

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1508 of 2015

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Satendra Kumar Son of Late Mannu Prasad, resident of Village- Indore, P.O.
Baban Barule, P.S. Hilsa, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Department of Education, Government of Bihar, Patna.
4. The District Magistrate Nalanda at Biharsharif.
5. The District Education Officer Nalanda at Biharsharif.
6. The District Superintendent of Education Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-08-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following

reliefs:

“That this is an application for issuance of an appropriate writ or direction to the respondents for making the payment of salary in regular pay scale of the Assistant Teacher in place of fixed pay of Block Teacher on the said post he was appointed on compassionate ground as a dependent of a government teacher taking into consideration of order of Hon’ble Apex Court in Civil Appeal No. 5090 of 2013 (Arising out of S.L.P. (C) No. 5328 of 2012) by order dated 2.7.2013 the Hon’ble Apex Court has held the appointment as per the policy of compassionate appointment framed by the State Government and they policy does not envisage the appointment of the dependent of a deceased employee on the fixed pay and further taking into consideration the liberty given by this Hon’ble Court



dated 27.2.2012 passed in the earlier writ application filed by the petitioner in C.W.J.C. No. 11836 of 2011.”

3. The petitioner's father was a Regular Government Assistant Teacher and died in harness 25.12.2003. Thereafter, it appears that in the meeting dated 06.06.2008, along with others, the case of the petitioner for appointment on compassionate ground was also recommended on a Class-III post. However, the District Education Officer, Nalanda informed the petitioner that in terms of the recommendation, no Class-III post was available and, thus, he was called upon to give his consent for being appointed on the post of Teacher. The petitioner being aggrieved moved the Court in C.W.J.C. No. 11836 of 2011, which was disposed off by order dated 27.02.2012 with the observation that the decision by the Hon'ble Supreme Court shall govern the claim of the petitioner. It was further observed that the petitioner would be at liberty to accept the offer made by the State Government without any prejudice to him or he may await the decision of the Hon'ble Supreme Court. In terms thereof, the petitioner accepted employment on the post of Teacher on a fixed pay and after the judgment of the Hon'ble Supreme Court, he has moved this Court.

4. Learned counsel for the petitioner submitted that at the time the petitioner has moved the Court in C.W.J.C. No. 11836 of



2011, there were only two cases before the Hon'ble Supreme Court, namely, **Vishwanath Pandey vs. State of Bihar and Ors.** (Civil Appeal No. 5090 of 2013) and **Rajiv Ranvijay Kumar and Ors. vs. State of Bihar and Ors.** (Special Leave to Appeal (Civil) No(s). 29655/2010). Learned counsel submitted that the case of **Rajiv Ranvijay Kumar and Ors.** (supra) was disposed off by the Hon'ble Supreme Court on 26.11.2012, with the observation that in terms of the stand of the State, if the petitioners withdrew the petition and move before the authorities concerned, their cases shall be considered by the authorities keeping in view the facts and circumstances of each case.

5. Learned counsel submitted that thereafter the decision of the Hon'ble Supreme Court in **Vishwanath Pandey** (supra), clearly entitles the petitioner for the relief of getting regular pay scale and not fixed pay as is being paid to him.

6. Learned counsel for the State submitted that the stand of the petitioner is misconceived. It was submitted that recently the Hon'ble Supreme Court in the case of **Mukesh vs. State of Bihar** reported as **2017 (2) PLJR (SC) 263**, by order dated 03.04.2017 after considering both **Vishwanath Pandey** (supra) and **Rajiv Ranvijay Kumar and Ors.** (supra) has finally held that in terms of the said orders itself, persons who were recommended for appointment on



Class-III or Class-IV post prior to 01.07.2006 will be appointed on such post on regular basis or will be entitled for continuance as Teachers on a regular pay scale but others who were appointed after 01.07.2006 will not be entitled for the relief of regular pay scale.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that after the judgment of the Hon'ble Supreme Court in the case of **Mukesh** (supra), the petitioner cannot be granted any relief. Once the Hon'ble Supreme Court has considered the cases of **Vishwanath Pandey** (supra) and **Rajiv Ranvijay Kumar and Ors.** (supra) and has come to a definite conclusion recorded in paragraph no. 4 of the judgment which reads as under:

“4. For the foregoing reasons, we direct that the Appellants who were recommended for appointment to Class-III or Class-IV posts prior to 1.7.2006 will either be appointed on Class-III or Class-IV posts on regular basis or will be entitled for continuance as Teachers on a regular pay scale. The other Appellants who were appointed after 1.7.2006 will not be entitled for the relief of regular pay scales. However, we grant them liberty to approach the State Government for suitable relief in terms of the order passed in SLP (C) No. 29655 of 2010.”

nothing further is left for any other interpretation except for what has been clearly recorded in the order aforesaid.

8. In the present case, the recommendation in favour of the petitioner itself was on 06.06.2008 i.e., almost after two years of



the cut-off-date fixed, according to the judgment of the Hon’ble Supreme Court in the case of **Mukesh** (supra). Once, there is a categorical finding that persons who had been recommended prior to 01.07.2006, would only be entitled for continuance/ payment on a regular pay scale, the petitioner being recommended much after that, and the Hon’ble Supreme Court also categorically holding that all those who were appointed after 01.07.2006, will not be entitled for the relief of regular pay scale, the same cannot be granted to the petitioner.

9. For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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