

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4276 of 2025

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Rakesh Ranjan Son of Late Ram Naresh Sharma, Resident of Village-
Manhgupur, P.S. Janipur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Patna.
5. The District Programme Officer (Establishment), Patna.
6. The Block Education Officer, Phulwari Sharif, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Sharma, Advocate
For the State : Mr. Sanjay Kumar, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 18-03-2025

Heard Mr. Shailesh Kumar Sharma, learned counsel
appearing on behalf of the petitioner and Mr. Sanjay Kumar,
learned AC to GP-7 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 an appropriate writ for
Commanding and directing the respondents to pay
the salary of the petitioner which has not been given
after his appointment to the post of regular teacher
in regular pay scale.*

*ii) For issuance of an appropriate for the
relief/reliefs found to be entitled to the petitioner*



under the facts and circumstances of the case."

3. Brief facts of the case are that the petitioner was appointed on the post of teacher in regular pay scale at Primary School, Changer, Block Phulwarisharif, District- Patna, on compassionate ground after the death of his father in harness on 07.07.2005, while he was discharging his duty as Headmaster at Middle School, Karai, Naubatpur in the District of Patna. The said information is recorded in the order dated 17.05.2024 passed in CWJC No. 12443 of 2019, earlier filed on behalf of the petitioner for claiming compassionate appointment. This Court, vide order dated 17.05.2024, had directed the Principal Secretary, Education Department to consider to appoint the petitioner on compassionate ground and to grant the regular pay scale to the petitioner as a consequence of which, petitioner also became entitled to consequential/monetary benefit admissible to him in accordance with law. The law in respect of compassionate appointment is no more *res integra* and reference in this regard can be taken to ***Umesh Kumar Nagpal v. State of Haryana and Others reported in (1994) 4 SCC 138.***

4. The petitioner, in the present writ petition, is aggrieved for non-payment of salary from the date of joining i.e. 31.07.2024 till date.



5. Whether the petitioner is entitled for the relief(s) as prayed for in paragraph no. 1 of the writ petition? I find that no doubt compassionate appointment is an exception to the normal method of recruitment, but subject to strict scrutiny of various parameters. 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 has held that the determinative fixed criteria is the date of death. 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."

6. In view of the law laid down by the Apex Court, the petitioner becomes entitled for his due salary as payable to the Assistant Teachers as his service condition is governed by the rules and scheme, which was applicable on the date of death of the father of the petitioner, who had died in harness on 07.07.2005, while he was discharging his duty as Headmaster at Middle School, Karai, Naubatpur in the District of Patna.

7. The Additional Chief Secretary, Education



Department, Government of Bihar, is directed to ensure that the petitioner is paid his due salary in accordance with scheme applicable on the date of death of the father of the petitioner in view of law laid down in *Bheemesh Alias Bheemappa (Supra)* and in light of the law laid down by the Apex Court in the case of *Amresh Kumar Sinha & Ors. Vs. The State of Bihar & Ors.* reported in *2023 SCC OnLine SC 496* and the recent judgment dated 28.06.2024 of the Hon'ble Full Bench of this Court passed in *CWJC No. 18727 of 2017(Kamlanand Thakur Vs. The State of Bihar)* and other analogous matter.

8. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
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