

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14537 of 2023

-
1. Arvind Kumar Singh Son of Late Kameshwar Singh, Village and P.O. and P.S.- Phenhara, District- East Champaran at Motihari.
 2. Rajiv Ranjan Kumar, Son of Late Vishwanath Singh, Village- Govindbara, P.O. and P.S.- Phenhara, District- East Champaran at Motihari.
 3. Sujit Kumar, Son of Ravindra Narain Singh, Village and P.O.- Betauna, P.S.- Patahi, District -East Champaran Motihari.
 4. Abhishek Kumar Singh, Son of Late Ashok Kumar Singh, Village- Bhandhuvarwa, P.O. and P.S.- Ramgarhawa, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administrative Department, Govt. of Bihar, Patna.
4. The Director, Primary Education, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	None.
For the Respondent/s	:	Mr. P.K. Shahi, A.G. with Mr. Vikash Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 29-11-2023

No one appeared for the petitioners despite repeated calls. The State is represented.

2. On 28.11.2023 also, no one represented the petitioners forcing the Court to adjourn the same for 29.11.2023.

3. The present writ application has been preferred for the following reliefs:-



(i) issuance of order/directions declaring Rule 10 of Bihar Panchayat Primary Teachers (Appointment and Service conditions) Rule 2006 as ultra vires to Articles 14, 16 and 21 of the Constitution of India;

(ii) issuance of order/direction that the Rule/Circulars for compassionate appointment of the dependents of deceased Govt. employees (other than Education Department of Govt. of Bihar) will be applicable to the employees of the State Government;

(iii) Issuance of appropriate order/direction commanding the respondents to recommend and make appointment of petitioners on compassionate ground on religious scale.

4. The matrix of facts giving rise to the present petition is/are as follows:-

5. The petitioner no.1's father, Kameshwar Singh was an Assistant Teacher in the Government Middle School , Phenhara, East Champaran and died on 31.12.2008 while in service. The petitioner no.1 was subsequently appointed as Block Teacher on compassionate ground in the Middle School, Kalupakar, Phenhara, East Champaran on 6.4.2010 where he joined on 7.4.2010.

6. Similarly, the Petitioner no.2's father,



Vishwanath Singh was an Assistant Teacher in the Upgraded Middle School, Govindbara, East Champaran. He died on 27.12.2008 whereafter the petitioner no.2 was appointed on compassionate ground as Block Teacher in Middle School, Munkarna Phenara, East Champaran on 6.4.2010 where he joined on 7.4.2010.

7. The petitioner no.3's father, Ravindra Narain was an Assistant Teacher in Primary School, Karhaniya, Dhaka, East Champaran and died on 17.6.2008. Petitioner no.3 was subsequently appointed as Panchayat Teacher on compassionate ground in Government Primary School, Khatauna Patahi Block, East Champaran on 29.3.2010 and he joined on 30.3.2010.

8. Lastly, the petitioner no.4's father Ashok Kumar Singh died as an Assistant Teacher in the Government Primary School, Chutanan, Ramgarhwa block, East Champaran on 16.7.2008. Subsequently, the petitioner no.4 was appointed as Block Teacher on compassionate ground on 5.10.2013 whereafter he joined on 23.10.2013. All of them are having Intermediate degrees.

9. As per the writ petition, the petitioners claim that their respective fathers were in regular pay-scale when the deaths took place. It is their further averment in the petition that



the General Administration Department, Bihar has issued circulars and guidelines prescribing terms and conditions and eligibility for seeking appointment on compassionate ground which also covered the deceased Teachers working on regular pay scales.

10. According to them, the circular dated 12.7.1997 conferred right to be considered for appointment in regular scale on compassionate ground. However, the said circular dated 12.7.1997 was replaced by the circular dated 22.6.2009 in which an alternative arrangement has been made that the Teachers serving in erstwhile Govt. school, if they die-in-harness, their legal heirs can be accommodated as Block Teachers/Panchayat Teachers.

11. The further averment is that the State Govt. promulgated Bihar Panchayat Primary Teachers (Appointment and Service conditions) Rules, 2006 (hereinafter referred as the Rules, 2006) with effect from 1.7.2006. A special provisions by way of Rule 10 was incorporated to deal with cases of compassionate appointment.

12. The contention is that the respondents are rampantly misusing the provisions and are making appointment of dependent of deceased employees who died in harness, on a



pick and choose method. It is averred that Rule 10 is not applicable to the dependents of deceased Teachers who were continuing on regular pay scales at the time of their death.

13. It has been contended in the petition that Rule 10 of 'the Rule 2006' directing appointment of heirs of Teachers on compassionate ground on the post of Panchayat Teacher/Prakhand Teacher can be made applicable only in case of those Teachers who were appointed under 'the Rule 2006' and not to those who were appointed under the regular scale.

14. It is relevant to state here that in similar matter, the heirs of the deceased employees had earlier moved before this Court against their appointments as Prakhand Teachers/Panchayat Teachers on compassionate ground. The State after having suffered in writ petition, preferred L.P.A. No. 321 of 2010 (**The State of Bihar & Others vs. Rajeev Ran Vijay Kumar & Ors.**) which was heard by the Full Bench and the same was allowed and the order of the learned Single Judge was set aside. **[2010 (3) PLJR 294 (F.B.)]**.

15. Aggrieved, SLP (Civil) No. 29655/2010 was preferred against the order and judgment and the contention of the petitioners is/are that on the submission of the State of Bihar that their matter will be considered, the appellants therein



were allowed to withdraw the appeal to move before the authorities. However, as the State failed to look into the matter, the present petition. It has to be immediately observed that the order in the SLP did not interfere with the declaration of law made by the Full Bench.

16. Mr. Vikash Kumar, learned State Counsel, on the other hand, submits that all the four petitioners, by their own admissions, were appointed more than a decade ago as Block/Panchayat Teachers after they gave their respective consents and are accordingly, functioning since then. Further, all these appointments were made on compassionate ground.

17. He further took this Court to the decision of the Full Bench in the **State of Bihar & Ors. vs Rajeev Ran Vijay Kumar & Ors.** (supra) with specific reference to paragraph nos. 19, 23 and 26 which read as follows :-

19. We have referred to the afore- said authorities to highlight that a com- passionate appointment cannot be claimed as a matter of right and no one should harbour or nurture an idea that he has a vested right or he has a he- reditary right. The grant is founded on the rules and, in the absence of the rules, on the policies in vogue.

23. On a reading of the said circular, it is vivid that the legal heirs/dependents/representatives are to be given preference in respect of Class-III and



Class-IV posts under the said circular where consultation with the Public Service Commission is not necessary. Conditions have been laid down of giving such preference. On a scrutiny of the same, we are not in a position to hold that any indefeasible right has been conferred on the dependents or legal heirs to claim the said posts as a matter of right. As has been laid down in various pronouncements/authorities, this kind of appointment is an exception and dependent on the rule or the policy of the Government. The circular, as we understand, confers a right to be considered in respect of these posts, If it is not possible to give the benefit of such a post, a person cannot seek a writ of mandamus.

26. From Rule 4 onwards, there is a procedure for appointment of teachers. Rule 10 deals with appointment on compassionate basis. We are really concerned with Rule 2. On a perusal of the scheme, especially Rule 2(ii), it is clear as crystal that the schools have been taken over by the Government. The responsibility of management and control of the schools has been shifted to the Panchayat Raj Institution. The State Government by the circular dated 22.6.2009 has laid down the procedure for appointment of the dependents of the teaching and non-teaching employees on compassionate basis to the post of teacher.

18. Learned State Counsel thus submits that considering the hardship of the family of the deceased Teacher, the Government came out with the scheme so that they are immediately provided a job. Admittedly, the petitioners were



given compassionate appointment as Prakhanda/Panchayat Teachers immediately after the death of their respective fathers, also on the basis of the consent given as per the circular dated 22.06.2009.

19. He further submits that the petitioners' father were regular Teachers but that does not mean that these petitioners (who have been extended the compassionate appointment) are entitled for the appointment as Government Teachers as under Class III post in the Government.

20. He lastly submits that the petitioners having been appointed more than a decade ago after they gave their respective consent for being appointed as Block Panchayat Teachers cannot now come forward and say that Rule 10 of 'the Rules 2006', be declared ultra vires.

21. Having gone through the facts of the case, the contention of the petitioners on record and the submissions put forward by the State Counsel, this Court is of the considered view that Rule 10 of 'the Rules 2006' provide employment to the dependents of the Teaching/non Teaching employees against the available vacancies in Block/Panchayat subject to their giving consent.

22. Only after they gave their respective



consent, they were appointed more than a decade ago and are functioning as Block/Panchayat Teachers since then. Further, the dust settled in the matter after the decision of the Full Bench in the **State of Bihar & Ors. Vs Rajeev Ran Vijay Kumar & Ors.** (supra) in 2010 itself. Now they cannot be allowed to come out of deep slumber with the prayer that the said Rule be declared ultra vires.

23. We cannot but observe that Compassionate Appointment on the death of the bread-winner of the family does not go by the post held by the employee at the time of death. As is trite, it is an exception to the general rules of appointment regulated by Articles 14 & 16 of the Constitution. The policies and rules of the Government framed to grant Compassionate Appointment is only with the object of relief against destitution and is not one intended at restitution to the status of the deceased employee. The petitioners were appointed as per the extant rules and it cannot be upset after passage of long time, giving them a status which was never intended by the rules.

24. It seems having realized the same, even the petitioners after filing the writ petition chose not to contest the matter which reflects from the fact that despite the matter



having been taken up yesterday, no one came forward to represent them. As a last chance, it was posted for today when again there is no representation.

25. The writ petition has got no merit and is accordingly dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.12.2023
Transmission Date	

