

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1622 of 2017

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Rabita Devi, Wife of Late Anil Kumar Das, resident of village - Malduar, P.O. Malduar, P.S. Palasi, District - Araria (Bihar) Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resource Development, Government of Bihar, Vikas Bhawan, Patna
 2. Secretary, Primary Education, Government of Bihar, New Secretariat, Patna
 3. Regional Deputy Director, Education, Purnia Division, Purnia
 4. District Programme Officer (Establishment), Araria Respondent/s
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Appearance :

For the Petitioner/s : Mr. Anil Kumar Mukund, Advocate

For the Respondent/s : Mr. Narendra Kumar, AC to GP-20

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 28-03-2018

Heard learned counsel for the petitioner and State.

2. In the matter of compassionate appointment, the respondents are now adopting the policy that compassionate appointment is not on compassion, but on merit. The petitioner, who was untrained, was granted compassionate appointment as Panchayat Teacher, now the respondents have decided to terminate the petitioner on the ground that vide notification dated 24.11.2014 appointment on the post of Panchayat Teacher can be made only if the incumbent is trained and passed TET examination. The respondents have lost sight of two facts that; (i) compassionate appointment requires compassion and relaxation; (ii) When the other department was maintaining the stand of making appointment of Class-III and IV in 2009, they maintained the stand that in the Department of Education appointment on compassionate ground would be considered only on the post of



Panchayat Teacher because at the relevant time Panchayat Teacher was carrying only fixed remuneration and large number of writ applications were filed by the candidates, who were offered appointment on the post of Panchayat Teacher on compassionate ground, for a direction to the respondents to consider their case for appointment not against the post of Panchayat Teacher, but even on Class IV post.

3. The matter was taken to the Apex Court twice and recently the Apex Court has occasion to decide the issue whether the dependent should be granted compassionate appointment on regular basis in Class-III or Class IV posts or on the post of Panchayat Teacher. The judgment of the Apex Court in the case of **Mukesh & Ano. Vs. The State of Bihar & Ors.**, reported in (2017) 5 SCC 383 is clinching on the point where the Apex Court has drawn a distinction between the cases of the dependents, whose right for consideration accrued before the cut off date i.e. 01.07.2006 or thereafter. Now with the passage of time, the respondents have taken a decision not to make appointment on compassionate ground on the post of Panchayat Teacher that means the dependent of the teacher, who died in harness, may not be considered either for appointment against Class-III or Class IV post or not even on the post of Panchayat Teacher. This situation has rendered the dependent of teachers in a situation where social security measures available to other are



rendered illusory on the same is not available to the dependents of teachers.

4. The idea behind the compassionate appointment is social security and State as a model employer, in a Welfare State, is supposed to adopt social security measure on uniform basis and not to encourage pick and choose. The policy decision in the Rule 2009 to consider the case of the teachers, who died in harness, for appointment against the post of Panchayat Teacher was acted upon in the matter of dependents of teacher, but now the respondents are insisting that the requirement of passing training and passing of TET examination has to be followed for compassionate appointment and as such the family, who was facing problem of financial crunch on account of death of bread earner, is left in lurch and to suffer financial crisis. Instead of providing financial assistance to tide over the financial crisis on account of the death of the bread earner the dependents are subjected to discrimination in the matter of compassionate appointment. The Court has come across to a large number of cases where the compassionate appointment was not made insisting upon passing of training and TET examination, as a condition precedent. In other cases, the Court has noticed the stand of the respondents that the compassionate appointment would be conditional and would be subject to passing of training and TET examination within a period of six years. In such as situation, the



Court has requested the Principal Secretary, Education Department, Government of Bihar in one of the case to workout the mechanism to deal with the problem of compassionate appointment of the dependents of the teachers, who died in harness.

5. In the instant case, the petitioner was offered appointment and thereafter the petitioner was terminated on the ground that the condition precedent for appointment i.e. passing training and TET examination has not been followed and as such the petitioner is not eligible to be considered for appointment on the post of Panchayat Teacher on compassionate ground.

6. In the peculiar facts of the case, this Court does not approve the action of the respondents. Accordingly, the order as contained in letter no. 4219 dated 08.09.2016 is hereby quashed. The respondents are directed to reinstate the petitioner with all consequential benefits and allow the petitioner to acquire necessary qualification of passing training as well as TET within a period of 6 years from the date of reinstatement.

7. With the aforesaid, the writ application is allowed.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.04.2018
Transmission Date	

