

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7272 of 2013

Kaushik Kumar, Son of Late Ram Kishore Shukla Resident of Village Balchhi P.S.
Karandey District Sheikhpura Petitioner

Versus

1. The State Of Bihar
2. The District Magistrate Jamui
3. The District Education Officer Jamui
4. The District Programme Officer (Establishment) Jamui
5. The District Compassionate Appointment Committee through ts Chairman Jamui
6. The Regional Deputy Director Munger Division- Jamui
7. Regional Education Officer (Aliganj) District Jamui
8. Block Education Officer (Aliganj) Jamui Respondents

With

Civil Writ Jurisdiction Case No. 5329 of 2013

Shakti Nath Jha S/O Late Lakhan Lal Jha R/O Village- Karama, P.O.- Bhagipur,
Via- Alamnagar,P.S.- Puraini, District- Madhepura Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary Personnel And Administrative Reforms Deptt., Govt. Of Bihar, Patna
3. Principal Secretary Human Resources Development Deptt., Govt. Of Bihar, Patna
4. The Director (Primary Education) Department Of Education, Bihar, Patna
5. Joint Secretary Department Of Education, Bihar, Patna
6. Regional Deputy Director Of Education Koshi Division, Saharsa
7. District Education Officer, Madhepura
8. District Programme Officer (Establishment), Madhepura
9. District Magistrate-Cum-Chairman Of District Compassionate Committee Madhepura, District- Madhepura
10. District Superintendent Of Education, Madhepura
11. Block Development Officer-Cum-Executive Officer Panchayat Samittee, Puraini, Distt.- Madhepura Respondents

With

Civil Writ Jurisdiction Case No. 11558 of 2013

Praveen Kumar Singh, Son of Late Narvadeshwar Singh, resident of village –
Bardiha Dalpat, Post- Bardiha Persuram, P.S. Lar, District- Dewariya (U.P.)

.... Petitioner

Versus

1. The State of Bihar
2. District Magistrate, Siwan, District-Siwan.
3. District Education Officer, Siwan, District-Siwan.
4. The District Programme Officer Education (Establishment), Siwan, District-Siwan.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 11567 of 2013

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Mahendra Pratap Singh, Son of Late Prem Narayan Singh, Resident of Village-
Darauli, P.S. District-Siwan.

.... Petitioner

Versus

1. The State of Bihar
2. District Magistrate, Siwan, District-Siwan.
3. District Education Officer, Siwan, District-Siwan.
4. The District Programme Officer Education (Establishment), Siwan, District-Siwan.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 8797 of 2013

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Kumar Jay Vardhan S/O Late Bimal Kishore Jha R/O Village- Jhagruchak, P.O.-
Jhagruchak, P.S.- Falka, District- Katihar

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary Department Of Human Resources, Government Of Bihar, Patna
3. The Director, Primary Education Government Of Bihar, Patna
4. The District Magistrate, Katihar
5. The District Programme Officer Education (Establishment), Katihar
6. The District Education Officer, Katihar
7. The Block Development Officer Falka Block, District- Katihar
8. The Block Education Officer, Falka Block, District- Katihar

.... Respondents

With

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Civil Writ Jurisdiction Case No. 8909 of 2013

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Sandeep Kumar Sinha Son Of Late Paramdeo Sinha Resident Of Village - Singhia
Diwanganj, P.O. Rautara, District - Purnea

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Human Resources, Government of Bihar, Patna
3. The Director, Primary Education, Government Of Bihar, Patna
4. The District Education Officer, Purnia
5. The District Education Officer, Patna

.... Respondents

With

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Civil Writ Jurisdiction Case No. 9227 of 2013

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Nutan Kumari D/O Late Dinesh Prasad Mandal Resident Of Village- Dhokardhara, P.O- Bishanpur Datt, Police Station- Banmankhi, District- Purnea.
2. Nutan Kumari D/O Late Dinesh Prasad Mandal Resident Of Village- Dhokardhara, P.O- Bishanpur Datt, Police Station- Banmankhi, District- Purnea.

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Human Resources, Government of Bihar, Patna.
3. The Director, Primary Education, Government Of Bihar, Patna.
4. The District Magistrate, Katihar.
5. The District Programme Officer, Education (Establishment), Katihar.
6. The District Education Officer, Katihar.
7. The Block Development Officer, Falka Block, District- Katihar.
8. The Block Education Officer, Falka, Block, District- Katihar.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 9397 of 2013

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Najmul Haque Son Of Late Shermajul Haque Resident Of Village- Charkhi, P.O. Korha, P.S. Korha District- Katihar.

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Human Resources, Government of Bihar, Patna
3. The Director, Primary Education, Government Of Bihar, Patna
4. The District Magistrate, Katihar
5. The District Programme Officer Education (Establishment), Katihar
6. The District Education Officer, Katihar
7. The Block Development Officer, Korha Block, District- Katihar
8. The Block Education Officer, Korha Block District- Katihar

.... Respondents

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Appearance :
(In CWJC No. 7272 of 2013)

For the Petitioner : Mr. Bipin Kumar, Advocate,
: Mr. Arun Kumar, Advocate,
: Mr. Ram Vinay Prasad Singh @ Sanjay, Advocate
For the Respondents : Mr. Parth Sarthi, GA-11
: Mr. Utsav Kumar, AC to GA-11

(In CWJC No. 5329 of 2013)

For the Petitioner : Mr. Subodh Kumar Jha, Advocate,
Mr. Shyam Nand Thakur, Advocate.

For the Respondents : Mr. Uday Shankar Sharan Singh, GP-1
Mr. Uday Bhan Singh, AC to GP-1

(In CWJC No. 11558 of 2013)

For the Petitioner : Mr. Sanjay Kumar Singh, Advocate

For the Respondents : Mr. Yogendra Kumar Singh, AC to SC-15

(In CWJC No. 11567 of 2013)

For the Petitioners : Mr. Sanjay Kumar Singh, Advocate

For the Respondent/s : Mr. Arvind Kumar, SC-13

(In CWJC No. 8797 of 2013)

For the Petitioner : Mr. Ashutosh Ranjan Pandey, Advocate

Mr. Abdul Wadood, Advocate.

For the Respondents : Mrs. Abhanjalli, AC to GP-16.

(In CWJC No. 8909 of 2013)

For the Petitioner : Mr. Ashutosh Ranjan Pandey, Advocate

Mr. Abdul Wadood

For the Respondents : Mr. Kamlesh Kishore, AC to GP-2

(In CWJC No. 9227 of 2013)

For the Petitioner : Mr. Ashutosh Ranjan Pandey, Advocate

Mr. Abdul Wadood, Advocate

For the Respondents : Archana Jha, AC to GA-13

(In CWJC No. 9397 of 2013)

For the Petitioner : Mr. Ashutosh Ranjan Pandey, Advocate

Mr. Kalanand Jha, Advocate

For the Respondents : Mr. S.P. Ojha, GP-22

Mr. Praveen Kumar.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-04-2016

In all the cases the identical issues have been raised and as such they are being heard together are being disposed of by this common order.

For the convenience case of Kaushik Kumar (C.W.J.C. No. 7272 of 2013) is being taken into consideration. Petitioners are claiming for their appointment on compassionate ground in Class III post. Admittedly they were appointed as Panchayat Teachers and were discharging the duties aforesaid. They claimed that in stead of being appointed as Panchayat Teachers on consolidated pay, they should be appointed on Class –III Government servant so they will be

placed in better scale as they are getting in a consolidated pay.

Admittedly in all the cases the father of the petitioners were working as teachers in different school, some one as Head Master and some one as teachers. The father of the petitioners have died after the enforcement of Primary Teachers (Appointment and Service Conditions) Rules 2006 in pursuance of Rule 10, the Government of Bihar has came out with a scheme for the compassionate appointment as Panchayat Teacher of the dependent of teaching and non-teaching employees. The claim has been made by the petitioners that their cases were placed before the Compassionate Appointment Committee. All were recommended for Class-III posts but instead of appointing them to Class –III, all have been appointed as Panchayat Teachers on the consolidated pay scale if they were appointed on Class-III post, their pay scale have been better than to the Panchayat Teacher as their father was a Government servant and not was appointed as a Panchayat Teacher, so they cannot be compelled to work on the post of Panchayat Teacher, but one fact remains, all persons on the issuance of appointment letter, they joined the post and have been discharging their duties of Panchayat Teacher.

Learned counsel for the petitioners has placed reliance on the judgment of this court in the case of *Vishwnath Pandey Vs. State of Bihar & Ors*, reported in 2013(3) PLJR SC 305.

In that Vishwnath Pandey the petitioners was



recommended for Class –III posts but was appointed as Panchayat Teachers. Even after joining Vishwnath Pandey pursued his case, ultimately matter reached to the Hon’ble Supreme Court. The Hon’ble Supreme Court has given direction that he should be appointed in Class-III in the regular pay scale instead of consolidated pay scale. He has also relied on the judgment in the case of *The State of Bihar through the District Magistrate Patna & Ors. Vs. Dilip Kumar & Anr. reported in 2015 (4) PLJR 674* and on L.P.A. No. 734 of 2011(The State of Bihar Vs. Rakesh Kumar) and L.P.A. No. 600 of 2011 (State of Bihar Vs. Saket Suman). In all the judgments bread earners have died before the enforcement of Rules 2006 and in all cases recommendation took place before the Enforcement of scheme.

Counsel for the petitioners has placed reliance on the order passed in S.L.P. No. 29655 of 2010 where the State has come forward and stated that if they will withdraw their S.L.P, the authority concerned shall take decision on their cases on expeditiously. The order is based on concession, order does not disclose in what manner benefit was given to those persons, so this order is of no help to these petitioners.

In the present case the father has died and the scheme of 2009 applies when it has been specially mentioned that the appointment of teaching and non-teaching staff, who died in harness, their ward will be appointed on the post of panchayat teacher. So after

the enforcement of Rule 10 of Rule 2006, the Government come out to its own scheme.

It is well known Principle of law that compassionate appointment cannot be said to be source of appointment but merely a solace is given to the family where the bread earner has died and family has been put to the penury, benefit is extended to overcome this financial crisis. The family is given a bread earner so that he can discharge his burden properly. Reliance can be placed on the judgment reported in (1994) 4 Supreme Court Cases 138 in the case of *Umesh Kumar Nagpal Vs. the State of Haryana*. There also the Court has taken this view that the compassionate appointment cannot be said the source of appointment cannot be granted after a lapse of reasonable period. It will be relevant to quote the following portion of the judgment in the case of *Umesh Kumar Nagpal Vs. State of Haryana and Others* reported in (1994) 4 Supreme Court Cases 138:

The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The

Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

The judgments of Vishwnath Pandey's case (supra) cited by the petitioners is not applicable to the present case. All petitioners have been working for long time as now family is no longer in financial crisis.

In result this court does not find any merit in the present case and the same is dismissed.

(Shivaji Pandey, J.)

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