

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18647 of 2016

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Rakesh Kumar, S/o Late Dinesh Kumar, resident of Mohallah- Pir Muhani, PO+PS-
Kadamkuan, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Home Department, Govt. of Bihar, Patna.
2. The Secretary, Home Department, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The Dy. Director of Education, Patna Division, Patna.
5. The District Magistrate, Patna.
6. The District Education Officer, Patna.
7. The District Program Officer (Establishment), Patna.
8. The Principal, T.K. Ghose Academy, Patna.
9. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bankey Bihari Singh, Adv.

For the Respondent/s : Mr. Shashi Shekhar Tiwari, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-05-2017

Heard Mr. Bankey Bihari Singh, learned counsel for the
petitioner and Mr. Shashi Shekhar Tiwari, AC to AAG-15, for the
State.

With the consent of the parties the writ petition has been
heard with a view to final disposal at the stage of admission itself.

The petitioner prays for a writ in the nature of mandamus
commanding the respondent authorities of the State Government in its
General Administration Department, Education Department as well as
the District Committee for Compassionate Appointment, Patna
headed by the District Magistrate, Patna for appointing the petitioner



on any Class III post on compassionate ground.

The facts of the case leading to the writ petition stands discussed in the order of this Court recorded on 23.3.2017 and to put the facts in brief it is mentioned that the petitioner is a son of Government servant late Dinesh Kumar, who was appointed and serving on the post of Peon with Government T.K.Ghose Academy, Patna. The father of the petitioner expired while on duty on 19.3.2014 during his treatment at a hospital. These facts are not in dispute. The dispute has arisen when the petitioner applied for compassionate appointment after the death of his father, which was considered by the District Compassionate Committee, Patna headed by the District Magistrate, Patna and the District Compassionate Committee on consideration of the case of the petitioner returned the file to the Regional Deputy Director of Education, Patna Division, Patna to inform whether the father of the petitioner would come within the cadre of Ministerial staff being non-teaching staff in the school. It is thereafter that the matter kept hanging which has persuaded the petitioner to come before this Court.

A counter affidavit was filed on behalf of the Education Department making reference to a letter dated 22.6.2009 of the Department of Personnel and Administrative Reforms to inform that since after enforcement of the Bihar Urban Primary Teachers (Appointment and Service Condition) Rules, 2006, it is the



Appointment Committee constituted thereunder who would be competent to take a decision in respect of compassionate appointment of the deceased teaching and non-teaching staff. A similar stand was also taken by the District Programme Officer by filing a separate counter affidavit and it is in this view of the matter that the District Magistrate, Patna as the Chairman of the District Compassionate Committee as well as General Administration Department, who was impleaded as a party, were directed to place their stand on record.

While the counter affidavit filed on behalf of the General Administration Department in paragraph 7 would reflect that the compassionate appointment of teaching and non-teaching employee in schools, who died in harness would be governed by the Rules aforementioned, paragraph 8 of the counter affidavit is a clarification on the issue and in which the stand taken is that since the petitioner's father was holding the post of a Peon he would be covered under the Education Ministerial Service Classification Appointment Promotion and Transfer Rules, 1974 which treats the non-teaching employees of Government school as Education Ministerial Service. The stand of the General Administration Department as present in paragraph 8 of the counter affidavit thus puts at rest all confusion that the post of a Peon which was held by the deceased father of the petitioner was under the ministerial service of the Education Department. In fact it is in furtherance of the stand so taken by the General Administration



Department that the Education Department has also clarified the position by enclosing a letter dated 16.4.2017 of the Director, Secondary Education, present at Annexure 'A' to the counter affidavit of respondent no.3 filed on 19.4.2017 in which the Director, Secondary Education in reference to the opinion of the General Administration Department dated 7.3.2017 has confirmed that such cases would be considered by the District Compassionate Committee.

In view of the position so clarified by the General Administration Department and the Education Department, there should not be any impediment now for the District Compassionate Committee, Patna to take a final decision on compassionate appointment of the petitioner which should be taken within six weeks from the date of receipt/ production of a copy of this order. The District Magistrate, Patna as the Chairman of the District Compassionate Committee shall act accordingly.

The writ petition is allowed. Let writ of mandamus be issued accordingly.

Surendra/-

(Jyoti Saran, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.05.2017
Transmission Date	NA

