

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10129 of 2019**

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Surendra Kumar Son of Surya Prasad Sharma R/o Village-Ward No. 9, P.S.-  
Piro, District-Bhojpur

... .. Petitioner/s

Versus

1. The District Magistrate Bhojpur at Ara
2. The District Programme Officer (Establishment) Bhojpur at Ara
3. The District Education Officer Bhojpur at Ara
4. The Sub Divisional Officer, Piro Bhojpur at Ara
5. The Block Development Officer, Charpokhari Bhojpur at Ara
6. The Block Education Officer cum Member of Block Niyojan Ikai

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Manoj Kumar

For the Respondent/s : Smt. Binita Singh (Sc28)

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL JUDGMENT**

**Date : 18-12-2023**

1. The present writ application has been filed for a direction to the respondents authorities to appoint the petitioner on compassionate ground in place of his father namely, Late Surya Prasad Sharma, who died in harness on 24.11.2003 while working as “Assistant Teacher” in Primary School, Nagri, District- Bhojpur.

2. Learned counsel for the petitioner submits that after death of his father on 24.11.2003 the petitioner submitted an application before the concerned authority for appointment on



compassionate ground on 21.11.2008 i.e. within five years with Matriculation Certificate. On 24.10.2013 the District Education Officer, Bhojpur, Ara sent a letter to the Block Development Officer- cum- Member of the Selection Committee for taking necessary steps relating to appointment of the petitioner along with all relevant documents of the petitioner with family genealogical table. He further submits that at the time of making application the petitioner was having the certificate of Matriculation but the petitioner has not been appointed by the authority by saying that he was not fulfilling the criteria for appointment to the post of Teacher and has rejected the claim of the petitioner vide letter dated 13.10.2014 bearing letter no. 4069.

3. The petitioner had applied for appointment within time but his rejection came after a lapse of six years without any notice to the petitioner and by saying that his qualification was not sufficient for the post of Teacher. The petitioner has been meted out with great injustice. The authorities have not pointed out at any point of time regarding the qualification of the petitioner being not sufficient for appointment on the post of Teacher inasmuch as the authorities are duty bound to point out qualification for the post for which the petitioner applied. The



concerned authority neither appointed the petitioner nor pointed out the requisite qualification for the post and after passing of six years simply rejected the claim of the petitioner for compassionate appointment.

4. On the other hand, learned counsel for the State submits that the petitioner submitted his application for appointment as Panchayat Teacher which was forwarded to the Block Development Officer- cum- Secretary, Block Selection Committee, Charpokhri vide letter no. 5892 dated 24.10.2013. The Block Education Officer, Charpokhri requested the BDO, Charpokhri to forward the application form to the Panchayat Secretary, Gram Panchayat vide letter no. 514 dated 16.12.2013. It has been found that the petitioner does not fulfill the required essential qualification to be appointed as Panchayat Teacher as he was only Matriculate at the time of submission of his application on 21.11.2008.

5. Rule 13 of the Bihar Panchayat Teacher (Selection & Service Condition) Rules, 2012 provide for compassionate appointment if there is vacancy and if the candidate fulfills the condition and Rule 5 provides for minimum qualification for appointment as Basic Grade Primary Teacher which is Intermediate with minimum 45 % marks and two years training



in Primary Education and TET qualified.

6. As per letter no. 574 dated 26.04.2018 the Director, Primary Education, Bihar in the light of NCTE direction said that after 31.03.2015 no one can be appointed even on compassionate ground on the post of Teacher without teachers training of two years. Accordingly, his submission is that the claim of the petitioner has rightly been rejected.

7. I have heard learned counsel for the parties and have perused the material on record. The petitioner had applied for appointment on compassionate ground as Panchayat Teacher but he was not fulfilling the eligibility criteria for appointment and was only Matriculate at the time of submission of his application. The Bihar Panchayat Teacher (Selection & Service Condition) Rules, 2012 provides the qualification for appointment as Basic Grade Primary Teacher which is Intermediate with minimum 45 % marks and two years training in Primary Education and TET qualified. None of these qualifications were possessed by the petitioner. The respondent authority while rejecting the claim of the petitioner for appointment noted that if the petitioner had applied for Class IV post at the relevant time, he would have been considered for appointment on Class IV post.



8. As per law laid down by the Hon'ble Apex Court in catena of decisions relating to appointment on compassionate ground for all the Government vacancies equal opportunity should be provided to all aspirants as mandated under Article 14 and 16 of the Constitution however appointment on compassionate ground offered to a dependant of the deceased employee is an exception. The appointment on compassionate ground is a concession and not a right. The Hon'ble Supreme Court in the case of Director of Treasuries in Karnataka and Another *versus* V. Somyashree reported in (2021) 12 SCC 20 has held that compassionate appointment is an exception to general rule and no aspirant can claim right to compassionate appointment. Appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and / or satisfaction of eligibility criteria as per the policy. The norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment.

9. In yet another judgment reported in Umesh Kumar Nagpal vs State of Haryana and Ors reported in (1994) 4 SCC 138 in paragraph no. 2 the principles for compassionate appointment has been encapsulated in the following terms:-

“ 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.”

10. Taking into consideration the facts of the case, the object and purpose for which appointment on compassionate ground is provided and the law laid down by the Hon’ble Supreme Court as discussed hereinabove, I do not find any



merit in this writ application. Accordingly the same is dismissed.

(Anil Kumar Sinha, J)

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