
(2015) 03 PAT CK 0102

In the Patna High Court

Case No : LPA No. 1589 of 2009 [in CWJC No. 6147 of 2009]

The State of Bihar and Others

APPELLANT

Vs

Dilip Kumar and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Citation : (2015) 4 PLJR 674

Hon'ble Judges : Navaniti Prasad Singh and Jitendra Mohan Sharma, JJ.

Bench : Division Bench

Advocate : Amresh, for the Appellant; Sunil Kumar Singh and Nagendra Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—The present intra-court appeal has been filed by the State being aggrieved by the judgment and order dated 15.5.2009, passed in C.W.J.C. No. 6147/2009 (Dilip Kumar vs. State of Bihar). The learned Single Judge ordered that in view of the letter of Personnel and Administrative Reforms Department dated 17.10.2008, the petitioners had to be considered for compassionate appointment as an Assistant Teacher, which is the post under the government and not Nagar Shikshak which is local self-government (Nagar Parishad). The State being aggrieved, filed this intra-court appeal on the solitary ground that the circular of the State Government dated 17.10.2008 was recalled by the State on 22.6.2009, and as such, the recommendations made in case of the writ petitioners, for being appointed on compassionate appointment as Nagar Shikshak, was valid and the judgment of the learned Single Judge does not (sic) warrant interference. We may note the sequence of dates to resolve this issue. The death of the employee took place prior to the Rules i.e. prior to 1.7.2006. The circular of Personnel and Administrative Reforms Department dated 17.10.2008, as contained in Annexure-1 to the Letters Patent Appeal, filed by the State, in clear terms, states that compassionate appointees had to be appointed in government service. If the employees, who died, was in government service

then the compassionate appointment could not be as Panchayat Shikshak/ Prakhhand Shikshak or Nagar Shikshak. Taking note of this circular, the writ petition was allowed on 15.5.2009. The circular of the State Government dated 22.6.2009 came thereafter recalling the earlier circulars. A circular issued after the judgment would not take away the mandamus by the judgment. Moreover, we may note that the Apex Court in the case of Vishwanath Pandey Vs. State of Bihar and Others, , has held that the appointment had to be a regular teacher and the Apex Court affirmed the order of learned Single Judge which has since been reported in Vishwanath Pandey Vs. The State of Bihar and Others, , whereby this Court had clearly held that notwithstanding the 2006 Rules, where the occurrence had taken place prior to the Rules, the appointment would have to be the teacher under government.

2. In that view of the matter, we find no merit in this appeal, accordingly, this Letters Patent Appeal is dismissed.