

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1443 of 2016
IN
Civil Writ Jurisdiction Case No. 9123 of 2013**

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1. Amrendra Kumar Tripathi, Son of Late Shambhu Tripathi, resident of Village-Sarwali, Police Station - Karpi in the district of Arwal.
2. Bhimendra Choudhary, Son of Late Sudarshan Singh, resident of Village and P.O. - Aathar, Police Station - Nawanagar in the district of Buxar.
3. Santosh Kumar, Son of Late Vijay Prasad, resident of Mohalla- Near Government Bus Stand, P.S. - Aurangabad (T) in the district of Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Bihar.
3. The Principal Secretary, General Administration, Government of Bihar, Patna.
4. The Principal Secretary, Personal & Administrative Reforms Department, Government of Bihar, Patna.
5. The Chairman-cum-District Magistrate, District Compassionate Appointment Committee, District - Aurangabad.
6. The District Magistrate, Aurangabad.
7. The District Magistrate, Jehanabad.
8. The District Magistrate, Jehanabad.
9. The Circle Officer, Goh, District - Aurangabad.
10. The Circle Officer, Madanpur, District - Aurangabad.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. S.K. Lal, Advocate.

For the Respondent/s : Mr. Rishi Raj Sinha, SC 19 and
Mr. Birendra Pd. Singh, AC to SC 19.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 12-12-2017

Heard learned counsel for the appellants and learned
counsel for the State.

2. The learned single Judge, after hearing the appellants in
the Writ with regard to the issue of their right to continue on a Class



III post after having initially appointed on a Class IV post on compassionate ground, has given the following reasons for dismissing the Writ Application.

“19. In view of the aforesaid judgments, it is admitted fact that in pursuance of the decision of the District Compassionate Appointment Committee the petitioners have joined the post. The Scheme for compassionate appointment specifically provides in clause-9 that once a person has joined the post there cannot be any change of the cadre, meaning thereby, it has got exhausted. Persons cannot say that because others have been appointed in class-III post his position should also be improved. In the present case, the authority of his own has not taken any action, but when one Brajesh Kumar Singh has approached this Court in C.W.J.C. 15197 of 2007, raising grievance about these petitioners that they first joined the class-IV post, when they filed a representation their position was improved as class-III post. The Court has taken a very serious view of the matter and held that once a person has joined the post of class-IV his position cannot be improved from class-IV post to class-III post, thereupon the authority has taken action.

20. It will be relevant to quote certain paragraphs of the judgment, which are as follows:-

“The submission as with regard to the discrimination of the case of the petitioner has two facets. The appointment of the petitioner was made in the year 2007, whereas, the decision of the District Compassionate Appointment Committee to review those cases was taken in the year 2005, therefore, it was open for the petitioner to refuse such appointment and not to join the Class-IV post of peon. The petitioner did not do so and, in fact, happily joined the post of Peon offered to him and after joining the said post, he had filed this writ application on 6.12.2007 for claiming parity with the aforementioned four persons. To that extent, the petitioner will be bound by the principle of estoppel, inasmuch as, he had already accepted the appointment on Class-IV post and therefore he cannot be allowed to reprobate and reprobate in the matter of appointment from Class-IV post to Class-III post.



The other aspect, which would really make the case of the petitioner distinguishable, is that the petitioner wanted to be appointed against a Class-III post of Teacher. The post of Teacher in all the schools, whether, primary, middle or secondary have been governed by the statutory Recruitment Rules, which require a person to be trained. The Government executive order of relaxation of training being contrary to the statutory Recruitment Rules, the same cannot be at least made basis for issuing a direction by this Court. In the case of other four persons, they were not seeking appointment on the post of Teacher but on any other Class-III post. How far that decision of review by the Establishment Committee was correct, inasmuch as, those four persons were also already appointed on Class-IV post, is a matter of concern and should be looked into by the competent authority but, that cannot be a ground for perpetuating an illegality by also appointing the petitioner on a Class-III post. Article 14 and 16 to the Constitution of India as with regard to equality and equal opportunity in public employment cannot be enforced in a negative manner...

Before parting with, this Court must notice the submission of the learned counsel for the petitioner that if the appointment of the petitioner on a Class-III post was not permissible, the case of four persons, who were given favorable treatment of being allowed to take the Class-III post after being appointed on Class-IV post on compassionate ground, should also be reviewed.

There is a difficulty for this Court to straightway pass an order against them inasmuch as, none of the four persons have been impleaded party to this writ application but, then, as the case of these four persons may become bad precedent for the State and its functionaries, this Court would direct the Principal Secretary of the Personnel and Administrative Department to look into this aspect of the matter and examine the case of the aforesaid four persons and if it is found that their reappointment on Class-III post after being appointed on Class-IV post was not permissible, he would pass an appropriate order for reverting them to Class-IV post but, of course, after following the principles of natural justice”.

21. It is not so that authority has taken *ex-parte* decision, but the fact remains that the petitioners were given liberty at two stages to defend their cases; first at



the level of the Chief Secretary and second at the level of District Magistrate, both the authorities did not find favour with them and rejected the claim of the petitioners.”

3. The rationale and reasoning provided therein is good and valid, not to interfere with the order of the learned single Judge or the decision of the authorities. It is a case where not only compassion has been shown by the administration, especially the then District Magistrate, he has also been very benevolent than was necessary under the rules to accommodate these appellants on a Class III post. Something unheard of had been done on the mere asking of the appellants.

4. In view of the above this Court is not inclined to interfere with the order of the learned single Judge dated 02.05.2016.

5. The Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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