

SUPREME COURT OF INDIA

Mukesh

Vs.

State of Bihar

C.A.No.4776-4777 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

03.04.2017

JUDGMENT

L.Nageswara Rao,J.,

SLP (C) No.31158-31159 of 2013

1. Leave granted.

2. The Appellants are children of Government employees who died in harness. They applied for appointment to Class III Government posts on the basis of instructions governing compassionate appointments. The competent authority recommended the appointment of some of the Appellants in Class III posts. However, they were appointed on fixed pay as Prakhand Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. The Writ Petitions filed by them were allowed and the Respondents were directed to appoint them in Class III or Class IV posts or to pay them regular pay scales in the post of Assistant Teacher. The Appeals filed by the Government challenging the said judgment in the writ applications were allowed. The Appellants who have challenged the judgment of the Division Bench of the High Court in these Appeals submitted that they are covered by a judgment of this Court in *Vishwanath Pandey v. State of Bihar and Others, reported in*¹. Vishwanath Pandey who was similarly situated to the Appellants succeeded in the Writ Petition filed by him for appointment on a regular pay scale. However, the said judgment was reversed by a Division Bench. By the aforementioned judgment, the Appeal filed by Vishwanath Pandey was allowed by this Court holding thus:-

"8. We have heard the learned counsel for the parties and scrutinised 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 the 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 That order was neither rescinded nor modified by the competent authority on the premise that after coming into force of the 2006 Rules, the appellant could have been appointed only by the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 Prakhand 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 Prakhand 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 dependant of a deceased employee on fixed pay."

3. By the impugned judgment, a Division Bench of the High Court correctly held that the Appellants have no legal right to seek appointment on compassionate grounds. Compassionate appointments are not a source of recruitment and they are made to provide succour to the family of an employee who dies in harness. In the State of Bihar compassionate appointments are governed by instructions issued by the Government. Some of the Appellants were recommended for appointment to Class III posts on a regular basis by the District Compassionate Committee. However, they were appointed as Prakhand Teachers/Panchayat Shikshaks/ Nagar Shikshaks, etc. on a fixed pay. The Appellants could not have been appointed on a fixed pay and they are entitled for appointment to either on Class III or Class IV posts on regular basis or payment of regular pay scale in the posts of as Prakhand Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. in which they are working at present. Some of the Appellants who were recommended for appointment to Class III posts but were appointed as Prakhand Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. on fixed pay are similarly situated to Vishwanath Pandey and they are entitled to be appointed on a regular pay scale.

4. The other Appellants who were appointed after 01.07.2006 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 and Others v. Rajeev Ran Vijay Kumar*, reported in² held that the dependents of 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 Bihar Panchayat Primary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the 'Rules') which came into force w.e.f. 01.07.2006. Rule 10 of the said Rules provides for employment on compassionate grounds to the dependents of teaching/ non-teaching employees against available vacancies of Panchayat Teachers/Block Teachers/Prakhand Teachers, etc. Such appointments can be made only on a fixed pay by the committee constituted under the Rules. The Appellants who have not been recommended for appointment to Class III or Class IV posts prior to 01.07.2006 are not covered by Vishwanath Pandey's case (supra). On the other hand, they are squarely covered by the judgment of 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 01.07.2006. The Appellants, who were appointed after 01.07.2006, 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.

5. For the foregoing reasons, we direct that the Appellants who were recommended for appointment to Class III or Class IV posts prior to 01.07.2006 will 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 01.07.2006 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.29655 of 2010.

6. The Appeals are disposed of. No costs.

Judgment Referred.

¹(2013) 10 SCC 0545

²(2010) 3 PLIR 0294 (FB)