

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1080 of 2009

IN

Civil Writ Jurisdiction Case No 5188 of 2009

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- 1 The State of Bihar
 - 2 The Principal Secretary cum Commissioner, Human Resources Development Department, Government of Bihar, Patna
 - 3 The Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna
 - 4 The District Superintendent of Education, Banka

.... Appellant/s

Versus

- 1 Amrendra Kumar, son of late Baldeo Prasad Jha, resident of Village – Jagannathpur, PS – Rajoun, District – Banka
- 2 Varun Kumar Jha, son of late Satyanarayan Jha, resident of Village – Bhawanipur, Via – Navgachhia, PS – Gopalpur, District – Banka
- 3 Bhaskar Kant Jha, son of late Sahdeo Jha, resident of village – Athnaha, PS – Amarpur, District - Banka
- 4 Sudhir Kumar, son of late Bhubaneshwar Yadav, resident of Village – Tahakumi, PS – Chandan, District – Banka
- 5 Jatashankar Kumar, son of late Subhash Chandra Kumar, resident of Village – Khagra, Via – Navgachhia, PS – Parvatta, District – Banka
- 6 Pramod Kumar, son of late Yogendra Thakur, resident of Village – Parsa, PS – Dhoraia, District – Banka
- 7 Alok kumar, son of late Rajendra Prasad Singh, resident of Village – Pararia, PS – Shambhuganj, District – Banka
- 8 Suman Kumar, son of late Ram Narayan Singh, resident of Village – Mohanpur, PS – Shambhuganj, District – Banka
- 9 Babul Shekhar, son of late Premlata Kumari, resident of Village – Kushmeha, PS – Amarpur, District – Banka
- 10 The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar
- 11 The District Magistrate, Banka
- 12 The District Establishment Committee Appointment Banka through its Chairman

.... Respondent/s

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For the Appellant/s : Mr Anil Kr Sinha, GA IX

For the Respondent/s : Mr Rajendra Prasad Singh, Sr Advocate with
M/s Rajeev Kr Singh & Navjot Yesu, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 07-04-2015

Heard learned counsel for the State and learned

counsel for the State respondents as well as respondents No 1 to 9, the private respondents and with their consent, this intra-Court appeal is being disposed of at this stage itself.

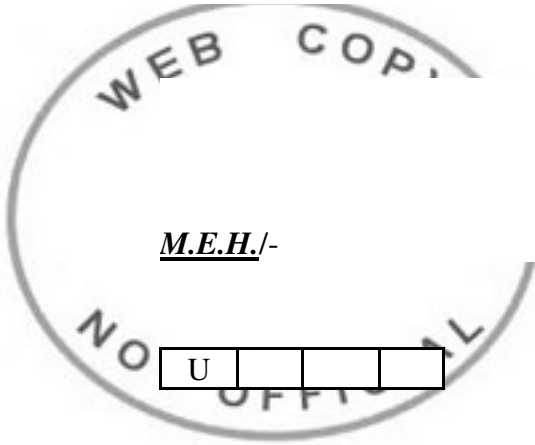
2 The facts are not in dispute. Respondents No 1 to 9 in this appeal, were writ petitioners. They are all from District – Banka. It is not in dispute that they were seeking compassionate appointment on the ground that either their father or their mother, who were the bread earner and were in Government service, died in harness. It is important to note that this death which gives them the cause of action took place prior to 2006 when Bihar Panchayat Raj Primary Teachers (Niyojan and Service Conditions) Rules, 2006 (in short, the *2006 Rules*) came into existence. Their parents were all Assistant Teachers in Government Schools on regular pay scale. Their cases were considered by the District Compassionate Appointment Committee and considering their educational qualification and eligibility, they were recommended for compassionate appointment. This recommendation was made on 20.02.2006. Writ petitioners/respondents No 1 to 5, 7 and 9 were recommended for Class III Post and writ petitioners/respondents No 6 and 8 were recommended for appointment as Teachers under the Government. All these appointments were recommended under the Government on regular pay scale. By the time these appointments came to be considered by the Government, the 2000 Rules, as referred

to above, came into being with effect from July, 2006 and, accordingly, in terms of Rule 10 thereof, all the nine writ petitioners/respondents were ordered to be offered compassionate appointment as Panchayat Teachers. It may be noticed that Panchayat Teachers are not under Government service. They are under the control of and appointed by the respective Panchayat Samiti which is a local self-Government. The appointment is not on any pay scale but on fixed remuneration of Rs 4,000/- per month. The writ petitioners/respondents joined under protest. Their protest either not been heeded to or rejected, they came to this Court. The learned Single Judge held that as their rights had accrued prior to the 2006 Rules coming into being, they had to be given employment in other Government service on permanent basis which has pay scale. This is by which State is aggrieved and filed this intra-Court appeal. On behalf of State, it is submitted that compassionate appointment is not appointment by way of a right. In our view, there is no quarrel with that proposition. It is further submitted that 2006 Rules having come into being and it having provided under Rule 10 thereof that compassionate appointments would now be made on the post of Panchayat Teachers, the writ petitioners were rightly offered compassionate appointment on the post of Panchayat Teachers/Nagar Teachers, both of which are on fixed remuneration. In correction with the later submission, we may note that similar view of the learned

Single Judge was not approved by the Division Bench of this Court. The matter was taken to the Apex Court. The Apex Court overruled the decision of the Division Bench and affirmed the judgment of the Single Judge which decision is now reported in the case of *Vishwanath Pandey –Versus- State of Bihar & Others, (2013) 10 Supreme Court Cases 545*. There is nothing on the facts to distinguish application of the said judgment to the facts of the present case and, accordingly, we have no option but to hold that the view, as taken by the learned Single Judge, did not suffer from any legal or factual infirmity. It requires no interference.

3 However, before closing, we need to point out that even if the Compassionate Appointment Committee recommends for appointment in the facts aforesaid and above noted in Class III or Teachers' Post, it would always be subject to availability of the post at the time when consideration is made for appointment. If at that time, there are no posts available for compassionate appointment then persons would have to be considered for appointment, if they are otherwise eligible, as Panchayat Teachers or Nagar Teachers as the case may be. They would have no choice but to accept the same or forego their claim. This is so because it must be borne in mind that the compassionate appointment is not an appointment by way of right. It is by way of compassion that the Government has provided the same and would always be subject to availability of post.

4 With the aforesaid observations and directions, this appeal stands disposed of.



(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)