

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1543 of 2010
IN
Civil Writ Jurisdiction Case No. 9930 of 2009

- =====
- 1.The State of Bihar.
 - 2.Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
 - 3.District Magistrate, Siwan-Cum-Chairman, District Compassionate Committee, Siwan
 4. District Superintendent of Education, Siwan

.... Respondents/Appellants

Versus

1. Pooja Mishra, W/O Late Chandrabhushan Mishra, R/O Ayodhyapuri, Gali No.3, Srinagar, P.O. & P.S.- Siwan, Distt.- Siwan.
2. Gauav Kumar, S/O Late Neelam Kumari, R/O Vill.- Mahana, P.O.- Bansohi-Via-Masrakh, P.S.- Bhagwanpur Haat, Distt.- Siwan.
3. Mukesh Kumar Singh, S/O Late Basudeo Prasad, R/O Vill.- Mardapur, P.O.- Barahamgopal, P.S.- Siwan (Sadar), Distt.- Siwan. (Deleted vide order dated 26.11.2010).
4. Kumar Vijeta, son of Late Ramakant Yadav, resident of village- Bardhan, P.O. Mustafabad, P.S.- Goraiya Kothi, District-Siwan.

.... Petitioners/respondents

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Appearance : Appearance :

For the Appellant/s : Mr. S.K. Sharma, G.A.1

For the Respondent/s : Mr. Brisketu Sharun Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-04-2015

Heard learned counsel for the State-appellants and the
learned counsel for the private contesting respondents.

This appeal has been preferred after delay of 351 days,
i.e., almost a year and application being I.A. No. 8645 of 2010 has



been filed for condoning the delay in filing the appeal. The explanation is that on coming to know that a similar Letters Patent Appeal had been filed by the State, in which, the Judgment of the learned Single Judge in similar terms had been stayed it was decided to file this appeal. In the aforesaid circumstances, we do not find that the grounds given for condonation of delay are good grounds for condoning the delay. We, therefore, hold that the appeal is barred by the law of limitation. As such, limitation petition is rejected. However, we are not dismissing the matter on that technicality alone for even otherwise, the appeal is devoid of merit.

In the earlier orders passed by the State, it is apparent that the State had taken the plea that on the similar issue, the matter is pending before the Apex Court. It was accordingly, ordered that the appeal be taken up after the said judgment of the Apex Court. Apex Court has since decided the matter in the case of ***Vishwanath Pandey V. State of Bihar and others*** reported in ***2013 (3) PLJR 305(SC)***. The said decision is against the State. The dispute is similar.

The four writ petitioners, one of whom has died during the pendency of this appeal, had filed the writ petition for direction to the respondents-State to give them compassionate appointment in Class –III service of the Government. Initially, the Compassionate Appointment Committee recommended the appointment of four writ

petitioners as Panchayat Teachers on compassionate ground but subsequently then reviewed the matter and made recommendations that the writ petitioners be appointed on compassionate basis on class III Government post, which were vacant and/or as Assistant Teachers in Government Schools.

Notwithstanding the aforesaid recommendations made in their favour, when the District Authorities were not following up, they moved this Court in the writ petition aforesaid. The writ petition was allowed and accordingly, the State preferred present intra-court appeal. It may be noted that in the case of *Vishwanath Pandey v. the State of Bihar and others* since reported in 2013(3)PLJR 735, a learned single Judge of this Court had taken the view that where the cause of action for compassionate appointment arose prior to the 2006 Rules (Panchayat Recruitment Rules, 2006) then their rights would be considered as such and they were entitled to be considered for appointment depending upon their educational qualification in Government jobs commensurate to their educational qualification. It may be noticed that 2006 Panchayat Rules provided that compassionate appointment would be made only on the post of Panchayat or Nagar Panchayat Teachers. This view of the learned Single Judge in the said report was not accepted by the division bench which reversed and the Apex Court then considered the matter in the

case of Vishwanath Pandey (Supra) and over ruled the division bench confirming the view taken by the learned Single Judge. In that view of the matter, we have no option but to confirm the order of the learned Single Judge and dismiss this appeal of the State.

We may however wish to add that originally recommendations made in favour of the writ petitioners, one of whom died during the pendency of this appeal, and his matter thus abetted. The recommendations for their appointment in Class III sanctioned vacant post, if those posts, in the meantime, for any reason being filled up then those petitioners who cannot get appointment on those posts would be liable to be adjusted and appointment on the post of Assistant Teachers. In case, no such post is available then in any other Class-III post in the District or its equivalent in the District, the writ petitioners-respondents before us may be suitably adjusted at the earliest but not later than two months from today.

The appeal stands dismissed.

(Navaniti Prasad Singh, J)

Bhardwaj/-

(Rajendra Kumar Mishra, J)

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