

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1782 of 2018
In
Civil Writ Jurisdiction Case No.17856 of 2009

1. The State Of Bihar
2. The Secretary cum Commissioner Personal and Administrative Reforms Department, Bihar, Patna.
3. The Principal Secretary, Human Resources Department, Bihar, Patna.
4. The Deputy Secretary personal and Administrative Reforms Department, Bihar, Patna.
5. The District Magistrate, cum Collector, Establishment, Katihar.
6. The Deputy Collector Establishment, Katihar.
7. The District Education Officer, Katihar.
8. The Superintendent of Education, Katihar.

... .. Appellant/s

Versus

1. Tanoj Kumar Jha, S/o Late Sachchidanand Jha Resident of Village P.O.- Kataria, P.S.- Katihar District- Katihar.
2. Vivekanand Paswan, S/o Late Gurudeo Paswan, Resident of Village P.O.- Lakshmipur, P.S.- Katihar, District- Katihar.
3. Kishore Kumar, S/o Late Vindeshwar Mishra, Resident of Village Teachers Colony, P.O.- Purniya, P.S.- Kehat, District- Purniya
4. Deepak Kumar Jha, S/o Late Vijay Prakash Jha, R/o Village- Gedabari Kali Sthan, P.O.- Kordha, P.S.-Katihar, Katihar Asst. Teacher Primary School Mushapur, Korha, District- Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs. Shilpa Singh, G.A.-12 Mrs.Abhanjalli, AC to GA 12
For the Respondent/s	:	Mr.Prabhakar Singh, Advocate Mr. Rakesh Mohan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 25-02-2023

Heard learned counsel for the appellants and learned
counsel for the respondents.



2. The present L.P.A. is directed against the judgment dated 18.03.2017 and order dated 20.04.2017 passed in CWJC No. 17856 of 2009 by the learned Single Judge of this Court whereby and whereunder the civil writ petition filed by the respondents has been disposed of in the terms mentioned therein. Thereafter, the said judgment dated 18.03.2017 has been modified by correcting factual error vide order dated 20.04.2017.

3. In the writ petition, the petitioners-respondents herein have sought following relief :

“1. For issuance of writ/writs in the nature of mandamus for a direction to the respondent authorities to appoint the petitioners on compassionate ground on the post regular post of class-(III) in pursuance of recommendation made vide letter dated 31.12.2008 by the District Compassionate Committee, Katihar for appointment and in the light of recommendation made by the District Superintendent of Education, Katihar, for which examination was taken and petitioners successfully passed, though as matter of fact other candidates who passed the examination and selected for appointment on class-III post on compassionate ground like petitioners have been appointed in different department.

II. For issuance of writ (s) in the nature of



certiorari for quashing the letter issued vide letter no. 634 dated 7.9.2009 by the respondent D.S.E., Katihar in favour of petitioner no.1 whereby and whereunder he has been directed to submit application for employment in concern block/ panchayat employment unit for employment, because vide letter dated 22.06.2009 issued by the respondent no.4, direction has been given for compassionate appointment of the dependents of deceased employee who were posted as teacher/ non teaching posts.

III. For issuance of writ (s) in the nature of certiorari for quashing the letter No. 2955 dated 22.06.2009 issued by the Deputy Secretary, Personal and Administrative Reforms Department, Bihar, Patna, by which direction has been given for employment of the dependents of teaching non teaching employees on compassionate ground as block/ panchayat teacher instead of regular appointment against the regular post, though after taking examination name of the petitioners was recommended for appointment on class-III posts and the letter dated 17/10/2008 issued by the same authority disclosed that earlier, authorities of the education department were directed to not make employment on compassionate ground on the post of Block/ Panchayat teacher, because it not come under the State Govt., accordingly, compassionate committee has no jurisdiction.

IV. And for any other relief/reliefs for which petitioners are legally entitled to.



4. Brief facts of the case are that the parents of the writ petitioners (respondents herein) were Assistant teachers at different primary schools and they died in harness in the year 2004 to 2007 and, as such, the writ petitioners-respondents herein being their dependents applied for compassionate appointment. The District Compassionate Committee after considering the case of the writ petitioners on different dates had finally recommended for their appointment on Class III posts vide order dated 31.12.2008 as they cleared the examination held for making such selection. However, when the orders of appointment in favour of the writ petitioners were being delayed, the writ petitioners approached this Court by filing CWJC No.17856 of 2009 which was finally disposed of vide judgment dated 18.03.2017 directing the District Magistrate to appoint the petitioner nos. 1, 3 and 4 on Class III posts in terms of the recommendation dated 31.12.2008. However, the said order dated 18.03.2017 was modified vide order dated 20.04.2017 directing to appoint the petitioner nos. 1, 2 and 3 and further observed that the appointment of the petitioner no.4 as Panchayat Teacher was proper. The said decision was precisely based on the analogy that the petitioner nos. 1, 2 and 3 applied for compassionate appointment prior to



01.07.2006 i.e. prior to enactment of Bihar Panchayat Primary (Appointment and Service) Rules, 2006 (hereinafter referred to as 'the Rules, 2006') whereas the petitioner no.4 applied for compassionate appointment on 12.02.2007. Being aggrieved by and dissatisfied with the judgment and order dated 18.03.2017 and 20.04.2017 passed in CWJC No. 17856 of 2009, the appellants-State preferred the present LPA.

5. The learned counsel for the appellants-State of Bihar submitted that the compassionate appointment is not a fundamental right nor a constitutional right nor a statutory right as it is an exception to Articles 14 and 16 of the Constitution of India and once in exercise of power conferred by Rule 10 of the aforesaid 'Rules, 2006', the writ petitioners have been offered employment as Panchayat Teacher on compassionate ground and they have accepted the same, might be under protest, their claim for compassionate appointment stands satisfied and they cannot claim employment in government service.

6. *Per contra*, the learned counsel for the respondents has submitted that the matter relating to compassionate appointment is to be governed on the basis of the Government policy which was existing at the time when the cause of action arose and in any case, at least, from the time when they had



applied for such post. The learned counsel further submitted that the aforesaid Rules came into effect from 01.07.2007 and prior to the same, the policy of the State Government for compassionate appointment was appointment either on a Class III or Class IV, post depending on the qualification and eligibility of the candidate. The learned counsel further submitted that the parents of the writ petitioners were Government servant and, as such, they had rightly been recommended for appointment on Class III post under the Government and could not have been appointed as Panchayat Teacher, which is not a Government employment. The learned counsel also submitted that no interference in the impugned judgment of learned Single Judge is called for as the same has been passed after duly considering all the materials on record.

7. Having considered the materials available on record and further considering the rival submission, it appears that the learned Single Judge while passing of the impugned judgment has rightly observed as follows :

“Having considered the rival contentions, in the considered opinion of the Court, compassionate appointment being an exception to the general rule of employment, has to be governed by the scheme framed by the concerned Government. In this regard, since the Government has taken



a conscious decision, as is incorporated in the Rules itself, that dependants of teachers would be appointed, depending on the qualification, on the post of Panchayat Teachers, no person has any right of seeking appointment under the State Government on a Class-III or IV post. This is one aspect of the matter. The other aspect, which is more relevant in the present case, is to the applicability of the Rules as far as the case of the petitioners are concerned. In this regard also the settled law is that the scheme which is prevalent on the date of cause of action would be the scheme under which such consideration would be made. In the present case, the admitted position is that the Rules came into effect in the year 2006 much later to the cause of action of the petitioners no. 1, 3 and 4 having arisen and they had even applied much prior to coming into effect of the Rules. Thus, in view of such position and also taking into consideration the fact that the petitioners no. 1, 3 and 4 have been recommended for a Class-III post, meaning thereby that they have been found eligible for appointment on such post, such claim is fit to be allowed.

Accordingly, mandamus is issued upon respondent no. 5, for appointing the petitioners no. 1, 3 and 4 on a Class-III post under the Government in terms of the recommendation of the District Compassionate Committee, Katihar dated 31.12.2008. As far as the petitioner no. 2



is concerned, the cause of action as well as him applying, after coming into effect of the Rules, the decision to appoint him as a Panchayat Teacher does not require to be interfered with. Since he has already joined as Panchayat Teacher, he shall continue on the same post”.

8. It further appears from the records that after disposal of CWJC No.17856 of 2009 vide judgment dated 18.03.2017, the same has been again listed at the behest of learned counsel for the writ petitioners for correcting factual error reflected in the order. After hearing the parties, the learned Single Judge vide order dated 20.04.2017 has observed in paragraphs 5, 6 & 7 as follows :

"5. Having heard the parties, in view of the issue relating to date of application for appointment on compassionate ground being a matter of record and taking into account the submissions made by learned counsel for the petitioners, let the reference with regard to date of application for appointment on compassionate ground relating to petitioners no. 2, 3 and 4 be read as 15.11.2005, 16.12.2005 and 23.12.2004 respectively.

6. Accordingly, the mandamus issued upon respondent no. 5 for appointment is modified to petitioners no. 1, 2 and 3 and as a consequence, the decision to appoint petitioner no. 4 as Panchayat Teacher is held to be proper and he



shall continue as such.

7. The order dated 18.03.2017 stands modified to the extent indicated above”.

9. The settled law is that the scheme which is prevalent on the date of cause of action would be the scheme under which such consideration would be made. In the present case, the admitted position is that the Rules came into effect in the year 2006 much later to the cause of action of the petitioners no. 1, 2 and 3 having arisen and they had even applied much prior to coming into effect of the Rules. Further, if the respondents were holding the requisite qualification for the job on the date of application as per the existing rules and the then scheme providing on the date for compassionate appointment is to be taken into consideration.

Even the Apex Court in the case of ***Delhi Jal Board Vs. Nirmala Devi, reported in (2022) 10 SCC 696***, has held that once the application for compassionate appointment is made, the qualification which the applicant possesses on the date of application is to be considered. This strengthens the fact that for consideration of date of reckoning, the relevant date is the date on which application has been made.

Further, the Apex Court in the case of ***Excise Commr. v. Esthappan Cherian, (2021) 10 SCC 210*** in



paragraph 16 has held as under :

“16. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In CIT v. Vatika Township (P) Ltd. [CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] this Court, speaking through a Constitution Bench, observed as follows : (SCC pp. 21-22, paras 28-29)

*“28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre* [*Phillips v. Eyre*, (1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past*



transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of “fairness”, which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. [L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd., (1994) 1 AC 486 : (1994) 2 WLR 39 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.”

10. In the light of discussion made hereinabove and under the facts and circumstances of the case, it cannot be said that the learned Single Judge has committed any error which calls for interference by this Court in exercise of the appellate jurisdiction. We are in agreement with the view taken by the learned Single Judge.



11. Accordingly, the present Letters Patent Appeal is dismissed.

12. Pending application, if any, stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

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