

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.465 of 2014**

**Arising out of**

**Civil Writ Jurisdiction Case No. 6627 of 2010**

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1. Abhishek Roy S/O Samar Kumar Roy R/O- Village- Laskaria Tola, P.O. + P.S. + District- Katihar
  2. Arbind Kumar Roy S/O Late Kedar Nath Roy R/O- Balwari, P.S.- Azamnagar, District- Katihar
  3. Kumar Vikram Sinha S/O Late Kumar Ashok Sinha R/O- Village + P.O.- Sameli, P.S.- Kursela, District- Katihar

.... .... Appellant/s

Versus

1. The State Of Bihar
2. The Secretary-Cum-Co-Commissioner, Personnel and Administrative Reforms Department, Bihar, Patna
3. The Principal Secretary, Human Resources Department Bihar, Patna
4. The Deputy Secretary, Personnel and Administrative Reforms Department Bihar, Patna
5. The District Magistrate Cum Collector, (Estt.), Katihar
6. The Deputy Collector, (Estt.) Katihar
7. The District Superintendent Of Education, Katihar

.... .... Respondent/s

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**Appearance :**

For the Appellants : Mr. Rajeev Kumar Singh with  
Mr. Priyadarshi Matin Sharan, Advocates

For the State : Mr. Sheo Shankar Prasad, SC 8

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)**

**Date: 19-08-2016**

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 27<sup>th</sup> January, 2012 whereby the writ petition filed by the appellants for claiming appointment under the State in a regular pay scale was not accepted in view of the Full Bench judgment of this Court reported as

2010 (3) PLJR 294 (The State of Bihar & Ors. Vs. Rajeev Ran Vijay Kumar).

The appellants are the candidates who have sought appointment on compassionate ground consequent to the death of their bread earner in harness. In terms of the scheme as then prevalent, the appellants were subjected to written test for the purposes of appointment along with the other eligible candidates by the State Government. But before the appointment could be made, the policy for appointment was changed for the reason that there is no posts available with the State Government and it was decided to offer appointment under the Panchayat as Panchayat Teacher. It is thereafter, the appellants were appointed as Panchayat Teacher.

The appellants invoked the writ jurisdiction of this Court for quashing of the communication whereby it was decided to offer appointment to the candidates such as the appellants as a Panchayat Teacher.

The issue in respect of appointment as Panchayat Teacher on compassionate ground was examined by a Full Bench judgment of this Court in the case of The State of Bihar & Ors. Vs. Rajeev Ran Vijay Kumar (supra) where it was held to the following effect:

*“ 27. We have referred to the above circular in extenso only to appreciate that a legal heir or*



*dependant having no legal right to be appointed to a government post cannot claim it as a matter of right. The State Government has withdrawn the preference that existed in the circular dated 12.07.1977. It has made an alternative arrangement that the teachers serving in the erstwhile government schools, when die in harness, their legal heirs can be accommodated as Prakhand Teachers. The view expressed in **Brajesh Kumar** (supra) that they cannot be appointed in the said schools is really not a matter to be adverted to by this court as it is the policy decision of the Government to appoint such teachers in those schools by carving out an exception. As has been stated in many a decision, a compassionate appointment by its very nature is an exception and the same has to be treated as an exception for all purposes. Possibly, the matter would have been different had the rule been in force conferring a particular privilege on the legal heir or dependant of the government teacher, who died in harness. That not being the position, the Government has the power / authority to change the policy from time to time and that having been done, no fault can be found with the appointment given to the appellant on the post of Prakhand Teacher in the Koilwar Block.”*

The learned Single Bench dismissed the writ petition relying upon the Full Bench judgment of this Court in Rajeev Ran Vijay Kumar's case.

Learned counsel for the appellants pointed out that in a Special Leave Petition before the Hon'ble Supreme Court against the

Full Bench judgment, the State offered to consider the appellants if their Special Leave Petitions were withdrawn. It is, thus, pointed out that on similar line, the case of the appellants should be considered for appointment under the State.

The Special Leave to Appeal (Civil) No (s). 29655 of 2010 against the full Bench judgment of this Court was withdrawn on 26.11.2012. Therefore, the judgment of the Full Bench holds the field. The statement of the State to re-consider the claim of the writ petitioners made before the Supreme Court cannot be extended in the present case as such was the statement made only before the Hon'ble Supreme Court.

Learned counsel for the appellants also refers to the judgment of the Hon'ble Supreme Court reported as (2013) 10 SCC 545 (Vishwanath Pandey v. State of Bihar) wherein the action of the State in offering appointment on fixed salary after appointing the candidates under the State was not found to be legal. In the said case, the appellant was offered appointment on compassionate ground under the State but later on appointed as Panchayat teacher on fixed salary. It was said action which was set aside. The relevant extract from the judgment reads as under:-

*“8. We have heard the learned counsel for the parties and scrutinised the records. It is not in dispute that even though the District Compassionate*



*Committee had made recommendations on 29-11-2005 that the appellant may be appointed on a Class III post, he was not given appointment because of the ban imposed by the State Government. It is also not in dispute that after lifting of the ban, the District Compassionate Committee recommended the appellant's appointment as teacher on compassionate ground and he was appointed against the vacant post by the District Superintendent of Education, Buxar. That order was neither rescinded nor modified by the competent authority on the premise that after coming into force of the 2006 Rules, the appellant could have been appointed only by the Panchayat Samiti on the post of Prakhanda Teacher. Therefore, the Division Bench of the High Court was not at all justified in recording a finding that the appellant could have been appointed only as a Prakhanda Teacher by the Panchayat Samiti on fixed pay. Unfortunately, the Division Bench overlooked the fact that the appellant had been appointed as per the policy of compassionate appointment framed by the State Government and that policy does not envisage the appointment of the dependant of a deceased employee on fixed pay."*

But the question in the present case is as to whether, the appellant can seek appointment on compassionate ground, when there is no post, and the policy of appointment has undergone change. Such question would in turn depend as to whether a candidate seeking appointment on compassionate ground has any vested right to seek

appointment and when such right would arise for consideration. The Supreme Court in a judgment reported as ***MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583*** held that the consistent view is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. The Court held as follows:-

*“6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family*

*in distress. It is improper to keep such a case pending for years.”*

The Hon'ble Supreme Court in a judgment reported as (1994) 6 SCC 560 (State of Rajasthan v. Umrao Singh) was examining the case where a candidate was appointed to the post of LDC but he claimed appointment to the post of Sub Inspector. The Court held that once he has accepted the appointment as LDC, therefore, the right to be considered for appointment on compassionate ground was consummated. The relevant extract reads as under:

*“8. Admittedly, the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-03-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of “endless compassion”. Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no*

*application to the facts of this case.”*

In view thereof, when the appellants were not offered appointment on regular pay scale and that the appellants have accepted appointment on fixed salary, they cannot be permitted now to claim appointment on regular pay scale. Once the appellants stand appointed on fixed salary, the appellants came out of precarious financial condition to claim appointment on compassionate ground. Thus, we do not find any merit in the present Letters Patent Appeal.

The appeal stands dismissed.

**(Hemant Gupta, J)**

**(Ahsanuddin Amanullah, J)**

Anjani/P. Kumar

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