

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 912 of 2023
In
Civil Writ Jurisdiction Case No.1224 of 2017

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Education Department, Govt. of Bihar, Patna
4. The District Magistrate, Purnea, -cum-Chairman, The District Compassionate Committee, Purnea
5. The District Education Officer, Purnea.
6. The District Programme Officer (Establishment), Purnea
7. The Block Education Officer, Banmankhi, Purnea.

... .. Appellants

Versus

Manoj Kumar, Son of Late Arun Kumar Das, Resident of Village -
Madhuban, Post Chopra Ramnagar, P.S. Inki Nagar, District - Purnea

... .. Respondent

Appearance :

For the Appellants : Mr. Prabhakar Jha, G.P.-27 and Mr. Mukund
Mohan Jha, A.C. to G.P.-27

For the Respondent : Mr. Manish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 23-04-2026 Heard learned counsel for the parties.

2. The present *intra court* appeal has been preferred against the judgment and order dated 01.12.2017 passed by the learned Single Judge in C.W.J.C. No. 1224 of 2017, whereby the writ application filed by the writ petitioner (respondent herein)



was disposed of.

3. The brief facts of the case are that the father of the respondent (writ petitioner) was working as an Assistant Teacher in Primary School, Rampur Tilak (North), Anchal Banmankhi, District Purnea, and died in harness on 16.10.2015. Following his death, the respondent submitted an application dated 31.12.2015 before the Block Education Officer, Banmankhi, Purnea, seeking appointment on compassionate grounds along with requisite documents. Thereafter, the respondent submitted a representation dated 23.08.2016 before the District Magistrate, Purnea, requesting consideration of his claim for compassionate appointment. However, no decision was communicated to the respondent on his claim. Aggrieved thereby, the respondent preferred C.W.J.C. No. 1224 of 2017 for appointment on compassionate grounds, which was disposed with a direction to the appellants to consider the case of respondent for compassionate appointment on Class III or Class IV post.

4. The learned Single Judge, while disposing the said writ petition, *vide* order dated 01.12.2017, observed as follows:

“5. Counsel for the petitioner submits that the petitioner has no choice for appointment on the post of teacher and he is ready to accept any post commensurate with his qualification and availability of the post whether Class III or Class IV and the claim of



the petitioner for compassionate appointment cannot be denied on the ground that the petitioner has not passed TET examination and, as such, he cannot be offered appointment as Panchayat Teacher.

6. Considering the scheme of compassionate appointment, the respondents are under obligation to consider the case of the petitioner for appointment on compassionate ground against Class III or Class IV posts instead of insisting of appointment against the post of Panchayat Teacher and refusing to entertain the case of the petitioner on the ground that petitioner has not passed TET examination, in the compelling circumstance, the Court is constrained to direct the respondent authorities to consider the case of the petitioner for compassionate appointment, as the scheme of compassionate appointment was adopted by the State Government, as a social security measure, to tide over the financial crisis on account of death of the bread earner. The respondents are under obligation to consider the case of the petitioner for appointment on compassionate ground against the available Class III or Class IV post, as the case may be, within a period of 60 days from the date of receipt/production of a copy of this order along with the necessary documents required for consideration for appointment on compassionate ground.”

5. Learned counsel for the appellants submits that, in view of Rule 10 of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006, compassionate appointment of dependents of deceased teachers can be made only on the post of Panchayat Teacher and not on



any Class III or Class IV posts. It is submitted that the said position stands settled by the Full Bench of this Court in *Rajiv Ran Vijay Kumar vs. State of Bihar*, (2010) 3 PLJR 294, as affirmed by the Hon'ble Supreme Court in *Mukesh Kumar vs. State of Bihar* (Civil Appeal Nos. 4776–4777 of 2017), with limited exception for cases recommended prior to 01.07.2006.

6. Learned counsel further submits that the writ petitioner does not possess the requisite qualification, including TET, for appointment as Panchayat Teacher. It is further submitted that *vide* Resolution No. 1128 dated 21.08.2020 the posts of Clerk and Peon have been declared as a dying cadre and redesignated as Vidyalaya Sahayak / Vidyalaya Parichari. It is thus submitted that the direction of the learned Single Judge to consider the petitioner for appointment on Class III or Class IV posts is contrary to the settled legal position and warrants interference.

7. Learned counsel for the respondent submits that the learned Single judge had rightly passed the impugned order after considering the facts of the case and therefore the same requires no interference.

8. The limited issue which arises for consideration is that *whether the direction issued by the learned Single Judge for*



consideration of the writ petitioner's claim for compassionate appointment against available Class III or Class IV posts, in furtherance of the object of the compassionate appointment scheme, warrants interference in intra-court appeal.

9. At the outset, it should be noted that for compliance of the impugned order, the respondent had filed M.J.C. No. 1931 of 2018. Pursuant to the order dated 01.02.2024 passed in M.J.C. No. 1931 of 2018, the order of the learned Single Judge has been complied with, and the respondent (writ petitioner) has been given appointment. It should also be noted that the said appointment has been made without any reservation or exception that the said appointment would be subject to the outcome of the present Letters Patent Appeal, when it was well within the knowledge of the appellants that they had challenged the order of the learned Single Judge.

10. As such, by unconditionally appointing the respondent without specifying that it would be 'subject to the outcome of the appeal', the appellants have effectively waived their right to challenge the impugned order. This creates an 'estoppel by conduct', as the appellant's full and unreserved compliance is legally inconsistent with the pursuit of present Letters Patent Appeal.



11. At this juncture, it is pertinent to take note of the Judgment rendered by the Hon'ble Supreme Court in ***Tata Iron & Steel Co. Ltd. v. Union of India*** reported in **(2001) 2 SCC 41**, relevant paragraph of which is reproduced as under:

“21.Phipson on Evidence (14th Edn.) has the following to state as regards estoppels by conduct.

“Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like, and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed. (Lyon v. Reed [(1844) 13 M&W 285] M&W at p. 309). The doctrine has, however, in modern times, been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows: ‘Where one by his words or conduct wilfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.’ (Pickard v. Sears [(1837) 6 Ad & El 469] A&E at p. 474). And whatever a man's real intention may be, he is deemed to act wilfully ‘if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it’.

Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled (Mercantile Bank v.



Central Bank [1938 AC 287 : (1938) 1 All ER 52 : 107 LJPC 25 : 158 LT 269 (PC)] AC at p. 304 and National Westminster Bank v. Barclays Bank International [1975 QB 654 : (1974) 3 All ER 834 : (1975) 2 WLR 12]). This principles sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently (Moorgate Mercantile Co. Ltd. v. Twitchings [1977 AC 890 : (1976) 2 All ER 641 : (1976) 3 WLR 66 (HL)]). The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped as against the other from asserting differently at another time.”

12. Further, the reliance on the Rule 10 of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 is misplaced, as the said rule does not prohibit any appointment on Class III or Class IV posts. The rule only states that compassionate appointment can be done on posts of Panchayat/Prakhand Teacher. There is no express or implied bar on appointment on other posts. Thus, it is apparent that only prescription is there, and there is no prohibition. The relevant part of the said rules is reproduced as under:

“10 – अनुकम्पा के आधार पर नियोजन:—
शिक्षक/शिक्षकेत्तर कर्मियों के आश्रितों को अनुकम्पा के आधार पर निर्धारित योग्यता के अनुरूप पंचायत शिक्षक/प्रखण्ड शिक्षक के पद पर उपलब्ध रिक्तियों के विरुद्ध नियोजन किया जा सकेगा यदि वे



स्पष्ट रूप से इसके लिए अपनी सहमति देते हैं। नियोजन सरकार के कार्मिक विभाग द्वारा अनुकम्पा के आधार पर नियुक्ति संबंधी निर्धारित अन्य शर्तों के आलोक में उपरोक्त समितियों द्वारा किया जा सकेगा, अप्रशिक्षित आश्रितों को नियोजन के बाद उन्हें अधिकतम 6 वर्षों के अन्दर प्रशिक्षण प्राप्त कर लेना अनिवार्य होगा।”

13. The reliance placed on *Rajiv Ran Vijay Kumar v. State of Bihar* (supra) also seems to be misplaced as facts of the said case are clearly distinguishable from facts of the present case.

14. The appellants have further relied on a resolution dated 21.08.2020 and stated that since the posts of Clerk and Peon have been declared as a dying cadre, the appointment on the said posts cannot be done. However, it should be noted that the father of the respondent died in harness in the year 2015. Further, the appellant claimed compassionate appointment in the year 2015 itself, and the Writ Court has passed the order in the year 2017. The said resolution cannot have a retrospective effect in case of the respondent. As such, relying on a document which was not in existence when the cause of action arose is wholly misplaced.

15. In the present case, it is not in dispute that the father of the writ petitioner died in harness and the petitioner had applied for compassionate appointment within time. The object of the compassionate appointment scheme is specifically



to provide immediate financial assistance to the bereaved family. Thus, the respondent would be entitled for consideration for appointment on compassionate grounds. In ***Umesh Kumar Nagpal v. State of Haryana & Ors. reported in (1994) 4 SCC 138***, the Hon'ble Supreme Court has held that the object of such appointment is to enable the family to tide over sudden financial crisis. The relevant part of the said order reads as follows:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate



employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

16. In view of the discussions made hereinabove, we find no merit in the arguments advanced by the appellants. As



such, this Court is of the view that the order passed by learned Single Judge does not suffer from any infirmity or illegality so as to warrant interference in *intra court* appellate jurisdiction.

17. Accordingly, the present intra court appeal stands dismissed.

18. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

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B.K.S./A.F.R.

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