

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24132 of 2019

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Rajeev Kumar Mishra, S/o Late Uma Kant Mishra, Resident of Village-
Chamtha Barkhut, Ward No. 6, P.O.- Barkhut, Via- Bachhawara, P.S.-
Bachhawara, District- Begusarai, at present posted and working as Prakhanda
Teacher in Government Middle School Chamtha Goptol, Anchal-
Bachhawara, District- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Personnel and Administrative Reforms Department,
Govt. of Bihar, Patna
3. The Principal Secretary, Education Department, Govt. of Bihar, Patna
4. The Director, Primary Education, Bihar, Patna
5. The District Level Compassionate Appointment Committee through its
Chairman, the District Magistrate, Begusarai
6. The District Magistrate Begusarai
7. The Deputy Development Commissioner-cum-Chairman, District Education
Establishment Committee, Begusarai
8. The Deputy Collector (Establishment), Begusarai
9. The District Education Officer, Begusarai
10. The District Programme Officer (Establishment), Begusarai
11. The Block Education Officer, Bachhawara, District- Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra
For the Respondent/s : Mr. Kameshwar Kumar (Gp17)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 05-12-2019

Heard learned counsel for the parties.

2. The petitioner has put to challenge the
office order dated 05.09.2018 issued under the joint
signature of District Programme Officer (Establishment),
Begusarai, and District Education Officer, Begusarai,



whereby his claim for his appointment on compassionate ground on a Class-III regular post, with regular pay-scale, has been rejected.

3. The petitioner's father was an Assistant Teacher in a Government Middle School, in the District of Begusarai, who died on 19.09.2008 in harness. The petitioner was given appointment on compassionate ground as *Prakhand Teacher* with fixed pay. With a grievance that since the petitioner's father was in regular establishment, he ought to have been appointed against a post with regular pay-scale, he filed a writ application before this Court, which gave rise to CWJC No. 19884 of 2012.

4. The writ application was disposed of by an order dated 10.04.2013 in terms of an order of the Supreme Court dated 26.11.2012 passed in **SLA (Civil) No. 29655 of 2010 (Rajiv Ranvijay Kumar & Ors. Vs. State of Bihar & Ors.)** and an order dated 14.02.2013 passed by this Court in CWJC No. 2551 of 2013. Alleging of non-compliance of the aforesaid order, the petitioner had filed a contempt application, which gave rise to MJC No. 2944 of 2016. During the pendency of the said contempt application, the



impugned order has been passed. It transpires from the impugned order that the same has been passed in the light of the Supreme Court's decision in case of *Mukesh and Another Vrs. State of Bihar and Ors.*, reported in (2017) 5 SCC 383, relevant portion of which reads as under :

“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 and Ors. 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.”

5. It has been clearly held by the Supreme Court in the case of *Mukesh* (supra) that the persons who were recommended for appointment on Class-III or Class-IV posts, prior to 01.07.2016, will either be adjusted on Class-III or Class-IV posts on regular basis, or will be entitled for continuance as a teacher, on a regular pay. Since the petitioner’s father died subsequent to the said date i.e.



01.07.2006, he cannot claim a compassionate appointment with regular pay-scale, by way of right.

6. A claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer. There is no legal right to claim compassionate appointment on any ground other than the one, if any, conferred by the employer, by way of scheme or instructions as the case may be. [See **(2007) 4 SCC 778, State Bank of India Vs. Samir Singh, Para 7, 8 & 10]**.

7. For the aforesaid reason, I do not find any illegality in the impugned order.

8. This writ application has no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	11/12/2019
Transmission Date	N.A.

