

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23856 of 2019

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1. Md. Talib Son of Late Riyajul Haque resident of Village and P.O. Bari Balia, P.S. Balia, Distt. Begusarai, presently posted as Block Teacher in Model Urdu Middle School, Lakhminiyan, Block Balia, District- Begusarai.
 2. Mehadi Hasan son of Late Muslim Ansari resident of Village Bhavanandpur, P.S. Birpur, Distt. Begusarai, presently posted as Block Teacher in Middle School Malipur Block Garhpura, Dist. Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director Primary Education, Education Department, Govt. of Bihar, Patna.
3. The District Magistrate, Begusarai.
4. The District Education Officer, Begusarai.
5. The District Programme Officer (Establishment), Begusarai.
6. The Block Education Officer, Balia, Begusarai.
7. The Block Education Officer, Garhpura, Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhay Kumar Jha
For the Respondent/s : Mr. Kameshwar Kumar (Gp17)

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date : 03-12-2019

Heard learned counsel appearing on behalf of petitioners and the learned counsel appearing on behalf of State.

2. The petitioners have filed this writ application under Article 226 of the Constitution of India being aggrieved with the order dated 12.09.2019 passed by the District



Programme Officer (Establishment), Begusarai (Respondent No.5){Annexure-1 to this writ application}, whereby the petitioner No.1 Md. Talib has been appointed, as clerk, in Government T.P.C. High School, Nayatola, Agapur and petitioner No.2 Mehadi Hasan has been appointed, as clerk, in Government High School, Tarbanna, District-Begusarai in regular pay scale of Rs.5200-20200/-, Grade Pay Rs.1900/-, seeking the writ of mandamus, directing the respondents to appoint them on the post of teacher on regular pay scale.

3. The case of the petitioners is that Riyajul Haque, father of petitioner No.1 Md. Talib, and Muslim Ansari, father of petitioner No.2 Mehadi Hasan, were Assistant Teachers on regular pay scale and both died prior to 01.07.2006. Thereafter, both the petitioners submitted applications for thier appointment on compassionate ground. The District Compassionate Committee, Begusarai, considered the matter of the petitioners and recommended for their appointment on compassionate ground in meeting held on 14.12.2005 on Class-III post, but the petitioners were appointed on the post of Block Teacher on fixed pay scale. Thereafter, the petitioner No.1 Md. Talib was posted as Block Teacher in Urdu Middle School, Lakhminiya, Block-Balia, District-Begusarai on



26.05.2007 and petitioner No.2 Mehadi Hasan was posted as Block Teacher in Middle School Malipur, Block-Garhpura, District-Begusarai on 02.07.2007. The petitioners appeared in the evaluation examination for primary teachers and got succeeded. The petitioners made representation before the respondents to grant them the status of Assistant Teachers on regular pay scale, but their representations were not considered. Thereafter, both the petitioners filed C.W.J.C. No. 15713 of 2018 before this Court, which was disposed of on 12.09.2018 with direction that the petitioners may file representation regarding their grievance before the respondent No.5, the District Programme Officer (Establishment), Begusarai, within a period of two weeks and in case such representation is filed, then the same may be considered and disposed off considering the Judgment rendered by the Hon'ble Apex Court dated 03.04.2017 passed in Civil Appeal No. 4776-4777 of 2017 and other analogous cases within a period of six weeks from the date of filing of the said representation by a reasoned and speaking order. Due to non-consideration of the representations of petitioners, petitioners filed Miscellaneous Jurisdiction Case no. 627 of 2019 in Civil Writ Jurisdiction Case No. 15713 of 2018, but, in the meantime,



the District Programme Officer, Establishment (Education Department) passed the order dated 12.09.2019 (Annexure-1), hence, the said M.J.C. No. 627 of 2019 was disposed of on 26.09.2019 with liberty to the petitioners to file fresh writ petition for redressal of their grievance. Thereafter, both petitioners have filed the present writ petition.

4. Learned counsel appearing on behalf of petitioners submits that since the petitioners have already appointed as Block Teacher on the fixed pay scale on compassionate ground due to death of their fathers during the service period as assistant teachers in regular pay scale and the petitioners have requisite qualification for the post of Assistant Teacher in regular pay scale hence they should have been appointed on the post of Assistant Teacher in regular pay scale but the District Programme Officer, (Establishment), Begusarai (Respondent No.5) have not appointed the petitioners on the post of Assistant Teacher in regular pay scale in the light of order dated 03.04.2017 of the Hon'ble Apex Court passed in Civil Appeals Nos. 4776-77 of 2017 and other analogous case (**Mukesh and Another vs. State of Bihar and Others**) reported in (2017) 5 SCC 383 and petitioners have been posted as Clerk on regular post in the pay scale of



Rs.5200-20200/-, Grade Pay Rs.1900/-.

5. To appreciate the aforesaid submission of the learned counsel for the petitioner, it would be proper to quote paragraph no.6 of the aforesaid judgment, which is as under:-

“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.*”

6. Thus, according to the aforesaid decision of the Hon'ble Apex Court, the persons, who were recommended for appointment to Class III or Class IV posts prior to 01.07.2006 will either be appointed on the post of Class III or Class IV posts or will be entitled for continuance as Teachers on a regular pay scale. Admittedly, the petitioners were initially recommended by the District Compassionate Committee, Begusarai for their appointment on Class-III post due to death of their fathers, who were Assistant Teachers on regular pay scale and both the petitioners were recommended for



compassionate ground on Class-III post prior to 2006, but both the petitioners were appointed as Block Teacher on fixed pay scale on 25.05.2007 and 29.06.2007, respectively. After receiving representation of both the petitioners in the light of order dated 12.09.2018 passed in Civil Writ Jurisdiction Case No. 15713 of 2018 & in the light of Judgment of the Hon'ble Apex Court passed on 03.04.2017 in Civil Appeals Nos. 4776-77 of 2017 (Mukesh and Another vs. State of Bihar and Others), the District Programme Officer (Establishment), Education Department, Begusarai (Respondent No.5) taking into consideration the case of the petitioners in the light of Judgment of this Court and Hon'ble Apex Court, ordered to appoint both the petitioners on the post of Clerk in regular cadre in the pay scale of Rs.5200-20200/-, Grade Pay Rs.1900/-, respectively in Government T.P.C. High School, Nayatola, Agapur (Mansurchak) and Government High School, Tarbanna.

7. As such, I do not find any illegality or irregularity in the order dated 12.09.2019 passed by the District Programme Officer (Establishment), Begusarai (Respondent No.5) {Annexure-1 to this writ application} to interfere with the same exercising the power under Article 226 of the Constitution of India.



8. Accordingly, this writ application stands dismissed.

(Rajendra Kumar Mishra, J)

Manish Kumar

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2019
Transmission Date	09.12.2019

