

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14094 of 2021

Prabhat Kumar S/o Late Raj Kumar Singh Resident of At- Karna, P.O.-
Parbatta, P.S.- Parbatta, District- Khagaria, Present address- At Simrabagan
Hirdayganj, P.O. and P.S. and Distt- Katihar, Office Clerk, Office of the
District Education Officer, Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Secondary Education, Bihar, Patna.
3. The Regional Deputy Director, Purnea.
4. The District Education Officer, Katihar.
5. The District Programme Officer (Establishment), Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh, Advocate.
Mr. Dineshwar Prasad Singh, Advocate.
For the State : Mr. Apurva Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 07-01-2025

Heard Mr. Amaresh Kumar Singh, learned counsel
along with Mr. Dineshwar Prasad Singh, learned counsel
appearing on behalf of the petitioner and Mr. Apurva Kumar,
learned counsel 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) Issuance of an order, direction, writ in the
nature of certiorari quashing that part of the memos no.
747 dated 14.12.2015 and 04 dated 02.01.2016 both issued
by RDDE, Purnea by which the petitioner had been given
appointment in class III post from the date of joining and*



the past services on class iv post has been Counted only for pensionary purpose.

(ii) Issuance of direction in the nature of Mandamus commanding the respondent authorities to treat the petitioner to be in service on a class III post from the date of his initial appointment on class IV post, with due monetary benefits.

(iii) Issuance of a direction in the nature of Mandamus directing the respondent authorities to grant all the consequential benefits to the petitioner after fixing his date of appointment of class III post w.e.f 07.02.2003.

(iv) Issuance of any other appropriate order for which the petitioner would be found entitled under the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner submits that after the death of the father of the petitioner in harness on 30.04.1998, while he was working as Assistant Teacher in Primary School, Dasgram, P.S.-Barari, Katihar, the petitioner had made an application for considering him to be appointed on compassionate ground. The case of the petitioner was considered by the District Compassionate Committee in its meeting held on 21.05.2002 along with other applicants from which one Ms. Dolly Mamta, the daughter of Late Santoshi Mery who was serving at Primary Health Centre, Mahihari was recommended for Class-III post and she was appointed on the said Class-III post. The petitioner's father was Assistant Teacher and in spite of the fact that the petitioner having all the requisite qualification for being appointed on Class-III post in accordance with the governing Rules of Appointment of teachers and Circular of the State Government



issued in this regard, the petitioner was discriminated and he was appointed on Class-IV post w.e.f. 07.02.2003. The petitioner being discriminated filed C.W.J.C. No. 11735 of 2005 which was heard on 10.02.2012. This Court having perused the recommendation dated 21.05.2002 and the order of this Court dated 22.03.2005 passed in C.W.J.C. No. 9982 of 2002 (Quajee Md. Hussain Vs. The State of Bihar & Ors.) observed that while making recommendation dated 21.05.2002, authorities were not justified in recommending Ms. Dolly Mamta for appointment on Class-III post and the petitioner's appointment on Class-IV post when both were qualified for Class-III post. This Court directed the State-respondents to consider the case of the petitioner for granting him Class-III appointment or to take steps for reversion of Ms. Dolly Mamta on Class-IV post after giving notice to her. It is further contended on behalf of the petitioner that the authority concerned took corrective measures and appointed the petitioner on Class-III post on 14.12.2015 (Annexure-3), however, the petitioner has not been given pay protection and has sought interference with the Office Order contained in Memo Nos. 747 dated 14.12.2015 and 04 dated 02.01.2016 both issued by RDDE, Purnea to the extent that the petitioner is entitled for pay protection from the initial date of



his appointment in light of the order dated 03.09.2019 passed in M.J.C. No. 1204 of 2017, arising out of C.W.J.C. No. 9982 of 2002.

4. *Per contra*, Mr. Apurva Kumar, learned counsel appearing on behalf of the State submitted that in compliance of the order dated 03.09.2019 passed in M.J.C. No. 1204 of 2017, a corrective measure has been taken and the petitioner has been posted on Class-III post vide order contained in Memo No. 747 dated 14.12.2015 (Annexure-3 to the writ petition). The office of the District Education Officer, Katihar has posted the petitioner on Class-III post and the petitioner joined the said post on 18.12.2015. The continuity of the services of the petitioner w.e.f. 10.02.2003 to 17.12.2015 has been taken into account for the purposes of pension, treating the initial appointment of the petitioner on Class-III Post of clerk w.e.f. 10.02.2003 on which date he had joined on Class-IV post of peon. Learned counsel submitted that so far as the grievance of the petitioner that petitioner is entitled for salary and allowances admissible to the higher post against which the petitioner has never worked is not in accordance with the service condition and in the eye of law. Learned counsel, however, admitted that since the Additional Chief Secretary has clarified the position of



one Quajee Md. Hussain in C.W.J.C. No. 9982 of 2002 and they have complied with the order dated 22.03.2005 in M.J.C. No. 1204 of 2017 vide order dated 03.09.2019 which was passed in presence of the Additional Chief Secretary, Department of Education who has admitted that the petitioner of the said case was to be given a Class-III post and because he was also on a Class-IV post, the day he joins on the Class-III post offered to him, his services would be notionally counted on a Class-III post till the date he joins actually, from when the actual payment of Class-III post shall be paid. The said admission was subject to the notional entitlement of the petitioner of the said case on Class-III post, all consequential benefits would be counted taking his initial date of appointment on Class-III post from the date when the said employee had joined on Class-IV post including pay protection and pension policy as was existing in the year 2002 which was applicable to the petitioner of the said case. Learned counsel submits that the petitioner is entitled for relief only to the above extent.

5. Heard the parties.

6. Having heard the rival submissions made on behalf of the parties, I find it apt to reproduce the admission of the Additional Chief Secretary, Department of Education while



he had appeared before this Court in a contempt proceeding relating to M.J.C. No. 1204 of 2017 on 03.09.2019 and the order of this Court based on the said admission. Paragraph Nos. 4 to 8 of the order dated 03.09.2019 passed in M.J.C. No. 1204 of 2017 are reproduced hereinafter:

“4. Today, the Additional Chief Secretary, Department of Education, at the very outset, fairly submitted that he has examined the matter and finds that as per the directions of the writ Court, the petitioner was to be given a Class-III post and because he is already on a Class-IV post, the day he joins on the Class-III post offered to him, his services would be notionally counted on a Class-III post till the date he joins actually, from when actual payment of Class-III post shall be paid. However, he submitted that in terms of the notional entitlement of the petitioner on a Class-III post, all consequential benefits would be counted taking his initial date of appointment on Class-III post from the date when he had joined on Class-IV post in the year 2002, including pay protection and the pension policy as was existing in the year 2002. The Court clarifies that actual payment of Class-III post, after pay protection and fixing of his salary, would begin only from the date he joins on a Class-III post and he would not be entitled to any arrears by way of back wages etc. However, for notional purposes his appointment on a Class-III post shall be reckoned from the date on which he had joined on Class-IV post in the year 2002, on the basis of the relevant departmental rules.

5. He submitted that this is what he proposes to do for which he would require some time as the Department of Finance would also be required to give its concurrence in the matter.

6. In view thereof, as prayed for, on behalf of the State, the matter be listed on 25th November, 2019, when affidavit shall be filed showing compliance of the writ Court order in the terms indicated above.

7. In the meantime, the Court would make it clear that the petitioner would be required to join Class-III post offered to him within two weeks from today, failing which his right to such post shall be forfeited.

8. Personal appearance of the Additional Chief Secretary, Department of Education, Bihar stands dispensed with.”



7. From the facts of the present case, I find that the petitioner was recommended by the District Compassionate Committee for being appointed on Class-IV post and he continuously worked on the said post and the said fact has been admitted by the respondent in their counter affidavit and supplementary counter affidavit. The petitioner having been discriminated had preferred C.W.J.C. No. 11735 of 2005 and this Court relying on the judgment passed in C.W.J.C. No. 9982 of 2002 (Quajee Md. Hussain Vs. The State of Bihar & Ors.) has passed, *inter alia*, following order in Paragraph No.4, which is reproduced hereinafter:

“4. Having heard counsel for the parties and having perused the recommendation dated 21.05.2002 and the order of this Court dated 22.03.2005, Annexure-5, I am of the view that while making recommendation dated 21.5.2002 authorities were not justified in recommending Ms. Dolly Mamta for appointment on Class-III post and the petitioner for appointment on Class-IV post when both were qualified for Class-III post. Aforesaid discrimination, however, in my opinion, shall not entitle the petitioner for a writ of mandamus directing the authorities to grant the petitioner compassionate appointment against Class-IV post. Accordingly, I dispose of this writ petition directing the State- respondents to consider the case of the petitioner for granting him Class-III appointment or to take steps for reversion of Ms. Dolly Mamta on Class-IV post after giving notice to her. Appropriate order in this regard be passed by the District Compassionate Committee, as early as possible, in any case in the subsequent meeting which is to be held after receipt/production of a copy of this order before the Chairman of the District Compassionate Committee, Katihar.”

8. The petitioner was appointed on Class-III post



on 14.12.2015 vide Memo No. 747 dated 14.12.2015 and in view of the position clarified by the Additional Chief Secretary, Department of Education in Para No. 4 of the order dated 03.09.2019 passed in M.J.C. No. 1204 of 2017, I find that similar treatment is required to be given to the petitioner in light of the admitted position that the petitioner was appointed on Class-III post in compliance of the order dated 10.02.2012 passed in CWJC No. 11735 of 2005 by this Court and also in view of the fact that one Ms. Dolly Mamta who was appointed on Class-III post and the respondents have complied with the order by not reverting Ms. Dolly Mamta on Class-IV post. I find that the petitioner has made out a clear case of discrimination who is required to be given equal treatment as in regard to Ms. Dolly Mamta so far as the benefits which have been claimed by the petitioner in the present writ petition by giving actual payment of Class-III post, after pay protection and fixing of his salary, notionally for the Class-III post, which will reckon from the date on which he had joined on Class-IV post on 07.02.2003 on the basis of the relevant departmental rules.

9. The order contained in Memo Nos. 747 dated 14.12.2015 and 04 dated 02.01.2016 both issued by RDDE, Purnea are modified to the above extent.



10. The writ petition is allowed.

11. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.01.2025
Transmission Date	N.A.

