

(2018) 07 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1299 of 2015

Sandip Kumar Roushan

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Citation : (2018) 07 PAT CK 0017

Hon'ble Judges : AHSANUDDIN AMANULLAH, J

Bench : Single Bench

Advocate : Shivendra Kishore, B. S. Thakur, J. K. Poddar, Uday Prasad, Ranjeet Kumar Pandey

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner; State and Patna Municipal Corporation.

2. The petitioner has moved the Court for the following reliefs:

â??i. For a direction on the respondent no. 3, the District Compassionate Committee, Patna to consider the case of petitioner for appointment on

Class III post on compassionate basis and to recommend the name of petitioner to the concerned appointing authority including Municipal

Commissioner, Patna Municipal Corporation, Patna for issuing consequential order of appointment.

ii. For a direction on the concerned appointing authority including Patna Municipal Commissioner to act upon the recommendation of the District

Compassionate Committee Patna and to issue consequential order of appointment of the petitioner on Class III post and to allow him to discharge the

duty of the said post with consequential benefits.

(iii) For any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.â??

3. The father of the petitioner, Ashok Kumar, while working as Assistant Teacher in Upgraded Middle School Bodhgama in Phulwarisharif, Patna

died in harness 08.03.2009. Pursuant thereto, the petitioner, who is the third son of the deceased employee, applied for compassionate appointment

before the Competent Authority on 17.04.2009. It appears that till date, the matter is under consideration and the latest position is that the authorities

are taking the stand that now appointments can be made only in terms of the Bihar Panchayat Primary Teachers (Employment and Service

Conditions) Rules, 2006 and the Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2012, which mandates passing of

the Teachers Eligibility Test, which the petitioner does not possess. In such condition, some correspondence by the authorities to the National Council

for Teachers Education has also been brought on record to indicate that permission has been sought for relaxation of such Rule. It is further the stand

that upon receipt of such concurrence, appointment shall be made.

4. Learned counsel for the petitioner submitted that he possesses B.Sc.(Hons.) + MCA qualification and is ready to be appointed on any post,

including that of teacher, Class-III or Class-IV. It was further submitted that the stand of the respondents is unreasonable for the simple reason that

the petitionerâ??s father having died in the year 2009, and the petitioner having applied for compassionate appointment soon thereafter, his case has

to be considered with reference to the relevant policy of the State Government at that point of time. It was submitted that the requirement coming in

the year 2012, for any clearance of Teachers Eligibility Test, cannot be enforced in the case of the petitioner. It was further submitted that the

petitioner is ready to be appointed as a teacher and is also ready to comply with the condition that within six years he should clear the Teachers

Training Course.

5. Learned counsel for the State submitted that in view of the 2012 Rules, now no appointment can be made on the post of teacher without the person

having cleared the Teachers Eligibility Test.

6. However, on a direct query of the Court as to how the 2012 Rules would apply in a case relating to the year 2009, learned counsel for the State had

no answer.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court holds that the petitioner is eligible for being appointed on compassionate ground on account of death of his father in harness. Such appointment shall be governed by the policy/rules/circulars of the State Government as was in operation on that day. As the 2006 Rules had come providing for employment on the post of teacher, subject to the person being eligible, the petitioner having higher qualification than what was required was definitely eligible to be appointed as a teacher. Moreover, the stipulation at that time being only that within six years of such appointment, he had to clear the Teachers Training Course, shall apply in the case of the petitioner also. Thus, mandamus is issued to the authorities to appoint the petitioner on compassionate ground on the post of teacher, subject to the requirement of him clearing the Teachers Training Course within six years of his appointment. Let such appointment be made within two months from the date of production of a copy of this order before the respondents no. 4 and 5. They shall be obliged to communicate the order for its compliance to the Competent Selection Unit of the Prakhand/ Nagar Nikay, as the case may be.

8. The writ petition stands allowed in the aforementioned terms.