

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2016 of 2025

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Raghvendra Thakur S/o Late Ramesh Thakur, Ward No 10, R/o Village and P.O.- Chandiha Purnahiya District Sheohar at Present Posted as Block Teacher at Government Upgraded Middle School, Kushmari, Block- Riga District -Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary General Administration Department, Government of Bihar, Patna.
4. The Director, Primary Education, Education Department, Government of Bihar, Patna.
5. The District Magistrate, Sitamarhi , District-Sitamarhi.
6. The District Education Officer, Sitamarhi , District-Sitamarhi.
7. The Distirt Programme Officer (Establishment) Education, Sitamarhi , District-Sitamarhi.
8. The Member Secretary, Block Teacher Employment Unit-Cum-The Block Development Officer, Riga, District-Sitamarhi.
9. The Block Education Officer, Block-Riga, District-Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalit Kishore, Sr. Adv. Mr. Mrityunjay Kumar, Adv. Mr. Mukesh Kumar Singh, Adv.
For the Respondent/s	:	Mr. Government Advocate (02) Mr. Venkatesh Kirti, JC to GA-2

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 24-11-2025 Heard Mr. Lalit Kishore, learned Senior Advocate with Mr. Mrityunjay Kumar, learned Advocate for the petitioner and Mr. Venkatesh Kirti, learned Advocate for the State.

2. The petitioner is aggrieved with the Office Order contained in Memo No.113 dated 14.01.2025 issued under the



joint signature of the District Education Officer and District Program Officer, Establishment, Sitamarhi, whereby the claim of the petitioner for treating him as duly appointed Teacher on regular pay scale has been rejected.

3. Learned Senior Advocate, while assailing the impugned order, has submitted that earlier the petitioner had moved before this court in CWJC No. 3909 of 2024, wherein this Court, on being found that the case of the petitioner is squarely covered with the judgment dated 08.04.2018 rendered by the learned Division Bench of this Court in LPA No. 1472 of 2015 [**The State of Bihar & Ors. v. Rhituraj Saraubh & Anr.**], disposed off the same in terms of the afore-noted judgment as well as the order passed by a co-ordinate Bench of this Court dated 11.05.2018 in **CWJC No. 8963 of 2018 [Chandra Shekhar Azad and Ors. v. The State of Bihar and Another]**, directing the respondents to grant similar benefits to the petitioner within a period of eight weeks.

4. Notwithstanding the aforesaid fact, when the petitioner approached the concerned authority along with the order of this Court, his claim was turned down by giving a finding that his case is not identical to those of Rhituraj Saraubh and Chandra Shekhar Azad, only on account of the fact that in



the case of the petitioner, his appointment on compassionate ground is made upon the recommendation of the District Compassionate Committee, Sitamarhi, dated 22.01.2007, much after the cut-off date on 01.07.2006; hence, he is not entitled to get the benefit of regular pay scale, as has been extended to Rhituraj Saraubh and Chandra Shekhar Azad, and as such, the case of the petitioner is not covered with the afore-noted case.

5. Adverting to the aforesaid fact, learned Senior Advocate submitted that admittedly the father of the petitioner had died in harness on 28.07.2004, while he was working on the post of Assistant Teacher at Government Middle School, Akhta Block-Suppi, District Sitamarhi. The petitioner possessing all the qualifications and being legal heir of the deceased Government employee submitted all the relevant documents and the certificates. The matter was placed before the District Compassionate Committee, Sitamarhi. The meeting was held on 13.12.2004, under the chairmanship of the Collector, Sitamarhi and vide Memo No. 53 dated 17.12.2004, the name of the petitioner was recommended for appointment to the post of Clerk under regular establishment in the regular pay scale. Notwithstanding the recommendation, afore-noted, the appointment of the petitioner could not have been done on the



plea of non-availability of vacant post.

6. In the meanwhile, Bihar Panchayat Elementary Teacher (Employment and Service Condition) Rules, 2006 (for short 'the Rules, 2006) came into effect, where Rule-10 of the Rules, 2006, provided employment of dependent of teaching and non-teaching employee on compassionate ground only against the sanctioned post of Panchayat/Block Teacher on the fixed honorarium. Thus, the name of the petitioner was again considered by the Committee in the light of the Rules, 2006. A meeting of the District Compassionate Committee, Sitamarhi, was further held on 25.01.2007 and by modifying the earlier recommendation, the name of the petitioner was again recommended for appointment against the post of Block Teacher. The petitioner having found no option accepted the joining of the post of Block Teacher. However, meanwhile, various identically situated persons, being aggrieved by the action of the respondents, approached this court and subsequently the matter was placed before the Full Bench of this Court in **State of Bihar & Ors. v. Rajeev Ran Vijay**, reported in **2010 (3) PLJR 294**, wherein it has been held that that the dependents of deceased Government employees though do not have a legal right to be appointed in Government posts, their



appointment on compassionate ground shall be in accordance with Bihar Panchayat Primary Teacher (Employment and Service Conditions) Rules, 2006. However, the candidates, in whose favor, the recommendation has been made prior to coming into force of the Rules, 2006, in their cases, they should be appointed on regular pay scale. The aforesaid order was put to challenge before the Apex Court, however the same was withdrawn by the State Government.

7. The identical matter has also come up for consideration before the Apex Court in the case of **Mukesh and Anr. v. State of Bihar & Ors. [Civil Appeal Nos. 4776-4777 of 2017 (Arising out of SLP (C) Nos.31158-31159 of 2013]**, where the Court in no uncertain terms held that the appellants whose names were recommended for appointment to Class-III or Class-IV posts prior to 01.07.2006 will either be appointed on Class-III or Class-IV posts on regular basis or will be entitled for continuance as Teachers on a regular pay scale. Similar matter has also come up for consideration before the learned Division Bench of this Court in **Rhitoraj Saraubh** (supra), wherein the Court upheld the aforesaid position of law. Similar is the position in the case of **Chandra Shekhar Azad** (supra). Despite the afore-noted settled legal position, the



rejection of the claim by the impugned order is said to be wholly unsustainable in law, inasmuch as the respondent authorities have failed to consider that in the case of the petitioner, the recommendation was made much prior to coming into force of the Rules, 2006. Hence, in any way view of the matter, the impugned order is fit to be set aside, is the contention of the learned Senior Advocate.

8. On the other hand, Mr. Venkatesh Kirti learned Advocate for the State, while refuting the afore-noted contention has submitted that the factual position cannot be ignored that subsequently, the claim of the petitioner for appointment on compassionate ground was duly considered by the District Compassionate Committee in its meeting dated 28.01.2007 and thereby a recommendation has been made for appointment to the post of Block Teacher and accordingly the petitioner was appointed, which has been challenged belatedly.

9. Having considered the submissions advanced by the learned Senior Advocate for the petitioner and the learned Advocate for the State and after going through the decisions referred to hereinabove, this Court finds that the respondent authorities have completely failed to consider the claim of the petitioner in its right perspective in the light of the settled legal



position, and on account of this indiscretion and non-application of mind, a fresh, unwanted litigation has been created.

10. In the earlier round of litigation, this Court, noticed the admitted facts that the father of the petitioner died in harness on 28.07.2004 while he was posted as an Assistant Teacher in Government Middle School and, on being found eligible, the District Compassionate Committee, Sitamarhi, recommended the name of the petitioner for his appointment on Class III post of Clerk under its proposal no. 29 in its meeting held on 27.12.2005. It is also not in dispute that at the relevant point of time, the Rules, 2006 was not in existence; for the first time, said Rules came into existence w.e.f. 01.07.2006, hence in no circumstances, it could have been applied retrospectively.

11. In terms of the recommendation, the matter was placed before the District Education Officer and, subsequently, to the Regional Deputy Director of Education, Muzaffarpur. However, on account of non-availability of the Class-III post, the appointment of the petitioner could not be made and thus the proposal for appointment was sent back to the District Compassionate Committee for fresh recommendation to a different department.

12. Under this premise, the matter was placed in the



meeting dated 25.01.2007. However, in the meantime, since the Rules, 2006 came into force, the District Compassionate Committee, on being persuaded with Rule 10 of Rules, 2006, recommended the name of the petitioner for appointment to the post of Panchayat Teacher on fixed honorarium.

13. In the case of **Vishwanath Pandey v. State of Bihar and others, reported in (2013) 10 SCC 545**, the District Compassionate Committee had made recommendation in favour of the appellant, Vishwanath Pandey, on 29.11.2005 that the appellant may be appointed on a Class-III post. However, he was not given appointment because of the ban imposed by the State Government. After the ban was removed, the District Compassionate Committee recommended the appellant's appointment as Teacher on compassionate ground, and he was appointed against the vacant post by the District Superintendent of Education, Buxar. The competent authority, however, did not accept the recommendation on the premise that after coming into force of the Rules, 2006 the appellant could have been appointed only by the Panchayat Samiti on the post of Prakhanda Teacher and thus refused to pay the regular pay scale.

14. The appellant approached this Court and succeeded in the writ petition filed by him for appointment as a



teacher under regular pay scale. However, the State, being aggrieved, assailed the order before the Division Bench and the order of the learned Single Judge was reversed. On challenge the matter came up for consideration before the Apex Court. The Court ultimately held that the Division Bench of the High Court was not at all justified in recording a finding that the appellant could have been appointed only as a Teacher by the Panchayat Samiti on fixed pay. The Division Bench unfortunately overlooked the fact that the appellant had been appointed as per the policy of compassionate appointment framed by the State Government, and that policy does not envisage the appointment of the dependent of a deceased employee on fixed pay.

15. Similarly, an identical matter came up for consideration before a Full Bench of this Court in the case of **Rajeev Ran Vijay** (supra). In the said case, the appellants who were appointed after 01.07.2006 were found not entitled to the relief granted to those, whose cases had been recommended for appointment to Class III or Class IV posts prior to that date. The learned Full Bench, after having anxious consideration, held that the dependents of deceased Government employees do not have a legal right to be appointed in Government posts. Their appointments on compassionate grounds shall be in accordance



with the Rules, 2006 which provides for employment on compassionate grounds to the dependents of teaching and non-teaching employees against available vacancies of Panchayat Teachers/ Block Teachers/ Prakhanda Teachers, etc. However, the appellants whose cases had been recommended prior to 01.07.2006 were held to be squarely covered with the judgment rendered in **Vishwanath Pandey's** (supra).

16. Various identical matters have travelled up to the Apex Court in **Civil Appeal Nos. 4776–4777 of 2017** titled as “**Mukesh and another vs. State of Bihar and others**”, wherein, the learned Court, noticing the decisions rendered in **Vishwanath Pandey** as well as in **Rajeev Ran Vijay** (supra), in no uncertain terms held and directed that the appellants who were recommended for appointment to Class III or Class IV posts prior to 01.07.2006 will either be appointed on Class III or Class IV posts on regular basis or will be entitled to continuance as Teachers on regular pay scale.

17. Now coming to the case of **Rhitoraj Sarabh** (supra), the petitioner along with one another applicant, being aggrieved with the action of the respondents in not extending the regular pay scale and not appointing them against sanctioned posts in regular pay scale, had preferred CWJC No. 6282 of



2009. The writ petition came to be disposed of with a direction to the respondents to grant appointment to the petitioners in pursuant to the recommendation made in their favour and strictly in accordance with the Government directives dated 17.10.2008.

18. Despite the order of the learned Single Judge, the same was not given effect to, and after six years of the said order, the State preferred Letters Patent Appeal No. 1472 of 2015. The learned Division Bench, having noticed the facts of the case that not only the deaths of the Government servant(s) had taken place much prior to 01.07.2006 when the Panchayat Nagar Shikshak Service Rules had not come into force, and even the applications for compassionate appointment had been filed by those petitioners much prior thereto, and it was the delayed completion of formalities by the respondents which had resulted in delayed recommendation by the District Compassionate Committee, Patna, on 30.10.2006, while dismissing the appeal, held that once the Education Department itself had acted on the liberty given by the Supreme Court to clarify the issue, this contest is rendered academic.

19. The Court observed that the Education Department issued an advisory bearing Memo No. 38 dated



12.01.2018, which left no room for any confusion that a conscious decision has been taken by the State Government in consideration of cases of the present kind, in which deaths of teaching/non-teaching employees had taken place prior to 01.07.2006 to resolve that in case the District Compassionate Committee makes a recommendation in the case of a Government Teacher who died prior to 01.07.2006 for appointment of his dependent on Class III or Class IV post or for appointment against the post of a Teacher, then the appointment of the dependent has to be made in terms of the recommendation of the District Compassionate Committee against a regular post and on regular pay scale.

20. After going through the above referred decisions, there is no confusion that in any case where the death of a Government employee takes place before coming into force of the Rules, 2006 i.e., 01.07.2006, the Government is bound to accept the recommendation of the District Compassionate Committee for appointment of his dependent against a regular post and regular pay scale under the Government.

21. Reverting back to the facts of this case, it has never been disputed that the father of the petitioner died in harness on 28.07.2004 and the name of the petitioner was



recommended for appointment to a Class III post on 13.12.2004. However, only on account of the fact that the post was not available in the office of the District Education Officer or the Regional Deputy Director of the concerned district, his appointment could not be made for a pretty long time. In the meantime, the Rules, 2006 came into effect. In these circumstances, the petitioner could never be held at fault. It was incumbent upon the concerned authorities to act upon the recommendation of the District Compassionate Appointment Committee and, in case there was no vacancy available at that point of time, he should have been adjusted against any other department. But in no circumstances the claim of the petitioner for compassionate appointment should be dealt with under the provisions of the Rules, 2006, which were not at all applicable in his case.

22. Once the issue is no longer *res integra* and stood settled up to the highest Court of the land, any transgression of the mandate of the Court would be treated as contemptuous and an attempt to overreach the order.

23. The second recommendation made by the District Compassionate Committee in a compelling circumstances in its meeting dated 25.01.2007 was nothing but a consequence of



certain eventualities which were not under the control of the petitioner. Hence, any delay in causing appointment of the petitioner on compassionate ground is solely attributable to the respondents.

24. In the opinion of this Court, the case of the petitioner is squarely covered with the decision rendered in **Rhituraj Saraubh** (supra). Hence, the impugned order as contained in Memo No. 113 dated 14.01.2025, duly signed by the District Programme Officer (Establishment) as well as the District Education Officer, Sitamarhi, is hereby set aside. The respondents are directed to treat the petitioner as duly appointed on regular basis and entitled to regular pay scale and further to extend all the benefits accruing thereupon, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

25. The writ petition stands allowed.

26. There shall be no order as to cost(s).

(Harish Kumar, J)

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