

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.700 of 2020

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1. Nikesh Kumar, Male, aged about 33 years, Son of Late Hari Kishore Tiwari Resident of Auria, P.O.- Auria, P.S.- Barahat, District- Banka, presently working as Prakhand Teacher, Upgraded Middle School, Parbatta, Barahat, District- Banka.
 2. Manish Kumar, Male, aged about 33 years, Son of Late Mohan Pandit Resident of Bishanpur, P.O.- Bishanpur, P.S.- Dhoriya, District- Banka, working as Prakhand Teacher, Upgraded Middle School, Akoriya, District- Banka.
 3. Amit Kumar Singh, Male, aged about 39 years, Son of Late Nityanand Singh, Resident of Dhanoura, P.O.- Dhanoura, P.S.- Rashalpur, District- Bhagalpur, working as Prakhand Teacher, Upgraded Middle School, Bindi, District- Banka.
 4. Aditya Kumar, Male, aged about 36 years, Son of Late Arvind Prasad Ghosh, Resident of Mohalla- Babu Tola, P.O. & District- Banka, working as Prakhand Teacher, Upgraded Middle School, Kahara Bandh, District- Banka.

... .. Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. District Compassionate Committee, Banka, through the Chairman cum District Magistrate, Banka.
4. The District Magistrate, Banka.
5. The District Education Officer, Banka.
6. The District Programme Officer (Establishment), Banka.
7. The District Superintendent of Education, Banka.
8. The Director, Department of Education, Government of Bihar, Patna.
9. The Regional Deputy Director of Education, Banka.
10. The Block Education Officer, Banka.
11. The Block Education Officer, Barahat, Banka.

... .. Respondents

Appearance :

For the Petitioner : Mr.Arun Kumar Sinha, Advocate
For the Respondents : Mr.Kameshwar Kumar (GP17)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY



ORAL ORDER

3 04-03-2021 Heard Mr. Arun Kumar Sinha, learned counsel appearing on behalf of the petitioners and Mr. Kameshwar Kumar, learned counsel appearing on behalf of the State.

This Court, vide order dated 01.8.2019 passed in CWJC No.15626 of 2019, formulated certain questions to be answered by a larger Bench of this Court. After the reference, the Division Bench answered the reference by decision dated 13.2.2020. The Division Bench in most unambiguous terms held out that the post of Assistant Teacher is Dying Cadre after 2006.

Learned counsel appearing on behalf of the petitioners submits that the Division Bench has not only answered the reference but also gone into the merit of the writ petition by answering the reference and as such, only empty formality is required in this case. The Court finds substance in the submission of Mr. Sinha. However, after going through the decision of the Division Bench under reference the Court finds that many allied issues have cropped up on account of decision of the Division Bench. The Court is of the view that the issue of compassionate appointment was authoritatively decided by the Full Bench in the case of *State of Bihar & Ors. Vs. Rajeev Ran Vijay Kumar* in LPA No. 321 of 2010 and the decision of the Full Bench has not been set aside by the Apex Court. The SLP



filed against the decision of the Full Bench was permitted to be withdrawn and as such the judgment of the Full Bench has remained intact as yet. Additionally, the following issues are required to be decided in appropriate proceeding. (1) The effect of the direction of the Apex Court in *Mukesh & anr. Vs. The State of Bihar & Ors*: (2017) 5 SCC 383 to grant suitable relief to the petitioners is also required to be understood as the Court is of the view that for doing complete justice between the parties, the Apex Court has issued direction to grant suitable relief to the petitioners which cannot be construed as (a) overruling the judgment of the Full Bench in *Rajeev Ran Vijay Kumar* (b) nullifying the statutory rule regarding compassionate appointment which has been considered by the full Bench (c) the circular to grant suitable relief to the petitioner in *Mukesh & anr.* (supra) and can apply as a matter of uniform rule overriding the statutory rule, (d) whether the Bench of smaller jurisdiction can ignore the judgment of *Rajeev Ran Vijay Kumar* and whether the binding effect of Full Bench in *Rajeev Ran Vijay Kumar* has vanished in thin air after the order passed by the Apex Court in other proceeding and (e) whether the judgment of the Full Bench stands overruled by necessary implication on account of the direction issued by the Apex Court for doing



complete justice between the parties under Article 142 of the Constitution?

However, in order to maintain judicial discipline and decorum the court is left with no option but to allow the writ application in terms of the reference answered by the Division Bench.

The writ application is, accordingly, allowed.

The respondents are directed to act in accordance with the reference answered by the Division Bench by judgment dated 13.02.2020 at the earliest.

(Anil Kumar Upadhyay, J)

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