents to give priority to the Para Teachers who are having above position in merit list and also having teaching experience but the authorities are calling the candidates for counseling from below merits of Non Para candidates.

c. For issuance of appropriate direction upon the Respondents to continue the appointment process till last existing vacancy of Intermediate/Graduate Trained Teacher and fill up the remaining seats from the petitioners only considering the lengthy process of selection so that Hon'ble Court's direction can be followed in its true spirit."

(viii) L.P.A. No. 533 of 2023 arises out of W.P. (S) No. 2879 of 2019. The petitioners approached the writ Court with the following prayers:

"1. That in the instant writ application, the petitioners pray from this Hon'ble Court for issuance of an appropriate writ(s)/ order(s) direction(s) commanding upon the concerned respondents showing them cause as to why and under what circumstance, the counseling of petitioners who are the Para Teachers have not been taken for appointment of the post of Inter Trained Teacher in Para Category who obtained higher merit marks in connection with Advertisements issued by the concerned Respondents, whereas the counseling of some Para Teachers have been taken who obtained less marks from the petitioners.

And

Further pray for issuance of an appropriate writ(s)/ Order(s) direction(s) commanding upon the concerned respondents to take counseling of petitioners who are the Para Teachers for appointment of the post of Inter Trained Teacher in Para Category who obtained higher merit marks in connection with Advertisements issued by the concerned Respondent whereas several seats of the post of Inter Trained Teacher are still vacant.

AND/OR

Further pray for issuance of an appropriate writ(s)/ Order(s) direction(s) commanding upon the concerned respondents to issue letters of appointment to the petitioners for the post of Intermediate Trained Teacher since the petitioners are TET passed and obtained higher merit marks and fulfill all the criteria from some other Para Teachers, whose counseling has already been taken by the respondents."

(ix) L.P.A. No. 534 of 2023 arises out of W.P. (S) No. 3106 of 2019. The petitioners approached the writ Court with the following prayers:

“1. That by the instant writ petition the petitioners pray before this Hon’ble Court to issue necessary direction(s)/order(s)/writ(s) commanding upon the Respondent Authorities to consider the application and candidature of Petitioners under the non-para category for the remaining vacant seats of Inter Trained Teacher 1 to 5 (Non-Para) and to further consider the candidature of the petitioners for the remaining vacant seats and if the petitioners are found entitled then they shall be given appointment as they had already applied for the aforesaid vacancies at their respective districts in the year 2015 and candidates having lesser marks than the petitioners have been called and allowed to participate in the counseling.”

(x) L.P.A. No. 536 of 2023 arises out of W.P. (S) No. 5120 of 2019. It has been stated by respondents Nos. 1 and 2 in their affidavit dated 12.12.2023 that they are para-teachers and they applied under the para-teacher category.

(xi) L.P.A. No. 537 of 2023 arises out of W.P. (S) No. 6140 of 2019. The petitioner approached the writ Court with the following prayers:

a. For quashing and setting aside order as contained in memo no. 1311 dated 15.07.2019 (Annexure-8) district superintendent of education, Hazaribagh whereby and whereunder the petitioner has been denied any benefit in the present appointment process in contradiction of the judgment dated 11.05.2018 passed in L.P.A. No. 186/2017 with L.P.A. No. 199/2017.

b. For quashing and setting aside notification no. 662 dated 02.05.2019 (Annexure-4) whereby and whereunder the department has tried to water down the benefit given to para teachers to be considered under non-para teacher category by inserting contradictory clauses.

c. For quashing the final merit list published on 1.06.2019 (Annexure-9) inviting candidates in non-para category for counseling in the district of Hazaribagh as the candidates who have scored lesser marks than the petitioner find place in the said merit list.

d. Directing the respondents concerned to include the name of the petitioner in list of the candidates invited for counseling for the post of assistant teachers in government primary schools for classes 1 to 5 insofar as the petitioner has higher marks than the candidates whose names are appearing in the final merit list.”

(xii) L.P.A. No. 539 of 2023 arises out of W.P. (S) No. 3766 of 2019. The petitioner approached the writ Court with the following prayers:

“1. That by the instant writ petition the petitioner prays before this Hon’ble Court to issue necessary direction(s)/order(s)/writ(s) commanding upon the Respondent Authorities to consider the application of Petitioner under the Most Backward Class category in the light of Memo No. 2604 dated 06.11.15 (contained in Annexure 3) for the remaining vacant seats for the selection of Inter-trained Teacher Appointment 1 to 5 (2015-16) under the Non-Para Teacher Category vacancy

as his name has appeared at Sl no. 1923 in the Provisional List of Teacher Appointment 1 to 5 (2015-16) Non Para for district of Dhanbad.”

(xiii) L.P.A. No. 542 of 2023 arises out of W.P. (S) No. 2871 of 2019. The petitioners approached the writ Court with the following prayers:

“1. That the petitioners beg to move before this Hon'ble Court for issuance of an appropriate writ / order / direction directing the concerned Respondent to allow the petitioners to participate in the counseling and accept their joining as on the post of Teacher they obtained higher marks than the other candidates and they discriminated the case of petitioners for participating in the counseling and they are allowing other candidates who obtained lesser marks than the petitioners and their names bear in Merit list, so they are entitled to participate in the counseling but Respondents did not allow which action is wholly illegal, malafide and arbitrary as in pursuance of advertisement to fill up posts of inter-trained Teacher (Hindi advertisement was published in the news-paper and also published in different district for filling up the post of their trained teachers and petitioners applied in pursuance of vacancies as they were possessing all the requisite qualification for the post of inter trained teacher and Teacher's Eligibility Test (TET) was held and they were declared successful and the obtained qualifying marks for selection for the post of Teacher and accordingly their names bear in the Merit list but they were not called for participation in the counseling which is elementary stage of joining on the post of teacher but they Authority without following the rules without looking the advertisement they are not allowing the petitioners to participate in the counseling and the case of the petitioners was not considered for the counseling and joining on the post, though they obtained much more marks than the other candidates their names appear in the Merit list in Giridih & Deoghar District so the action of the concerned Respondents is highly discriminatory, arbitrary and malafide and the same is based on violation of principles of natural justice as well as based on Articles 14 and 16 of the constitution of India so the action of concerned respondents are against the rules, law and action is malafide so, petitioners pray for appropriate writ/order/direction as Your Lordships may deem fit and proper for doing conscionable justice to the petitioners.”

(xiv) L.P.A. No. 543 of 2023 arises out of W.P. (S) No. 2577 of 2019. The petitioners approached the writ Court with the following prayers:

“1. That the petitioners beg to move before this Hon'ble Court for issuance of an appropriate writ/order/direction directing the concerned Respondent to allow the petitioners to participate in the counseling and accept their joining as on the post of Teacher they obtained higher marks than the other candidates and they discriminated the case of petitioners for participating in the counseling and they are allowing other candidates who obtained lesser marks than the petitioners and their names bear in Data list, so they are entitled to participate in the counseling but

Respondents did not allow which action is wholly illegal, malafide and arbitrary as in pursuance of advertisement 01/2015 to fill up posts of inter-trained Teacher (Hindi) advertisement was published in the news-paper and also published in different district for filling up the post of inter trained teachers and petitioners applied in pursuance of vacancies as they were possessing all the requisite qualification for the post of inter trained teacher and Teacher's Eligibility Test (TET) were held and they were declared successful and they obtained qualifying marks for selection for the post of Teacher and accordingly their name bear in the Data base list but they were not called for participation in the counseling which is elementary stage of joining on the post of teacher but the Authority without following the rules without looking the advertisement they are not allowing the petitioner to participate in the counseling and the case of the petitioners were not considered for the counseling and joining on the post, though they obtained much more marks than the other candidates their name appear in the Data Base list in Hazaribag District so the action of the Concerned Respondents highly discriminatory, arbitrary and malafide and the same is based on violation of principle of natural justice as well as based on Articles 14 and 16 of the constitution of India so the action of concerned respondents are against the rules, law and action is malafide so, petitioners pray for appropriate writ/order/direction as Your Lordships may deem fit and proper for doing conscionable justice to the petitioner."

5. The status of the writ petitioners in the cases involved in these batch are as under:-

L.P.A. No.	Corresponding Writ Petition No.	Petitioner(s) category	Post applied for
510 of 2023	4333 of 2019	Para Teacher	Non-Para Teacher Category
513 of 2023	2710 of 2019	Para Teacher	Non-Para Teacher Category
521 of 2023	2660 of 2019	Para Teacher	Non-Para Teacher Category
522 of 2023	2678 of 2019	Para Teacher	Para Teacher Category
527 of 2023	4383 of 2019	Para Teacher	Non-Para Teacher Category
528 of 2023	3136 of 2019	Para Teacher	Non-Para Teacher Category
532 of 2023	2867 of 2019	Para Teacher	Para Teacher Category
533 of 2023	2879 of 2019	Para Teachers	Para Teacher Category
534 of 2023	3106 of 2019	Petitioner Nos. 1 to 7 are para teachers and petitioner No. 8 is not a para teacher.	Non-Para Teacher Category
536 of 2023	5120 of 2019	Para Teachers	Para Teacher Category
537 of 2023	6140 of 2019	Para Teacher	Non-Para Teacher Category
539 of 2023	3766 of 2019	Para Teacher	Non-Para Teacher Category

542 of 2023	2871 of 2019	Para Teacher	Non-Para Teacher Category
543 of 2023	2577 of 2019	Para Teacher	Non-Para Teacher Category

6. Thus, the batch of cases at hand broadly involves two categories. one, para-teachers applied under the non-para-teacher category, *and* second, para-teachers applied under the para-teacher Category. Writ petitioner no. 8 (*Rajesh Kumar son of Shambhu Yadav*) in WPS No. 3106 of 2019 (corresponding L.P.A. no. 534 of 2023) is not a para teacher and had applied under non para teacher category.

7. **Arguments of the appellants.**

- A. By referring to the order passed in W.P. (S) No. 19 of 2016 (affirmed in LPA No. 168 of 2017) it has been submitted that in the order passed by writ Court and confirmed by the Division Bench of this Court, there is a clear direction that there shall be only one counseling in all the districts of the State but the writ Court while passing the impugned order has failed to consider the direction as passed in W.P. (S) No. 19 of 2016.
- B. The writ Court while passing the impugned order has further failed to consider that in W.P. (S) No. 19 of 2016 (affirmed in LPA No. 168 of 2017) had directed that the candidates who were earlier called for counseling shall not be permitted in the counseling except those permitted by the order of the Court.
- C. It has further been submitted that the writ Court ought to have considered that as per resolution dated 02.05.2019 issued in pursuance of the guidelines issued by this Court, the candidates who were previously called for counseling would not be invited for counseling.

8. **Arguments of the writ-petitioners**

The learned counsel for the writ petitioners has opposed the prayer and has submitted that the impugned order does not call for any interference as out of the same batch of the writ petitions one batch of L.P.A. No. 203 of 2022 and other analogous cases have been decided by a co-ordinate Division Bench wherein appropriate directions have also been issued and such a decision is a binding precedent therefore different view may not be taken in these batch of cases. It is also submitted that any different view would be against the judicial discipline.

9. Pursuant to the order dated 01st December 2023 written submissions have been filed by the respondents in L.P.A. Nos. 510/2023, 513/2023, 521/2023, 527/2023, 528/2023, 534/2023, 537/2023, 539/2023, 542/2023 & 543/2023, and no written submission has been filed in L.P.A. Nos. 522/2023, 532/2023, 533/2023 and 536/2023. The aforesaid chart would reflect that no written submission has been filed on behalf of para-teachers who had applied under the para-teacher category. Further, there is no mention of one isolated writ petitioner no. 8 (connected LPA No. 534/2023) who is not a para teacher and had applied under non-para teacher category.

Findings of this Court.

Background of the cases

10. The background of the cases is that an advertisement was issued in the year 2015 in different districts for the appointment of intermediate-trained teachers and graduate-trained teachers. The applicable rule was Jharkhand Elementary School Teachers Appointment Rules, 2012. The candidates were to apply district-wise and make different applications for different districts. As per the advertisement, out of the total posts, 50% were to be filled up by para teachers who were working in government schools whereas the remaining 50% were to be filled up by non-para teacher candidates.

11. The counseling was stopped midway without filling up the vacancies as advertised which led to the filing of writ petitions before this Court including W.P.(S) No.19 of 2016 and W.P.(S) No.32 of 2016. All the petitioners in the batch of writ petitions decided in W.P.(S) No.19 of 2016 and other analogous cases were para-teachers. A common question of law arose for consideration in the said writ petitions as to whether appointment against advertised vacancies can be denied arbitrarily by deciding not to conduct further counseling resulting in arbitrary denial of appointment. It was the case of the State before the writ Court that the schedule fixed by the Department vide order dated 03.07.2015 was that the selection process was to be completed by 18.09.2015 and upon expiry of the period, further counseling was stopped in all the districts. It stood admitted in the writ proceeding that in most of the districts, counseling continued till December 2015 and in a few districts, counseling was also held in the month of

January 2016. It was the case of the petitioners in those cases that they were shortlisted as eligible candidates and were included in the panel of eligible candidates. The writ Court was of the view that denial of appointment to eligible candidates against the remaining unfilled vacancies was illegal and not justified. It was observed that the number of counseling in different districts varied from 6 to 10 and there were a large numbers of unfilled posts in each district. This Court was of the view that it was not in the public interest to leave such a large number of vacancies unfilled and deprive appointment to the eligible candidates. This Court was also of the view that the situation can be remedied if one more counseling is conducted for the appointment in the remaining advertised vacancies.

12. The writ Court also took note of the plea raised in W.P.(S) No.19 of 2016 based on paragraph 16(iii) of the counter affidavit that the candidates lower in the merit list were appointed but the petitioners were left out. In the said writ petition under the order passed on 11.01.2017, a supplementary counter-affidavit was filed in which it was clarified that the minimum cut-off marks reflected therein were for female candidates which was corroborated by the chart produced along with the counter-affidavit. In such a view, this Court observed that no further inquiry on the aforesaid plea was required. The writ Court was further of the view that in the matter of appointment, there is a necessity to extend similar benefits to other eligible candidates to avoid potential future litigations claiming similar benefits by other eligible candidates who may be higher in the merit-list than the petitioners before the Court.

13. In the aforesaid background that writ petition being W.P.(S) No.19 of 2016 with W.P.(S) No.32 of 2016 and other analogous cases were allowed with the directions contained in paragraphs nos.19 and 20 of the judgment dated 02.02.2017 to conduct one more counseling simultaneously in all the districts in terms of directions contained in paragraphs 19 and 20 of the judgment, quoted as under:

“19. In the light of the foregoing discussions, the following directions are issued:-

- (i) A public notice, indicating that counselling for all unfilled advertised vacancies in all the districts shall be conducted in the 3rd / 4th week of March, 2017. It shall be published in two daily newspapers on or before 23.02.2017. The public notice shall also indicate that no further opportunity to produce original certificate would be granted

to the candidates. The counselling may continue for more than one day.

- (ii) An exercise to short-list eligible candidates viz-a-viz vacancy-position in each category shall be undertaken and candidates twice the number of total vacancies, merit-wise, after the last selected candidate shall be put on the web-site, preferably by the 3rd week of March 2017. However, it may not be necessary to call all short-listed candidates for counseling.
- (iii) The name of candidates falling under the “zone of consideration” as indicated in clause (ii) above shall be put on the web-site, at least one week prior to the date of counselling.
- (iv) The entire exercise must be concluded by 31.03.2017.

20. It is further made clear that there shall be only one counselling in all the districts of the State and counselling shall be conducted simultaneously in all the districts. The candidates who were earlier called for counselling shall not be permitted to participate in the counselling except, those permitted by an order of the Court.”

14. The judgment dated 02.02.2017 passed in W.P.(S) No.19 of 2016 was challenged in LPA No.168 of 2017 which was dismissed vide judgment dated 11.05.2018 by observing that there were genuine difficulties canvassed by the original writ petitioners and there was a need of competent teachers. Considering the total number of vacancies advertised, the Division Bench found no reason to take a different view than what was taken by the learned writ Court in paragraphs nos.19 and 20 as quoted above whereby a reasonable opportunity of one more counseling was given. It was also observed that such direction cannot be said to be contrary to any law or any clause of the advertisement or circular issued by the State Government as there was not even a single circular regarding the minimum or maximum number of counseling. It was also observed that out of the total number of advertised vacancies of 10,000, 3832 vacancies were still unfilled and no prejudice would be caused if directions given in paragraphs nos.19 and 20 of the order dated 02.02.2017 passed in W.P.(S) No.19 of 2016 is complied by the State. On the contrary, it appeared that the State was given one more chance to perform its duty. While dismissing the appeal the Division Bench directed the Secretary, School Education and Literacy Development Department, Government of Jharkhand to complete the exercise of counseling as directed by the writ Court in W.P.(S) No.19 of 2016 in paragraph nos.19 and 20 as early as possible and practicable, and in no case later than a period of four months from 11.05.2018.

15. On the same day i.e. 11.05.2018, another batch of Letters Patent Appeal being LPA No.186 of 2017 and another analogous case arising out of the same selection process was disposed of. In the said LPA, the original writ petitioners working as para teachers had not applied under the reserved category meant for para-teachers but had applied under the non-para teachers category. The State had argued that the original petitioners were working as para-teachers so they must apply or they shall be deemed to have applied, under the reserved category quota for para teachers. Such argument of the State was rejected by the Division Bench by observing that there was no rule, regulation or Government Circular or Government Policy that those candidates, who were already working as para teachers must apply under the reserved category meant for para-teachers and there was no such condition attached with the public advertisement in question that those candidates, who were working as para-teachers must apply for the reserved category seats meant for para- teachers. It was further observed that on the contrary, it depends upon the confidence of the candidate to apply under the reserved category or not to apply under the reserved category and there was no bar for such candidates that they could not apply under the General category, which was meant for non-para teachers and such candidates were confident enough not to take advantage of the age relaxation or any other type of relaxation meant for the para-teachers as given by the government. It was observed that the concerned writ Court while deciding W.P.(S) No.6031 of 2015 and W.P.(S) No.173 of 2016 vide common judgment dated 02.03.2017 had not properly appreciated these aspects of the matter and consequently the judgment dated 02.03.2017 passed by the learned Single Judge was quashed and set aside. The Division Bench passed direction upon the State to initiate the counseling of the original petitioners, as early as possible and practicable, so that it can be completed within a period of four months from 11.05.2018 in terms of the direction contained therein and by considering the candidature of the writ petitioners as per non-para teacher category vacancies subject to fulfilling the conditions by the appellants regarding eligibility criteria for age etc. Another LPA being LPA No.172 of 2018 which was on similar line as that of the LPA No.186 of 2017 was decided on 23.07.2018 with similar directions. Thereafter, in writ petition being W.P.(S)

No. 2142 of 2019 and W.P.(S) No. 768 of 2019 with other analogous cases decided on 13.05.2019, the benefits extended to para teachers applying under the non-para teacher category vide LPA No.186 of 2017 were extended to all such persons who were similarly situated and direction was also issued to the State to include the name of all the writ petitioners of W.P.(S). No.2142 of 2019 and other analogous cases in the counseling process for selection of Assistant Teachers.

16. Under the aforesaid orders passed by this Court and for conducting one counseling for all districts on one day, a Resolution dated 02.05.2019 was issued mentioning that the candidates who were previously called for counseling would not be invited for counseling to be held on 03.06.2019 and the entire procedure for conducting a single round of counseling was conducted by the appellants on 03.06.2019 and a number of persons were appointed.

17. Thereafter another batch of writ petitions W.P.(S) No. 2378 of 2019 and other analogous cases fell for consideration before the writ Court which have been disposed of vide impugned order dated 16.02.2022. As recorded in the impugned order itself in paragraph 3, the writ petitioners had approached the writ Court with the common prayer seeking a direction upon the appellants to consider their candidature in respective categories, that is, para teacher and non-para teacher category for the district for which they had applied for against the vacant seats of Intermediate Trained Teachers.

18. The learned writ Court referred to the entire background of the matter and the fresh cause of action to approach this Court again has recorded in paragraph 6 of the impugned order.

Cause of action for filing W.P. (S) No. 2378 of 2019 and other analogous cases and the case of the writ petitioners before the learned writ Court.

19. The cause of action for filing batch of writ petitions being W.P. (S) No. 2378 of 2019 and other analogous cases as mentioned in the impugned order is that though the writ petitioners had applied for several districts but their names were not included in counseling list of any of the districts and their specific grievance was that the candidates having lesser marks than the writ petitioners were included in the counseling list and were also called for appearing in the counseling and were given appointment in the year 2019

itself. It was argued by the learned counsels for the writ petitioners in the batch of writ petitions that the counseling was to be conducted against the vacant seats in light of the advertisement of the year 2015 for all the respective categories i.e. para teacher as well as non-para teacher category and since the writ petitioners had secured more marks in the merit list than the candidates who were appointed in the year 2019 therefore, the candidature of the writ petitioners ought to have been considered. It was also argued that since the writ petitioners were never called for counseling therefore their candidature ought to be considered in terms of Clause 6 (d) of the aforesaid Resolution / Sankalp dated 02.05.2019. It was also argued that in light of the direction given in ***Order dated 13.05.2019 in W.P.(S.) no. 768 / 2019 with analogous cases(supra)*** the state ought to have considered the cases of all the candidates depending upon the merit list including the candidates who had not approached the Hon'ble Court. It was also argued that for several districts, the names of the same candidates were published for counseling and as such, the seats remained vacant even after the counseling was conducted as one candidate could have participated in the counseling for only one district. It was argued that in several districts the candidates who had obtained lesser marks than the writ petitioners were included in the merit list and called for counseling and appointed after counseling only on the ground that earlier they had approached this Court for redressal of their grievances. It was submitted that the State had filed a counter affidavit showing the chart of cut-off marks for all the districts of the State of Jharkhand and from there, it was evident that the writ petitioners had more marks than the last candidate who was appointed in their respective categories in their respective districts.

Case of the appellants before the writ Court.

20. It was submitted by the appellants before the writ Court that as the advertised posts belong to the district cadre, hence, the cut-off marks vary for each category in each district due to the number of applications received by the respective districts and the number of candidates appearing in the counseling process. The cut-off marks for the appointment of para teachers and non-para teachers were published before the fresh counseling by every district and the candidates were allowed to participate in the counseling as

per the operative portion of the order(s) passed in W.P.(S). No. 19 of 2016, wherein this Court has observed that there shall be only one counseling in all the districts of the State and counseling shall be conducted simultaneously in all the districts and the candidates who were earlier called for counseling shall not be called for counseling, except, those permitted by an order of the Court.

21. It was argued that the database showing marks of individual candidates had been prepared by the respective district and was published on the district Website pursuant to the directions issued by the Directorate which was evident from letter No. 203 dated 29.01.2019. As per the directions of this Court, Resolution No. 662 dated 02.05.2019 was issued, and according to para-6(e)(i) of the said resolution, the candidates who were previously called for counseling (attended or not attended) were not invited again for attending the present counseling. Since the writ petitioners were earlier called for counseling in various districts, therefore, they were not invited for fresh counseling held on 03.06.2019. It was submitted that the prayer of the petitioners was not maintainable as the entire fresh round of counseling was over and writ petitioners were not allowed to participate in the counseling process as per the direction of the High Court hence, the present writ petitions were devoid of any merit and was liable to be dismissed at the outset.

Findings of the writ Court, the issue framed and directions issued

22. The writ court recorded its findings, interalia, in paragraphs 10 and 12 as under: -

“ 10. Be that as it may, having heard the rival submissions of learned counsel for the parties and upon perusal of the documents brought on record, it appears that the cases have got chequered history. Earlier similarly situated persons (para teachers and non-para teachers) had approached this Court in **W.P.(S). No. 19 of 2016 and other analogous cases (Binod Kumar Yadav & Ors. Vs. the State of Jharkhand & Ors.)**, for appointment by way of fresh counseling as the same has been denied by the State in an arbitrary manner. It was contended by the State in those cases that because of the time schedule fixed by the Department vide letter dated 03.07.2015, wherein selection process was to be completed by 18.09.2015, further counseling was stopped in all the districts. The matter was heard at length by the learned Single Judge and taking into consideration that no conscious decision has been taken by the State to stop the appointment process and as the eligible candidates were there and also since posts were lying vacant and vacancies were there, denial of appointment was held to be completely illegal and not justified.

Admittedly, the appointment process cannot continue for an indefinite period and it has to come to a logical end and must be stopped somewhere. The learned Single Judge considering every aspects of the matter, was of the view that the issues can be resolved if one more counseling is conducted for appointment for remaining advertised posts. The Court was very much conscious of the fact that if the cases of the petitioners in the aforesaid writ petitions are allowed, similarly situated persons may also approach this Court for similar orders and even if they did not approach, in view of celebrated judgment of Hon'ble Apex Court in case of **State of U.P. Vs. Arvind Kumar Srivastava [(2015) 1 SCC 347]**, the normal rule is that when a particular set of employees is given relief by Court, all other identically situated persons need to be treated alike by extending that benefit. Accordingly, this Court allowed the writ petition being W.P.(S). No. 19 of 2016 and other analogous cases.”

12. The order of the learned Single Judge was challenged before the Division Bench in **LPA No. 168 of 2017 (State of Jharkhand & Ors. Vs. Binod Kumar Yadav & Ors.)** and the Hon'ble Court while dismissing the said LPA clearly observed that, *“We, therefore, direct the Secretary, School Education and Literacy Development Department, Government of Jharkhand to complete the exercise of counseling as directed by the learned Single Judge in Paragraph 19 and 20, as aforesaid, as early as possible and practicable, and in no case later than a period of four months from today”*. The same view as expressed by this Court in different LPAs and in different Writ Petitions, wherein it was clearly held that no other view other than what has been expressed in para-19 and 20 of the judgment passed in WP(S). No. 19 of 2016 and other analogous cases and in para-8 of the judgment passed in LPA No. 168 of 2017 can be taken.

The present writ petitions have been filed on the ground that the writ petitioners have secured more marks than the last selected candidates who have been appointed in the year 2019 and therefore, the candidature of these petitioners ought to have been considered. It is the specific contention of learned counsel representing the petitioners that they were never called for counseling, therefore, their candidature ought to have been considered in terms of Clause-6(d) of the Resolution/ Sankalp dated 02.05.2019.

Though a specific direction was given to the State for coming-out with the vacancy positions, the same has not been complied with though several adjournments were made and several affidavits were filed by the State.”

23. The learned writ court framed the issue for consideration in paragraph 13 of the impugned judgment and order as follows: -

“13. Now, the sole issue before this Court is whether left-out candidates, who have secured more marks than the last selected candidates, can be further for counseling for appointment to the post of Assistant Teacher (Para or Non-Para) since they have never been called for counseling earlier.”

24. The issue framed in paragraph 13 of the impugned order has been answered vide paragraph 14 to 17 and the findings are summarized as under: -

- a. The Clause 6(e)(i)to(v) of the resolution of the State Government dated 02.05.2019, contained in memo No. 662, clearly speaks that those who were earlier called for counseling, whether participated or not, were not to be called again and only those candidates will be called for counseling, who obtained the order of the Court for participating in the fresh counseling. The State has denied counseling of present petitioners though they have secured more marks than the last selected candidates.
- b. The law is well settled that merely because the candidates were successful in the exams they do not acquire an indefeasible right to be appointed on the vacant post. There is no quarrel to the settled principle of law but simultaneously it is also clear from aforesaid legal propositions that the State does not have the license of going in an arbitrary manner. If vacancies are still there, the candidates who have approached this Court on fulfilling the requisite qualifications and are eligible for appointment in all respects, having more marks than the last selected candidates, then certainly the State is bound to consider their cases as no fresh advertisement has yet been floated for appointment of the Assistant Teachers (para and non-para) in which the backlog vacancies can also be added.
- c. In the instant case, the petitioners were never called for counseling. The case of the State that the order of the Court passed in the aforesaid writ petition and LPA have been fully complied with, is not acceptable to this Court as the legal proposition that has been laid down in the case of **Arvind Kumar Srivastava (supra)** was also to be considered and implemented and it is not that the persons who had approached this Court can only be benefited. Further, these petitioners were never called for counseling, and hence, the contention of the State is also not acceptable.
- d. In the present case, since the petitioners have obtained more marks than the candidates whose names figured in the select list, are entitled to be considered for appointment if the vacancies are still there and the same has not been advertised as yet.
- e. Since the ambiguity as to whether para teachers can apply under non-para category has already been set at rest by this Court in LPA No. **186 of 2017 (Pawan Singh Choudhary & Ors. Vs. the State of Jharkhand & Ors.)**, without the said distinction, they may be called for appointment inviting them for one time counseling. The appointment of less meritorious candidates is in contravention of the provisions enshrined under Article 14 and 16 of the Constitution.

25. After recording the aforesaid findings, the writ Court issued the directions contained in paragraphs 18 to 20 of the impugned judgment as follows: -

“18. As a cumulative effect of the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, I hereby direct the respondents to initiate process of counseling for the present petitioners by way of last opportunity, since they have obtained more marks than the last selected candidates in the merit list. The petitioners shall approach the Deputy Commissioners of the concerned Districts, as early as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order and thereafter, the Deputy Commissioner shall initiate the process of counseling after giving proper notice to the petitioners by way of Press Communique, advertising the notice in the local newspaper having the wide circulation in the concerned Districts and also by putting the notice on the Notice Board of the Office of concerned District Superintendent of Education and thereafter, the entire process of counseling be completed within a period of further four weeks subject to fulfilling the eligibility criteria and also if the present petitioners have secured more marks than the last selected candidates.

Let the entire process be completed within a period of four months from the date of receipt/ production of a copy of this order.

19. Let it be made clear that no further counseling shall be held for any reasons whatsoever as the advertisement for appointment of these teachers are of 2015 and the aforesaid directions have been issued in peculiar facts and circumstances of the case, which shall be not taken as precedent.

20. With the aforesaid observations and directions, all these writ petitions stand allowed.”

26. Different Letters Patent Appeals were filed against the impugned order passed in the batch of writ petitions and some of them have been decided vide order dated 15.09.2023 passed in L.P.A. No. 203 of 2022 and other analogous cases wherein the coordinate Division Bench of this Court has refused to interfere with the order passed by the writ Court and has issued fresh directions for compliance with the order. It has been stated by the learned counsel for the parties that the directions as contained in L.P.A. No. 203 of 2022 and other analogous cases have not yet been complied with by the appellants and in the meantime, this batch of appeals arising out of the same impugned order has been listed for consideration.

27. The L.P.A. No. 203 of 2022 and other analogous cases were heard by a coordinate Division Bench of this Court and were dismissed by citing reasons in paragraph 56 of the judgment which is quoted as under: -

“56. This Court, on appreciation of rival submissions advanced on behalf of parties, is of the view that the impugned order passed by learned Single Judge does not require interference on the following grounds:

I. It is admitted fact that the Co-ordinate Single Bench has passed order dated 02.02.2017 in W.P. (S) No. 19 of 2016 and analogous cases wherein at paragraph 20 direction has been given that there shall be only one counseling holding therein that “It is further made clear that there shall be only one counseling in all the districts of the State ...”.

II. The order dated 02.02.2017 passed in W.P.(S) No. 19 of 2016 and analogous cases was affirmed in intra-court appeal i.e., in L.P.A. No. 168 of 2017 showing no interference in the order passed by learned Single Judge.

III. Further the issue of allowing the candidates falling under para-teacher category to participate in the process of selection under non-para teacher category fell for consideration before the learned Single Judge in W.P. (S) No. 6031 of 2015 and analogous cases, which was negated, against which the writ petitioners preferred intra-court appeal being LPA 186 of 2017 with LPA 199 of 2017, which was allowed vide order dated 11.05.2018 whereby the order passed by learned Single Judge was quashed and set aside and the respondents-State were directed to initiate the counseling of the original petitioners as early as possible, however, it was held that candidature of the writ petitioners shall be considered as per non-para category teacher vacancies subject to fulfilling the conditions by these appellants-writ petitioners regarding eligibility criteria for age etc.

IV. One another intra-court appeal, being L.P.A. No. 172 of 2018, was preferred against order dated 01.02.2018 passed in W.P. (S) No. 178 of 2016 whereby the writ petitioners though had not applied under reserved category (para category) but were compelled to be treated as reserved category candidates. The learned Coordinate Division Bench, taking into consideration the fact that there is no rule, regulation or Government Circular or Government Policy that those candidates, who are already working as Para Teachers, must apply under the reserved category meant for teachers and further there is no such conditions attached with the public advertisement in question that those candidates who are working as Para Teachers must apply for the reserved category seats meant for Para-Teacher, quashed and set aside the order passed by learned Single Judge. It has further been held that it depends upon the confidence of the candidates to apply under category or not to apply under the reserved category and there is no bar for such candidates that they cannot apply under the General Category which is meant for Non-Para Teachers.

V. Thus, it appears from the order passed by learned Single Judge in W.P. (S) No. 19 of 2016 that learned counsel for the

petitioners confined their argument only to the legality of respondents' decision to stop the counseling midway. The learned Single Judge in that pretext has passed the order that there shall only one counselling. Here the learned Single Judge had not decided the issue of consideration of candidature of para-teachers under non-para teacher category, if they are otherwise eligible. As a matter of fact, said issue was decided by learned Co-ordinate Division Bench in LPA 186 of 2017 with LPA 199 of 2017, which was allowed vide order dated 11.05.2018 whereby the order passed by learned Single Judge was quashed and set aside and the respondents-State were directed to initiate the counseling of the original petitioners as early as possible, however, it was held that candidature of the writ petitioners shall be considered as per non-para category teacher vacancies subject to fulfilling the conditions by these appellants-writ petitioners regarding eligibility criteria for age etc.

VI. This Court on consideration of the fact that the issue of allowing para-teachers has already been decided in LPA NO. 186 of 2017 with LPA No. 199 of 2019 hence if in that circumstances the learned Single Judge has passed order for consideration of their candidature by allowing the writ petitions to participate in the counseling which according to our considering view cannot be said to suffer from error.

VII. The learned Single Judge is correct and the judicial discipline warrants that if the issue has been decided by the higher Coram the same binds the Court having the lesser Coram on the principle of binding precedence.

Reference in this regard be made to the judgment rendered in the case of *Official Liquidator vs. Dayanand and Ors., (2008) 10 SCC 1*, wherein at paragraphs-84, 86 & 88 it has been held as under:

"84. In *State of Bihar vs. Kalika Kuer*, the Court elaborately considered the principle of per incuriam and held that the earlier judgment by a larger Bench cannot be ignored by invoking the principle of per incuriam and the only course open to the coordinate or smaller Bench is to make a request for reference to the larger Bench.

86. In *Central Board of Dawoodi Bohra Community vs. State of Maharashtra*, the Constitution Bench interpreted Article 141, referred to various earlier judgments including *Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha* and *Pradip Chandra Parija vs. Pramod Chandra Patnaik* and held that "the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status - both would be immediate casualty (*Central Board of Dawoodi Bohra Community case*, SCC p. 682, paras 12 & 10). 88. In *U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj*, the Court noted that by ignoring the earlier decision of a coordinate Bench, a Division Bench of the High Court directed that part-time tube-well operators should be treated as permanent employees with same service conditions as far as possible and observed: "26. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the

decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity.”

28. The coordinate bench of this Court in L.P.A. No. 203 of 2022 while refusing to interfere with the view of the learned writ Court issued directions as contained in paragraph 57 of the order which is quoted under: -

“57. This Court, on entirety of facts and circumstances, is of the view that the order passed by learned Single Judge needs no interference by this Court and the direction so passed by learned Single Judge needs no interference by this Court and is required to be complied with at an earliest as the vacancies is of the year 2015 and it must be put to logical end without snatching right of candidates, if they are otherwise eligible. Therefore, the appellants State are hereby directed to:

I. Initiate the process of counseling forthwith for the present petitioners by way of last opportunity as it is alleged they have obtained more marks than the last selected candidates in the merit list in the respective districts.

II. The petitioners shall approach the Deputy Commissioners of the concerned Districts, as early as possible, preferably, within a period of four weeks from the date of receipt of a copy of this order.

III. However, in the meantime, the Deputy Commissioner of the concerned district shall give proper notice to the petitioners by way of Press Communique, advertising the notice in the local newspaper having the wide circulation in the concerned Districts and also by putting the notice on the Notice Board of the Office of concerned District Superintendent of Education.

IV. This Court hopes and trusts that the entire process of counseling will be completed within a period of further eight weeks subject to fulfilling the eligibility criteria and also if the present petitioners have secured more marks than the last selected candidates.

V. It is made clear that the entire process of selection shall be made strictly in accordance with relevant rules/regulations and judicial pronouncements, as mentioned above, within a period of four months from the date of receipt/production of copy of this order.

VI. Let it be made clear that no further counselling shall be held for any reasons whatsoever as the advertisement for appointment of these teachers are of 2015 and the aforesaid directions have been issued in peculiar facts and circumstances of the case, which shall be not taken as precedent.”

29. This Court finds that a large number of writ petitions were tagged and taken up together by the learned writ Court and most of the writ petitions had more than one petitioner. There were primarily three

categories of petitioners, candidates working as para-teacher and applied under non-para teacher category; candidates working as para-teacher and applied under para teacher category; and other candidates who had applied under non-para teacher category. In the first round of litigation arising out of the same recruitment process, there were broadly two categories of writ proceedings: -

- a. WPS No. 19 of 2016 with WPS No. 32 of 2016 with the analogous case where the grievance of the writ petitioners primarily was that the counseling was stopped mid-way without filling up all the advertised posts under the different categories. As discussed above, the writ petitions were allowed with directions contained in paragraphs 19 and 20 as quoted in paragraph 12 above clearly directing that one counseling be done in all the districts simultaneously and the candidates who were earlier called for counseling shall not participate except those who were permitted by an order of the Court. The benefit of the order was directed to be extended to all similarly situated candidates. The appeal against the judgment was dismissed on 11.05.2018.
- b. Another set of writ petitions were filed by those candidates who were para-teachers and had applied under non- para teacher category but their candidature was either rejected on account of not having applied under the reserved category of para teacher or they were sought to be treated under reserved category of para teacher. The writ petitions were dismissed and the writ order was challenged in LPA No. 186 of 2017 and other analogous cases wherein it was held that the para teachers cannot be compelled to apply under the reserved category of para teacher when they are not seeking any benefit under the reserved category. The appeal was allowed on 11.05.2018 with a direction to initiate counseling for the original petitioners. Other batches of appeals were also disposed of in the same lines and in the writ petition being WPS No. 2142 of 2019 the benefit granted to para teachers

applying under non para teacher category vide order passed in LPA No. 186 of 2017 was extended to all similarly situated persons.

30. As a follow-up of the aforesaid directions issued by this Court the appellant State published a resolution dated 02.05.2019 for one counseling to be conducted at a time in all the districts with the condition that those persons who were earlier called for counseling would not be permitted to participate in the counseling process. In terms of the resolution dated 02.05.2019, counseling was conducted on 03.06.2019 and several persons were also appointed. Still, many candidates were not satisfied and filed writ petitions alleging that though they had applied for several districts but their names were not included in the counseling list of any of the districts and their specific grievance was that the candidates having less marks than the writ petitioners were included in the counseling list , called for appearing in the counseling and were given appointment in the year 2019 itself and therefore the candidature of the writ petitioners ought to have been considered. It was also argued that since the writ petitioners were never called for counseling therefore their candidature ought to be considered in terms of Clause 6 (d) of the Resolution / Sankalp dated 02.05.2019.
31. This Court finds that the learned writ Court has recorded in paragraphs nos.13 and 17 of the impugned order that the writ petitioners were never called for counseling based on the submissions made by the learned counsel appearing on behalf of the writ petitioners in paragraph no. 7 of the impugned order.
32. The learned writ court in paragraphs 14 to 17 of the impugned judgment while answering the issue framed in paragraph 13 has taken note of the Resolution dated 02.05.2019 which in turn mentioned that those candidates who were earlier called for counseling whether participated or not were not to be called again. It was also recorded that the State had denied counseling to the writ petitioners although they had secured more marks than the last selected candidate and that the writ petitioners were never called for

counseling. Appropriate directions were issued for one more counseling since the writ petitioners who were never called for counseling earlier had obtained more marks than the last selected candidate they were held entitled to be considered for appointment if the vacancies were still there and the same had not been advertised as yet.

33. Since it was the specific case of the writ petitioners that they were never called for counseling and that candidates securing less marks than the writ petitioners were called for counseling and were selected, it would be important to issue the following clarifications / directions in consonance with the specific stand of the various writ petitioners in the batch of cases involved in the impugned order though this Court is not inclined to differ with the findings and directions issued vide order dated 15.09.2023 passed in L.P.A. No. 203 of 2022:-

(a) Only those candidates are to be called for counseling who have never been called for counseling earlier in one or the other district irrespective of the fact as to whether they had participated in the counseling or not.

(b) To enable the candidate to participate in the fresh counseling the concerned respondent shall verify whether a candidate below in the merit list in the concerned district has been ultimately selected irrespective of the fact as to whether such a candidate had joined or not. If that be so, then only such candidate be permitted to appear in the fresh counseling.

(c) There should be one counseling to be conducted simultaneously in all the districts as was directed by this Court in W.P. (S) No. 19 of 2016 and other analogous cases which has been upheld in L.P.A. No. 168 of 2017.

34. These appeals are disposed of in terms of the judgment passed in L.P.A. No. 203 of 2022 and other analogous cases with further clarifications/directions as mentioned above.
35. Pending interlocutory applications, if any, are closed.

(Shree Chandrashekhar, A.C.J.)

I agree.
(Shree Chandrashekhar, A.C.J.)

(Anubha Rawat Choudhary, J.)

Jharkhand High Court, Ranchi
Dated:
Binit/Amit
A.F.R.