

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.462 of 2021

In

Civil Writ Jurisdiction Case No.15626 of 2019

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1. Chandra Shekhar Azad Son of Sri Binod Kumar, Resident of Village - Rahiara, P.S. Ghailadh, District - Madhepura.
 2. Vinay Kumar, Son of Late Bhupendra Prasad Yadav, Resident of Village - Jhitkiya, P.S. Gwalpara, District - Madhepura.
 3. Shidharth Shankar, Son of Late Narayan Prasad, Resident of Village and P.O. Ranipatti, P.S. Kumarkhand, District - Madhepura.
 4. Jaishankar Mehta, Son of Late Dashrath Mehta, Resident of Village and P.O. - Madhuban, P.S. - Bihariganj, District - Madhepura.
 5. Amar Kumar Kanth, Son of Late Ramkrishna Kanth, Resident of Village and P.O. - Babhangama, P.S. Bihariganj, District - Madhepura.
 6. Rana Pratap Singh, Son of Ambika Prasad Singh, Resident of Village Hathiaundha, P.S. Bihariganj, District - Madhepura.
 7. Md. Shakir, Son of Late Md. Nasrat Ali, Resident of Village and P.O. Paina, P.S. - Chausa, District - Madhepura.
 8. Akhilesh Kumar Son of Late Kailash Prasad Yadav, Resident of Village - Itahri, P.S. Ghailrah, District - Madhepura.
 9. Shiv Kumar, Son of Late Vishnu Ranjan Kumar, Resident of Mohalla - Ward No. -3, Krishnapuri Madhepura, P.S. and District - Madhepura.
 10. Amrendra Kumar, Son of Late Kameshwar Prasad Yadav, Resident of Village Betauna, P.S. Singheshwar, District - Madhepura.
 11. Chandan Kumar, Son of Late Satyendra Narayan Yadav, Resident of Village Bhairapur, P.S. Singheshwar, District - Madhepura.
 12. Surya Kumar Surya, Son of Late Kamleshwari Prasad Yadav, Resident of Village and P.O. - Sukhasan, P.S. Singheshwar, District - Madhepura.
 13. Vijay Kumar, Son of Late Rajendra Prasad Yadav, Resident of Village Jogbani, P.S. Singheshwar, District - Madhepura.
 14. Tuna Kumar Singh, Son of Late Sadanand Singh, Resident of Village Patori, P.S. Singheshwar, District - Madhepura.
 15. Rajesh Kumar, Son of Late Doman Mehta, Resident of Village Jotaili, P.S. Puraini, District - Madhepura.
 16. Subodh Thakur, Son of Late Ram Sewak Thakur, Resident of Muhalla - Laksamipur, Ward No. 17, Madhepura, P.S. and District - Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through Mr. Sanjay Kumar, the Principal Secretary of Education Department, Government of Bihar, Patna.
2. Mr. Amir Suhani, Principal Secretary General Administration Department, Government of Bihar.



3. Mr. Vinod Kumar Singh, Joint Secretary, Department of Education, Government of Bihar, Patna.
4. Mr. Arbind Kumar, The Special Secretary of Department of Education, Government of Bihar, Patna.
5. Mr. Ranjeet Kumar Singh, The Director, Primary Education, Department of Education, Government of Bihar, Patna.
6. The District Compassionate Appointment Committee Madhepura, through Mr. Navdeep Shukla the District Magistrate, Madhepura.
7. Mr. Jagatpati Choudhary, The District Education Officer, Madhepura.
8. Mr. K.N. Sada, The District Programme Officer (Establishment), Madhepura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Y.V. Giri, Sr. Advocate Mr. Alok Kumar Singh, Advocate
For the Opposite Party/s :	Mr. Nishant Kumar, AC to SC 28

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

5 23-02-2024 Heard Mr. Y.V. Giri, learned Senior Counsel for the petitioner duly assisted by Mr. Alok Kumar Singh, Advocate and Mr. Nishant Kumar, learned AC to SC-28.

2. The present contempt petition has been preferred for the compliance of the order dated 14.09.2020 passed in CWJC No. 15626 of 2019 by which taking into account the Division Bench reference date 13.02.2020, the following order has been passed:

“Heard Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioners and Mrs. Binita Singh, learned counsel appearing on behalf of the State.

This Court on 1.8.2019 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.

Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner 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. Giri. 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 LAP 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 petitioner 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 petitioner which cannot be construed as (a) overruling the judgement 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.”

3. Learned Senior counsel for the petitioners submit that once the reference by the Division Bench was made in affirmative, the learned Single Judge passed the order but the opposite parties were sitting on the same.

4. Learned State counsel has taken this Court to the show cause filed on behalf of the opposite party no. 7, the District Education Officer, Madhepura in which Annexure-A has been attached which is the memo no. 651 dated 09.05.2023 by which the claim of the petitioners have been allowed and they have been appointed on regular pay scale.

5. Mr. Giri, learned Senior Counsel submits that though the major grievance has been redressed, the fact remains



that they are also entitled to the difference of the salary that a few for the period they work as ‘*Niyojit*’ Teacher.

6. This Court is satisfied that the order of the writ Court has been complied with. However, the petitioners, if they so want, can always have the liberty to agitate for the other grievances.

7. 5The MJC No. 462 of 2021 stands disposed of.

(Rajiv Roy, J)

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