

IN THE HIGH COURT OF JUDICATURE AT PATNA

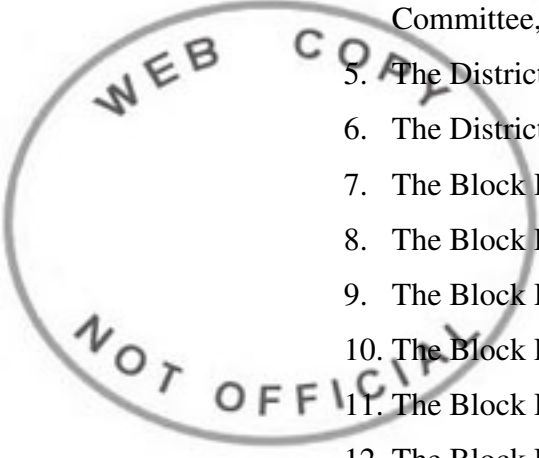
Letters Patent Appeal No.672 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 19769 of 2013
Along with
Interlocutory Application No. 2871 of 2015
In
Letters Patent Appeal No.672 of 2015

- =====
1. Navin Chandra Thakur, S/o Late Ramawatar Thakur, R/o AT + P.O.-
Bathanada, Via- Khutauna, District- Madhubani.
 2. Rahul Kumar Singh, S/o Late Surendra Prasad Singh, R/O Vill + P.O.-
Kewalpatti, Via + Block + P.S.- Rajnagar, District- Madhubani.
 3. Ravi Shekhar Prasad, S/o Late Surendra Narayan Raut, R/o Vill- Ratauli, P.O.-
Baingra, Via + P.S- Saharghat, Block-Madhwapur, District- Madhubani.
 4. Shambhu Kumar, S/o Late Durganand Raut, R/o Vill + P.O.- Rakhwari, P.S.-
Rudrapur, Block- Andhara Thadhi, District- Madhubani.
 5. Narayan Jee Thakur, S/o Late Ravi Kant Thakur, R/o Vill- Belahi, P.O.- Lohat,
P.S.- Pandaul, District- Madhubani.
 6. Mehdi Hasan, s/o Late Abdul Mannan, R/o P.O.- Jagarpur, Via- Ghoghardiha,
P.S.- Phulpar, District- Madhubani.
 7. Rishi Kumar Jha, S/o late Sharda Nand Jha, R/o Vill- Marrar, P.O.- Jitwarpur,
P.S.- Rahika, District- Madhubani.
 8. Rambalak Roy, S/o Late Sukhdeo Roy, R/o- Ekkamma, P.O.- Ghonghor,
Block- Rajnagar, District- Madhubani.
 9. Santosh Kumar, S/o Late Ram Prasad Paswan, R/o Vill- + P.O.- Khirhar,
Block- Harlakhi, District- Madhubani.
 10. Shandkar Kumar, S/o Late Indreshwar Thakur, R/o Vill- Banigawa, P.O.-
Ghonghour, Via- Rajnagar, District- Madhubani
 11. Kumar Pujan, S/o Late Meena Kumari, R/o Vill + P.O.- Raghopur Balat,
Block- Rajnagar, District- Madhubani.
 12. Rakesh Prasad Dutta, S/o Late Dev Chandra Prasad Dutta, R/o Moh- J.P.
Colony, Ward No. 14, District- Madhubani.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Govt. of
Bihar, Patna.

- 
3. The Director Education Department, Govt. of Bihar, Patna.
 4. The District Magistrate-cum- Chairman, District Compassionate Appointment Committee, District- Madhubani.
 5. The District Education Officer, Madhubani
 6. The District Programme Officer (Estt.), Madhubani.
 7. The Block Development Officer, Khutauna, District- Madhubani.
 8. The Block Education Officer, Khutauna, Madhubani.
 9. The Block Development Officer, Rajnagar, District- Madhubani
 10. The Block Education Officer, Rajnagar, District- Madhubani
 11. The Block Development Officer, Rahika, Madhubani.
 12. The Block Education Officer, Rahika, Madhubani
 13. The Block Development Officer, Andhra Thadhi, Madhubani
 14. The Block Education Officer, Andhra Thadhi, Madhubani
 15. The Block Development Officer, Pandaul, Madhubani
 16. The Block Education Officer, Pandaul, Madhubani
 17. The Block Development Officer, Phulparas, Madhubani
 18. The Block Education Officer, Phulparas, Madhubani
 19. The Block Development Officer, Basopatti, Madhubani
 20. The Block Education Officer, Basopatti, Madhubani
 21. Shiv Chandra Ram, S/o Late Chheu Ram R/o Vill + P.O.- Gonauli, Via- Andhara Thardhi, District- Madhubani
 22. Kiran Kumari W/o Late Avdhesh Kumar(Husband), R/o Bathohia, P.O.- Lohat, Block- Pandaul, District- Madhubani

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ashok Kumar, Advocate.
Mr. Ram Chandra Lal Das, Advocate.

For the State : Mr. M.N.H.Khan, S.C.-1.
Mr. Md. Irshad, AC to SC-1.

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 09-11-2016

Re.: Interlocutory Application No. 2871 of 2015

The application is for condonation of delay of 01 year 48 days in filing of the appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 01 year 48 days in filing of the appeal is condoned.

3. Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 672 of 2015

4. The challenge in the present Letters Patent Appeal is to the order dated 21.10.2013 passed by the learned Single Bench by which CWJC No. 19769 of 2013 filed by the appellants has been dismissed.

5. Appellants no. 1 to 4, 6, 7 and 9 to 14 are wards of either teachers or employees, who were working in the Government schools in the District of Madhubani, when they died in harness. The death occurred between the years 2007 to 2011. Pursuant to their claims for compassionate appointment, in the meeting of the District Compassionate Appointment Committee of the District of Madhubani held on 29.06.2011, the application of appellants no. 1, 2, 5, 9, 11 and 12 were sent to the Education Department for further action. The applications of rest of the appellants were directly sent to the



Education Department without consideration by the District Compassionate Appointment Committee, Madhubani. The Block Development Officer, Phulparas-cum-Executive Officer, Block Employment Unit, Phulparas issued appointment letters to the appellants for the post of Block Teachers (untrained) stipulating that the appointment was on compassionate ground in terms of Rule 10 of the Bihar Panchayat Primary Teacher (Employment & Service Conditions) Rules, 2006 (hereinafter referred to as the “Rules”), as amended in 2008. The appellants also joined their post as Block Teachers.

6. The appellants decided to agitate the matter on the basis of observation given by the Hon’ble Supreme Court in Petition for Special Leave to Appeal (Civil) No. 29655 of 2010, which, by order dated 26.11.2012, was withdrawn by those petitioners (Rajiv Ran Vijay Kumar & Ors.) in view of the stand that if the petitioners withdraw the petition and move before the authorities concerned, their cases shall be considered by the authorities concerned keeping in view the facts and circumstances of each case. With the said liberty, the Hon’ble Supreme Court dismissed the said case.

7. When no action was taken, the appellants seeking similar relief of appointment on Class-III post, moved this Court in CWJC No. 19769 of 2013, which has been dismissed by the learned

Single Bench on 21.10.2013 giving rise to the present Letters Patent Appeal.

8. Learned counsel for the appellants submitted that they are entitled to appointment under the Government and not on a fixed pay on the post of Block Teachers as their fathers/mothers were in Government service. Learned counsel submitted that the Hon'ble Supreme Court, in the case of other persons, had permitted the petition of Special Leave to Appeal to be withdrawn in view of the stand of the State authority that the cases of the persons shall be considered keeping in view the facts and circumstances of each case. It was submitted that the appellants may also be granted the same liberty and the State be directed to consider their case.

9. Learned counsel also referred to a decision of a Division Bench of this Court in L.P.A. No. 600 of 2011 (*The State of Bihar and Another vs. Saket Suman and Others*) in which, by order dated 09.08.2012, the Court has held that Rule 10 of the Rules is an enabling provision and cannot be held as a bar on appointment on compassionate ground on the post other than Panchayat Teacher/Block Teacher.

10. Learned counsel for the appellants has also referred to the decision of the Hon'ble Supreme Court in the case of *Vishwanath Pandey vs. State of Bihar and others* reported as (2013)

10 SCC 545, where it has been held that the appointment on compassionate ground, as per the policy framed by the State Government, does not envisage the appointment of the dependant of a deceased employee on fixed pay.

11. Learned counsel for the State submitted that the judgment of the Full Bench of this Court in the case of *The State of Bihar and others v. Rajeev Ran Vijay Kumar* reported as {2010(3) PLJR 294}, has held that the compassionate appointment by its very nature, being an exception, policy of the State Government making alternative arrangement regarding teachers serving in the erstwhile Government schools, who died in harness, their legal heirs can be accommodated as Prakhanda Teachers and appointment can only be made on that post. It was further submitted that the appellants, having accepted their appointment as Block Teachers, now cannot turn and claim appointment on some other post having become wiser by any decision passed in the case of other persons.

12. Having considered the contentions of the parties, we do not find any merit in the appeal. The appellants have been offered appointment on compassionate ground by way of grace, pursuant to a policy of the State Government, where all constitutional requirements relating to such appointment are waived and direct appointment is made for the purposes of giving immediate relief to the dependant

family members of a Government servant, who had died in harness. Thus, such appointments are to be strictly made in terms of the prevailing policy of the State Government.

13. It is not in dispute that as per the provisions of the Rules, specially Rule 10, appointment of a dependent of a deceased teacher, is to be made on the post of Prakhanda/Block Teacher. Such person had the options to accept or refuse such employment, but cannot claim a right for being appointed on a particular post. Once having exercised such option, he cannot claim for appointment on any other post.

14. In the decision relied upon by the learned counsel for the appellants in the case of *Saket Suman* (supra), there was recommendation by the District Compassionate Appointment Committee for employment on a Class-III post and the death of the teachers/employees had also occurred in the year 2004-05, i.e., before coming into effect of the Rules. Similarly, in the case of *Vishwanath Pandey* (supra), the deceased employee had died in the year 2004 and the District Compassionate Appointment Committee had, in its meeting held in November, 2005, recommended for such appointment on a Class-III post, that is, before coming into effect of the Rules.

15. Thus, the said decisions are clearly distinguishable from the facts and circumstances of the present case. Moreover, in the

present case, the District Compassionate Appointment Committee had never recommended for appointment of the appellants on a Class-III post and the matter was referred to the authorities of the Irrigation Department and taking into consideration the provisions of Rule 10 of the Rules, they were offered appointment, which they have accepted and after joining, are also working.

16. In view of the aforesaid, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present letters Patent Appeal, which, accordingly, is dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, ACJ I agree.

(Hemant Gupta, ACJ)

Sujit/-

AFR/NAFR	
U	