

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2329 of 2025

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Amar Anand S/o Late Ashok Kumar Yadav @ Ashok Kumar Haldhar, R/o
Village and PO- Pipra, P.S.- Banmankhi, District- Purnia, State- Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The District Compassionate Committee, Araria through its Chairman,
District Araria.
3. The District Magistrate-cum-Collector, District Araria.
4. The Deputy Collector, Establishment, District Araria.
5. The District Education Officer, District Araria.
6. The District Programme Officer (Establishment), District Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Narayan, Advocate Mr. Ketan Dayal, Advocate
For the State	:	Mr. Md. Zeeshan Kalim, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 11-02-2025 Heard Mr. Amit Narayan, learned counsel appearing

on behalf of the petitioner and Mr. Md. Zeeshan Kalim, learned

AC to SC-20 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:

*"i. For issuance of appropriate writ/s
directing the official respondents to consider the
matter of petitioner in the meeting of District
Compassionate Committee, District Araria as per
Letter No. 689 dated 05.10.2024 (Annexure P/9)
issued by District Education Officer, Araria and as
per notifications contained in Letter (Paripatra)
No.- 3/C2-2067/90 Ka-13293 dated 05.10.1991
(Annexure P/3), Letter No. 3-C2-60108/94-Ka-
2822, dated 27.04.1995 (Annexure P/4), Letter No.*



3/Anu-17/2005 Ka- 6905, dated 17.10.2008 (Annexure P/6), Memo No. 7095 dated 15.07.2021 (Annexure P/8) all issued by the Department of General Administration, Government of Bihar & Letter No. 3-R 1-178/03- Ka 2271 dated 02.07.2007 (Annexure P/5) issued by Department of Finance, Government of Bihar, Patna.

ii. For issuance of appropriate writ/s directing the official respondents to consider the aforesaid within a reasonable period.

iii. For any other relief or reliefs to which the petitioner may be deemed entitled, may be granted to him."

3. Learned counsel appearing on behalf of the petitioner submitted that the District Education Officer, Araria, has communicated a letter to the Additional Collector (Establishment), Araria, for taking necessary action in respect of the petitioner, who has already been appointed on compassionate ground as a Block Teacher in Middle School, Sohagmaro, Block- Sikti, District- Araria in accordance with the provision of Rule 10 of Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the "Rules, 2006"), which came into effect from 01.07.2006. Learned counsel further submitted that corrective measures are required to be taken in respect of the petitioner in light of the Judgment passed in S.L.P(C) No. 29655 of 2010, in which, the Apex Court has upheld the judgment passed by a Division Bench of this Court in L.P.A. No. 1326 of 2018. Learned counsel further informs that recently the Apex Court



has rendered law in 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, who died in harness on 17.02.2003, while he was posted as Assistant Teacher in Government Middle School, Sikti, District Araria. Learned counsel further submitted that the case of the similarly situated teachers were considered by the District Education Officer (Establishment) and the petitioner being given not the same treatment is violation of Articles 14 and 16 of the Constitution of India.

4. In this regard, learned counsel has placed reliance upon paragraphs no. 17 to 20 of the judgment passed by the Apex Court in the case of **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."



5. Heard the parties.

6. Considering the law laid down by the Apex Court and the steps taken by the District Education Officer, I direct the Additional Collector (Establishment) to call for the service particulars of the petitioner from the Block Education Officer, as well as, from the District Education Officer and verify the case of the petitioner on his own level and seek recommendation from the District Magistrate, who is the chairman of the District Compassionate Appointment Committee to redress the grievance of the petitioner in accordance with law as laid down by the Apex Court in the case of **Bheemesh Alias Bheemappa (supra)** and in **L.P.A. No. 1326 of 2018**.

7. The above exercise must be completed well within a period of six weeks from the date of production of this order.

8. With aforesaid observation(s)/direction(s), the present writ petition stands disposed of.

(Purnendu Singh, J)

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