

# SUPREME COURT OF INDIA

Vishwanath Pandey

Vs.

State of Bihar

(2013) 10 SCC 0545

(G.S. Singhvi and V.Gopala Gowda JJ.)

02.07.2013

## JUDGEMENT

### **G.S.Singhvi, J.**

1. Leave granted. The appellant is aggrieved by the judgment of the Division Bench of the Patna High Court declaring that he is entitled only to fixed pay admissible to a "Prakhand Teacher" and not the regular pay scale.

2. The appellant's father, Dadan Pandey, who was then serving as Assistant Teacher in Primary School Akodi, Block -Brahmpur, District Buxar died on 14.10.2004 leaving behind his widow, three sons and two daughters. The appellant submitted application dated 5.2.2005 for his appointment on compassionate ground. After some time, he filed CWJC No. 7258 of 2005 for issue of a mandamus to the concerned authority to decide his application. The writ petition was disposed of by the learned Single Judge of the High Court with a direction that the appellant's prayer for appointment on compassionate ground be decided within a maximum period of twelve weeks. In compliance of the direction given by the High Court, District Compassionate Committee, Buxar recommended the appellant's case for appointment on a Class -III post. However, he was not given appointment because of the ban imposed by the State Government. On 1.7.2006, Deputy Secretary to the Government, Human Resources Development Department sent communications to all District Magistrates and other officers to appoint eligible persons on the post of teachers. That letter reads as under: "Letter No. 8/B3 -102/02 Ma. 1078 Government of Bihar Human Resources Development Department From Braj Kishore Pathak Deputy Secretary to the Government To All District Magistrate All Regional Deputy Director of Education All District Superintendent of Education Patna, dated 01/07/2006 Subject: In respect of appointment of dependents of Teachers on the basis of compassion on the post of Teacher Sir, In respect of the above -mentioned subject a ban was imposed on appointment of dependents of teachers on the post of teacher on compassionate grounds. For this reason information has been received that eligible trained dependents are being appointed on Class III and IV posts at several places. In this regard requests have been received by the Government from various sources that the aforesaid

circulars may be reconsidered. Since for last several years the system for training teachers has been dormant in the State, therefore after careful consideration it has been decided in this regard that dependents who are trained and have requisite qualifications can be appointed on compassionate grounds in case they fulfill the conditions mentioned in the relevant circulars of the Personal and Administrative Reforms Department of the Government. In special circumstances if the dependent has minimum qualification, which is intermediate or equivalent for primary teachers, but has not received training, he shall be granted 5 years time for training after appointment. Kindly steps may be taken in the light of the aforesaid and the concerned cases may be disposed of. If any dependent has been appointed on other Class III and IV posts despite his being trained, then steps should be taken for his appointment on the post of teacher. Yours faithfully Braj Kishore Pathak Deputy Secretary to the Government Memo No. 1078/Patna, dated 01/07/2006 Copy to - Director, Primary Education/Director, Intermediate Education and all Deputy Development Commissioner for information and necessary action. Yours faithfully Braj Kishore Pathak Deputy Secretary to the Government"

In view of the aforesaid communication, District Compassionate Committee, Buxar again considered the appellant's case and recommended that he be appointed as a Teacher. Thereafter, District Superintendent of Education, Buxar issued order dated 25.11.2006 whereby he appointed the appellant as a Teacher in Girls Middle School, Raghunathpur, Block -Brahmpur on fixed pay. The relevant portions of that order are extracted below: "Office of District Superintendent of Education, Buxar Office Order In the light of order dated 29/06/2005 passed by Hon'ble High Court in CWJC No. 7258/05 entitled Vishwanath Pandey versus State Government and others and in accordance with the decision taken by the District Compassionate Committee, Buxar in meeting dated 29/11/2005 the name of the petitioner Shri Vishwanath Pandey was recommended for appointment on a Class III post. Thereafter in this regard the recommendation for appointment was returned on the ground of non -availability of post by the then Regional Deputy Director of Education, Patna Division, Patna. The District Education Officer vide letter No. 307 dated 02/09/2006 informed the District Compassionate Committee, Buxar about non -availability of vacant Class III post in the District and requested for reconsideration of claim for compassionate appointment. In the light of the aforesaid in a decision taken upon reconsideration by the District Compassionate Committee in its meeting dated 25/09/2006 bearing memo number 721 dated 27/09/2006 the petitioner Shri Pandey was recommended to be appointed on the post of teacher. In accordance with it, in the light of decision/recommendation made by District Compassionate Committee in its meeting dated 25/09/2006 and the direction contained in letter No.2822 dated 17/04/1995 issued by the Personnel and Administrative Reforms Department, Bihar and letter No.894 dated 10/08/2006, letter No.1120 dated 21/09/2006, letter No.1434 dated 16/11/2006 and letter No.1495 dated 23/11/2006 issued by the Regional Deputy Director of Education, Patna Division, Patna Shri Vishwanath Pandey dependent son of late Dadan Pandey, deceased, Primary School, Akori, Block -Brahmpur, District - Buxar, Village & Post -Pokhaha, P.S. Bagengola, District -Buxar, who has been asked for his consent by letter No.699 dated 19/10/2006, is appointed on the vacant post of Teacher in Girls Middle School, Raghunathpur, Block - Brahmpur [Buxar] on the fixed pay admissible by the State Government with other benefits admissible in future and is posted from the date of joining on the following conditions: 1. The candidate will have to submit his

original educational qualification certificate, date of birth certificate and health certificate issued by Civil Surgeon -cum -Chief Medical Officer. 2. If the certificates produced by the appointed candidate are found to be not correct, his appointment shall be cancelled automatically. 3. The candidate will have to join the posting but then 15 days of issuance of the appointment letter. 4. Shri Vishwanath Pandey shall be responsible for taking care of the dependents of late Dadan Pandey, ex -Teacher. If this is not done, steps will be taken to terminate his service. 5. The payment will be made only after verification of the letter of appointment and educational qualification certificates. 6. The newly appointed teacher will have to compulsorily obtain teacher training within 6 years.

3. The concerned Controlling Officer is directed to ensure the joining of the newly appointed Teacher immediately and send compliance report to the undersigned. District Superintendent of Education, Buxar" After joining the post, the appellant made representations for payment of salary in the regular pay scale. The respondents did not accept his claim on the ground that in view of the Bihar Primary Teacher (Appointment and Service Condition) Rules, 2006, the appellant could have been appointed on fixed pay only and he is not entitled to regular pay scale. The appellant then filed CWJC No.7218 of 2007 and prayed for issue of a direction to the respondents to make correction in the letter of appointment so as to enable him to claim salary in the regular pay scale. The learned Single Judge allowed the writ petition by observing that the 2006 Rules cannot be invoked for denying regular pay scale to the appellant who had been appointed as Teacher pursuant to the direction given by the High Court in the backdrop of the claim lodged by him in 2005 and the recommendations made by the District Compassionate Committee.