

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2547 of 2025

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Md. Kazim Halim S/o Late Md. Halim Khan, R/o Ward No. 31, Islam Nagar,
P.O., P.S. and District- Nawada, State - Bihar.

... .. Petitioner/s

Versus

1. State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. District Compassionate Committee, Nawada through the Collector, Nawada.
4. District Magistrate-cum-Collector, Nawada.
5. District Education Officer, Nawada.
6. District Programme Officer, (Establishment), Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amit Narayan, Advocate. Mr. Ketan Dayal, Advocate. Ms. Vandana Rani, Advocate. Mr. Abhigyan Kumar, Advocate.
For the State	:	Mr. Rakesh Ranjan, AC to GP-22.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 17-02-2025

Heard Mr. Amit Narayan, learned counsel along with

Mr. Ketan Dayal, Ms. Vandana Rani and Mr. Abhigyan Kumar,

learned counsel appearing on behalf of the petitioner and Mr.

Rakesh Ranjan, learned AC to GP-22 for the State.

2. The petitioner in paragraph no. 1 of the present

writ petition has sought, inter alia, following relief(s), which is

reproduced hereinafter:-

*“That this writ application is filed for regularization of
service of petitioner on regular pay scale, who was appointed
on compassionate on the post of teacher at fixed pay and has
been working in furtherance thereof. For sake of brevity,*



hereinafter, every respondent is referred to as 'R' with respective number in cause title. By this instant writ application, the petitioner prays for the following reliefs:-

i. For issuance of writ of mandamus directing the respondents to regularize the petitioner on the regular post & pay scale of Teacher, with all consequential benefits, since the date of his initial joining dated 30.12.2010, as Block Teacher, as he was recommended to be appointed on compassionate on the post of 'Teacher' by District Compassionate Committee, Nawada vide Letter No. 513 dated 17.07.2008 under the schemes of Letter (Paripatra) No.- 3/C2-2067/90 Ka-13293 dated 05.10.1991 and Letter No. 3-C2-60108/94-Ka-2822, dated 27.04.1995 both issued by the then Department of Personnel & Administrative Reforms, Government of Bihar, now Department of General Administration, Government of Bihar, Patna.

ii. For issuance of writ of mandamus directing the respondents to follow the Provision 4.C (1) of Bihar Litigation Policy, 2011 (Annexure P/18) as similarly situated persons have already been granted equitable relief by the respondents.

iii. For quashing Memo No. 336 dated 07.03.2019 (Annexure P/16) issued under the signature of Joint Secretary by the Department of Education of the Government of Bihar.

iv. For imposing considerable cost on respondent authorities for not complying with the Bihar Litigation Policy, 2011."

Brief Facts:

3. The father of the petitioner Late Md. Halim Khan died in harness on 12.12.2005 while he was posted as Assistant Teacher at Urdu Primary School, Akbarpur, Nawada. The father of the petitioner was the sole bread earner of his family. On 14.01.2006, the petitioner made his application for appointment on compassionate ground to the concerned Headmaster of the school where his father was posted, who forwarded the application to the office of the District Compassionate Committee, Nawada. Thereafter after making inordinate



unexplained delay of more than two years, the then District Superintendent of Education, Nawada forwarded the application and all documents of the petitioner to the office of District Compassionate Committee, Nawada vide Letter No. 501 dated 15.02.2008. On 24.05.2008, in the meeting of the District Compassionate Committee, Nawada under the Chairmanship of the District Magistrate, the petitioner was recommended for appointment to the post of Teacher by Letter No. 513 dated 17.07.2008 issued under the signature of District Magistrate-cum-Chairman, Committee, Nawada. District Compassionate Committee, Nawada. The District Superintendent of Education, Nawada directed the appointment of petitioner as Teacher on fixed pay as a Contract Teacher by Letter No. 3050 dated 17.09.2008 to the Block Education Prasar Officer, Block & District- Nawada to appoint the petitioner accordingly. In light of the aforesaid direction, again after inordinate delay of more than two years, the Block Education Officer, Block & District Nawada; Authorised Officer, Block & District Nawada and Block Development Officer, Block & District Nawada appointed the petitioner as Block Teacher under Bihar Panchayat Teacher (Appointment & Service Conditions) Rules 2006 in Upgraded Middle School, Bhadauni, Block & District-



Nawada on fixed pay as a Contract Teacher by Letter/Memo No. 870 dated 28.12.2010. Thereafter, the petitioner joined as Block Teacher in Upgraded Middle School, Bhadauni, Nawada on fixed pay as a Contract Teacher, on 30.12.2010.

Submission on behalf of the petitioner

4. Learned counsel appearing on behalf of the petitioner submitted that the father of the petitioner had died in harness on 12.12.2005 and the law in respect of the Rules which will govern the appointment and service condition of the persons who are appointed on compassionate ground would be the same Rule prevailing on the date of the death of the deceased employee. Learned counsel, in this regard, has placed reliance upon the law laid down by the Apex Court in the case of **the Secretary To Govt. Department of Education (PRIMARY) & Ors. Vs. Bheemesh Alias Bheemappa (Civil Appeal No.7758 of 2021)** arising out of **Special Leave Petition (c) No.1564 of 2021**, in which the order was passed on 16.12.2021. In these backgrounds, learned counsel submitted that the petitioner is entitled for being considered to be appointed as per the Rules for compassionate appointment, which was prevalent at the time of death of his father in the year 2005. He further submitted that the case of the similarly situated



teachers were considered by the District Education Officer and the District Programme Officer (Establishment) and the petitioner being given not the same treatment is in violation of Articles 14 and 16 of the Constitution of India.

Submission on behalf of the State

5. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner has been appointed as per Rules, 2006 and the earlier Rules were repealed. So far Rule of compassionate appointment is concerned, as per Rule 10 of Rules, 2006, the case of the petitioner cannot be considered for being appointed on Class III post or Class IV post under the State Government, even though the father of the petitioner was State Government employee, who had died in harness while working as Assistant Teacher in a Urdu Primary School. He further submitted that the petitioner cannot claim equity with those persons whose case were considered by the Establishment (Section of District Education) because the case of the petitioner is entirely different from those persons.

Analysis and Conclusion

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, the fact that it is well settled



that the appointment on compassionate ground is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate ground. The question arises whether the scheme which was in force on the date of death of the deceased employee, i.e., the father of the petitioner, who had died in harness as an Assistant Teacher while he was posted in Urdu Primary school fully financed by the State Government will be applicable to the petitioner. In this regard, learned counsel has placed reliance upon the judgment of the Apex Court rendered in **Bheemesh Alias Bheemappa (supra)**. I find it gainful to reproduce paragraphs no. 17 to 20 which are reproduced hereinafter:

“17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.



18. *If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever; the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.*

19. *The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different*



dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.

20. Coming to the case on hand, the employee died on 8.12.2010 and the amendment to the Rules was proposed by way of a draft notification on 20.06.2012. The final notification was issued on 11.07.2012. Merely because the application for appointment was taken up for consideration after the issue of the amendment, the respondent could not have sought the benefit of the amendment. The Judgment of the Division Bench of the Karnataka High Court in Akkamahadevamma on which the Tribunal as well as the High Court placed reliance, was not applicable to the case of compassionate appointments, as the amendment in Akkamahadevamma came as a result of the existing rule being declared to be ultra vires Articles 14 and 16 of the Constitution.

8. Considering the law laid down by the Apex Court, I find that the authorities have not taken into consideration the date of death of the father of the petitioner and the Rules which was governing at that time. I also take note of the fact that the petitioner has also made out a case on equity. The appropriate authorities in the case of several persons, whose fathers had died in harness, have rectified their action by appointing them on regular pay scale on Class-III/Class-IV post /Teacher, as would appear from Annexure 15 to the writ



petition.

9. I find it proper to direct the District Magistrate, Nawada to first proceed to rectify the action which has been erroneously taken while appointing the petitioner in accordance with Rule 10 of Rules, 2006. The corrective measures are required to be taken as per the Rules governing the compassionate appointment at the time of death of the father of the petitioner in accordance with the law laid down by the Apex Court in case of **Bheemesh Alias Bheemappa (Supra)**.

10. The writ petition is, accordingly, allowed.

11. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2025
Transmission Date	NA

