

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10326 of 2015

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1. Md. Kashif Reza S/o Late Md. Nasim Akhtar, Resident of village- Gaiyari, Police Station- Araria, District- Araria
 2. Md. Azam Quamar, S/o Late Mustaque Alam Resident of village- Bansbari, Police Station- Araria, District- Araria
 3. Sudhir Kumar Rajak S/o- Late Indra Narayan Rajak, Resident of village- Bageshwari, Police Station- Jokihat, District- Araria
 4. Hamidur Rahman S/o Wasiur Rahman, Resident of village- Hayatpur, Police Station- Araria, District- Araria
 5. Md. Hammad Alam, S/o Late Md. Sajjadul Haque, Resident of village- Koshkipur, Police Station- Araria, District- Araria
 6. Anil Kumar Jha S/o Sitaram Jha, Resident of village- Palasi Pategna, Police Station- Tarabari, District- Araria
 7. Lalan Kumar Paswan S/o Late Mahendar Narayan Paswan, Resident of village- Braina, Police Station- Sarsi, District- Purnia

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna
3. The Principal Secretary, Human Resources Department, Bihar, Patna
4. The Director, Primary Education, Department of Human Resources, Bihar, Patna
5. The Regional Deputy Director of Education, Purnea
6. The District Magistrate- cum-Chairman, District Compassionate Appointment Committee, Araria
7. The District Education Officer, Araria
8. The District Programme Officer, Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Prakash, Adv.
Mr. Avinash Kr. Sinha, Adv.
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG5

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 29-07-2015

Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application:-

“1(i) For issuance of appropriate writ/writs, direction/directions in the nature of Mandamus or Writs, order or orders for directing the respondents



to adjust/promote these petitioners to the post of Assistant Teachers or Class-III post under the State Government against regular vacancy and regular pay scale from the post of Class-IV appointed on compassionate ground discriminating with other similarly situated persons with similar qualification despite nine regular vacancies being still available for the post of regular Assistant Teachers.

- (ii) For issuance of appropriate Writ/Writs, direction/directions in the nature of Mandamus or Writs, order or orders for direction upon the respondents to ensure adjustment of the petitioners on Class-III post or as assistant teacher in terms of the settled position by the Hon'ble Patna High Court and Compassionate policy of the Government and the recommendations made against the post in Government Service.*
- (iii) For further kind indulgence of this Hon'ble court to look into the matter and the concerned respondents may be directed to produce all connected records for perusal of the same for passing an appropriate order.*
- (iv) For grant of any other relief or relief's for which the petitioners are legally entitled and the Hon'ble Court deems fit and proper in the facts and circumstances of the case."*

Having regard to the fact that the petitioners were already appointed on compassionate ground on the Class-IV post way back in the year 2004 and 2005, there would be no question of further compassion by now allowing them to claim their fresh appointment on Class-III posts including the posts of Teachers or



other higher posts as this issue stands concluded by the Apex Court in the case of ***State of Rajasthan Vs. Umrao Singh*** reported in 1994 (6) SSC 560 which was followed by this Court in the case of ***Purushotam Kumar Singh Vs. The State of Bihar through the Principal Secretary, Human Resources Department, Government of Bihar & Ors.*** reported in 2014(1) PLJR 168 wherein it was held as follows:-

“7. Having thus examined the impugned order passed by the Collector of Aurangabad district, this Court has no iota of doubt that full consideration has been given by the Collector of the district. It has to be noted that initially when the petitioner’s appointment was under consideration in the year 2001 and in fact he got appointed on compassionate ground in less than six months of the recommendation of the District Compassionate Appointment Committee for the appointment on compassionate ground for a class-4 post. Thus, when the petitioner was given Class-4 post, he had accepted such post without any protest and, therefore, in the light of the policy decision of the Government dated 5.10.1991 which itself lays down that once a person is appointed on compassionate ground on any post, he cannot be allowed to raise any further claim for higher post. It is well settled that the appointment on compassionate ground is a matter of policy and if the policy itself lays down for no further consideration after being given one post, the same cannot be claimed by the person already appointed and continuing in service as a matter of right.

*8. In fact, this very aspect has also been settled by the Apex Court in the case of ***State of Rajasthan Vs. Umrao Singh*** reported in 1994(6) SCC 560 wherein it was held that there is no such concept of “endless compassion”*

and the claim of compassionate appointment gets extinguished once one of the available post is offered by the employee and is accepted by the employee.

9. *It has to be kept in mind that the decision taken in the year 2001 by the District Compassionate Appointment Committee for appointment of the petitioner on a Class-4 post could not have been reopened after ten years because the petitioner was not competing on merit. It was the case of the availability of the post which was offered at that point of time to the petitioner and which he had also happily accepted. Thus, after a period of more than twelve years of continuation of the petitioner on Class-4 post, this Court is not inclined to hold that the initial appointment of the petitioner on compassionate ground in the year 2001 was made on any irrelevant consideration. The example cited by the petitioner of other persons are not comparable and in any event, each case of compassionate appointment arising at a particular point of time cannot be reopened only because the policy subsequently had been re-defined or changed. The case of the petitioner will have to be considered as on 12.1.2001 when the father had died and on that day, his appointment on Class-4 post cannot be faulted either on fact or in law."*

The only other aspect being raised by Mr. Amit Prakash, learned counsel for the petitioners that one Rajesh Kumar Shashi has been favoured with continued compassion by way of his such appointments on Class-III post also cannot be held to be a healthy precedent and consequently also cannot be followed by this Court specially when Rajesh Kumar Shashi has also not been made party to this writ application. Nonetheless, if the petitioners

would approach the competent authority and assail the illegality in the continued illegal compassion being shown to Rajesh Kumar Shashi, nothing said in this order shall stand in the way of competent authority to examine and take appropriate decision by following the law laid down by the Apex Court in the case of Umrao Singh (supra) and this Court in the case of Purushotam Kumar Singh (supra).

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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