

G.P-30
27-1-15

IN THE HIGH COURT OF JUDICATURE AT PATNA.

(Civil Writ Jurisdiction)

C.W.J.C.No. 2015.

Sudhakar Kumar ----- Petitioner.

Versus

The State of Bihar & others----- Respondents.

Subject:- Appointment, School service.

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SYNOPSIS

C.W.J.C.No. of 2015.

Sudhakar Kumar ----Petitioner.

Versus

The State of Bihar & Others ----Respondents.

Reliefs: -

For direction to appoint the petitioner on the post of Assistant Teacher in regular pay Scale from the date of his initial appointment, appointed as a Block Teacher in fixed honorarium with all consequential benefits along with arrear of Salary of regular pay scale.

Date and Events.

16-06-2006:- Father of petitioner died in harness.

* Petitioners filed application for compassionate appointment.

District compassionate Appointment Committee considered the application of petitioner but not communicated to him.

11-10-2006:-Annexure-1:-

Vide memo no 799 asked the consent to the petitioner with in one week.

30-11-2006-Annexure-2:-

Vide letter Respondent no-6 issued appointment letter to the petitioner.

08-12-2008-Annexure-3:-

Vide letter no.977 the respondent no-3 sought guide lines to the respondent no-5.

Hence this writ petition.

IN THE HIGH COURT OF JUDICATURE AT PATNA.

(Civil writ Jurisdiction)

C.W.J.C.No. _____ of 2015.

In the matter of an application under
Article 226 of the Constitution of India.

And

In the matter of

Sudhakar Kumar, Son of Late Madhwanand Singh, resident
of Village-Murlichandwa, P.S.-Udakishunganj, District-
Madhepura _____ Petitioner.

Versus

1. The State of Bihar through the Principal Secretary,
Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education,
Government of Bihar, Patna.
3. The Director, Primary Education, Department of
Education, Government of Bihar, Patna.
4. The District Magistrate, Madhepura.
5. The District Programme Officer (Establishment),
Madhepura.
6. The Block Development Officer, Block Udakishunganj,
District-Madhepura. _____ Respondents.

To,

The Hon'ble L. Narasimha Reddy, Chief Justice of the High court Judicature at Patna and his companion Justices of the said Hon'ble Court.

The humble application on behalf of the petitioners above named.

Most Respectfully Showeth:-

1. That by way of filing the instant writ petition the petitioners craves the indulgence of this Hon'ble court for grant of following reliefs:-

- a. Issuance of an order, direction or writ in the nature of mandamus directing the respondents to appoint the petitioners on the post of Assistant Teacher in regular Pay scale with all consequential benefits from the date of his initial appointment as a fixed honorarium.
- b. Issuance of an order, direction or writ in the nature of mandamus directing the respondents to pay the arrears of salary on the basis of regular pay scale from the date of his initial appointment, after converting his service as a Assistant teacher in regular pay scale.
- c. Any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.

2. That the instant writ petition is sought to be maintained other the following main GROUNDS:-

- a. Whether the action of the respondents to grant the compassionate appointment to the heirs of the teaching employee who was getting regular scale of pay and died in harness; on contractual basis on fixed honorarium is highly illegal and teeth of law?
- b. Whether the action of the respondents to give discriminatory treatment of the heirs of the teaching employees of regular scale from the heirs of the employees of other departments who died in harness is highly illegal and arbitrary and tantamounting to violation of Article 14 of the Constitution of India?
- c. Whether the action of the respondents to take decision that is to appoint the petitioner on contractual basis on the post of Block teacher is not without jurisdiction?
- d. Whether the action of the respondents to give different treatment to the petitioner from the others heirs of employee who died in harness is arbitrary, malafidy and malicious?
- e. Whether the action of the respondents, in spite of the regular appointment of the petitioner they engaged the petitioner on contractual basis is highly illegal, arbitrary and highly deprecated by this Hon'ble court?

3. That the petitioners are citizen of India. At present he is working on the post of Block Teacher in Middle school, Murlichandwa, Madhepura.
4. That the father of the petitioner namely Madhwanand Singh died in harness on 16-06-2006 when he was working on the post of Assistant Teacher, Primary School, Khuran in District Madhepura.
5. That it is submitted here that the father of the petitioner, was the sole bread earner of the family, after the sudden death of the father of the petitioner. his family was suffering from crucial hardship, in that situation the petitioner submitted application before the competent authority for appointment on contractual basis.
6. That it is stated here that the application of the petitioner was considered by the District Compassionate Appointment Committee, Madhepura. But the decision of the committee had not been communicated to the petitioner.
7. That vide letter no.799 dated 11-10-2006 the District Program Officer (Establishment), Madhepura , the then District Superintendent of Education, Madhepura communicated to the petitioner that that vide memo no.09 dated 20-09-2006 issued by the District Magistrate, Madhepura (Respondent No.4) the petitioner was recommended for appointment on the post of teacher

on compassionate ground and further asked consent from the petitioner within one week for engagement for the post of panchayat , Block, Nagar Primary teacher.

A true copy of the letter no.799 dated 11-10-2006 is annexed here with and marked as Annexure-1 to this petition.

8. That it is submitted here that after receiving the letter dated 11-10-2006 petitioner was surprised to see that he had been offered on compassionate ground for engagement ~~on contractual~~^{appointment} basis in fixed salary in place of regular appointment. Petitioner submitted an application before the District Magistrate, Madhepura as well as District Program Officer (Establishment), Madhepura to review or consider his matter of appointment and further requested there in to appoint him in regular pay scale. The concerned authorities assured the petitioner to consider his matter of appointment.
9. That on 30-11-2006 the Block Development Officer, Udakishunganj, Madhepura (Respondent No.6) issued the appointment letter of the petitioner whereby petitioner was appointed on the post of Block Teacher in Middle School, Murlichandwa, Block Udakishunganj, District-Madhepura and further directed the petitioner to join within ten days.

A true copy of letter dated 30-11-2006 is annexed here with and marked as Annexure-2 to this application.

10. That it is submitted here that the family of the petitioner was suffering from economic hardship so that the petitioner had no other option except to join on the post of Block Teacher which was offered by the respondents on compassionate ground. Petitioner with protest gave joining on the post of Block Teacher in Middle School, Murlichandwa, Udakishunganj, Madhepura.
11. That it is further submitted here that the post of Panchayat, Prakhand and Nagar Teacher was not under controlling of the State Government. It is foiling the Jurisdiction of Panchayat Samiti as such the District Compassionate Appointment Committee has no Jurisdiction to recommend the petitioner or other heirs of the Teaching Employee to engage/appoint as a Panchayat, Prakhand or Nagar Teacher. In this concerned in another cases the District Program Officer (Establishment), Purina sought guide lines Vide letter no.977 dated 08-12-2008 from Director Primary Education Department Government of Bihar, Patna.

A true copy of letter no.977 dated 08-12-2008 is annexed here with and marked as Annexure-3 to this application.

12. That it is further submitted here that the respondent authorities beyond his jurisdiction recommended the petitioner for appointment on the post of Block Teacher and further directed to engage the petitioner as a Block Teacher on contractual basis on compassionate Ground in place of regular appointment in regular Pay scale.
13. That it is further submitted here that in case of other employees except teaching employee who died in harness the State Government offers regular appointment in regular pay scale to the heirs of those employees. But in case of heirs of teaching employee, who died in harness the Education Department offer them contractual engagement in fixed salary in place of regular appointment which is clearly shows the discrimination of the State Government as well as the Education Department between the heirs of teaching Employee and other employees of the State Government.
14. That the scheme / Policy of the State Government to give different treatment of the heirs of teaching employee and other employees who died in harness is highly illegal arbitrary and violation of Article 14 of the Constitution of India.
15. That it is further submitted here that the decision of the Education Department to offered the contractual engagement to the heirs of regular scale teaching

employees on compassionate ground is bad in eye of law and highly deprecated by this Hon'ble court.

16. That the petitioner have no other alternative and equally efficacious remedy then to move before this Hon'ble court on its extra large writ Jurisdiction.
17. That the petitioner has not moved earlier in this case before this Hon'ble court for grant of relief as prayed in paragraph no-1 of this writ application.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this petition issue Rule NISI calling upon the respondents to show cause as to why the reliefs prayed for in paragraph no-1 of this writ petition be not granted to the petitioner and on return of the Rule passing the cause shown if any and after hearing the parties be further pleased to make the rule absolute in the said terms.

And / Or

Pass such other order or orders as your Lordships may deem fit and proper in the facts and circumstances of this case.

And for this the petitioner shall ever pray.

AFFIDEVIT

I, Sudhakar Kumar, aged about 26 years, son of Late Madhwanand Singh, resident of Village-Murlichandwa, P.S.-Udakishunganj, District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in the instant writ application as such am well acquainted with the facts and circumstances of the case.
2. That I have read and understood the contents of the writ application.
3. That the statements made in paragraphs no- 3 to 6, 8, 10, _____ and 17 are true to my knowledge and the statements made in paragraph no- 7, 9, 11, _____ and 16 are true to my information derived from the records of this case and the rest are by way of submission to this Hon'ble court.
4. That the annexure are photo/ true copies of their respective originals.

सुधाकर कुमार

पत्रांक Annex-1
799 कि

10 A-1

प्रेषक :- श्रीराम सिंह
जिला शिक्षा अधिकारी
मर्चेपुरा ।

सेवा में,

श्री लुद्याल सुवाल

पिता - 2 नं० भाववानन्द सिंह

ग्राम - मुत्तीनंदवा 337 विभाग-
जो

जिला - मर्चेपुरा

मर्चेपुरा दिनांक 11/10/06

विषय :- अनुसूचित के आवार पर नियुक्ति हेतु सहमति पत्र
यस्यार्थ करने के संबंध में।

प्रशंसा

अपुन्य विषय जिला प्रशासकीय मर्चेपुरा के सावांक
09 (मु) 430 दिनांक 20.9.06 के द्वारा अनुसूचित के आवार पर
शिक्षक पद पर नियुक्ति हेतु अनुसूचित प्राप्त हुई है।

शिक्षक नियोजन नियमावली 2006 के चैडिडा-10
में वर्णित है कि अनुसूचित के आवार पर पंचायत शिक्षक पद
पर अनुसूचित के आवार पर नियोजन हेतु सहमति पत्र अपेक्षित है।

अतः आप अपने शिक्षक नियोजन संबंधित
सहमति पत्र पत्र प्राप्त के एक सप्ताह के अन्दर अधीक्षक-
कारी कार्यालय में यथापि हों। साथ ही यह भी अंकित
करें कि किश प्ररकेड या पंचायत में नियोजन किया जाय
चाहते हैं।

विष्वाय भाजन

जिला शिक्षा अधिकारी
मर्चेपुरा

T/C

एनेक्सचर-1

पत्रांक-799 नि०

प्रेषक:- श्री राम सिंह,
जिला शिक्षा अधीक्षक,
मधेपुरा।

सेवा में,

श्री सुधाकर कुमार,
पिता -स्व० माधवानंद सिंह,
ग्राम-मुरलीचंदवा उदा किशनगंज,
पो०-मुरलीचंदवा उदा किशनगंज,
जिला-मधेपुरा।

मधेपुरा,दिनांक-11.10.06

विषय:- अनुकम्पा के आधार पर नियुक्ति हेतु सहमति पत्र समर्पित करने के सम्बन्ध में।
महाशय,

उपर्युक्त विषयक जिला पदाधिकारी मधेपुरा के ज्ञापांक-09 (मु०) रथा० दिनांक- 20.09.06 के द्वारा अनुकम्पा के आधार पर शिक्षक पद पर नियुक्ति हेतु अनुशंसा प्राप्त हुई।

शिक्षक नियोजन नियमावली 2006 के कंडिका-10 में वर्णित है कि अनुकम्पा के आधार पर पंचायत शिक्षक एवं प्रखण्ड शिक्षक तथा नगर प्रारंभिक शिक्षक पद पर नियोजन हेतु सहमति पत्र अपेक्षित है।

अतः आप अपने शिक्षक नियोजन से संबंधित सहमति पत्र का प्राप्ति का एक सप्ताह के अन्दर अधोहस्ताक्षरी कार्यालय में समर्पित करें ! साथ ही यह भी अंकित करें कि किस प्रखण्ड या पंचायत में नियोजन चाहते हैं।

विश्वासभाजन,

ह०/-अस्पष्ट

11.10.06

जिला शिक्षा अधीक्षक, मधेपुरा।

अनुसूची III

पंचायत शिक्षक/प्रखण्ड शिक्षक के नियोजन हेतु नियोजन पत्र

मेवा में,

श्री/सुश्री/श्रीमती सुधाकर कुमार

पिता- स्व. माधवानन्द सिंह

ग्राम-पो. मुरलीचंदवा, थाना- उदा किशुनगंज, जिला- मधेपुरा

प्रमन्नतापूर्वक मंचित करना है कि..... उदा किशुनगंज प्रखण्ड/पंचायत के
अन्तर्गत म० वि० मुरलीचंदवा विद्यालय में अनुकम्पा के आधार पर शिक्षक
(प्रशिक्षित/अप्रशिक्षित) के रूप में नियोजन करने हेतु आपका चयन किया गया है।

आपका नियोजन बिहार पंचायत प्रारम्भिक शिक्षक (नियोजन एवं सेवा शर्तों) नियमावली 2006 के अनुसार होगा। अगर आपको नियोजन स्वीकार्य हो तो कृपया निम्नांकित प्रपत्र में अपनी सहमति अंकित करते हुए इसे अधोहस्ताक्षरी के कार्यालय में सुपुर्द करें तथा दस दिनों के अन्दर उपरोक्त विद्यालय में योगदान दें।

नोट -

(I) नियोजन औपबधिक है।

(II) शैक्षणिक/प्रशैक्षणिक प्रमाण-पत्र

सत्यापन के उपरांत गलत पाये जाने पर आपका नियोजन स्वतः रद्द समझा जाएगा।

तिथि :- 30.11.2006

स्थान :- उदा किशुनगंज

प्राधिकृत पदाधिकारी का हस्ताक्षर,
पुरा नाम, कार्यालय तथा मुहर
Block Development Officer
Uda Kishunganj (.....beparaj)

हस्ताक्षर

पुरा नाम S. Z. Hassan

पता B.D.O. Uda Kishunganj

पत्रांक - 977 /

- प्रेषक— हरिहरनाथ झा
जिला शिक्षा अधीक्षक
पूर्णियाँ।
- सेवा में,
निदेशक (प्रा० शि०), मानव सञ्चालन विकास विभाग,
बिहार, पटना।
- विषय— पूर्णियाँ, दिनांक - 8-12-08
अनुकम्पा के आधार पर नियुक्ति के संबंध में।
- प्रसंग— सरकार के उप सचिव, कार्मिक एवं प्रशासनिक सुधार विभाग बिहार,
पटना के पत्रांक- 6905 दिनांक- 17/10/2008।

महाशय,

उपर्युक्त विषयक प्रसंगाधीन पत्र के संबंध में भवदीय का ध्यान आकृष्ट करते हुए कहना है कि शिक्षकों के आश्रितों को कार्मिक एवं प्रशासनिक सुधार विभाग के निर्देशानुसार अनुकम्पा के आधार पर नियुक्ति हेतु शिक्षक नियोजन नियमावली 2006 में प्रावधान किया गया है, जिसके तहत जिला अनुकम्पा समिति द्वारा अनुशंसित अभ्यर्थियों को शिक्षक पद पर नियत वेतन पर नियुक्ति हेतु उनसे सहमति प्राप्त कर संबंधित नियोजन इकाई को निदेश दिया जाता रहा है जिस आलोक में संबंधित नियोजन इकाई तनका नियोजन करती है।

सरकार के उक्त पत्र में यह उल्लेखित किया गया है कि पंचायत/प्रखंड/नगर शिक्षक के पद सरकार के अधीन पद नहीं होने के कारण ऐसे पदों पर अनुकम्पा के आधार पर नियुक्ति की अनुशंसा अनुकम्पा समिति के क्षेत्राधीन नहीं है। जिला अनुकम्पा समिति को पूर्व के अनुशंसाओं पर पुनः विचार करने का भी निदेश दिया गया है।

उपर्युक्त वर्णित स्थितियों में अनुकम्पा समिति द्वारा अनुशंसित वैसे आवेदकों, जिनका नियोजन शिक्षक पद के तहत नियत वेतन पर होना है के सम्बद्ध में अग्रतर कार्रवाई एवं भविष्य में शिक्षकों के आश्रितों को अनुकम्पा के आधार पर शिक्षक पद पर नियोजन के संबंध में मार्गदर्शन देने की कृपा करना चाहेंगे।

विश्वासामाजन

जिला शिक्षा अधीक्षक
पूर्णियाँ

8/12