

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6026 of 2013

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Pankaj Kumar Son Of Parmanand Prasad, resident Of Village-Khand, P.S.
Surygarha, District - Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Compassionate Committee, Through Its Chairman - Cum - District Magistrate, Lakhisarai
3. The District Magistrate, Lakhisarai
4. The District Education Officer, Lakhisarai
5. The District Superintendent of Education, Now Designated As the District Programme Officer (Estab.), Lakhisarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Prasad

For the Respondent/s : Mr. U.S.S. Singh, G.P.1

: Mr. Uday Bhan Singh, A.C. to G.P.1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 28-04-2016

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present case, the petitioner is aggrieved by the order containing Memo No.1013 dated 12.04.2008 and the appointment letter bearing Memo No.280 dated 28.08.2008, whereby and whereunder the petitioner has been appointed as Panchayat Teacher on consolidated salary.

3. The mother of the petitioner was appointed as Assistant Teacher in Middle School, Manikpur. As has been stated in



paragraph No.5 of the writ application that all the family members were dependent on the income of the mother, but in the whole of writ application the petitioner has not stated about the profession of his father. After the death of the mother, the petitioner being eldest in the family filed an application for appointment on compassionate ground. The case of the petitioner was considered and accordingly, the matter was referred to the District Compassionate Committee, Lakhisaria. The District Compassionate Committee, Lakhisarai, in its meeting dated 28.09.2007 considered the case of the petitioner and others, recommended that the petitioner should be appointed on class-III posts. The District Education Officer, Lakhisarai, issued letter No.1013 dated 12.04.2008, thereby informing the petitioner to have been selected as Pacnahayat Teacher in terms of Rule-10 of the Bihar Panchyat Primary Teachers Appointment and Condition of Service Rule, 2006 and was posted at Middle School, Dighari Bhawanipur, on consolidated salary of Rs.4,000/- per month. Accordingly, the petitioner joined the post.

4. The petitioner raised grievance that his mother was a Government servant and she died on 31.10.2004, before enforcement of Bihar Panchyat Primary Teachers Appointment and Condition of Service Rule, 2006 so much so that the District



Compassionate Committee, Lakhisarai, had recommended for appointment on class-III post, but he has wrongly been appointed on class-IV post. In support of his submission, he relied upon the judgment of *Vishwanath Pandey vs. State of Bihar and Others*. **2013(3) PLJR, 305**, in that case the bread earner of the family was died in harness before enforcement of Bihar Panchyat Primary Teachers Appointment and Condition of Service Rule, 2006. The petitioner-Biswanth Pandey applied for compassionate appointment and recommendation was made to appoint him on class-III post, but the petitioner-Vishwanath Pandey was appointed as Panchayat Teacher. After joining, he raised the protest that he should be accommodated in class-III post and when it was refused, he approached this Court in writ application as well as in LPA. When this Court refused to give relief to the petitioner-Vishwanath Pandey, the matter was carried to the Hon'ble Supreme Court. The Hon'ble Supreme Court after considering the facts and circumstances of the case, granted relief for appointment on class-III post including difference of salary.

5. Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the aforesaid judgment.

6. Whereas, learned counsel for the State submits that the petitioner has already joined the post of Panchayat Teacher, therefore, the question of further any improvement on class-III post does not arise in terms of Rule-10 of Bihar Panchyat Primary Teachers Appointment and Condition of Service Rule, 2006, he can only be accommodated on the post of Panchayat Teacher not any other posts.

7. Having considered the rival contentions of the parties, it appears that the mother of the petitioner died before enforcement of Bihar Panchyat Primary Teachers Appointment and Condition of Service Rule, 2006 and the recommendation was made by the District Compassionate Committee, Lakhisarai to appoint the petitioner on class-III post, but in stead of class-III post the petitioner appointed as Panchayat Teacher on consolidated salary. This Court feels that the present case is squarely covered by the decision of *Vishwanath Pandey's case (supra)* and he cannot be denied the benefit as has been given to Vishwanath Pandey, but in paragraph No.5 of the writ petition the petitioner has not stated about the occupation of his father. Let the matter is remanded to the District Magistrate, Lakhisari, who will consider the case of the petitioner after making verification of the status of the father of the

petitioner, would give the benefit in terms of the decision of *Vishwanath Pandey’s case (supra)*.

8. With the aforesaid observations and directions, this petition is allowed.

(Shivaji Pandey, J)

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