IN THE HIGH COURT OF JUDICATURE AT PATNA

The State Of Bihar And Ors
vs.
Md. Ejaaz Kauser And Ors

Letters Patent Appeal No. 805 of 2022
In
Civil Writ Jurisdiction Case No. 11447 of 2018
[With Letters Patent Appeal No. 735 of 2023 In Civil Writ Jurisdiction Case No. 15967 of 2018]

25 June, 2025

(Hon'ble Mr. Justice P.B. Bajanthri And Hon'ble Mr. Justice S. B. PD. Singh)

Issue for Consideration

Whether the policy decision dated 26.11.2008, which restricted the appointment of Talimi Markaz volunteer teachers exclusively to the Muslim community, is constitutionally valid and whether such appointments can be sustained under Articles 14 and 16 of the Constitution of India ?

Headnotes

Constitutional Law – Reservation in Public Employment – Religion-Based Classification – Articles 14 and 16 Violated The policy dated 26.11.2008 restricted volunteer teacher posts at Talimi Markaz to Muslims of socially and economically backward communities. The Court held this violates the equality mandate and is not permissible under Articles 14 and 16.

Held: Policy quashed as unconstitutional; public posts cannot be reserved for any religious group. [Paras 8, 15–16]

Public Employment – Adherence to Constitutional Mandates – Article 16(2) – No Reservation Solely on Religious Grounds Appointments based on religion, even under the guise of social upliftment, contravene the equality of opportunity clause in Article 16(2). Affirmative action must be based on social and educational criteria, not religion per se.

Held: Restriction to Muslim candidates invalid; appointments made under this policy are also void. [Paras 10–11, 14–15]

Judicial Review – Suo Motu Power to Strike Down Subordinate Legislation – Violation of Fundamental Rights Citing the Supreme Court in *Devmuni Paswan* and *Bihar Rajya Dafadar Chaukidar Panchayat v. State of Bihar*, the Court reiterated that subordinate legislation violating fundamental rights can be struck down suo motu under Article 226.

Held: Court empowered to invalidate policy dated 26.11.2008 for breaching equality principles. [Paras 9, 13]

Service Law – Appointments Without Advertisement – Violation of Article 14 and 16 – Due Process Required Following *Renu v. District & Sessions Judge* and *Umadevi (3)*, Court reiterated that appointments to public posts must follow open, competitive, and transparent processes. Appointments under the impugned policy lacked such process.

Held:Selection process invalid; no regularisation without valid procedure. [Paras 12–14]

Case Law Cited

Renu & Ors. v. District & Sessions Judge, Tis Hazari, **(2014) 14 SCC 50** – followed; State of Karnataka v. Umadevi (3), **(2006) 4 SCC 1** – reiterated; Amrit Yadav v. State of Jharkhand, Civil Appeal Nos. 13950-13951/2024 – applied; Anjum Kadari v. Union of India, **(2025) 5 SCC 53** – cited; Devmuni Paswan v. State of Bihar, LPA No. 508/2022 – relied on; Bihar Rajya Dafadar Chaukidar Panchayat v. State of Bihar, SLP (C) No. 18983/2023 – affirmed

List of Acts

Constitution of India– Articles 14, 15, 16, 46, 309; Policy Circular dated 26.11.2008(Talimi Markaz Scheme) – struck down

List of Keywords

Talimi Markaz; Volunteer teacher; Religious reservation; Constitutional equality; Article 14 and 16; Subordinate legislation; Secularism; Public post; Muslim-only reservation; Umadevi principles; Devmuni Paswan; Anjum Kadari, Sachar Committee

Case Arising From

Appeal against judgment dated 27.07.2022 in CWJC No. 11447 of 2018, where the learned Single Judge had allowed the writ and held the appointments of volunteer teachers under the Talimi Markaz scheme to be valid. The Division Bench set aside the policy as unconstitutional and invalidated the appointments.

Appearances for Parties

(In Letters Patent Appeal No. 805 of 2022)

For the Appellant/s : Mrs. Binita Singh, SC 28

: Mr. Nishant Kumar Jha, AC to SC 28

For the Respondents : Mr. Basant Kumar Chaudhary, Sr. Advocate

(In Letters Patent Appeal No. 735 of 2023)

For the Appellant/s : Mr. Binita Singh, SC 28

: Mr. Nishant Kumar Jha, AC to SC 28

For the Respondent/s : Mr. Rajeev Kumar Singh, Advocate

Headnotes prepared by the Reporter : Ms. Akanksha Malviya, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.805 of 2022
In
Civil Writ Jurisdiction Case No.11447 of 2018

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1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Public Education, Education Department, Govt. of Bihar, Patna.
4. The District Magistrate, Sitamarhi.
5. The District Education Officer, Sitamarhi.
6. The District Programme Officer Sakshrata, Sitamarhi.
7. The Block Education Officer, Dumra Block, Sitamarhi.
8. The Block Education Officer, Nanpur Block, Sitamarhi.
9. The Block Education Officer, Runisaidpur Block, Sitamarhi.
10. The Block Education Officer, Pupari Block Sitamarhi.
11. The Block Education Officer, Belsand Block, Sitamarhi.
12. The Block Education Officer, Bairgania Block, Sitamarhi.
13. The Block Education Officer, Bajpati Block, Sitamarhi
14. The Block Education Officer, Parihar Block, Sitamarhi.
15. The Block Education Officer, Majorganj Block, Sitamarhi.
16. The Block Education Officer, Sonebarsa Block, Sitamarhi.
17. The Block Education Officer, Parsauni Block, Sitamarhi.
18. The Block Education Officer, Suppi Block, Sitamarhi.
19. The Block Education Officer, Bokhara Block, Sitamarhi.

... ... Appellant/s

Versus

1. Md. Ejaaz Kauser Khan S/o Md. Azfarul Kauser Khan R/o VillP.O.- Gauri, P.S.- Nanpur, Dist- Sitamarhi.
2. Shahid Reza S/o Md. Abbas, R/o Vill P.O.- Mehsaul, P.S.-Runni Saidpur, Dist.-Sitamarhi.
3. Md. Niyaj Ashraf S/o Md. Moin Ashraf, R/o Vill- Sahpur, PO- Awapur, P.S.- Pupri, Dist- Sitamarhi.
4. Md. Zaki Haidar Khan S/o Md. Hasin Haidar Khan R/o Vill PO- Gauri, P.S.- Nanpur, Dist- Sitamarhi.
5. Israt Khatoon S/o Md Atibul Khan R/o Vill PO- Runnisaidpur, P.S.- Runnisaidpur, Dist- Sitamarhi.
6. Aabda Khatoon S/o Md. Mazharul Haqu, R/o Vill- Giddah Phulwariya, PO- Suhai Gadh, P.S.- Runnisaidpur, Dist- Sitamarhi.
7. Md. Shakil Ahmad S/o Md. Sairul Hoda, R/o VillPO- Shirkhiriya, P.S.-

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Runnisaidpur, Dist- Sitamarhi.

8. Md. Afroj Khan, S/o Md. Jasim Khan, R/o VillPO- Bailgarh Mananpur Ward 01 P.S.- Runnisaidpur, Dist- Sitamarhi.
9. Md. Istayak Alam S/o Md. Zafirul Hasan R/o VillPO- Gaus Nagar, P.S.- Runnisaidpur, Dist- Sitamarhi.
10. Sultana Praveen S/o Abdul Alam Ro VillPO- Rakshiya, P.S.- Runnisaidpur, Dist- Sitamarhi.
11. Nazre Alam S/o Md. Amirul Haqe, R/o Vill- Giddah Phulwariya, P.O.- Suhai Gadh, P.S.- Runnisaidpur, Dist- Sitamarhi.
12. Afira Zabin, S/o Ahmad Reza R/o Vill- Mauna, P.O.- Olipur, P.S.- Runnisaidpur, Dist- Sitamarhi.
13. Md. Jugno S/o Abdul Mannn, R/o Vill- Nanpur North, P.O.- Nanpur, P.S.- Nanpur, Dist- Sitamarhi.
14. Iftekhar Ahmad S/o Hasin Akhtar R/o Vill- Nanpur North, P.O.- Nanpur, P.S.- Nanpur, Dist- Sitamarhi.
15. Baby Zahan, S/o Md. Ejaj Kausar Khan R/o VillPO- Gauri, P.S.- Nanpur, Dist- Sitamarhi.
16. Nahida Tabbasum, S/o Taukir Alam R/o VillPO- Majhaur, P.S.- Nanpur, Dist- Sitamarhi.
17. Ghazi Asadullah S/o Md Safir R/o VillPO- Gauri, P.S.- Nanpur, Dist- Sitamarhi.
18. Zeba Khanam, S/o Israrul Haque R/o VillPO- Majhaur, P.S.- Nanpur, Dist- Sitamarhi.
19. Imbesat Baano, S/o Md. Asif, R/o Vill- Bahurar, P.O.- Dadri, P.S.- Nanpur, Dist- Sitamarhi.
20. Md. Asaduj Zama Khan S/o Masihuzama Khan R/o VillPO- Gauri, P.S.- Nanpur, Dist- Sitamarhi.
21. Md. Ehsaan Elahi, S/o Md. Mohsin, R/o Vill- Lohaitha, PO- Dorpur, P.S.- Nanpur, Dist- Sitamarhi.
22. Juli Khanam S/o Israrul Haqu Khan R/o VillPO- Majhaur, P.S.- Nanpur, Dist- Sitamarhi.
23. Md. Nausad Alam S/o Md. Abdas R/o VillPO- Gauri, P.S.- Nanpur, Dist- Sitamarhi.
24. Farzana Begum S/o Abdul Mannn R/o VillPO- Pandaul Buzurg, P.S.- Nanpur, Dist- Sitamarhi.
25. Shahin Praveen, S/o Md. Akhtar, R/o VillPO- Dorpur, P.S.- Nanpur, Dist- Sitamarhi.
26. Abdullah Khalid S/o Md. Halim R/o VillPO- Rasulganj Koili, P.S.- Nanpur, Dist- Sitamarhi.
27. Md. Shakil S/o Md. Islam R/o VillPO- Dorpur, P.S.- Nanpur, Dist- Sitamarhi.
28. Rehan Hasan Quadri S/o Naqui Ahmad R/o VillPO- Dorpur, P.S.- Nanpur, Dist- Sitamarhi.

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29. Md. Maksood Alam S/o Md. Mansoor Alam R/o VillPO- Majhaur, P.S.- Nanpur, Dist- Sitamarhi.
30. Qamre Ashiqe Khan, S/o Makruz Zama Khan R/o VillPO- Gauri, P.S.- Nanpur, District- Sitamarhi.
31. Jeba Sahnaj, S/o Md. Abbas, R/o Ward- 09, Mehsaul Purvi, P.S.- Sitamarhi, Dist- Sitamarhi.
32. Md. Gulam Gaus, S/o Md. Mahtab Khan R/o Ward- 09, Mehsarul Purvi, P.S.- Sitamarhi, Dist- Sitamarhi.
33. Naazra Paikar S/o Mahfuz Khan R/o Mehsaul Purvi, P.S.- Sitamarhi, Dist- Sitamarhi.
34. Sahina Praveen, S/o Amin Sarvar Khan R/o VillPO- Mehsaul Purvi, P.S.- Sitamarhi, Dist- Sitamarhi.
35. Nayla Khatoon S/o Sabir Ahmad R/o VillPO- Bhabdehpur, P.S.Dist- Sitamarh
36. Intekhab Hussain S/o Zakir Hussain R/o VillPO- Rajopatti, P.S.- Sitamarhi, Dist- Sitamarhi.
37. Arshad Ali S/o md. Zamsaid Ali R/o Mehsaul, P.S.-Sitamarhi, Dist- Sitamarhi.
38. Md. Hasim S/o Lal Mohammad, R/o Vill-Bastpur, PO-Amghatta, P.S.- Dumra, Dist-Sitamarhi.
39. Nusrat Praveen, S/o Sabbir Alam Khan R/o VillPO- Rajopatti, P.S.-Sitamarhi, Dist- Sitamarhi.
40. Samir S/o Md. Samim R/o VillPO- Mejarganj, P.S.- Mejarganj, Dist- Sitamarhi.
41. Soni Khatoon S/o Md. Samim R/o VillPO- Mejarganj, P.S.- Mejarganj, Dist- Sitamarhi.
42. Zanesar Alam S/o Md. Jahir Alam R/o Vill- Dhanhara, P.O.- Parsurampur, P.S.- Parsauni, Dist- Sitamarhi.
43. Rizwana Khatoon S/o Md. Kamruddin R/o Vill- Dema, P.O.- Madanpur, P.S.- Parsauni, Dist- Sitamarhi.
44. Sagufta Praveen S/o Md. Sagir R/o Vill- Dema, PO- Madanpur, P.S.- Parsauni, Dist- Sitamarhi.
45. Md. Reyaj S/o Md. Rahmat Ali R/o Vill- Nagar Panchayat Belsand, P.S.- Belsand, Dist- Sitamarhi.
46. Musrat Praveen S/o Md. Ahmad R/o Vill- Bariyarpur, P.O.- Kansaar, P.S.- Belsand, Dist- Sitamarhi.
47. Sahimul Haqe S/o Zainil Haqe R/o Vill- Maula Nagar, P.O.- Pachnaur, P.S.- Belsand, Dist- Sitamarhi.
48. Ozair Alam Rizvi S/o Md. Abbas R/o Nagar Panchayat Belsand, P.S.- Belsand, Dist- Sitamarhi.
49. Md. Sharfe Alam S/o Md. Sabbir R/o VillPO- Banaul, P.S.- Nanpur, Dist- Sitamarhi.
50. Praveen Zahan, S/o Md. Qamre Alam R/o VillPO- Banaul, P.S.- Nanpur, Dist- Sitamarhi.

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51. Nazrana Khatoon S/o Md. Murtuza R/o VillPO- Ramnagra Gamhariya, P.S.- Suppi, Dist- Sitamarhi.
52. Md. Anwar Alam S/o Mohibur Rahman R/ Vill-Mirzapur, P.O.-Madaripur, P.S.-Bajpatti, Dist-Sitamarhi
53. Noor Zahan Praveen S/o Md. Ali Hussain Khan R/o VillPO- Bedaul, P.S.- Pupri, Dist- Sitamarhi.
54. Kaushar Praveen S/o Md. Nasir Alam R/o VillPO- Belmohan Halim Tol, P.S.- Pupri, Dist- Sitamarhi.
55. Md. Tazuddin Khan S/o Md. Waris Khan R/o Gramn Panchayat Janakpur Road Rajbag, P.S.- Pupri, Dist- Sitamarhi.
56. Md. Arif Hussain S/o Md. Ansar, R/o Vill- Gangwara, P.O.- Pupri, P.S.- Pupri, Dist- Sitamarhi.
57. Sama Rahman S/o Md. Habibur Rahman R/o VillPO- Balha Maksudanpur, P.S.- Pupri, Dist- Sitamarhi.
58. Imteyaj Ahmad S/o Sadik Hussain R/o Vill- Maula Nagar, P.O.- Awapur, P.S.- Pupri, Dist- Sitamarhi.
59. Md. Zahid Hussain S/o Md. Gulam Qadir, R/o Gramn. Panchayat Janakpur Road, P.S.- Pupri, Dist- Sitamarhi.
60. Tanvir Jamal S/o Zahir Ahmad R/o Vill- Bel Mohan, P.O.- Pupri, P.S.- Pupri, Dist- Sitamarhi.
61. Md. Wasi Ahmad S/o Sairul Hoda, R/o Vill- Belmohan Halimpur, P.O.- Bazar Samiti, P.S.- Pupri, Dist- Sitamarhi.
62. Md. Javed S/o Md. Zahir Ahmad R/o Vill- Ahiyatol, P.O.- Awapur, P.S.- Pupri, Dist- Sitamarhi.
63. Md. Faiyaj Ahmad S/o Md. Ziyaullah R/o Vill- Ahiyatol, P.O.- Awapur, P.S.- Pupri, Dist- Sitamarhi.
64. Tarannum Begum S/o Md. Matin Ashraf R/o Vill- Sahpur, P.O.- Awapur, P.S.- Pupri, Dist- Sitamarhi.
65. Md. Nasir Alam S/o Md. Shabbir Alam R/o Vill- Belmohan Halim Tol, P.O.- Bazar Samiti, P.S.- Pupri, Dist- Sitamarhi.
66. Imran Khan S/o Md. Kasim Khan R/o Vill- Pupri, P.O.- Ratan Lakshmi, P.S.- Pupri, Dist- Sitamarhi.
67. Md. Hakim Khan, S/o Md. Salim Khan R/o VillPO- Gangti, P.S.- Pupri, Dist- Sitamarhi.
68. Md. Dastagir S/io Md. Zahir Zamal R/o Vill- Belmohan Halim Tol, P.O.- Bazar Samiti, P.S.- Pupri, Dist- Sitamarhi.
69. Md. Sadik Hussain, S/o Md. Taslim R/o VillPO- Bacharpur, P.S.- Pupri, Dist- Sitamarhi.
70. Sarifur Rahman S/o Md. Murshid Khan R/o Vill- Madpa, P.O.- Pipradadan, P.S.- Kanhauli, Dist- Sitamarhi.
71. Md. Sanaullah Khan S/o Md. Gulcha Khan R/o Vill- Madpa, P.O.- Pipradadan, P.S.- Kanhauli, Dist- Sitamarhi.
72. Kaushar Ali Khan S/o Md. Hussain Khan R/o Vill- Fatehpur, P.O.- Bhuthi,

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P.S.- Sonbarsa, Dist- Sitamarhi.

73. Md. Sajid Ali Khan S/o Md. Nasrullah Khan R/o Vill- Madpa, P.O.- Pipradadan, P.S.- Kanhauli, Dist- Sitamarhi.
74. Md. Salim Raja, S/o Md. Mozibur Rahman Khan R/o Vill- Fatehpur, P.O.- Bhuthi, P.S.- Sonbarsa, Dist- Sitamarhi.
75. Gulam Samdani S/o Md. Ayub R/o Vill- Baara, P.O.- Lahuriya, P.S.- Bela, Dist- Sitamarhi.
76. Sahina Praveen S/o Md. Ansarul Haqe R/o Vill- Baara, P.O.- Lahuriya, P.S.- Bela, Dist- Sitamarhi.
77. Md. Mustak, S/o Md. Anwarul Haqe R/o Vill- Baara, P.O.- Lahuriya, P.S.- Bela, Dist- Sitamarhi.
78. Md. Noor Aein, S/o Md. Sibli R/o Vill- Betha, P.O.- Bethaa, P.S.- Bela, Dist- Sitamarhi.
79. Aslam Jawed S/o Abdul Wadood R/o VillPO- Bhakurahar Ward 16 P.S.- Bairganiya, Dist- Sitamarhi.
80. Md. Wazhul Qumar Khan S/o Md. Nurullah Khan Vill- Bhatuliya, P.O.- Bel, P.S.- Bairganiya, Dist- Sitamarhi.
81. Aarfa Sadaf S/o md. Wazhul Qamar Khan Vill- Bhatuliya, P.O.- Bel, P.S.- Bairganiya, Dist- Sitamarhi.
82. Hussna Bano S/o Md. Abrarul Haqe R/o VillP.O.- Bhakurahar, P.S.- Bairganiya, Dist- Sitamarhi.
83. Md. Firoz Khan S/o Abdul Khan R/o VillP.O.- Bhakurahar Ward 15, P.S.- Bairganiya, Dist- Sitamarhi.
84. Md. Zaffar Equbal S/o Md. Samsuddin R/o VillPO- Marpa Tahir, P.S.- Bairganiya, Dist- Sitamarhi.
85. Md. Sadare Alam S/o Abdul Khalik R/o VillPO- Marpa Tahir, P.S.- Bairganiya, Dist- Sitamarhi.
86. Md. Firdaus Alam Khan S/o Abdul Hafiz Khan R/o VillP.O.- Bhakurahar Ward No 15, P.S.- Bairganiya, Dist- Sitamarhi.
87. Afrida Khanam, S/o Ejajul Khan R/o Vill- Joriyahi, P.O.- Bel, P.S.- Bairganiya, Dist- Sitamarhi.
88. Shafquat Jahan S/o Md. Ali Hasnain , R/o VillP.O.- Bhakurahar Hospital Road 15, P.S.- Bairganiya, Dist- Sitamarhi.
89. Md. Amjad Reza S/o Md. Abrarul Hasan R/o VillP.O.- Bath Asli, P.S.- Nanpur, Dist- Sitamarhi.
90. Md. Naushad Alam S/o Md. Younus R/o VillP.O.- Bhakurahar Hospital Road 17, P.S.- Bairganiya, Dist- Sitamarhi.
91. Irfan Alam S/o Md. Badiuzzamma R/o Vill- Dema, P.O.- Madanpur, P.S.- Parsauni, Dist- Sitamarhi.
92. Nuzhat Jahan S/o Md. Muzaffar Alam R/o VillPO- Raipur, P.S.- Nanpur, Dist- Sitamarhi.
93. Md. Asraf Ali S/o Md. Abul Salam R/o Vill- Dema, P.O.- Madanpur, P.S.- Parsauni, Dist- Sitamarhi.

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94. Anwari Begum S/o Md. Zafrul Islam R/o VillPO- Bacharpur, P.S.- Pupri, Dist- Sitamarhi.R/o VillPO- Bacharpur, P.S.- Pupri, Dist- Sitamarhi.

95. Hasan Tauhid S/o Abdus Samad R/o VillPO-Garha, P.S.-Pupri, Dist-Sitamarhi.

... ... Respondent/s

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with

Letters Patent Appeal No. 735 of 2023
In
Civil Writ Jurisdiction Case No.15967 of 2018

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1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Director, Secondary Education, Education Department Government of Bihar, Patna.
3. The District Magistrate. Madhepura.
4. The District Education Officer, Madhepura.
5. The District Programme Officer LITERACY, Madhepura.
6. The District Programme Officer Sarva Siksha Abhiyan, Madhepura.
7. The District Programme Officer Establishment, Madhepura.
8. The Block Education Officer, Madhepura.

... ... Appellant/s

Versus

1. Md. Sajad S/o Md. Eliyas, AT PO.- Sapardah, P.S.- Puraini, Distt.- Madhepura.
2. Md. Sarik Anwar, S/o Md. Hasim At - Nardah Purab Tola, P.O. Naya Tola, P.S.- Purain Madhepura.
3. Nargis Ara D/o Md. Mohid At Nardah Purab Tola, P.O.- Naya Tola, P.S.- Puraini, Distt.- Madhepura.
4. Md. Khalique, S/o Kalimullah Md. At P.O.- Puraini, P.S.- Srinagar, VIA-Kumarkhand, Distt.- Madhepura.
5. Md. Kalam S/o Md. Sayeed At P.O. - Puraini, VIA-Puraini, Distt.- Madhepura.
6. Md. Firoz Alam, S/o Md. Ghayas Uddin At- Rahata, P.O.- Rahata Fanan, VIA- Udakishunj, Distt.- Madhepura.
7. Md. Anisur Rahaman S/o Md. Idris, At - Pokhariya, P.O.- Ramnagar, P.S.- Srinagar, Kumarkhand, Distt.- Madhepura.
8. Md. Habibur Rahman S/o Md. Motiur Rahman, At - Ujani Tola, P.O.- Rahta, P.S.- Udakishunganj, Distt.- Madhepura.
9. Md. Rustam S/o Md. Ilyas, At - Jorawargunj, P.O.- Israyan Kala, VIA-Kumarkhand, Distt.- Madhepura.
10. Najama Nasrin D/o Md. Mazaffar Ali, Ward NO. 11, Laheri Tola, Distt.-

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Madhepura.

11. Bibi Mushtarina Khatoon, D/o Md. Firoz Alam At- Puraini, P.O.- Purainim, VIA- Kumarkhand, Distt.- Madhepura.
12. Arsadullah, S/o Abdur Raut AT- Puraini, P.O.- Puraini, VIA- Kumarkhand, Distt.- Madhepura.
13. Md. Kamil S/o Md. Nisaruddin, At- Sarhad Gati, P.O.- Puraini, VIA- Kumarkhand, Distt.- Madhepura.
14. Md. Asif Ali, S/o Md. Shafikuddin AT- Jhanjhari, P.O.- Jhanjhari, VIA- Gwalpara, Distt.-Madhepura.
15. Abdul Kadir Rahmani S/o Md. Sabim At Rahta VIA- Udakishunj, Distt.- Madhepura.
16. Yasmin Parween, D/o Md. Sayeedul Alam VIA- Nayanagar, Distt.- Madhepura.
17. Md. Salman S/o Md. Dholan At P.O.- Simraha, VIA- Mathahi, Distt.- Madhepura.
18. S/o Mohiuddin At Pithai, P.O.- Mathahi, VIA- Madhepura, Distt.- Madhepura.
19. Rizwana Shahnaj, D/o Md. Manzoor Alam At- Pithahi, P.O.- Mathal, P.S.- Madhepura, Distt.- Madhepura.
20. Rajda Khatoon, D/o Md. Almin At P.O.- Sukhasan, VIA- Shigheswar, Distt.- Madhepura.
21. Israt Praveen, D/o Jawahar At P.O.- Sukhasan, VIA Shigheshwar, Distt.- Madhepura.
22. Arshad Alam S/o Amirul Alam At P.O.- Yaduapatti, VIA, Kumarkhand, Distt.- Madhepura.
23. Zafar Alam, S/o Anirul Alam At P.O.- Yaduapatti, VIA, Kumarkhand, Distt.- Madhepura.
24. Rabia Khatoon, D/o Jamal Ahmad At P.O.- Yaduapatti, VIA, Kumarkhand, Distt.- Madhepura.
25. Bibi Tabssum Begam, D/o Md. Zahid Hasan AT- Lalkuriya, P.O. Mangawara, VIA Kumarkhand, Distt.- Madhepura.
26. Abdul Nakib S/o Ghayasuddin AT- Lalkuriya, P.O. Lalkuriya, VIA Srinagar, Distt.- Madhepura.
27. Md. Kalam Azad S/o Md. Makbul At- Jhitkia, P.S.- Singheshwar VIA- Singheshwar, Distt- Madhepura.
28. Bareek Alam S/o Md. H Moheed At Jhitkiya, P.O. VIA- Singheshwar, Distt.- Madhepura.
29. Abduss Slam, S/o Md. Naeem Uddin At- Sukhasan, P.S.- Singheshwar VIA Singheshwar, Distt.- Madhepura.
30. Md Asad Alam S/o Md. Moin At P.O. Puraini, P.S.- Srinagar, Distt.- Madhepura.
31. Md. Sahzad Alam S/o Md. Salim At P.O.- Puraini, P.S.- Srinagar, Distt.- Madhepura.

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... ... Respondent/s

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Appearance :
(In Letters Patent Appeal No. 805 of 2022)
For the Appellant/s : Mrs. Binita Singh, SC 28
Mr. Nishant Kumar Jha, AC to SC 28
For the Respondent/s : Mr. Basant Kumar Chaudhary, Sr. Advocate
(In Letters Patent Appeal No. 735 of 2023)
For the Appellant/s : Ms. Binita Singh, SC 28
Mr. Nishant Kumar Jha, AC to SC 28
For the Respondent/s : Mr. Rajeev Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-06-2025

Pursuant to earlier orders *Mr. Anil Kumar,* Director, Mass Education is present in the Court.

2. The appellants have assailed the order of the learned Single Judge dated 27.07.2022 passed in CWJC No. 11447 of 2018. The State has evolved a scheme for providing upliftment of students of minor community of age between 6 years to 10 years known as Talimi Markaz. In the guise of implementation of the scheme there is provision for appointment of one teacher at the Markaz (elementary school) for 20 to 40 children and two teachers for 40 to 100 children and three teachers for 100 above children. Education was to be imparted to the children of the level up to Class II. The Teacher was to be known as Sikshak Swayamsevak (volunteer teachers). He or she was to be appointed

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from the extremely backward Muslim community (socially and economically backward community from Muslim).

3. The respondents were initially appointed as volunteers/teachers from the year 2009 to 2014 (Annexure 7 of CWJC No. 11447 of 2018). Thereafter, the State has taken a policy decision to the extent that respondents who were appointed as volunteers/teachers in the light of the Scheme dated 26.11.2008 was not in accordance with scheme and law to the extent that they do not fall under the definition of socially and economically backward community, therefore, their services have been dispensed, resultantly, they have approached this Court in filing CWJC No. 11447 of 2018.

4. The learned Single Judge proceeded to allow the writ petition on 27.07.2022 to the extent that respondents are entitled to continue to hold the post of volunteers of Talimi Markaz. Learned counsel appearing on behalf of the State/appellants submitted that having regard to the fact that respondents do not fall under the socially and economically backward community category has not been considered by the learned Single Judge. In other words, spirit of policy has not been apprised to the extent that respondents are not entitled to have the benefit of selection and appointment as a

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volunteers/teachers. To that extent, learned Single Judge has committed error.

5. The learned senior counsel for the respondents, Mr. Basant Kumar Chaudhary, on instruction, submitted that there is no infirmity in the order of the learned Single Judge dated 27.07.2022 as on the date of selection and appointment of the contesting respondents the concerned authority has taken note of the particulars of each of the respondents read with the policy decision dated 26.11.2008 to the extent that they would fall under the category of socially and economically backward community, therefore, there is no substance in the argument of the learned counsel for the State/appellants.

6. Heard learned counsel for the respective parties.

7. It is necessary to reproduce policy decision dated 26.11.2008 and it reads as under :

"तालिमी मरकज

मार्गदर्शिका

(मुस्लिम समुदाय के 6 से 10 वर्ष के बच्चों के लिए गैर आवासीय सेतु कार्यक्रम)

मुस्लिम समुदाय के सभी बच्चों को प्रारम्भिक शिक्षा सुनिश्चित करने हेतु सामाजिक तथा आर्थिक रूप से अत्यंत पिछडे मुस्लिम समुदाय के प्रत्येक गांव/टोला में वैकल्पिक तथा नावाचारी शिक्षा के अन्तर्गत एक ''तालिमी मरकज'' प्रारम्भ किया जायेगा।

विशेशतायें:

1. इसमें कक्षा 2 तक की दक्षता प्रत्येक बच्चे को सुनिश्चित की जायेगी।

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2. मरकज के सभी बच्चों को दो वर्ष की अवधि के बाद सामान्य विद्यालय की कक्षा 3 में नामांकन कराया जायेगा।

3. मरकज में प्रत्येक 20 बच्चे पर एक शिक्षक तथा बच्चों की संख्या 40 या उपर होने की स्थिति में दो शिक्षक तथा 100 अथवा 100 से उपर होने पर तीन शिक्षक होंगे।

4.इस मरकज के शिक्षक को स्वयंसेवक के नाम से जाना जायेगा।

5. स्वयंसेवक आर्थिक तथा सामाजिक रूप से अत्यंत पिछडे मुस्लिम समुदाय से प्राथमिकता के आधार पर संबंधित मुस्लिम टोला से ही लिये जायेंगे।

6. स्वयंसेवक की न्यूनतम योग्यता मैट्रिक होगी।

7. स्वयंसेवक को मानदेय के रूप में 2000 रू. प्रतिमाह देय होगा।

8. मरकज का संचालन एक संचालन–समिति के द्वारा होगा।

9. मरकज में नामांकित प्रत्येक बच्चे को पाठ्य–पुस्तक एवं अन्य शिक्षक अधिगम सामग्री उपलब्ध कराई जायेगी।

10. मरकज के लिए स्थल की व्यवस्था समुदाय के तरफ से की जायेगी।

11. मरकज के सभी बच्चों को मध्याह्न भोजन योजना के अन्तर्गत मध्याह्न भोजन सुनिश्चित किया जायेगा।

12. मध्याह्न भोजन के लिए बरतन के क्रय हेतु राशि मध्याह्न भोजन योजना के अन्तर्गत राज्य सरकार के द्वारा उपलब्ध करायी जायेगी।

13. मध्याह्न भोजन तैयार करने का कार्य मरकज पर नामांकित बच्चों की माताओं की समिति ''माता समिति'' के द्वारा या उनके माध्यम से चुने गये सदस्यों के द्वारा किया जायेगा।

14. मरकज के बच्चों को उनकी मांग के अनुसार पाठ्य–पुस्तक हिन्दी या उर्दू में उपलब्ध करायी जायेगी।

तालिमी मरकज संचालन–समिति

- मरकज–संचालन व्यवस्थित एवं सुचारू रूप से हो, इसके लिये एक 8 सदस्यीय संचालन–समिति का गठन किया जायेगा।
- संचालन–समिति का गठन संकुल संसाधन केन्द्र समन्वयक के द्वारा सुनिश्चित किया जायेगा।
- संचालन–समिति में नामांकित बच्चों के माता–पिता में से 5 सदस्य चुने जायेंगे। संचालन–समिति में 5 सदस्य कौन माता–पिता होंगे इसका चुनाव नामांकित सभी बच्चों के माता–पिता द्वारा किया जायेगा। नजदीकी विद्यालय के प्राधानाध्यापक तथा विद्यालय शिक्षा समिति के अध्यक्ष एवं सचिव भी संचालन समिति के सदस्य होंगे।
- संचालन–समिति के चयनित 8 सदस्य आपस में मिलकर अध्यक्ष एवं सचिव का चुनाव करेंगे। अध्यक्ष एवं सचिव हर हाल में सामाजिक तथा आर्थिक रूप से अत्यंत

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पिछ़डे मुस्लिम समुदाय के बच्चों के माता पिता को चुना जाए जो संचालन समिति के सदस्य भी होंगे।

100 बच्चों पर व्यय

क्र. सं.	मद	प्रति इकाई दर	वर्षिक व्यय	अभ्युक्ति
1.	शिक्षा स्वयंसेवक 3	2000रू0 / माह / स्वयंसेवक	2000x12x3=72000 रू0	1543 रू0 / बच्चा / वर्ष
2.	शिक्षा स्वयंसेवक का प्रशिक्षण (आवासीय)	70रू0 / स्वयंसेवक / दिन कुल 15 दिनों का वार्षिक	70x15x3=3150 रू0	
3.	शिक्षण अधिगम सामग्री	150रू0 / बच्चा / वर्ष	150 x 100=15000 रू0	
4.	शिक्षण अधिगम उपकरण	3500रू0 / वर्ष / आवश्यकतानुसार	25000 रू0	
5.	केन्द्र आकस्मिकता	1800रू0 / वर्ष	15000 रू0	
	कुल	.....	130150 रू0 / वर्ष	

बच्चों को दी जानेवाली शिक्षण अधिगम सामग्रीः

सेतु पठन–पाठन सामग्री, अभ्यास–पुस्तक, पाठ्य–पुस्तक एवं अन्य सहायक पुस्तकें–अधिकतम 80रू0 / बच्चा / वर्ष

- नोट बुक –12 एक जिस्ता का / वर्ष।
- पेंसिल –12 अदद / वर्ष।
- रबर –6 अदद / वर्ष।
- कटर –12 अदद / वर्ष।
- स्लेट –4 अदद / वर्ष।
- पेंटिंग बॉक्स – 2 अदद / वर्ष।
- पेंटिंग शीट – 12 अदद / माह।

मरकज पर उपलब्ध करायी जानेवाली सामग्रीः

1. श्यामपट्ट।
2. सभी बच्चों को बैठने के लिये समुचित मात्रा में टाट–पट्टी।
3. खल्ली, डस्टर आवश्यकतानुसार।
4. पीने के पानी की सामग्री यथा–बाल्टी, जग, गिलास आदि।
5. मरकज की सामग्री को रखने के लिये बक्सा।
6. बच्चों को खेलने के लिए आवश्यक सामग्री जो स्थल पर उपलब्ध खेल के स्थान की उपलब्धता के अनुरूप की जायेगी।
7. सेतु कार्यक्रम के लिए तैयार किये हुए पठन–पाठन सामग्री प्रत्येक बच्चों के लिए उपलब्ध करवाना।
8. प्रत्येक 5 बच्चों के समूह पर एक अक्षर–कार्ड, बारहखड़ी कार्ड, अंक और संख्या–कार्ड।

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9. बच्चों के अध्ययन–अध्यापन से संबंधित अन्य सामग्री जो संचालन–समिति आवश्यक समझेगी।

- सामग्री का क्रय मरकज संचालन–समिति के द्वारा किया जायेगा। बच्चों को दिये जानेवाली सामाग्री यदि शिक्षा अधिगम सामग्री मद में निर्धारित राशि से पूरी नहीं होगी तो केन्द्र आकस्मिकता मद तथा शिक्षण अधिगम उपकरण मद से उसकी पूर्ति की जायेगी।
- प्रत्येक मरकज पर एक स्टॉक–पंजी संधारित होगी जिसमें केन्द्र एवं बच्चों के लिये क्रय की गयी सामग्री उसके मूल्य के साथ संधारित किया जायेगा। प्रत्येक केन्द्र पर एक वितरण–पंजी भी संधारित की जायेगी जिस बच्चों के लिये वितरित की गयी सामग्री को बच्चों के नाम के साथ संधारित किया जायेगा। स्टॉक–पंजी तथा वितरण–पंजी को संधारित करने का कार्य मरकज के सर्वाधिक योग्यताधारी शिक्षा स्वयंसेवक के द्वारा किया जायेगा। स्वयंसेवकों की योग्यता एक समान होने की स्थिति में संचालन–समिति द्वारा किसी एक शिक्षा स्वयंसेवक को इस कार्य के लिये प्राधिकृत किया जायेगा।"

8. Reservation in appointment / promotion to a public post based solely on religion is not permissible under the Constitution. While constitution allows that reservation for socially and educationally backward classes, it explicitly prohibits discrimination based on religion in matters of public employment. This is enshrined under Article 14 and 16 of the Constitution, which emphasizes equality of opportunity and prohibit discrimination based on religion, race, caste, sex, descent, place of birth, or residence. Article 15 and 16 of the Constitution are key in this context. Article 16 (2) specifically prohibits discrimination in public employment based on religion. Article 16 (4) allows the State to make provisions for reservation for appointments or posts in favour of any backward classes of citizens which, in the opinion

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of the State, is not adequately represented in services under the State. In fact, Hon'ble Supreme Court has emphasized that reservation to the post of socially and economically backward class rather than solely based on religion. The focus is on identifying and addressing the backward classes of communities, not their religious identity.

9. In an identical matter, in the case of appointment of village Chaukidar (village watchmen) in the State of Bihar, the practice is to provide village Chaukidar post to his/her kith and kin which was deprecated in the case of ***Devmuni Paswan vs. The State of Bihar and Others*** in **LPA No. 508 of 2022**. It was subject matter of litigation before the Hon'ble Supreme Court in the case of ***Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) vs. State of Bihar and Others*** in **SLP (C) No. 18983 of 2023.** Decision in ***Devmuni Paswan*** (cited *supra*) has been upheld insofar as not adhering to various principles relating to filling up of public post to the extent in not following the constitutional provisions like Article 14 and 16 of the constitution read with Article 309 of the constitution. The Hon'ble Supreme Court also held that writ courts can *suo moto* strike down Sub-ordinate legislation which violates fundamental right enshrined in the constitution, rendering it void and unconstitutional. The Supreme

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Court has affirmed that writ courts possess the power to initiate proceedings (*suo moto*) and intervene when government decisions violate constitutional provisions, particularly fundamental rights. This means that a court can act on its own initiative, without a formal request, to examine and potentially nullify government actions deemed unconstitutional.

10. The State is providing consolidated fund for the purpose of implementation of the policy decision dated 26.11.2008 insofar as appointment of volunteers/teachers. To implement the aforementioned scheme they have restricted selection and appointment to only Muslim community persons read with socially and economically backward category. The post of volunteers/teachers of Markaz is a public post and it cannot be restricted to the persons of a particular community.

11. Reservations in India: Addressing Socio-Economic Disparities Without Religious Bias : The topic of reservations based on religion in India raises significant constitutional and legal debates. The Indian Constitution, particularly Articles 14, 15, and 16, outlines the framework for equality, non-discrimination, and equal opportunity, respectively. Here's a breakdown of how reservations solely on the basis of religion may conflict with these constitutional articles :

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Article 14 - This article guarantees "equality before the law" and "the equal protection of the laws" to all persons within Indian territory. Affirmative action and social justice are covered by "the equal protection of the laws". Reservation policies based solely on religion could be seen as a violation of this principle if they create unreasonable, arbitrary and unjust distinctions or promote inequality among citizens.

Article 15 - It prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. This article allows for special provisions for Scs, Sts, socially and educationally backward classes, children , women and EWS. Using religion as the sole criterion for reservation contradicts the general prohibition of discrimination based on religion.

Article 16 - It ensures equality of opportunity in matters of public employment and prohibits discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them. Article 16(4) does permit the state to make any provision for the reservation of appointments or posts in favor of Scs, Sts, OBCs, sons of soil and EWS who in the opinion of the state, are not adequately represented in the services under the state. However, defining "backward class" solely by religious

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identity without consideration of social and educational backwardness may not align with the spirit of Article16.

Social Justice and Secularism - The principle of secularism is enshrined in the preamble and various provisions of the Indian Constitution, indicating that the state should maintain impartiality in matters of religion. Reservation based on religion might be perceived as a deviation from secular principles, potentially leading to communal divisions rather than uniting the nation under the banners of social justice and equality.

Judicial Interpretations - The courts in India have occasionally addressed the issue of religious-based reservations. The judiciary has typically held that reservations should be provided to uplift the socially and educationally backward classes, and while religion can be a marker in this identification, it should not be the sole criterion. This view supports the concept that the state must balance the need for upliftment while ensuring that the measures do not undermine the constitutional mandates of equality and secularism. These principles guide the ongoing discussions and legal battles over reservation policies in India, emphasizing the need for a nuanced approach that adheres to constitutional values while addressing the realities of social and educational disparities.

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Article 46 of the Indian Constitution is a directive principle of state policy that deals with the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections of society. It encourages the State to protect these groups from social injustice and all forms of exploitation. Religion can not be the basis for the definition of weaker sections.

Criteria for Reservation : The reservation system is designed to address historical injustices and provide equal opportunities to those who have been socially and economically marginalized. The basis for reservations is multifaceted, reflecting a broad attempt to level the playing field across several dimensions of disadvantage. Here's a breakdown of the criteria used for reservations:

Basis for Reservation

Caste: Reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs) are the most longstanding forms of affirmative action in India. These groups have faced historical oppression and exclusion, and the reservation is intended to help them participate more fully in educational, economic, and political life.

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Tribe: Similar to caste-based reservations, tribal communities recognized as Scheduled Tribes are provided reservations. These communities are generally isolated and have had little access to education and economic opportunities.

Socio-Educational and Economic Backwardness: Other Backward Classes (OBCs), a diverse collection of communities that are educationally and socially disadvantaged but are not as acutely disadvantaged and so do not qualify as SC or ST, also receive reservations. This category is broad and encompasses a large percentage of the population. They cut across all religions. (Art.15 and 16)

Region (in appointments): In certain cases, especially in government appointments, region-based reservations exist to ensure that local populations receive appropriate representation and opportunities, particularly in areas that might be underdeveloped or have specific administrative needs. It is called sons of soil(Art.16)

Gender: Reservations or quotas for women in educational institutions, local government bodies (like Panchayati Raj Institutions), and certain jobs aim to address gender disparities and empower women.(Art.15)

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Economic Weakness: The Economically Weaker Sections (EWS) of society, irrespective of their caste or religious background, are also eligible for reservations in educational institutions and government jobs. This category was recently introduced to help those who are economically disadvantaged but do not fall into the existing reserved categories.(Art.15 and 16)-103 Constitutional Amendment Act 2019.

Religion as a Basis for Reservation : Religion, by itself, is not a constitutionally recognized basis for reservations in India. The Indian Constitution promotes secularism and prohibits discrimination based on religion (Article 15). Therefore, reservations based solely on religious identity are generally not permissible. However, members of religious groups that are socio-economically disadvantaged can still fall under other reservation categories if they meet the criteria, such as being part of the OBCs or EWS. Additionally, specific measures like scholarships or welfare programs targeted at religious minorities (e.g., Muslims, Christians, Sikhs, Buddhists, Jains, and Parsis) are implemented not as reservations but as part of minority welfare initiatives intended to uplift socio-economically backward sections within these communities.

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The reservation policy in India, thus, remains a complex system designed to rectify historical injustices across various dimensions while striving to maintain the secular and inclusive fabric of the nation as mandated by the Constitution.

Muslims and Reservation : The issue of reservations for Muslims primarily hinges on socio-economic criteria rather than religious identity, in line with constitutional mandates to ensure equality and non-discrimination.

Social and Economic Backwardness: Reservations for Muslims are not based on religion but on socio-economic indicators of backwardness. This is in compliance with the constitutional framework that prohibits discrimination solely based on religion. The National Commission for Backward Classes (NCBC) and various state commissions assess communities based on social, educational, and economic indicators to determine eligibility for reservation.

Sachar Committee Report: The 2006 Sachar Committee report significantly highlighted the socio-economic disadvantages faced by the Muslim community in India. It provided empirical data showing that Muslims, on average, lag behind other communities in terms of educational attainments, economic status, and representation in public employment. This

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report has informed policies regarding the inclusion of Muslim communities in the OBC lists where applicable.

Reservations in States:

Kerala: Provides OBC reservations for the entire Muslim community, recognizing widespread socio-economic backwardness among them.

Tamil Nadu: Nearly 95% of Muslim communities are included under the state's OBC reservation, acknowledging their socio-economic challenges.

Bihar: Has bifurcated OBCs into Backward and Most Backward Classes, with most Muslim communities falling under the Most Backward category, reflecting greater socio-economic disadvantages.

Karnataka: Carves out a specific sub-category for Muslims within the OBC reservation, ensuring that Muslims receive a fair share based on their socio-economic status. The landmark Indra Sawhney case (1992) or the Mandal Commission case provided judicial backing for categorizing backward classes into sub-categories such as backward, more backward, and most backward. This categorization allows for a more nuanced approach to reservations, ensuring that the benefits reach those who need them most. The decision underlines that

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reservations should be based on social and educational backwardness, not on religion.

Economic Weaker Sections (EWS): Recently, the introduction of reservations for Economically Weaker Sections among the general category is another effort to address economic backwardness irrespective of caste, religion, or other social indicators. This category aims to help those who are economically disadvantaged but do not qualify under traditional reservation categories.

Religious Basis for Reservations: Muslims, as a religious group, do not receive reservations based solely on religion, as the Constitution prohibits reservations based on religion.

Scheduled Caste (SC) Reservations:

SC reservations are confined to religions that are considered part of the Hindu social order, which includes Hindus, Buddhists, Sikhs, and Jains.

Muslims and Christians are excluded from SC reservations because they do not fall within this Hindu social order framework.

Scheduled Tribes (ST) Reservations:

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ST reservations are available across all religions, acknowledging tribal communities within various religious groups. Muslim STs are rare but are eligible for ST reservations if they belong to recognized tribal communities.

Other Backward Classes (OBC) Reservations: Many Muslims qualify for OBC (Socially and Educationally Backward Classes, SEBC) reservations due to socio-economic conditions linked to traditional occupations or demonstrated backwardness in certain regions.

Inclusion in OBC lists is based on socio-economic criteria rather than religious identity.

Economically Weaker Sections (EWS) Reservations: The EWS reservation is open to individuals from all religions, including Muslims, who do not belong to SC, ST, or OBC categories and whose family income falls below a specified threshold.

This category aims to provide opportunities based on economic need without considering the applicant's caste or religion. Reservations for Muslims in various states of India demonstrate a commitment to addressing socio-economic disparities through affirmative action within the framework of the Constitution. It is essential to understand that these reservations

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are accorded on the grounds of demonstrated backwardness in specific communities, not religious identity. This approach aligns with constitutional principles of equality, non-discrimination, and social justice, aiming to uplift economically and educationally disadvantaged groups across the nation.

12. In the light of the aforementioned reasoning, principles laid down by the Hon'ble Supreme Court decision in the case of ***Renu and Others vs. District And Sessions Judge, Tis Hazari Courts, Delhi and Another*** reported in **(2014) 14 SCC 50** in para Nos. 6 to 14 and 16, it is held as under

> ***"6.*** *Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of our Constitution.*
>
> ***7.*** *In I.R. Coelho v. State of T.N. [(2007) 2 SCC 1 : AIR 2007 SC 861] , the doctrine of basic features has been explained by this Court as under : (SCC p. 108, para 141)*
>
> > *"141. The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic features of the Constitution as indicated by the synoptic view of the rights in Part III.*
>
> ***8.*** *As Article 14 is an integral part of our system, each and every State action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered*

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by this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. , State of Haryana v. Piara Singh , Prabhat Kumar Sharma v. State of U.P. , J.A.S. Inter College v. State of U.P. , M.P. Housing Board v. Manoj Shrivastava , M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey and State of M.P. v. Sandhya Tomar.

9. *In Excise Supt. v. K.B.N. Visweshwara Rao , a larger Bench of this Court reconsidered its earlier judgment in Union of India v. N. Hargopal , wherein it had been held that insistence on recruitment through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. However, due to the possibility of non-sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from employment exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the employment exchange does not meet the requirement of the said articles of the Constitution. The Court further observed : (K.B.N. Visweshwara Rao case , SCC p. 218 para 6)*

> *"6. ... In addition, the appropriate department ... should call for the names by publication in the newspapers having wider circulation and also display on their office notice ... and employment news bulletins; and then consider the cases of all candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."*

10. *In Suresh Kumar v. State of Haryana, this Court upheld the judgment of the Punjab and Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due*

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publicity for inviting applications from the eligible candidates at large.

11. *In UPSC v. Girish Jayanti Lal Vaghela , this Court held : (SCC p. 490, para 12)*

> *"12. ... The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made ... Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."*

12. *The principles to be adopted in the matter of public appointments have been formulated by this Court in M.P. State Coop. Bank Ltd. v. Nanuram Yadav as under : (SCC pp. 274-75, para 24)*

> *"(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.*
>
> *(2) Regularisation cannot be a mode of appointment.*
>
> *(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.*
>
> *(4) Those who come by back door should go through that door.*

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(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.

13. *A similar view has been reiterated by the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) observing that any appointment made in violation of the statutory rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. "Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment." The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.*

14. *In State of Orissa v. Mamata Mohanty, this Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates, thereby the right of equal opportunity is effectuated. The Court held as under : (SCC p. 452, para 36)*

"36. Therefore, it is a settled legal proposition that no person can be appointed

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> *even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."*
>
> ***16.*** *Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."*

13. Thereafter, in yet another decision of the Hon'ble Supreme Court in the case of ***Amrit Yadav vs. The State of Jharkhand and Ors.*** in **Civil Appeal No(s). 13950-13951 of 2024** it is held that public posts are required to be filled up only after due adhering to the constitutional provision like Articles 14 and 16

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read with Article 309 of the constitution if it is a government servant post. In the light of these facts and circumstances, order of the learned Single Judge dated 27.07.2022 passed in CWJC 11447 of 2018 stands modified to the above effect.

14. In the case of ***Anjum Kadari vs. Union of India*** and Others, reported in **(2025) 5 SCC 53**, paragraph Nos. 39 and 40, it is held as under :

> ***"39.*** *Articles 14, 15, and 16 mandate the State to treat all people equally irrespective of their religion, faith, or belief. [S.R. Bommai case, (1994) 3 SCC 1, para 304 : (1994) 2 SCR 644, (B.P. Jeevan Reddy, J.)] Article 14 provides that the State shall not deny to any person equality before the law or equal protection of laws within the territory of India. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16 mandates that there shall be equality of opportunity for all citizens in matters relating to public employment or appointment to any office under the State. Article 16(2) further provides that no citizen shall be discriminated against in respect of any employment or office under the State on the grounds of religion, race, caste, sex, descent, place of birth, residence, or any of them.*
>
> ***40.*** *Secularism is one of the facets of the right to equality. [M. Ismail Faruqui v. Union of India, (1994) 6 SCC 360, para 37] The equality code outlined in Articles 14, 15, and 16 is based on the principle that all persons, irrespective of their religion, should have equal access to participate in society. The State cannot give preference to persons belonging to a particular religion in matters of public employment. As a corollary, the equality code prohibits the State from mixing religion with any secular activity of the State. [S.R. Bommai v. Union of India, (1994) 3 SCC 1, p. 146, para 148 : (1994) 2 SCR 644, (Sawant, J.)"148. One thing which*

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prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited."] However, the Constitution recognises that equal treatment of persons is illusionary unless the State takes active steps in that regard. Therefore, the equality code imposes certain positive obligations on the State to provide equal treatment to all persons irrespective of their religion, faith, or beliefs. [S.R. Bommai case, (1994) 3 SCC 1, p. 33, para 304 : (1994) 2 SCR 644, (B.P. Jeevan Reddy, J.)"304. ... Articles 14, 15 and 16 enjoin upon the State to treat all its people equally irrespective of their religion, caste, faith or belief. While the citizens of this country are free to profess, practise and propagate such religion, faith or belief as they choose, so far as the State is concerned i.e. from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time."

15. Article 14 and 16 of the Constitution is attracted in the event of public posts is to be filled up, therefore, it would go to

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the root of the matter insofar as policy decision restricting the selection and appointment to the post of volunteers/teachers of Markaz and reserving only to a particular community. Therefore, the policy decision of the State is not in consonance with Article 14 and 16 of the Constitution. In the absence of any constitutional provisions restricting to fill up public posts to a particular community, the policy decision dated 26.11.2008 is not in accordance with the scheme of constitution, therefore, we have to invoke Article 226 of the Constitution to strike down the policy decision dated 26.11.2008. Accordingly, policy decision dated 26.11.2008 stands set aside. Consequently appointment of respondents are set aside, reserving liberty to the State/appellants to formulate a policy in consonance with Article 14 and 16 of the Constitution. In evolving a new policy of the State and it must be in consonance with Article 14 and 16 of the constitution, such of those appointees to the post of volunteers/teachers in terms of policy dated 26.11.2008 shall not be displaced until fresh process of selection and appointment is undertaken with reference to new policy to be introduced by the State.

16. At this stage, learned counsel for the State/appellants, on instruction, submitted that the State has evolved a new policy and they may be permitted to implement the

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new policy. They are permitted to implement the new policy provided it is in consonance with Articles 14 and 16 of the Constitution read with principles laid down in the aforementioned judicial pronouncements.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

GAURAV S./-

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