

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.5766 of 2013

In
Civil Writ Jurisdiction Case No.10073 of 2008

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Sri Sushil Kumar, son of late Jagi Lal Rai, resident of Village- Hadars Colony,
Shyam Chak Chapra, Post Station-Bhagwan Bazar, Block-Chapra Sadar,
District-Saran at Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Sri Amarjeet Sinha, the Principal Secretary, the Department of Education,
Government of Bihar, Patna.
3. Ajay Kumar Chaudhary, the Director, Primary Education, Department of
Education, Government of Bihar, Patna.
4. Kundan Kumar, the District Magistrate, Saran at Chapra.
5. Madhusudan Paswan, the District Education Officer, Saran at Chapra.
6. Dr. Dwijendra Rai, the Block Development Officer, Chapra Sadar, District-
Saran at Chapra.

... .. Respondent/s

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with

Miscellaneous Jurisdiction Case No. 5767 of 2013
In
Civil Writ Jurisdiction Case No.698 of 2008

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Sri Niwas Singh, son of Late Ram Araj Singh, resident of Village-Barahiya,
Post Office-Mira Musharhi, Police Station-Chapra Mufassil, District-Saran at
Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Amarjeet Sinha, the Principal Secretary, the Department of Education,
Government of Bihar, Patna.
3. Ajay Kumar Chaudhary, the Director, Primary Education, Department of
Education, Government of Bihar, Patna.
4. Kundan Kumar, the District Magistrate, Saran at Chapra.
5. Madhusudan Paswan, the District Education Officer, Saran at Chapra.
6. Dr. Dwijendra Rai, the Block Development Officer, Chapra Sadar, District-
Saran at Chapra.
7. Chandrashekhar Das, the Block Education Officer Jalalpur, District-Saran
at Chapra.
8. Rajeshwar Prasad, the Block Development Officer Chapra Sadar, District-
Saran at Chapra.

... .. Respondent/s

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with

Miscellaneous Jurisdiction Case No. 5768 of 2013
In
Civil Writ Jurisdiction Case No.15292 of 2008

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Sri Dhananjay Kumar, son of late Kalpnath Ram, resident of Village-Mauzampur, Police Station-Awtar Nagar, Block-Garkha, District-Saran at Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Amarjeet Sinha, the Principal Secretary, the Department of Education, Government of Bihar, Patna.
3. Ajay Kumar Chaudhary, the Director, Primary Education, Department of Education, Government of Bihar, Patna.
4. Kundan Kumar, the District Magistrate, Saran at Chapra.
5. Madhusudan Paswan, the District Education Officer, Saran at Chapra.

... .. Respondent/s

with
Miscellaneous Jurisdiction Case No. 5769 of 2013
In
Civil Writ Jurisdiction Case No.14448 of 2008

Sri Brajesh Kumar Singh, son of late Duryodhan Singh, resident of Village and Post Office-Rampur, Police Station and Block-Mahaura, District-Saran at Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Amarjeet Sinha, the Principal Secretary, the Department of Education, Government of Bihar, Patna.
3. Ajay Kumar Chaudhary, the Director, Primary Education, Department of Education, Government of Bihar, Patna.
4. Kundan Kumar, the District Magistrate, Saran at Chapra.
5. Madhusudan Paswan, the District Education Officer, Saran at Chapra.

... .. Respondent/s

with
Miscellaneous Jurisdiction Case No. 5770 of 2013
In
Civil Writ Jurisdiction Case No.11495 of 2008

Sri Upendra Kumar, son of Late Krit Narayan Rai, resident of Village-Lodipur, Post Office-Chirand, Police Station-Doriganj, Block-Chapra Sadar, District-Saran at Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Sri Amarjeet Sinha, the Principal Secretary, the Department of Education, Government of Bihar, Patna.
3. Ajay Kumar Chaudhary, the Director, Primary Education, Department of Education, Government of Bihar, Patna.
4. Kundan Kumar, the District Magistrate, Saran at Chapra.



5. Madhusudan Paswan, the District Education Officer, Saran at Chapra.

... .. Respondent/s

with
Miscellaneous Jurisdiction Case No. 5771 of 2013
In
Civil Writ Jurisdiction Case No.11492 of 2008

Satya Prakash Yadav, son of Late Shiv Karn Prasad Yadav, resident of Village-Sheonagari Tola, Post Office-Gurukul, Mihiya, Police Station- Chapra Mufassil, Block-Chhapra Sadar, District-Saran at Chhapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Amarjeet Sinha, the Principal Secretary, the Department of Education, Government of Bihar, Patna.
3. Ajay Kumar Chaudhary, the Director, Primary Education, Department of Education, Government of Bihar, Patna.
4. Kundan Kumar, the District Magistrate, Saran at Chapra.
5. Madhusudan Paswan, the District Education Officer, Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Advocate
For the Respondent/s : Mr. Dhurjati Kr Prasad

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date : 29-11-2017

Inter alia contending that order passed by a Bench of this Court in CWJC No.10073 of 2009 with analogous cases on 08.1.2010 by which direction given in CWJC No.10616 of 2009 by a Bench of this Court was directed to be followed has not been complied in spite of the fact that case of the petitioners are required to be considered in view of the certain orders passed in the case of **Vishwanath Pandey Versus the State of Bihar & Ors** on 2nd July, 2013 in Civil Appeal No.5090 of



2013, these applications have been filed for initiating action for contempt.

In CWJC No.10073 of 2008 and various other analogous cases, the petitioners therein filed the writ petitions and claimed to be dependents and legal heirs of Assistant Teachers, who died in harness while working in Primary and Middle Schools. It was the case of the petitioners that their cases were recommended by the District Compassionate Appointment Committee for appointment on Class III Government posts considering their educational qualifications. It was stated in the writ petitions that in some cases ignoring the recommendation of the District Compassionate Appointment Committee for granting appointment on Class III posts, the employees have been appointed on the post of Panchayat Teachers/ Block Teachers in a fixed salary. In other cases, the application filed by the petitioners have been returned in view of the order issued by the Deputy Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna vide letter dated 2955 dated 22.06.2009, whereby the Department has directed the District Compassionate Appointment Committee not to recommend for compassionate appointment in case of legal heirs of teachers and non teaching employees in Primary



and Middle Schools on any Government Class III and Class IV posts. It was observed in this communication so. In some cases, petitioners had no option and had joined on Panchayat Teachers and Prakhanda Teachers in the fixed salary, but they moved before this Court for a direction to the respondents to appoint them on compassionate ground on any Class III and IV posts as per their eligibility and recommendation of the District Compassionate Appointment Committee.

The learned Writ Court found that the issue involved in the matter stands concluded by an order passed in CWJC No.10616 of 2009 and analogous cases by a Bench of this Court. It has been held in these writ applications that the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as 'the Rules of 2006') relating to appointment and service conditions of teachers in Primary and Middle Schools at Panchayat/Prakhanda level will not have any application in the case of Assistant Teachers who died in harness and their representatives have been governed by a separate service conditions rules. It has been held that only such teachers who were appointed on or after 01.07.2006 or absorbed on 01.07.2006 under the Rules of 2006 that the Circular will apply. The direction issued on 22.06.2009



will have no application to such teachers, who were appointed prior to coming into force of the aforesaid Rules.

Seeking appointment on compassionate ground on the basis of the aforesaid Rules, based on the direction issued by the Writ Court, all these applications have been filed for initiating action for contempt and on a perusal of the order passed on 08.01.2010 in the writ petitions, it is seen that all the writ petitions were disposed of with the following directions:-

Discussing all relevant rules and law, finally a direction has been issued to the respondents to consider the case of the petitioners' appointment in the light of letter no. 6905 dated 17.10.2008 issued by Personnel and Administrative Reforms Department, Government of Bihar, Patna, where it has clearly been pointed out that the posts of Panchayat/Prakhand/Nagar Shikshaks are not the posts under the State Government and with respect to such posts the District Compassionate Committee cannot make any recommendation since it is beyond the jurisdiction of the District Compassionate Appointment Committee. Further direction has been issued to appoint the petitioners on the Government posts as per the recommendation of the District Compassionate Appointment Committee and allow regular pay scales of an Assistant Teacher. In such cases, where the application of the petitioners have been returned by the District Compassionate Appointment Committee, a direction has been issued to recall such applications filed by the petitioners for the compassionate appointment and make recommendation considering the qualification on any Class III or Class IV posts. A direction has also been issued in respect of such



petitioners, who have no any option, have joined on the post of Panchayat/ Prakhhand teachers on a fixed salary, to make payment of salary in the regular scale and also to make payment of arrears of salary in the regular scale.

All these writ applications are allowed giving similar directions as mentioned above. The respondents will comply the direction of this Court in case of the petitioner as in the earlier writ applications. These writ applications were decided in the judgment passed in C.W.J.C. No. 10616 of 2009 and Analogous cases will apply in case of all similarly situated persons. As directed earlier, there should not be any undue delay in compliance of the direction of this Court, preferably the direction of this Court should be complied with within twelve weeks from the date of production/communication of this order.”

From the aforesaid narration of the facts, it is clear that the direction issued as hereinabove is primarily in view of the judgment passed in CWJC No.10616 of 2009 (**Brajesh Kumar Vs. The State of Bihar & Ors.**) and analogous cases. CWJC No.10616 of 2009 (**Brajesh Kumar Vs. The State of Bihar & Ors.**) and analogous cases were decided on 18.12.2009 by a Bench of this Court and the said judgment in the case of **Brajesh Kumar** (supra) travelled to a Division Bench and the judgment rendered by the Division Bench in the case of **Brajesh Kumar Vs. State of Bihar & Ors.** is reported in **2010 (1) PLJR 339**. This decision rendered in the case of **Brajesh Kumar** (supra) has been overruled by a Full Bench of this



Court in the case of **State of Bihar and others Vs. Rajeev Ran Vijay Kumar, 2010 (3) PLJR 294** and in the judgment authored by the then Chief Justice of this Court Hon'ble Mr. Justice Dipak Misra, now the Chief Justice of India, after elaborately considering various legal principles governing grant of compassionate appointment in paras 27, 28 and 29, the principles have been crytalized in the following manner:

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

28. In view of our preceding analysis, we are unable to persuade ourselves to accept the view expressed in **Brajesh Kumar** (supra) and, accordingly, the same stands overruled. Any decision following the said judgment is deemed to be overruled.

29. In the result, the appeal is allowed and the order passed by the learned single Judge is set aside. However, in the facts and circumstances of the case there shall be no order as to costs.”

From the aforesaid, it is clear that the views expressed in the case of **Brajesh Kumar** (supra), particularly with regard to appointment on compassionate ground to legal heirs and wards of employees, who were appointed prior to coming into force of Rules of 2006, have been rejected and it has been held that all decisions following the judgment in the case of **Brajesh Kumar** (supra) are deemed to have been overruled. In view of this finding recorded in para 28 as detailed hereinabove, the order passed in the present writ petitions, contempt of which is complained of is also deemed to have been overruled and, therefore, as canvassed by the learned counsel appearing for the State, now no further indulgence into the matter can be made.

However, during the course, learned counsel for the petitioners tried to indicate that petitioners’ claim is based on



an earlier Circular issued by the State Government and, therefore, the decision in the case of **Brajesh Kumar** (supra) based on the Circular dated 22.06.2009 will not be applicable.

We are unable to accept the aforesaid contention for the simple reason that in the order passed on 08.01.2010, breach of which is complained of in these contempt applications, the specific direction as reproduced hereinabove is that the writ petitions are decided on the basis of the judgment rendered in CWJC No.10616 fo 2009, i.e. the case of **Brajesh Kumar** (supra) and once the judgment rendered in **Brajesh Kumar** (supra) is overruled by the Full Bench, we see no reason to make any indulgence into the matter.

Accordingly, this Court now does not find any ground to proceed in the matter. The contempt proceedings are dropped. However, in case, any of the petitioners who have been appointed on compassionate ground and feel that their cases are covered by the law laid down by the Hon'ble Supreme Court in a recently decided case, i.e. **Mukesh and another Versus State of Bihar & others (2017) 5 SCC 383**, they are granted liberty to represent the State Government and the State Government are directed to consider their cases in the light of the law laid down in the case of **Mukesh** (supra) and take such steps as are



permissible in law.

Except granting the aforesaid liberty in these contempt proceedings, no further action is required to be taken, all the applications are accordingly disposed of.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.12.2017
Transmission Date	

