

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17856 of 2009

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1. Tanoj Kumar Jha S/o Late Sachchidanand Jha Resident of Village + P.O.- Kataria, P.S.- Katihar, District- Katihar.
 2. Vivekanand Paswan S/o Late Gurudeo Paswan, Resident of Village + P.O.- Lakshmipur, P.S.- Katihar, District- Katihar.
 3. Kishore Kumar S/o Late Vindeshwar Mishra, Resident of Village Teachers Colony, P.O.- Purniya, P.S.- Ke Hat, District- Purniya.
 4. Deepak Kumar Jha S/o Late Vijay Prakash Jha R/o Village- Gedabari Kali Sthan, P.O.- Kordha, P.S.- Katihar, Katihar Asst. Teacher Primary School Mushapur, Korha, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary cum Commissioner Personal and Administrative Reforms Department, Bihar, Patna.
3. The Principle Secretary, Human Resources Department, Bihar, Patna.
4. The Deputy Secretary Personal and Administrative Reforms Department, Bihar, Patna.
5. The District Magistrate cum Collector, Establishment, Katihar.
6. The Deputy Collector Establishment, Katihar.
7. The District Education Officer, Katihar.
8. The Superintendent of Education, Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhakar Singh @ Anil and
Mr. Rakesh Mohan Singh, Advocates
For the State : Mr. Manoj Kumar Yadav, A.C. to G.A. 10

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 18-03-2017

Heard learned counsel for the petitioners and the State.

The petitioners have moved the Court for a direction to the respondents to appoint them on compassionate ground on a regular Class-III post, as per the recommendation of the District Compassionate Committee, Katihar dated 31.12.2008.

The parents of the petitioners were Government teachers



and died in harness. Pursuant to the same, the petitioner no. 1 applied for compassionate appointment on 23.12.2004, petitioner no. 2 on 12.02.2007, petitioner no. 3 on 15.11.2005 and petitioner no. 4 on 16.12.2005 respectively. The matter was finally considered by the District Compassionate Committee, Katihar and recommendation was made under letter dated 31.12.2008 for appointment of the petitioners on a Class-III post, pursuant to them having also cleared the examination held for making such selection.

However, in view of coming into effect of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the 'Rules') especially, Rule 10 thereof, the petitioners were offered appointment as Panchayat Teachers. Being aggrieved by the same, the petitioners have moved this Court. However, during the pendency of the writ petition, the petitioners have joined on the said post. Learned counsel for the petitioners submitted that the matter relating to compassionate appointment is to be governed on the basis of the Government policy which was existing at the time when the cause of action arose and in any case, at least, from the time when they had applied for such post. Learned counsel submitted that the aforesaid Rules came into effect from 01.07.2006. Learned counsel submitted that prior to the same, the policy of the State Government, for compassionate appointment



was appointment either on a Class-III or Class-IV, post depending on the qualification and eligibility of the candidate. Learned counsel submitted that the parents of the petitioners were Government servant and thus, they had rightly been recommended for appointment on Class-III post under the Government and could not have been appointed as Panchayat Teacher, which is not a Government employment. Learned counsel has referred to various decisions of this Court including the judgment of the Division Bench in L.P.A. No. 734 of 2011 dated 12.03.2012 as well as L.P.A. No. 600 of 2011 dated 09.08.2012 and also of the learned Single Bench dated 04.12.2008 in C.W.J.C. No. 13944 of 2005 and its analogous case as also in C.W.J.C. No. 5188 of 2009 dated 23.04.2009 as also a decision of the Hon'ble Supreme Court in **Civil Appeal No. 5090 of 2013** in the case of **Vishwanath Pandey vs. State of Bihar & Ors.** dated 02.07.2013, where it has been held the Rules can only be applied prospectively.

Learned counsel for the State submitted that the Division Bench in L.P.A. No. 925 of 2010, by order dated 14.08.2013 has clearly held that compassionate appointment is not a fundamental right nor a constitutional right nor a statutory right as it is an exception to Articles 14 and 16 of the Constitution and once in exercise of power conferred by Rule 10 of the Rules, the writ petitioners having been offered employment as Panchayat Teacher on



compassionate ground and they have accepted the same, may be under protest, their claim for compassionate appointment stands satisfied and they cannot claim employment in Government service. He further relies upon the decision of a Bench of this Court in C.W.J.C. No. 5472 of 2015 dated 28.04.2015, where it has been held that the claim for compassionate appointment has to be decided in accordance with the prevalent rules governing such appointment.

Having considered the rival contentions, in the considered opinion of the Court, compassionate appointment being an exception to the general rule of employment, has to be governed by the scheme framed by the concerned Government. In this regard, since the Government has taken a conscious decision, as is incorporated in the Rules itself, that dependants of teachers would be appointed, depending on the qualification, on the post of Panchayat Teachers, no person has any right of seeking appointment under the State Government on a Class-III or IV post. This is one aspect of the matter. The other aspect, which is more relevant in the present case, is to the applicability of the Rules as far as the case of the petitioners are concerned. In this regard also the settled law is that the scheme which is prevalent on the date of cause of action would be the scheme under which such consideration would be made. In the present case, the admitted position is that the Rules came into effect in the year



2006 much later to the cause of action of the petitioners no. 1, 3 and 4 having arisen and they had even applied much prior to coming into effect of the Rules. Thus, in view of such position and also taking into consideration the fact that the petitioners no. 1, 3 and 4 have been recommended for a Class-III post, meaning thereby that they have been found eligible for appointment on such post, such claim is fit to be allowed.

Accordingly, mandamus is issued upon respondent no. 5, for appointing the petitioners no. 1, 3 and 4 on a Class-III post under the Government in terms of the recommendation of the District Compassionate Committee, Katihar dated 31.12.2008. As far as the petitioner no. 2 is concerned, the cause of action as well as him applying, after coming into effect of the Rules, the decision to appoint him as a Panchayat Teacher does not require to be interfered with. Since he has already joined as Panchayat Teacher, he shall continue on the same post.

The writ application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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