

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21690 of 2019

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Amit Kumar, Son of Late Radha Sharan Singh, Resident of Village-Haripur,
P.S.-Gogri, District-Khagaria at present Assistant Teacher Sukhraj Middle
School, Chautham, Block + P.S.-Chautham, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary-cum-Principal Secretary, Department of
Education, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Education Officer, Khagaria.
5. The District Programme Officer (Establishment), Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bishnu Kant Dubey Mr. Ranjit Kumar Mr. Sanjeev Kumar
For the Respondent/s	:	Mr.Kameshwar Kumar (GP17)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 02-12-2019 Heard Mr. Bishnu Kant Dubey, learned counsel for
the petitioner and learned counsel for the State.

The petitioner seeks direction to quash the letter
No.1477 dated 05.10.2019 issued under the signatures of
District Education Officer, Khagaria and District Programme
Officer(Establishment), Khagaria by which the consent of the
petitioner is sought for to reappoint on the post of Class III in
Clerk cadre in place of regular Assistant Teacher and for
consequential relief.

The relevant facts for decision in this writ petition is



Radha Sharan Singh, the father of the petitioner was an Assistant Teacher and he was posted in Middle School, Kabela, Parbatta. Radha Sharan Singh died on 16.07.2005. The petitioner applied for appointment on compassionate ground. The application of the petitioner was recommended and forwarded by the District Superintendent of Education, Khagaria on 21.11.2005 before the District Compassionate Appointment Committee for consideration for appointment on compassionate ground. The District Compassionate Appointment Committee on compassionate ground recommended for appointment of the petitioner on Class III post on 17.02.2006 vide letter as contained in Memo No.67 dated 17.02.2006. The petitioner was appointed on the post of Block Teacher and posted in Middle School, Gauchhari vide letter as contained in Memo No.149 dated 26.03.2007. The petitioner claimed to be appointed on the post of Regular Teacher in regular pay scale but the petitioner was appointed on the post of Block Teacher in fixed honorarium. Being aggrieved petitioner filed writ being CWJC No.14588 of 2007 to appoint the petitioner on compassionate ground on the post of Regular Teacher in regular pay scale but the writ was dismissed vide order dated 24.11.2011. The petitioner preferred L.P.A. No.80 of



2012 which was also dismissed on 17.02.2014. The petitioner preferred S.L.P.(c) No.35494 of 2013 which was converted into Civil Appeal No.4780 of 2017 and was heard along with Civil Appeal No.4776-4777/2017(Mukesh & Anr. v. State of Bihar & Ors.) and was allowed vide judgment dated 03.04.2017. The Hon'ble Apex Court laid down the law.

The petitioner filed representation before the Director, Primary Education, Govt. of Bihar, Patna, District Magistrate, Khagaria, District Education Officer, Khagaria, District Programme Officer(Establishment), Khagaria, Principal Secretary, Department of Education and the Chief Secretary on 13.09.2017 for compliance of the order of the Apex Court passed in the case of Mukesh & Anr. v. State of Bihar and Ors. Reported in (2017) 5 Supreme Court Cases 383 and for conversion of appointment of the petitioner on the post of Assistant Teacher in regular scale from the post of Block Teacher on fixed honorarium. The District Magistrate directed the District Education Officer, Khagaria for compliance of the order of the Apex Court. The District Programme Officer(Establishment), Khagaria vide letter bearing No.1572 dated 22.12.2017 recommended the representation of the petitioner to the Director, Primary Education mentioning therein



about the order of the Hon'ble Apex Court. The Education Department issued Memo No.38 dated 12.01.2018 directing that the dependents of deceased Government Teacher died prior to 01.07.2006 and duly recommended by the competent Selection Committee on compassionate ground to appoint on Class III/IV post on compassionate ground. The petitioner again represented before the District Education Officer on 30.01.2018 requesting him to convert his appointment on the post of Regular Teacher in regular pay scale. Thereafter, one office order contained in Memo No.224 dated 16.02.2018 was issued under the signature of District Programme Officer(Establishment) whereby the petitioner was converted in the District Cadre Assistant Teacher post with effect from initial date of appointment on the post of Block Teacher i.e. 05.04.2007 in Matric Trained Pay Scale and posted in Middle School, Block Gogri. The petitioner joined his new assignment on 21.02.2018.

Learned counsel for the petitioner submits that after appointment of the petitioner on the post of Regular Teacher in regular pay scale by order dated 21.02.2018, the petitioner is working on the post of Regular Matric Trained Teacher in Middle School, Block Colony, Gogri. The order for payment of salary was also passed and he was paid his salary from the



month of March, 2018 to September, 2019 but the District Education Officer, Khagaria and District Programme Officer, Khagaria put some illegal demand and when the petitioner did not satisfy their greed, the District Education Officer, Khagaria vide his letter dated 20.06.2019 sought guidelines from the Director, Primary Education with respect to other persons clarifying in respect of the law laid down by the Hon'ble Apex Court in the case of Mukesh & Anr.(supra) about the applicability of Memo No.38 dated 12.01.2018 and another letter contained in Memo No.336 dated 07.03.2019. The Director, Primary Education directed the concerned authority to take action in accordance with the direction as contained in Memo No.336 dated 07.03.2019. It is further submitted that there is no justification for issuance of letter No.1477 dated 05.10.2019(Annexure-21) by which he has been asked to furnish show cause for the conversion from the post of Assistant Teacher to Class III post on the post of Clerk. It is submitted that petitioner was appointed by the competent authority in view of the decision of the Hon'ble Supreme Court in the case of Mukesh and Anr. v. State of Bihar and Ors. and, therefore, letter No.1477 dated 05.10.2019(Annexure-21) is fit to be quashed.

The only question arises for consideration is “whether



the petitioner is entitled to be appointed on the post of Regular Teacher in regular pay scale after death of his father on compassionate ground in view of the judgment passed by the Hon'ble Supreme Court in the case of Mukesh & Anr.(supra)?"

It is admitted fact that the father of the petitioner was working as Assistant Teacher in Middle School, Kabela in regular pay scale and he died on 16.07.2005. The petitioner filed petition for appointment on compassionate ground and the District Superintendent of Education, Khagaria on 21.11.2005 recommended the petition of the petitioner to the District Compassionate Appointment Committee for consideration for appointment of the petitioner on compassionate ground. The District Compassionate Appointment Committee in its meeting held on 16.01.2006 under the Chairmanship of District Magistrate, Khagaria recommended for appointment of the petitioner on Class III post vide Memo No.67 dated 17.02.2006 but the petitioner was appointed on the post of Block Teacher on fixed salary/honorarium. The petitioner agitated this matter before this Court in CWJC No.14588 of 2007 and L.P.A. No.80 of 2012 but both were dismissed. The petitioner approached Hon'ble Supreme Court in S.L.P.(c) No.35494 of 2013 which was converted into Civil Appeal No.4780 of 2017 and was



heard along with Civil Appeal No.4776-4777/2017(Mukesh & Anr. v. State of Bihar & Ors.), reported in (2017) 5 Supreme Court Cases 383. The Hon'ble Supreme Court in para 3 and 4 of the aforesaid judgment has clearly laid down and settled the disputes which are as follows:

“3. 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 Prakhand 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 Prakhand 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 Prakhand 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.

4. 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 v. Rajeev Ran Vijay Kumar, 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 Teachers (Appointment 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.

In para 6 of the aforesaid judgment, the Hon'ble Supreme Court gave direction which are as follows:

“6.For the foregoing reasons, we direct that the appellants who were recommended for appointment to Class III or Class IV posts prior to 01.07.2006 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 01.07.2006 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 Rajiv Ranvijay Kumar v. State of Bihar.”

From perusal of above paragraphs of the judgment, it is crystal clear that the persons whose recommendations were made for appointment to Class III or Class IV post prior to



01.07.2006 will either be appointed on Class III/IV post on regular basis or will be entitled for continuance as Teacher on a regular pay scale, if the dependents of deceased Teacher was recommended for appointment on regular post of Teacher in regular pay scale but the petitioner was recommended for appointment on compassionate ground on the Class III post vide order as contained in Memo No.67 dated 17.02.2006 but the petitioner was appointed on compassionate ground on the post of Block Teacher in Middle School on fixed salary. The petitioner agitated this matter after judgment of the Supreme Court in the case of Mukesh & Anr.(supra). The petitioner again filed several representations and on the basis of misrepresentation of facts, the appointment of the petitioner was converted to the cadre of Regular Teacher in regular pay scale whereas the petitioner was never recommended by the Selection Committee for appointment on the post of Teacher in regular cadre, therefore, the petitioner in view of the judgment and law laid down by the Hon'ble Supreme Court is entitled to get appointment in Class III post for which he was recommended for appointment on compassionate ground and by the impugned order(Annexure-21), the District Education Officer, Khagaria on the basis of the instruction received from the Director, Primary



Education, Patna as contained in Memo No.1263 dated 25.09.2019, directed the petitioner to submit his willingness to work on the post on appointment in Grade III post. Therefore, I do not find any merit in this writ petition.

Having considered the facts aforesaid, I find that this writ petition is devoid of any merit and accordingly, it is dismissed.

(Prabhat Kumar Jha, J)

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