

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1044 of 2013

IN

Civil Writ Jurisdiction Case No. 12791 of 2013

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1. Amitesh Kumar S/O Late Ramadhar Sinha R/O Village - Dariapur, P.O. + P.S. - Paliganj, Distt. - Patna (Bihar)

.... Appellant/s

Versus

1. The State Of Bihar through Chief Secretary, Bihar, Patna
2. The Principal Secretary, Human Resources Department, Bihar, Patna
3. Director, Human Resources Department, Bihar, Patna
4. District Education Officer, Patna
5. District Programme Officer (Establishment), Patna
6. Block Education Officer, Paliganj, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. AJIT KUMAR

For the Respondent/s : Mr. ANJANI KR AAG-IV

Mr. BRAJESH KUMAR, AC to AAG-IV

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA)

Date: 11-04-2018

Heard both sides.

This appeal came up for hearing on remand from the Apex Court vide order dated 20.01.2015 passed in Civil Appeal No. 13327 of 2015 (Special Leave Petition (C) No. 31389 of 2015) that the case of appellant is similar to the case of Vishwanath Pandey, appellant of Civil Appeal No. 5090 of 2013.

The learned counsel for the appellant submits that Vishwanath Pandey was appointed after coming into effect of Bihar Primary Teacher (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as the 2006 Rules) which came into effect with effect from 01.07.2006. Vishwanath Pandey was appointed on fixed



salary but he was directed to be appointed on regular pay scale. It is further submitted that, of course, father of Vishwanath Pandey died on 14.10.2004 and the compassionate appointment committee recommended his appointment on class-III post but due to ban on appointment on compassionate ground he was not appointed in time. Later on Vishwanath Pandey was appointed on fixed pay and he was directed to be appointed in regular pay scale on compassionate ground and similar treatment should be given to the petitioner and petitioner be also appointed on regular scale on compassionate ground.

On the other hand, Mr. Anjani Kumar, the learned AAG-IV, submitted that facts of the case of appellant is quite different from the facts of the case of Vishwanath Pandey. The 2006 Rules came into effect from 01.07.2006. The father of the appellant died on 07.08.2011 and thereafter the appellant filed petition for appointment on compassionate ground. Rule 10 of the 2006 Rules provides for appointment on compassionate grounds to the dependants of teaching/non-teaching employees against available vacancies of Panchayat Teachers/ Block Teachers/ Prakhand Teachers etc. Such appointments can be made only on a fixed pay scale by the committee constituted under the Rules. It is further submitted that a similar matter came up for consideration before a Full Bench of this court in the case of ***State of Bihar vs. Rajeev Ran Vijay Kumar***, reported in ***2010 (3) PLJR 294 (FB)*** and it has been held that the dependents of deceased Government employee do not have a legal right to be appointed in Government posts. Their appointments on compassionate ground shall be in accordance with Bihar Panchayat Primary Teacher (Employment and Service Conditions) Rules, 2006. It is further submitted that a



similar matter again came up for consideration before the Apex Court in the case of **Mukesh Kumar & Anr. Vs. State of Bihar & Ors in Civil Appeal No. 4776-4777 of 2017**, arising out of SLP (C) Nos. 31158-31159 of 2013, and the Apex Court has clearly held that appointment after 01.07.2006 on which date the 2006 Rules came into effect shall be made in accordance with Rule 10 of the aforesaid Rules and the case of Vishwanath Pandey (supra) has been distinguished.

The question arises for consideration as to whether the case of the petitioner is similar to that of Vishwanath Pandey?

Admittedly, father of Vishwanath Pandey died on 14.10.2004. Vishwanath Pandey petitioned for appointment on compassionate ground and the compassionate appointment committee vide resolution dated 05.02.2005 recommended the name of Vishwanath Pandey for appointment on the post of regular teacher but on account of ban on compassionate appointment Vishwanath Pandey was not appointed for a while and later on after lifting of ban on compassionate appointment he was appointed on the post of teacher and was granted fixed scale whereas father of appellant died on 07.08.2011. The appellant applied for compassionate appointment. The compassionate appointment committee recommended the name of petitioner for appointment on the post of Prakhanda Teacher on fixed scale. The facts of the case of appellant is quite different from the facts of the case of Vishwanath Pandey but the appellant submitted before the Apex Court that his case is similar to the case of Vishwanath Pandey. In the case of **State of Bihar v. Rajeev Ran Vijay Kumar** (supra) the Full Bench of this court held that teaching or non teaching employees of schools do not have legal right to be appointed on regular post. The appointment shall be made in accordance with Bihar Primary Teachers (Employment and Service Condition) Rules,



2006 and they can be appointed only on the post of Primary Teacher, Prakhand Teacher and Block Teacher against available vacancies. The corresponding rules for appointment on compassionate ground and the earlier circulars have been amended accordingly and the Government has already withdrawn the circular dated 12.09.1997 and issued another circular with regard to appointment of teachers on compassionate ground on 22.06.2009. This dispute came up again for consideration before the Apex Court in the case of **Mukesh Kumar v. State of Bihar** (supra) and the Apex Court has held that applicant for appointment on compassionate ground after 01.07.2006 cannot have a right of appointment on a post having regular scale and in the aforesaid case the case of Vishwanath Pandey has already been distinguished. Therefore, we find that the case of appellant is quite different from the case of Vishwanath Pandey and the appellant is not entitled to get appointment on compassionate ground in regular pay scale.

Accordingly, we find no merit in this appeal and the same is dismissed

(Prabhat Kumar Jha, J)

BKS/-

(Arun Kumar, J)

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	28.4.18
Transmission Date	N.A

