

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16107 of 2019

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Amit Kumar Jha S/o Late Anant @ Anant Jha, Resident of Village-
Mangalwar, Birnagar, P.S.- Bhargama, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar.
2. The Secretary cum Commissioner, Human Resource Development
Department, Patna.
3. The District Magistrate, Purnea, District- Purnea.
4. The District Education Officer, Purnea, District- Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Md. Ziaul Quamar, Advocate
For the Respondent/s : Smt.Binita Singh (Sc28)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 08-08-2019 The issue raised in the instant writ petition is no more res integra. Earlier the Apex Court has occasion to decide the similar matter in the case of **Mukesh & anr. Vs. The State of Bihar & Ors: (2017) 5 SCC 383**. Recently on 18th July, 2019 the Apex Court has considered similar matter in the case of State of Bihar & Ors. Vs. Dilip Kumar and anr. (Civil Appeal No. 5205 of 2019. The relevant part of the judgment dated 18th July, 2019 is quoted below:-

“9 With the enforcement of the 2006 Rules, Rule 10 governs the appointment of Nagar Shikshaks on compassionate grounds. The respondents were appointed on 12 April 2008 and 19 August 2008, after the



enforcement of the 2006 Rules. Their appointments were in terms of Rule 10 of the 2006 Rules. The respondents accepted the appointments. The learned Single Judge, in placing reliance on the instruction dated 17 October 2008, failed to notice the 2006 Rules. The Division Bench was of the view that withdrawal of the instruction dated 17 October 2008 by the subsequent instruction dated 22 June 2009 would not obviate compliance with the mandamus issued by the Single Judge on 15 May 2009. The Division Bench ignored the fact that both the respondents were appointed in terms of Rule 10 of the 2006 Rules. Having accepted the appointment, it was not open to them to assert, as they did, that they should be appointed in the service of the Government of Bihar. Moreover, no executive instruction could have superseded the rules.

10. Learned counsel appearing on behalf of the respondents has placed reliance on the orders of this Court dated 9 October 2015 and 11 November 2016 dismissing the Special Leave Petitions filed under Article 136 by the State in the cases of Pooja Mishra and Sanjay Kumar. The above orders, by which this Court dismissed the Special Leave Petitions against the decision of the Patna High Court, will not aid the



submissions of the respondents. This is for the simple reason that subsequently, a two Judge Bench of this Court in Mukesh, in its decision dated 3 April 2017 considered the provisions of the 2006 Rules as well as the precedent on the subject. This Court extracted from the decision in Vishwanath Pandey (on which reliance has also been placed by the impugned judgment of the Division Bench of the High Court). In Mukesh's case, this Court held: “

“By the impugned judgment, a Division Bench of the High Court correctly held that the Appellants have no legal right to seek appointment on compassionate grounds. Compassionate appointments are not a source of recruitment and they are made to provide succour to the family of an employee who dies in harness. In the State of Bihar compassionate appointments are governed by instructions issued by the Government. Some of the Appellants were recommended for appointment to Class III posts on a regular basis by the District Compassionate Committee. However, they were appointed as Prakhanda Teachers/Panchayat Shikshaks/ Nagar



Shikshaks, etc. on a fixed pay. The Appellants could not have been appointed on a fixed pay and they are entitled for appointment to either on Class III or Class IV posts on regular basis or payment of regular pay scale in the posts of as Prakhanda Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. in which they are working at present. Some of the Appellants who were recommended for appointment to

Class III posts but were appointed as Prakhanda Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. on fixed pay are similarly situated to Vishwanath Pandey and they are entitled to be appointed on a regular pay scale.”

In regard to those of the appellants who were appointed after 1 July 2006 (the date of enforcement of the 2006 Rules), this Court observed:

“The other Appellants who were appointed after 01.07.2006 are not entitled to the relief granted to those who were recommended for appointment to Class III or Class IV posts prior to that date. A Full Bench of the Patna High Court in *State of Bihar and Others v.*



Rajeev Ran Vijay Kumar, reported in (2010) 3 PLJR 294 (FB), held that the dependents of deceased Government employees do not have a legal right to be appointed in Government posts. Their appointments on compassionate grounds shall be in accordance with Bihar Panchayat Primary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the 'Rules') which came into force w.e.f. 01.07.2006. Rule 10 of the said Rules provides for employment on compassionate grounds to the dependents 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 by the committee constituted under the Rules. 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's case (supra). On the other hand, they are squarely covered by the judgment of 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.”

(Emphasis supplied)

11. Admittedly, in the present case as well, the respondents have been appointed after 1 July 2006. Their case would hence be governed by the 2006 Rules. The above observations contained in the decision of the Division Bench in Mukesh will apply to the respondents in the present case. The High Court was manifestly in error in directing the Government of Bihar to appoint the respondents in its regular service despite the fact that their appointments were made after the 2006 Rules were brought into force. The respondents duly accepted their appointments as Nagar Shikshaks. However, we grant liberty to the respondents to approach the State Government for suitable relief in terms of the orders passed in Special Leave Petition (C) No 29655 of 2010 and in the same terms as ordered by this Court in its judgment dated 3 April 2017 in Mukesh.

12. The civil appeal is allowed. The



judgment and order of the High Court dated
30 March 2015 is set aside. There shall be no
order as to costs .

The present application is disposed of in terms of the
aforesaid order passed by the Apex Court dated 18th July, 2019.

(Anil Kumar Upadhyay, J)

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