

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7067 of 2019

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Santosh Kumar Tiwari Son of Murlidhar Tiwari Resident of Ward Number 21, Kiskunipur, Janari, Ballia, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar.
2. The Director, Primary Education, Department of Education, Government of Bihar
3. The District Magistrate, Buxar Cum The Chairman, District Compassionate Appointment Committee.
4. District Education Officer, Buxar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niraj Kumar Mr. Kameshwar Pandey
For the Respondent/s	:	Mr. S. K. Ranjan, AC to GP17

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

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| 7 | 09-02-2024 | <ol style="list-style-type: none">1. Heard learned counsel for the parties concerned.2. The petitioner has filed the present writ application for grant of regular pay scale of teacher, who was appointed in September, 2006, as Panchayat Teacher on compassionate ground.3. Learned counsel for the petitioner submits that the father of the petitioner was posted as Assistant Teacher in High School, Kathar, Buxar, who died in harness on 19.07.2003. Thereafter, on the basis of application and documents submitted by the petitioner, the name of the |
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petitioner was recommended for appointment on Class III post by the District Compassionate Appointment Committee on 26.07.2004. But the appointment of the petitioner could not be culminated due to non-availability of Class III vacant posts at that point of time.

4. However, District Compassionate Appointment Committee again recommended the name of the petitioner for appointed on compassionate ground as Panchayat Teacher on 25.07.2006. The petitioner joined as Panchayat Teacher on 05.04.2007 and continued to receive his salary.
5. Learned counsel further submits that the basis for claiming the regular pay scale of teacher by the petitioner is an order passed by the Supreme Court in SLP (Civil) No. 29655 of 2010 and Memo No. 38, dated 12.01.2018, issued by the State of Bihar, which was subsequently modified by Memo No. 336, dated 07.03.2019, annexed as Annexure-A to the supplementary counter affidavit.
6. Referring to the Annexure-A to the supplementary counter affidavit, learned counsel for the petitioner submits that as per the decision of the respondent-State, the dependents of the deceased employees, who were



recommended prior to 01.07.2006 for appointment on compassionate ground on Class III posts by the competent District Compassionate Appointment Committee, were entitled for regular pay scale. Accordingly, the submission is that since the claim of the petitioner for compassionate appointment on Class III post was recommended prior to 01.07.2006, as such, the petitioner is entitled to be given regular pay scale of teacher on that basis. It is further argued that the State cannot take benefit of its own wrong by not appointing the petitioner on vacant post after the recommendation of the District Compassionate Appointment Committee prior to 01.07.2006.

7. On the other hand, learned counsel for the State submits that appointment on Class III post on the basis of recommendation of District Compassionate Appointment Committee could not be made because no posts were available at that point of time. The action of the respondent-State is not arbitrary. Taking into account the death of the father of the petitioner, he was offered the post of Panchayat Teacher pursuant to the decision taken in September, 2006, by the District Compassionate Appointment Committee. The petitioner accepted the



offer and continued to work on the post. He further submits that the recommendation of the District Compassionate Appointment Committee prior to 01.07.2006 on Class III posts came to an end after the petitioner accepted the offer of Panchayat Teacher after 01.07.2006.

8. I have heard learned counsel for the parties and have gone through the relevant annexures and materials available on record.
9. It is not disputed that the petitioner accepted the offer of compassionate appointment as Panchayat Teacher after 01.07.2006. Prior to 01.07.2006, though the case of the petitioner was recommended for appointment on Class III post, but the same was not culminated due to non-availability of vacant posts. If the submission of the learned counsel for the petitioner is accepted, then the petitioner could have been entitled for regular pay scale on Class III post on the basis of recommendation by the Committee made prior to 01.07.2006, but the fact of the matter is that Class III posts were not available. The action of the respondent-State cannot be treated as arbitrary for not appointing the petitioner on Class III post



due to non-availability of the vacant posts at that point of time, however, the respondent offered the petitioner the post of Panchayat Teacher after 01.07.2006, which was accepted by the petitioner and the petitioner continued to work on the post so offered, as such, the circular, brought by the State Government vide Memo No. 336, dated 07.03.2019, relied upon by the petitioner is not attracted in this case and the petitioner is not entitled for regular pay scale of teacher as per the circular.

10. In the result, this writ application is, accordingly, dismissed.

(Anil Kumar Sinha, J)

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