

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19300 of 2021

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Sanjeev Kumar Divakar Son of Late Ashok Kumar Resident of Village-
Teghra, P.S.-Teghra, District-Begusari.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The District Education Officer, Begusarai.
4. The District Programme Officer (Establishment), Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amaresh Kumar Singh, Advocate Mr. Onkar Kumar, Advocate Mr. Dineshwar Prasad Singh, Advocate
For the Respondent/s	:	Ms. Meera Singh, AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 30-01-2025

Heard Mr. Amaresh Kumar Singh along with Mr.
Onkar Kumar and Mr. Dineshwar Prasad Singh, learned
counsels appearing on behalf of the petitioner and Ms. Meera
Singh, learned AC to GP 23 for the State.

2. Petitioner has *inter alia* prayed for following
reliefs in the paragraphs No.1 of the writ petition:-

*“That this is application for issuance of
appropriate writ/order/direction for grant of Regular
scale of teacher by modifying the appointment of
petitioner from the post of Nagar Prambhik Teacher on
the basis of honorarium to the regular teacher as the
father of petitioner died in year 2003 when the
provision for appointment on compassionate ground
was on regular post with consequential benefit.”*



3. At the outset, learned counsel appearing on behalf of the petitioner submitted that as the entire globe was suffering from Covid-19 pandemic and advisories issued from time to time, petitioner had given undertaking that when the Hon'ble Court will start functioning smoothly after the normalcy, the required court fees will be furnished. Today in the Court, learned counsel undertakes to file the hard copy of the writ petition along with the court fees forthwith in the Registry.

4. Learned counsel proceeded to submit that father of the petitioner, who was a clerk in High School died in harness on 25.08.2003 while CJWC No.12797 of 2000, which was filed by the father of the petitioner, was pending. An interlocutory application was filed for substitution of the legal heirs of the deceased employee, which was allowed and the petitioner and his mother were substituted along with his brother. However, the writ petition was dismissed *vide* order dated 11.08.2006 and the mother of the petitioner including the petitioner preferred LPA No.627 of 2006, which was allowed on 20.07.2011. Thereafter, the matter was considered at the level of the State Government and the Director, Secondary Education, Government of Bihar found under the facts and circumstances



of the case to pass an order of reinstatement of the father of the petitioner late Ashok Kumar with all consequential benefits. The reliefs as prayed on behalf of the substituted petitioners were allowed, holding the mother of the petitioner was entitled for family pension, as also the petitioner was entitled for being appointed on compassionate ground. It is admitted that father of the petitioner had died on 25.08.2003, however, the appointment of the petitioner was made as per the provision of Bihar Panchyat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the "Rules, 2006") which came into effect from 01.07.2006. Certain clarifications were sought again by the District Programme Officer (Establishment), Begusarai and it was clarified that the appointment of the petitioner can be made in accordance with Rule 10 of the Rules, 2006. The petitioner has taken a ground in the present writ petition that the father of the petitioner had died on 25.08.2003 and the Rules, 2006 came into effect from 01.07.2006 but the petitioner till date is getting only honorarium in place of pay scale, though his appointment has been made on permanent basis. Learned counsel submitted that 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 relevant which was prevailing on the date of death of the deceased employee. In the present case, the father of the petitioner had died on 25.08.2003 and the Rules which was prevailing at the said time, provided for appointment on Class III or Class IV post. Petitioner's case could have been considered for being appointed either on class III or class IV post and not in accordance with the Rules, 2006 on the post of Panchayat teacher. 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 the prevalent at the time of death of his father in the year 2003. He 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.



5. Learned counsel further proceeded to submit that the writ petition was filed during Covid 19 during which period the entire world was suffering and the matter got delayed because of the said pandemic. There is no laches on the part of the petitioner in pursuing his grievance as prayed for in the present writ petition.

6. *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 Clerk in a School. He further submitted that 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.

7. Having considered the rival submissions made on behalf of the parties, as well as, the fact the it is well settled that the 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 ground. The question arises whether the scheme which was in force on the date of death of deceased employee, i.e., the father of the petitioner, who had died in harness as a class III employee, while he was posted as Clerk in a 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 father of the petitioner had died on 28.05.2003 after that the petitioner was substituted and petitioner's claim was pending before this Court which was finally decided in LPA No.627 of 2006 and the authorities have not taken into consideration the date of death of the father of the petitioner and the Rules which was governing at the same 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 Class III and Class



IV post, as would appear from Annexure 7 to the writ petition. I find it proper to direct the Director, Secondary Education, Government of Bihar 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)**.

9. The writ petition is, accordingly, allowed.

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

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.02.2025
Transmission Date	NA

