

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.722 of 2019

In

Civil Writ Jurisdiction Case No.11579 of 2015

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Satya Prakash, Son of Sri Shivjee Prakash Resident of Mohalla- Bihiyan road
Piro, Town, Post Office, Police Station and Block- Piro, District- Bhojpur at
Ara. at Present working on the post of Block Teacher Madhya Vidiyalaya
Hasan Bazar, Post Hasan Bazar, District- Bhojpur at Ara.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Government of Bihar,
Patna.
3. The Director, Primary Education, Department of Education, Government of
Bihar, Patna.
4. The District Magistrate, Bhojpur at Ara.
5. The District Education Officer, Bhojpur at Ara.
6. The Program Officer Establishment, Education Department, Bhojpur at Ara.
7. The Block Education Officer Piro, District- Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amit Narayan, Advocate
Mr. Abhigyan Kumar, Advocate
For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-04-2024

Ref: I.A. No. 01 of 2019

Heard I.A. No. 01 of 2019 for condonation of
delay. There is delay of one day in filing L.P.A. No. 722 of
2019. For the reasons stated in the application read with the
affidavit, delay of one day in filing L.P.A. stands condoned.



2. Accordingly, I.A. No. 01 of 2019 stands allowed.

3. The appellant has assailed the order of the learned Single Judge dated 10.05.2019 passed in C.W.J.C. No. 11579 of 2015.

4. Grievance of the appellant is that he was wrongly appointed on contract basis instead of regularly appointing him to the post of Assistant Teacher in the light of the fact that on 04.07.2005, the appellant's mother died while she was serving the department/State Government. The appellant submitted application for compassionate appointment in the month of January, 2010 and he was appointed on contract basis on 03.01.2011, on a consolidated pay of Rs. 5000/-. Thereafter, it was enhanced from time to time.

5. The appellant has realized that he was wrongly appointed on contract basis instead of regular appointment with reference to the fact that his mother was a regular holder of the post in the State Government and she died while she was in service, therefore, appellant should have been appointed on regular basis in the light of the scheme dated 27.04.1995, which was in vogue till 01.07.2006. In other words, on 01.07.2006 compassionate appointment policy was revised. Case of the appellant was required to be considered with reference to policy



decision as on the date of his mother's death namely on 04.07.2005 in the light of Hon'ble Supreme Court decisions. Therefore, question for consideration is whether appellant is entitled to be appointed on regular basis with effect from January, 2010 while fixing pay scale attached to a particular post like Assistant Teacher or not. He has knocked the door of the Court only in the year 2015, in other words, appellant may not be eligible for the arrears of salary prior to January, 2012 in the light of Hon'ble Supreme Court decision in the case of ***M.R. Gupta V. Union of India & Others*** reported in ***AIR 1996 SC 669***.

6. Be that as it may, there is no error committed by the learned Single Judge. However, it is disputed by the respective counsels for the parties to the extent that appellant's case is not covered by *Mukesh & Another v. State of Bihar and Others* cited by the learned Single Judge, if it is so the appellant was required to file Review instead of filing the present L.P.A.

7. Accordingly, the present L.P.A. stands disposed of reserving liberty to the appellant to invoke Civil Review before the learned Single Judge. The time consumed in the present L.P.A. may be taken note for the purpose of condonation of delay in filing civil review under section 14 of the limitation



act, 1963 read with the recent hon’ble supreme court decision in
the case of *Purni Devi & Anr. Versus Babu Ram & Anr*
reported in Livelaw 2024 (SC) 273.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2024
Transmission Date	N.A

