

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.931 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 3076 of 2013**

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1. Ravi Kant Jha, son of Late Sobha Kant Jha, resident of village Upadhyaya Tola, P.S. Chanpatia, District West Champaran.
 2. Raju Kumar Singh, son of Late Ram Narayan Singh, resident of village + P.O. Baruari, P.S. Gaighat, District Muzaffarpur.
 3. Khalid Nadeem Khan, son of Gulam Gazi Khan, resident of Mohalla Kalibagh, P.S. Bettiah Town, District West Champaran.
 4. Sidharath Tiwari, son of Late Baleshwar Nath Tiwari, resident of Mohalla Shivpuri, P.S. Bettiah Town, District West Champaran.
 5. Amir Arfat, son of Late Md. Saqulain, resident of Mohalla Kishunbagh, P.S. Bettiah Town, District West Champaran.
 6. Farhat Zabin, daughter of Late Anisur Rahman, resident of Mohalla Kalibagh, P.S. Bettiah Town, District West Champaran.
 7. Prabhat Kumar, son of Jai Narayan Prasad, resident of Mohalla Quila Mohalla, Ward No.20, P.S. Bettiah Town, District West Champaran.
 8. Amulya Pratap, son of Late Nand Kishore Tiwari, resident of Mohalla New Colony, Baswaria, P.S. Bettiah Town, District West Champaran.
 9. Subodh Kumar Dwivedi @ Subodh Kumar, son of Late Abhishek Chandra Dwivedi, resident of village Bhitahan, P.S. Bairia, District West Champaran.
 10. Dharmendra Kumar, son of Late Ram Nath Mahra, resident of village Chargaha, P.O. Belbagh, P.S. Bettiah Town, District West Champaran.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Chief Secretary, Bihar, Patna.
3. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
4. The Director, Primary Education, Bihar, Patna.
5. The Regional Deputy Director, Education, Tirhut Division, Muzaffarpur.
6. The Collector-cum-District Magistrate, West Champaran at Bettiah.
7. The District Education Officer, West Champaran at Bettiah.
8. The District Programme Officer, Establishment Bettiah, West Champaran.
9. The Block Education Officer, Bettiah Block, Bettiah, West Champaran.
10. The Block Education Officer, Bairia Block, Bairia, West Champaran.
11. The Block Education Officer, Nautan Block, Nautan, West Champaran.
12. The Executive Officer, Nagar Parishad, Bettiah.
13. The Block Development Officer, Bettiah Block, Bettiah, West Champaran.
14. The Block Development Officer, Bairia Block, Bairia, West Champaran.
15. The Block Development Officer, Nautan Block, Nautan, West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Naresh Prasad, Advocate.

For the Respondent/s : Mr. Madanjeet Kumar, G.P. 20

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
C.A.V. JUDGMENT
(Per: **HONOURABLE MR. JUSTICE HEMANT GUPTA**)
Date: **14-09-2016**

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The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 30th of April, 2014 in C.W.J.C. No. 3076 of 2013 whereby, the claim of the appellants for appointment against the post of Clerk in Class-III was found to be without any merit and the same was declined.

2. The appellants are the wards of the employees who were working as Assistant Teacher under the State. After the death of the bread-winner, the appellants applied for appointment on compassionate grounds. The appellants were appointed on different dates from the year 2007 till the year 2012 on contract basis as Panchayat Teachers.

3. The grievance of the appellants before the Writ Court was that Ravi Ranjan Kumar and Krishna Mohan Pathak whose name appears at Serial Nos. 4 and 7 of the list (Annexure-3) have been recommended to be appointed as Class-III employee whereas, candidates from Serial Nos. 18 to 44 in the list (Annexure-4) have been recommended for appointment on Class-III post. Therefore, the appellants claim that the wards of similarly situated Assistant Teachers have been treated differently, as some of the dependents

have been appointed as Class-III employee whereas, the appellants have been appointed on contract basis as Panchayat Teacher.

4. The learned Single Bench dismissed the writ application, *inter alia*, on the ground that they have been appointed in terms of Bihar Panchayat Teacher (Appointment and Service Condition) Rules, 2006 and that there is no regular post of Teacher. Therefore, the appellants cannot be directed to be appointed in the absence of regular post.

5. Learned counsel for the appellants relies upon an order passed by the Hon'ble Supreme Court in Vishwanath Pandey Vs. State of Bihar and others, (2013) 10 SCC 545 and a Division Bench judgment of this Court in L.P.A. No. 1543 of 2010 (The State of Bihar & Ors. Vs. Pooja Mishra & Ors.) and also a Single Bench judgment of this Court reported as Anurag Kumar Vs. The State of Bihar & Ors., 2015 (2) PLJR 176 to claim appointment against Class II posts in a regular pay scale.

6. The argument of the appellants is that in all the above cases, the wards of Assistant Teachers who died in harness were ordered to be appointed as Class-III post.

7. On the other hand, learned counsel for the respondents referred to a Full Bench judgment of this Court reported as The State of Bihar & Ors. Vs. Rajeev Ran Vijay Kumar, 2010 (3)



PLJR 294 to contend that the appellants cannot seek appointment on compassionate grounds against Class-III post when there is no such policy of appointment. Since the appellants have joined on compassionate grounds as Panchayat Teacher on a fixed salary, they cannot turn around to say that they are entitled to be appointed against Class-III post in a regular pay-scale. The appellants are estopped to claim appointment in a regular pay-scale after having accepted the appointment as a Panchayat Teacher.

8. The appellants are wards of the Assistant Teachers who died in harness. The post of Assistant Teacher is stated to be a Class-III post. The Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and others, (1994) 4 SCC 138 has examined the right of appointment on compassionate grounds and has held that compassionate appointment can be given only against Class-III and Class-IV post but not in the same class and Grade in which the bread-winner was employed. The Court held to the following effect:-

“2.The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid



down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus 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 provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute

family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned. (*Emphasis Supplied*)

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5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Class III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity”

9. Reliance of the appellants on the judgment in Vishwanath Pandey's case (supra) as also the other judgments of this Court is of no help to them as it is not their case that they were recommended for appointment against Class-III post by the District Level Appointment Committee. The appellants were appointed as Panchayat Teachers under Bihar Panchayat Teacher (Appointment and Service Condition) Rules, 2006. In Vishwanath Pandey's case (supra), the appellant was recommended for appointment against Class-III post in the regular pay-scale but he was appointed on a fixed salary whereas, in the present case, there is no assertion on behalf of



the appellants that there was recommendation of the District Level Compassionate Appointment Committee for their appointment against Class-III post. In the absence of recommendation, the appellants cannot claim any right of appointment against Class-III post. 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 Prakhand 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 Prakhand 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 dependent of a deceased

employee on fixed pay.”

10. Still further, the appellants cannot be appointed against a post which is in Class-III for the reason that their father/mother was working as Assistant Teacher, which was a Class-III post. The judgment of the Supreme Court in Umesh Kumar Nagpal's case (supra) that a candidate cannot be appointed in the same class in which the bread-winner was working has not been noticed and discussed.

11. But the question in the present case is as to whether, the appellants 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.”

12. 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 Rule which has no application to the facts of this case.”

13. In a later three Bench Judgment reported as Director of Education (Secondary) v. Pushpendra Kumar, (1998) 5 SCC 192, the Court examined the question if it is incumbent for the authorities to appoint the dependants of a member of the teaching/non-teaching staff in a non-government recognized aided institution dying in harness on a Class III post even though no post was available for such appointment in the institution in which the deceased employee was employed or any other institution in the district and for that purpose a supernumerary post in Class III post was required to be created. The Court held as follows:-

“8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian



consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee.

10. The construction placed by the High Court on the Regulations governing appointment of dependants of teaching/non-teaching staff in non-government recognised aided institutions dying in harness would result in all the vacancies in Class III posts in non-government recognised aided institutions which are required to be filled by direct recruitment being made available to the dependants of persons employed on the teaching/non-teaching staff of such institutions who die in harness and the right of other persons who are eligible for appointment to seek employment on those posts by direct recruitment would be completely excluded. On such a construction, the said provision in the Regulations would be open to challenge on the ground of being violative of the right to equality in the matter of employment inasmuch as other persons



who are eligible for appointment and who may be more meritorious than the dependants of deceased employees would be deprived of their right of being considered for such appointment under the rules. A construction which leads to such a result has to be avoided. Having regard to the fact that there are a large number of posts falling vacant in Class IV and appointment on these posts is made by direct recruitment, the object underlying the provision for giving employment to a dependant of a person employed on teaching/non-teaching staff who dies in harness would be achieved if the said provision in the Regulations is construed to mean that in the matter of appointment of a dependant of a teaching/non-teaching staff in a non-government recognised aided institution dying in harness if a post in Class III is not available in the institution in which the deceased employee was employed or in any other institution in the district, the dependant would be appointed on a Class IV post in the institution in which the deceased employee was employed and for that purpose a supernumerary post in Class IV may be created. If the Regulations are thus construed, the respondent-applicants could only be appointed on a Class IV post and they could not seek a direction for being appointed on a Class III post and for creation of supernumerary post in Class III for that purpose. We are, therefore, unable to uphold the direction given by the High Court in the impugned judgments whereby the respondents have been directed to be appointed on a Class III post if they possess the requisite qualifications for such a post and in case no Class III post is available, then a supernumerary Class III post be created for the purpose of such appointment.”

14. In view of the above judgments of the Hon’ble Supreme Court, the appellants cannot claim appointment to a Class-III post, the class in which the father/mother of the appellants was

working.

15. In view of the said fact, we do not find any merit in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, J)

Ahsanuddin Amanullah, J I agree.

(Ahsanuddin Amanullah, J)

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