

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 989 of 2010

IN

Civil Writ Jurisdiction Case No 10056 of 2009

- =====
1. The State Of Bihar through the Secretary-Cum-Commissioner, Department Of Education, Bihar, Patna
 2. The Director, Primary Education, Bihar, Patna
 3. District Magistrate, Buxar
 4. District Education Officer, Buxar
 5. District Superintendent of Education, Buxar

.... Appellant/s

Versus

Sanjay Kumar Gupta S/O Late Bajrangi Prasad R/O Vill.- Chhotki Salimpur
(Kalimandir) Golamber, P.S.- Buxar, Distt.- Buxar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Lalit Kishor, Advocate General
Mr Kameshwar Prasad, GP XVII
Mr S Ranjan, AC to GP XVII

For the Respondent/s : M/s Jitendra Kr Roy, Sumit Kr, Advocates

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CORAM: HONOURABLE DR JUSTICE RAVI RANJAN

And

HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE MADHURESH PRASAD)

Date: 14-09-2018

The State has preferred the Letters Patent Appeal (for brevity, *LPA*) against the judgment and order dated 08.01.2010 whereby and where under the learned Single Judge has allowed the petitioner's claim for appointing the petitioner as Panchayat/Nagar Shikshak on a regular pay scale treating it as Government service.

2 The controversy leading to the instant proceedings is arising out of the petitioner's claim for compassionate appointment on



account of the death of his father in harness as a Government Employee while working as Teacher in Primary School. Petitioner's father passed away on 04.06.2005. He submitted his application for compassionate appointment on 12.08.2005. In its meeting dated 29.11.2005, the District Compassionate Appointment Committee recommended petitioner's claim for appointment in Government service on compassionate ground.

3 For some reason or the other, in spite of this specific recommendation in his favour, the same was kept pending and not acted upon by the authorities. Thereafter, District Compassionate Appointment Committee, in its meeting dated 25.09.2006, again recommended his claim for appointment as Teacher.

4 Finally, under order dated 05.04.2007, petitioner was appointed on the post of Panchayat Teacher on fixed pay and posted in Kunwar Singh Middle School, Buxar where he joined under protest. The Government, subsequently, by letter dated 17.10.2008, resolved that the post of Panchayat Teacher, on which the petitioner was appointed, was not a Government post and, as such, no appointment could be made thereupon on compassionate ground. Recommendation in favour of the petitioner (Annexure 1 to the writ petition) was, therefore, termed to be against the policy decision of the State Government. His appointment as Panchayat Teacher was



considered illegal as the same was not the Government post.

5 The State of Bihar, in the Department of Human Resource, had framed the Bihar Panchayat Primary Teacher (Appointment and Service Condition) Rules, 2006 or Bihar Nagar Primary Teacher (Appointment and Service Condition) Rules, 2006. Under letter dated 01.07.2006 bearing Memo No 1078 of the Human Resources Department, it was decided that no appointment could be made on the post of Panchayat Teacher on a regular pay as the same came to be abolished under the appointment Rules dated 01.07.2006. The Appointment Rules of 01.07.2006 contemplated appointment of Panchayat Primary Teachers and Nagar Primary Teachers on a fixed pay.

6 As a result of the said developments, specific recommendation dated 29.11.2005, for his appointment along with others as Panchayat Teacher with regular pay scale was ignored/not acted upon. Later, by order dated 25.09.2006, the petitioner was recommended and appointed as Nagar Teacher on a fixed pay.

7 The specific case of the petitioner is that the recommendation in his favour was made much prior to coming into force the Appointment Rules with effect from 01.07.2006. He, thus, submits that he was entitled to appointment on a regular pay scale. The issue now stands settled by the judgment of the Apex Court in the



case of *Mukesh & Another –Versus- State of Bihar & Others* reported in (2017) 5 Supreme Court Cases 383. Petitioner's counsel refers to paragraph 5 of the said judgment which reads as follows:

“5. The appellants who have not been recommended for appointment to Class III or Class IV posts prior to 01.07.2006 are not covered by Vishwanath Pandey case. On the other hand, they are squarely covered by the judgment of the Full Bench of the Patna High Court. They are not similarly situated to those who were recommended for appointment to Class III posts prior to 01.07.2006. The appellants, who were appointed after 01.07.2006, the date on which the Rules came into force, are not entitled to claim appointment on regular pay scales. It is relevant to note that the judgment of the Full Bench of the High Court of Patna was challenged before this Court. The said SLP was withdrawn with liberty granted to the petitioners therein to approach the Government for suitable relief.”

8 In view of the recommendation having been made prior to the year 2006 in favour of the petitioner, his claim for appointment on regular scale is fortified by the decision of the Apex Court in the case of *Mukesh (supra)*. To buttress his submission, he also submits that in terms of the date of recommendation, the petitioner's case is not only similar to the case of *Vishwanath Pandey – Versus- State of Bihar & Others*, (2013) 10 Supreme Court Cases 545, but is identical, inasmuch as the recommendation made in the case of *Vishwanath Pandey (supra)* as well as the petitioner was on the same dates and by the same recommendation. Relying upon the decision of



the Apex Court, as noticed hereinabove as also the case of *Vishwanath Pandey (supra)*, it is submitted that the order of the learned Single Judge does not require any interference.

9 It is specifically submitted by the writ petitioner/respondent's counsel that since during pendency of the instant *LPA*, the issue stands clarified in favour of the writ petitioner as a result of the aforesaid two judgments in the case of *Mukesh & Another and Vishwanath Pandey (supra)*, the *LPA* is fit to be dismissed.

10 The learned Advocate General appearing on behalf of the State has submitted that the claim of other similarly situated as the writ petitioner/respondent has been rejected. The *LPA* filed by the State in respect of all other petitioners, whose case was considered and decided under common order dated 08.01.2010 passed in *CWJC No 12747 of 2009* and its analogous cases has been allowed. Thus, this Court should not take view different from what has been taken in the case of the other petitioners, whose claim was decided under the same order, which is under appeal in the instant proceedings.

11 It is submitted that the decision of the Full Bench in the case of *State of Bihar & Others –Versus- Rajeev Ran Vijay Kumar* reported in 2010 (3) PLJR (HC) 294 (FB), has specifically held that all pending claims will be deemed to be overruled. Thus,



this Court should allow the instant LPA and overrule the judgment of the Writ Court in favour of the writ petitioner/respondent. He submits that even the SLP (Civil) No 29655 of 2010 preferred against the Full Bench judgment was withdrawn. Therefore, the writ petitioner respondent's claim is covered by the decision of the Full Bench in the case of *Rajeev Ran Vijay Kumar (supra)*.

12 This Court does not find any force in the submission of the learned Advocate General, in view of the specific declaration of law in the case of *Mukesh & Another (supra)*. The petitioner's claim for compassionate appointment was recommended in his favour on 29.11.2005 and 25.09.2006, under the same communication as that of *Vishwanath Pandey (supra)*. The writ petitioner/respondent would, therefore, be entitled to the same relief as has been granted to the said Vishwanath Pandey. Petitioner's claim in this respect is also fortified by the decision in the case of *Mukesh & Another (supra)* which has been taken note of hereinabove. The submission of the learned Advocate General, therefore, if relied upon, would amount to giving dissidents to a judgment of the Full Bench over the order passed by the Apex Court in the case of *Vishwanath Pandey and Mukesh & Another (supra)*. This Court, therefore, is not inclined to be swayed by the submission of the learned Advocate General to allow the LPA relying upon the judgment of the Full Bench of this Court in the case



of *Rajeev Ran Vijay Kumar (supra)*, when the claim of petitioner is covered by judgment of the Apex Court in the case of *Vishwanath Pandey & Mukesh & Another (supra)*. The writ petitioner/respondent's case is squarely covered by the two decisions in the case of *Vishwanath Pandey and Mukesh & Another (supra)*, this Court does not find any merit in the LPA.

13 In terms of the Litigation Policy of the State of Bihar dated 31.03.2011, the case of the petitioner is a "Covered Matter" under Clause 4.C (1) which provides as follows:-

"4.C (1). A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim of the representationist/applicant employee/citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the Department itself without compelling the litigant to come to the Court. In this manner, the Government Departments would be acting as efficient litigants."

14 The writ petitioner/respondent would be entitled to the benefits of the order and judgment dated 08.01.2010 passed on the writ petition which is in accordance with the two decisions of the Apex Court in the case of *Vishwanath Pandey & Mukesh & Another (supra)*.

15 The respondent-authorities were earlier granted twelve weeks time to comply with the directions of the Writ Court.



Now, since the law stands settled in favour of the writ petitioner/respondent by the decision of the Apex Court in the said two decisions and since considerable time has elapsed during pendency of the instant proceedings, this Court would consider it appropriate that the directions of the Writ Court dated 08.01.2010 be given effect to/complied within a period of four weeks from the date of receipt/production of a copy of this order.

16 The LPA stands disposed of.

(Dr Ravi Ranjan, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.09.2018
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