

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1589 of 2009

In

Civil Writ Jurisdiction Case No. 6147 of 2009

- =====
1. The State of Bihar through the District Magistrate, Patna being the Chairman of the District Compassionate Appointment Committee, Patna.
 2. The District Superintendent of Education, Patna.
 3. The District Education Officer, Patna.

.... Appellants

Versus

1. Dilip Kumar S/O Late Girijanandan Prasad R/O Hanuman Nagar, Mig-190, P.S.- Patrakar Nagar, Distt.- Patna.
2. Balram Kumar S/O Smt. Girja Kumari Yadav Of Kanhaipur P.S.- Mokamah, Distt.- Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Amresh (AC to SC-11)
For the Respondent/s : Mr. Mr. Sunil Kumar Singh, Advocate
Mr. Nagendra Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

5 30-03-2015 The present intra-court appeal has been filed by

the State being aggrieved by the judgment and order dated

15.05.2009, passed in C.W.J.C. No. 6147/2009 (Dilip

Kumar Versus State of Bihar). The learned Single Judge

ordered that in view of the letter of Personnel and

Administrative Reforms Department dated 17.10.2008, the

petitioners had to be considered for compassionate



appointment as an assistant teacher, which is the post under the government and not Nagar Shikshak which is local self-government (Nagar Parishad). The State being aggrieved, filed this intra-court appeal on the solitary ground that the circular of the State Government dated 17.10.2008 was recalled by the State on 22.06.2009, and as such, the recommendations made in case of the writ petitioners, for being appointed on compassionate appointment as Nagar Shikshak, was valid and the judgment of the learned Single Judge does not warrant interference.

We may note the sequence of dates to resolve this issue. The death of the employee took place prior to the Rules i.e. prior to 01.07.2006. The circular of Personnel and Administrative Reforms Department dated 17.10.2008, as contained in Annexure – 1 to the Letters Patent Appeal, filed by the State, in clear terms, states that compassionate appointees had to be appointed in government service. If the employees, who died, was in government service then the compassionate appointment could not be as Panchayat Shikshak/Prakhand Shikshak or Nagar Shikshak. Taking note of this circular, the writ petition was allowed on 15.05.2009. The circular of the State government dated

22.06.2009 came thereafter recalling the earlier circulars. A circular issued after the judgment would not take away the mandamus by the judgment. Moreover, we may note that the Apex Court in the case of *Vishwanath Pandey v. State of Bihar and others* reported in **2013 (3) PLJR 305 (SC)**, has held that the appointment had to be a regular teacher and the Apex Court affirmed the order of learned Single Judge which has since been reported in **2013 (3) PLJR 735**, whereby this Court had clearly held that notwithstanding the 2006 Rules, where the occurrence had taken place prior to the Rules, the appointment would have to be the teacher under government.

In that view of the matter, we find no merit in this appeal, accordingly, this Letters Patent Appeal is dismissed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Rajeev/-

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