
(2018) 04 PAT CK 0025

In the Patna High Court

Case No : Letters Patent Appeal No.1472 of 2015 IN Civil Writ Jurisdiction Case No. 6282 of 2009

The State Of Bihar & Ors

APPELLANT

Vs

Rhitoraj Saraubh & Anr

RESPONDENT

Date of Decision : 18-04-2018

Acts Referred:

Bihar Nagar Primary Teachers (Employment and Service Conditions) Rules, 2006 — Rule 10

Citation : (2019) 1 PLJR 444

Hon'ble Judges : JYOTI SARAN, Chakradhari Sharan Singh

Bench : Division Bench

Advocate : Anjani Kumar, Deepak Sahay Jamuar, Arun Kumar Sinha, Rajiv Kumar, Daya Shankar Pd. Sinha, Ajit Narayan Lall, Amit Narayan, Nirmala Kumari, Jeetendra Narayan

Final Decision : Dismissed

Judgement

This appeal under Clause 10 of the High Court of Judicature at Patna arises from the judgment and order dated 19.5.2009 of the learned Single Judge

passed in C.W.J.C.No. 6282/2009, whereby the writ petition was disposed of with a direction to the respondents to grant appointment to the

petitioners in pursuance of the recommendation made in their favour and strictly in accordance with the Government directive dated 17.10.2008 which

compliance had to be ensured within a maximum period of eight weeks of the receipt/ production of a copy of the judgment.

Eight weeks has translated into almost a decade and yet direction has not seen the light of the day. The judgment and order of the learned Single

Judge was passed on 19.5.2009 and it is after trying all possible lawful recourse available at the disposal of the respondents that it is ultimately after a

gap of six years that this L.P.A. was filed on 12.8.2015 and has been admitted for hearing after condonation of delay vide order passed on 9.3.2017.

The facts leading to this appeal are in a very narrow compass. For the sake of convenience we shall be making reference to the party position as it

occurred before the Writ Court. There were two petitioners before the Writ Court. While the father of writ petitioner no.1, an Assistant Teacher in

Primary School, Halidi, Chapra, Maner in the district of Patna, died in harness on 30.12.2004, the husband of writ petitioner no.2, also an Assistant

Teacher in Middle School, Ratan Tola, Maner in the District of Patna, died in harness on 3.8.2004. The dates are relevant and the reasons would

transpire as the matter progresses. Both these petitioners filed their application for compassionate appointment soon after the death of the bread

winner.

Mr. Anjani Kumar, learned AAG-4, addressing the Court on behalf of the appellants, has fairly produced copies of the relevant documents connected

with the exercise undertaken and which confirms that while petitioner no.1 filed his application in prescribed format on 4.2.2006, petitioner no.2 filed

her application on 2.9.2004. These applications were forwarded by the departmental head i.e. the District Superintendent of Education before the

District Compassionate Committee, Patna for a favourable consideration. The matters were considered and the District Compassionate Committee,

Patna chaired by the District Magistrate, Patna in its meeting held on 30.10.2006 recommended the case of the two petitioners for compassionate

appointment on a Class III post and in absence of vacancy, on a Class IV post. While the name of petitioner no.1 appears at serial no.11 of the

recommendation, the name of petitioner no.2 appears at serial no. 13. Contrary to the recommendation of the District Compassionate Committee for

appointment against Class III post in the Government that while petitioner no.1 was appointed as a Nagar Shikshak at Madhya Vidhyalaya, Kasba,

Karimabad, Patna, petitioner no.2 was similarly appointed as a Nagar Shikshak in Navin Kanya Prathmik Vidhyalaya, Nuruddinganj, Malsalami, Patna

vide appointment orders bearing No. 776 dated 14.8.2007 and 784 dated 13.9.2007 respectively which forms part of Annexure 4 series to the writ

petition. The appointment orders are under the signature of the Municipal Commissioner, Patna Municipal Corporation. It is feeling aggrieved and

relying upon a circular of the State Government dated 17.10.2008 of the Department of Personnel and Administrative Reforms, whereby the District

Compassionate Committee was cautioned in not making recommendation for appointment on compassionate ground against the post of Panchayat

Shikshak/ Block Teacher/ Nagar Shikshak since these posts were not posts under the State Government, that the petitioners came before this Court

through the writ petition in question and the learned Single Judge upholding their grievance, disposed of the writ petition in the manner stated above.

The judgment and order of the Single Judge was passed on 19.5.2009. Not being satisfied that the State filed a review giving rise to Civil Review No.

354/2009 which was dismissed for default. A restoration application was filed giving rise to M.J.C.No. 4746/2010 and which was disposed of on

17.8.2011 on the submission made by the learned counsel appearing for the State that in view of Special Leave petitions pending before the Supreme

Court, the restoration application had been rendered infructuous and it was disposed of accordingly. On the other hand, the writ petitioners on the

failure of the respondents to ensure compliance filed contempt application giving rise to M.J.C.No. 2502/2009. However, after being taken on different

dates that vide order passed on 31.8.2015 it was directed to be put up after disposal of the present appeal which had been filed in the meantime.

The argument advanced on behalf of the writ petitioners by Mr. Arun Kumar Sinha and Mr. A.N.Lall, learned counsel, is very brief. They simply rely

upon own circular of the State Government dated 17.10.2008, a copy of which is enclosed at Annexure 5 to the writ petition, to submit that the opinion

of the State Government itself is reflected in the circular and any such appointment has been held beyond jurisdiction of the Compassionate

Committee. It is submitted that the situation is even worse here because even though, the District Compassionate Committee has recommended for

appointment of the petitioners under the State Government, it is assuming jurisdiction that the Patna Municipal Corporation has issued appointment

order(s) when no such recommendation was made to them and even if made, it would be contrary to the circular dated 17.10.2008 which renders it

beyond the jurisdiction of the Committee concerned. According to the learned counsel appearing for the two writ petitioners, the death took place

much prior to 1.7.2006 when the Bihar Panchayat Elementary Teachers (Appointment and service Conditions) Rules, 2006, came into force and the

appointments in Primary and Middle School located within the jurisdiction of a Panchayat or Urban, local body, was put at their disposal. It is

submitted that since the right had already been inherited in these petitioners for appointment under the Government, it was rightly so recommended by

the District Compassionate Committee.

Learned counsel has also invited the attention of this Court to certain orders passed by the District Superintendent of Education, Madhepura to submit

that when similar errors occurred in other appointments, it was corrected taking note of the order passed by the Supreme Court in the case of Mukesh

& anr. V. State of Bihar & ors., reported in (2017)5 SCC 383, and the advisory issued by the Education Department, Govt. of Bihar vide Memo No.

38 dated 12.1.2018 whereby it was resolved that if the District Compassionate Committee has made recommendations in respect of the wards of a

Government servant who deceased prior to 1.7.2006, for compassionate appointment under the Government, it had to be made accordingly and there

can be no interference therewith.

Mr. Anjani Kumar, learned AAG-4, standing up for the appellants before this Court has basically questioned the right of compassionate appointees to

a choice post. According to him, a compassionate appointment by its very nomenclature is for providing help to a family facing adverse situation by

loss of the bread earner. He submits that the appointment of such kind is an exception to the normal rule of appointment and if acting upon

recommendation of the District Compassionate Committee these petitioners have been provided with an appointment as a teacher albeit under the

Corporation, they cannot raise any grievance. Learned counsel in support of his submission has relied upon a Full Bench judgment of this Court

reported in 2010(3) PLJR 294 (the State of Bihar & ors. v. Rajeev Ran Vijay Kumar) of which one of us (Jyoti Saran, J.) was a Member, to submit

that a similar issue being raised before the Full Bench has been negated in consideration of the scope of compassionate appointment and the law

settled on the issue. With much stress on the observations present at paragraph-26 of the judgment, he submits that the Full Bench in consideration of

the circular dated 22.6.2009 which was a clarification to the circular dated 17.10.2008 and inter alia provided that the case of dependents of Teaching

and Non-teaching staff, cannot be considered by the District Compassionate

Committee, since after the enforcement of the Bihar Panchayat

Elementary Teacher (Employment and Service Conditions) Rules, 2006 and the Bihar Nagar Primary Teachers (Employment and Service Conditions)

Rules, 2006, found no error in the offer given to those petitioners and similar is the case herein.

Learned counsel has next referred to a judgment of the Supreme Court reported in 2013(3) PLJR (SC) 305 (Vishwanath Pandey v. State of Bihar &

ors.) and with reference to paragraphs 3 to 9 of the judgment he submits that a classification has been carved out for those in whose respect

recommendations was made prior to 1.7.2006 and those made after 1.7.2006 which is the date from which, the Service Rules governing Panchayat

bodies/ urban local bodies, came into force. According to Mr. Kumar, in view legal position settled in the case of Vishwanath Pandey (supra) even

though the deaths in the present case took place prior to 1.7.2006 but since the recommendations of the District Compassionate Committee, Patna

was made on 30.10.2006, it would be guided by the stipulations present in the Rules governing appointment of Panchayat/ Nagar Shikshak.

Mr. Kumar has next referred to the judgment of the Supreme Court reported in (2017)5 SCC 383 (Mukesh & anr. V. State of Bihar & ors.) which is

a matter going from this State and has laid stress on the opinion expressed at paragraph-4 of the judgment to submit that the issue has been put at rest

by the Supreme Court in holding that those cases in which recommendations for appointment to Class III/ Class IV post have been made prior to

1.7.2006, they would be entitled for appointment on either Class III or Class IV post or for continuance as a teacher in regular pay scale but the

appellants, who were appointed after 1.7.2006, would not be entitled for regular pay scales. It is on the strength of the issue settled by this Court in the

case of Rajeev Ran Vijay Kumar (supra) and the Supreme Court in the case of Vishwanath Pandey and Mukesh (supra) that it was submitted by Mr.

Anjani Kumar that since in the case of the petitioners the recommendation admittedly was made by the District Compassionate Committee, Patna

after 1.7.2006, they were not entitled either for regular Class III/ Class IV post under the State Government or for appointment as a teacher under a

regular pay scale.

In a short reply to the argument of Mr. Anjani Kumar that Mr. Lall and Mr. Sinha

both have relied upon the advisory issued by the Education Department bearing Memo No. 38 dated 12.1.2018, a copy of which is enclosed at Annexure-A to I.A.No. 1209/2018 to submit that it is acting under the liberty issued in the case of Mukesh (supra) that this advisory was issued and when it has been resolved by the Education Department that such of the deaths which have taken place prior to 1.7.2006 and recommendations were made by the District Compassionate Committee for appointment under the Government, these recommendations have to be acted upon accordingly against the recommended post in a regular scale. According to the learned counsel appearing for the respondents- writ petitioners, once the State Government has acted on the liberty granted by the Supreme Court in the case of Mukesh (supra) to issue the advisory, they cannot be permitted to obstruct the relief available to the petitioners under the recommendation of the District Compassionate Committee, Patna.

We have heard learned counsel for the parties and have perused the records.

We certainly do not intend to spend time on discussing the facts because there is no dispute thereon. Mr. Anjani Kumar, learned AAG-4, does not

dispute that not only deaths of the Government servant(s) took place much prior to 1.7.2006 when the Panchayat/ Nagar Shikshak Service Rules had

not even come into force, even the applications for compassionate appointment had been filed by these petitioners much prior thereto and it is for the

delayed completion of formalities by the respondents which has resulted in a delayed recommendation by the District Compassionate Committee,

Patna on 30.10.2006 for compassionate appointment of these petitioners on a Class III post in a regular pay scale. The principles underlying a

compassionate appointment is no more open for discussion and it is not a choice of an applicant for such appointment to pray for a particular post. We

certainly do not intend to go into such issues because there is no such prayer either by these petitioners. All that it is said by the petitioners is that the

Government should act as per recommendation of the District Compassionate Committee, Patna and it is because the State Government failed to do

so, rather shifted the responsibility on the Patna Municipal Corporation, that even while accepting the appointment, they have chosen to question the

offer and rightly so because while they need the appointment they also need to protect the right vested in them under the recommendation of the

District Compassionate Committee. In our opinion thus, a mere acceptance of appointment by these petitioners to the post offered by the Patna

Municipal Corporation would certainly not take away their right to seek enforcement of the recommendation made by the District Compassionate

Committee, Patna and which has been recognized by the learned Single Judge in the judgment and order impugned but it is the usual obstructive

approach that even after a lapse of nine years, the State Government in its Education Department would not allow the matter to be set at rest.

Reverting back to the matter in contest and having noted the principle underlying a compassionate appointment as well, the limited scope of indulgence

in the matters concerning compassionate appointment, it is to be seen whether at all the judgments relied upon by Mr. Anjani Kumar, learned AAG-4,

answers the prayer made by these petitioners to get the recommendations of the District Compassionate Committee, Patna dated 30.10.2006 enforced

through the process of this Court. We shall be dealing with each of the cases one by one and which would confirm that the stage at which present

matter rests, there is no obstruction or impediment for the petitioners to the relief prayed and allowed by the Writ Court.

The judgment and order of the learned Single Judge came on 19.5.2009 in reference to the circular of the Department of Personnel and

Administrative Reforms dated 17.10.2008 but the respondents chose to keep the writ petitioners engaged before different forums. In this meanwhile,

the Full Bench judgment in the case of Rajeev Ran Vijay Kumar (supra) was delivered on 11.5.2010 which was admittedly in identical circumstances.

The Full Bench taking note of the circular dated 17.10.2008 as well as the subsequent circular dated 26.2.2009 upheld the challenge put forth by the

State of Bihar to question the judgment and order of the learned Single Judge and to hold that a dependent of a Government employee cannot claim a

particular post as a matter of right.

There can be no dispute on the legal position settled by the Full Bench and in fact going by the opinion of the Full Bench certainly there is no opening

for the petitioners because the matter has been put at rest. The opening for these petitioners arise from the order of the Supreme Court on the Special

Leave Petition preferred by the writ petitioner Rajiv Ranvijay Kumar bearing S.L.P. (Civil) No. 29655/2010. The Special Leave Petition preferred by

the said writ petitioner was disposed of on the following terms:

â?? Counsel for the respondent- State submits that if the petitioners withdraw this petition and move the authorities concerned, their cases shall be

considered by the authorities concerned keeping in view the facts and circumstances of each case. In view of the above statement, petitioners are

permitted to withdraw this special leave petition with liberty to move the authorities concerned who shall take a decision thereon expeditiously.

In view of the order passed above, the application for intervention does not survive and the same is dismissed.â??

A plain look at the order of the Supreme Court in the case of Rajiv Ranvijay Kumar would confirm that the respondent State did not allow the position

to be settled by the Supreme Court, rather got the matter disposed under a concession that if the petitioners would withdraw their case and approach

them, their cases would be considered accordingly. It is rather peculiar to note that the State itself avoided a judgment on the Special Leave Petition

questioning the Full Bench Judgment of this Court in the case of Rajiv Ranvijay Kumar (supra). While a concession was given by the State before the

Supreme Court to examine the claims where deaths in harness took place prior to 1.7.2006, but when the matter is being deliberated before us reliance

is being placed on the Full Bench judgment to oppose the relief prayed. The next case which relied upon by Mr. Anjani Kumar is the case of

Vishwanath Pandey (supra) and although Mr. Kumar lay stress on the classification made by the Supreme Court in between those in whose case

recommendations were made prior to 1.7.2006 with those in whose cases recommendations were made after 1.7.2006, to submit that since the

recommendation in the case of these petitioners admittedly was after 1.7.2006 they are not entitled to the benefit but in our opinion, the observation at

paragraph 9 of the judgment is contrary to the submissions advanced by Mr. Kumar. In fact the legal position settled in paragraph 9 would squarely

apply to the case of the petitioners and is quoted hereinbelow for ready reference:

â??9. We have heard learned counsel for the parties and scrutinized the records. It is not in dispute that even though the District Compassionate

Committee had made recommendations on 29.11.2005 that the appellant may be appointed on a Class III post, he was not given appointment because

of the ban imposed by the State Government. It is also not in dispute that after lifting of the ban, the District Compassionate Committee recommended

the appellant's appointment as Teacher on compassionate ground and he was appointed against the vacant post by District Superintendent of

Education, Buxar. That order was neither rescinded nor modified by the Competent Authority on the premise that after coming into force of the 2006

Rules, the appellant could have been appointed only by the Panchayat Samiti on the post of Prakhanda Teacher. Therefore, the Division Bench of the

High Court was not at all justified in recording a finding that the appellant could have been appointed only as a Prakhanda Teacher by the Panchayat

Samiti on fixed pay. Unfortunately, the Division Bench overlooked the fact that the appellant had been appointed as per the policy of compassionate

appointment framed by the State Government and that policy does not envisage the appointment of the dependent of a deceased employee on fixed

pay.

The third judgment relied upon by Mr. Anjani Kumar is the one rendered in the case of Mukesh (supra) and we are again persuaded to reproduce

paragraphs 4 to 6 of the judgment which in fact comes to the aid of the petitioners:

4. The other appellants who were appointed after 1.7.2006 are not entitled to the relief granted to those who were recommended for appointment

to Class III or Class IV posts prior to that date. A Full Bench of the Patna High Court in *State of Bihar v. Rajeev Ran Vijay Kumar*, reported in

(2010)3 PLJR 294, held that the dependants of the deceased government employees do not have a legal right to be appointed in government posts.

Their appointments on compassionate grounds shall be in accordance with the Bihar Panchayat Primary Teachers (Appointment and Service

Conditions) Rules, 2006 (hereinafter referred to as 'the Rules') which came into force w.e.f. 1.7.2006. Rule 10 of the said Rules provides for

employment on compassionate grounds to the dependants of teaching/ non-teaching employees against available vacancies of Panchayat Teachers/

Block Teachers/ Prakhanda Teachers, etc. Such appointments can be made only on a fixed pay by the Committee constituted under the Rules.

5. The appellants who have not been recommended for appointment on Class III or Class IV posts prior to 1.7.2006 are not covered by Vishwanath

Pandey case (2013)10 SCC 545. On the other hand, they are squarely covered by the judgment of the Full Bench of the Patna High Court. They are not similarly situated to those who were recommended for appointment to Class III posts prior to 1.7.2006. The appellants, who were appointed after 1.7.2006, the date on which the Rules came into force, are not entitled to claim appointment on regular pay scales. It is relevant to note that the judgment of the Full Bench of the High Court of Patna was challenged before this Court. The said SLP was withdrawn with liberty granted to the petitioners therein to approach the Government for suitable relief.

6. For the foregoing reasons, we direct the appellants who were recommended for appointment to Class III or Class IV posts prior to 1.7.2006 with either be appointed on Class III or Class IV posts on regular basis or will be entitled for continuance as Teachers on a regular pay scale. The other appellants who were appointed after 1.7.2006 will not be entitled for the relief of regular pay scales. However, we grant them liberty to approach the State Government for suitable relief in terms of the order passed in *Rajiv Ranvijay Kumar v. State of Bihar*.

The issue takes a new turn hereon for even though the Supreme Court held that in cases where the recommendations were made prior to 1.7.2006, would entitle the applicant to a Class III or Class IV post on regular basis or for continuance as teacher in a regular scale and in cases where recommendations were made after 1.7.2006 though they were held covered by the Full Bench judgment in *Rajeev Ran Vijay Kumar* (supra) but even while holding as such, the Supreme Court allowed them liberty to approach the State Government for suitable relief in terms of the order passed by the Supreme Court on the S.L.P. preferred by the writ petitioner *Rajeev Ran Vijay Kumar*, the relevant part of which we have already reproduced, it is acting on the liberty so granted by the Supreme Court in the case of *Mukesh* (supra) that the State Government in its Education Department has issued an advisory bearing Memo No. 38 dated 12.1.2018 and which reads under: We direct that the Appellants who were recommended for appointment to Class III or Class IV posts prior to 1.7.2006 will either be appointed on Class III or Class IV posts on regular basis or will be entitled for continuance as Teacher on a regular pay scale. The other Appellants who were appointed after 1.7.2006 will not be entitled for the relief of

regular pay scales. However, we grant them liberty to approach the State Government for suitable relief in terms of the order passed in SLP (C) No. 19655 of 2010??

A cursory glance to the advisory issued by the Education Department at paragraph 1, would leave no room for any confusion that a conscious decision has been taken by the State Government in consideration of the cases of present kind in which deaths of teaching/ non-teaching employees had taken place prior to 1.7.2006 to resolve

that in case the District Compassionate Committee makes a recommendation in case of a Government teacher deceased prior to 1.7.2006 for

appointment of his dependents on Class III or Class IV or for appointment against the post of a teacher then the appointment of the dependant has to

be made in terms of the recommendation of the District Compassionate Committee against a regular post and against a regular pay scale. The

resolution is loud and clear and concludes that in case the death of a Government teacher has taken place prior to 1.7.2006 and recommendation has

been made by a competent District Compassionate Committee for appointment of his dependent against a regular post and against a regular pay scale

under the Government, then that recommendation has to be acted upon and the appointment has to be provided against a regular Class III or Class IV

or against the post of a teacher against a regular pay scale.

In our opinion, this resolution puts at rest all speculations and all disputes and in fact renders this appeal infructuous for once the Education

Department itself has acted on the liberty of the Supreme Court to clarify the issue, this contest is rendered academic. Another interesting aspect of

the matter which we need to record is, the affidavit of the Principal Secretary of the Education Department filed on 11.4.2018. Now even though he

admits to issuance of the notification dated 12.1.2018 in the light of the order passed by the Supreme Court in the case of Mukesh (supra) and even

though he admits to revisit the issue of compassionate appointment in the light of the direction issued in C.W.J.C.No. 560/2015 but yet he does not

shoulder the responsibility of taking this case to its logical conclusion in the light of his own clarification dated 12.1.2018 qua the recommendation of

the District Compassionate Committee, Patna.

For the reasons so discussed, we are certainly not persuaded with the argument

of Mr. Anjani Kumar, learned AAG-4, to interfere with the opinion expressed by the learned Single Judge rather the advisory bearing memo no. 38 dated 12.1.2018 of the State Government in its Education Department binds them to act on the recommendation of the District Compassionate Committee, Patna dated 30.10.2006 in so far as it concerns these petitioners and we would remind the Principal Secretary, Education Department of the time stipulated in the order of the learned Single Judge which continues to binds him for ensuring its compliance and for taking the matter to its logical conclusion.

In result, the Letters Patent Appeal is dismissed with no order as to costs.