

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13388 of 2025

1. Anil Kumar Son of Late Shivendra Prasad Singh, Resident of Village Husena Raghva, Post-Balukaram Husaina Ragho P.S. Vaishali, District - Vaishali.
2. Afroj Alam @ Md. Afroz Alam Son of Late Muhammad Daud, Resident of Village Mahpur, Bishunpur, Khetal, P.S. Bochaha, District Muzaffarpur.
3. Mohammad Javed Son of Late Muhammad Ayub, Resident of Village Chak Ajmeri, ward no. 16, P.S. Chandanpatti, District Muzaffarpur.
4. Ragib Reza, Son of Late Ahmed Reza, Resident of Village Rajapur Dihuli, P.S. Sakara District Muzaffarpur.
5. Sanjay Kumar Diwakar Son of Ramashish Bhakta, Resident of Rupauli, P.S. Rupauli, District -Muzaffarpur.
6. Lalan Kumar Singh. Son of Late Ramsagar Singh, Resident of Marawapakar, Majhwapakar, P.S. Muzaffarpur, District - Muzaffarpur.
7. Sunil Kumar Pathak Son of Late Joginder Pathak, resident of Village Dharphari, P.S. - Dharphari, District - Muzaffarpur.
8. Santosh Kumar Son of Late Thakur Ram Krishna Sharma, Resident of Village Siho, P.S.-Siho, District Muzaffarpur.
9. Abdul Qadir Siddiqui Son of Late Abdul Rub Siddiqui, Resident of Village Sadpura, P.S. Kaji Mohammadpur, District - Muzaffarpur.
10. Anil Kumar Son of Late Nageshwar Singh, Resident of Village and P.O. - Sirsiya Jagdish, P.S. - Kathaiya, District - -Muzaffarpur.
11. Raj Kishore Kumar, Son of Late Sita Ram Prasad Singh, Resident of Village Sahpurpatti, P.S. Sahpurputti, District Muzaffarpur.
12. Raj Kishore Singh Son of Late Surendra Prasad Singh, Resident of Village Pachra Gote, P.O. Hirma, P.S. Tariyani District Sheohar.
13. Manoj Kumar Choudhary, Son of Late Raj Kumar Choudhary, Resident of Village Chhajan Hari Rai Tola, P.O. Chhajan Har Shankar, P.S. Kurhani, District Muzaffarpur.
14. Manish Ranjan, Son of Late Kapildeo Damodar Prasad Singh, Resident of Village Mohammadpur PO.Mohammadpur Badai, P.S. Muraul, District -Muzaffarpur.
15. Shambhu Kumar, Son of Late Madhusudan Shahi, Resident of Village Rampur North, P.O. -Korlahiya, P.S. Hathauri, District - Muzaffarpur.
16. Basant Kumar, Son of Late Harendra Prasad Singh, Resident of Village Bishunpur Jai Narayan, P.O. - Khutahi Bhataulia, P.S. Paroo, District Muzaffarpur.
17. Priti Priya Wife of Binit Kumar Singh and daughter of Late Kumari Kishori Shahi, Resident of Mohalla Sri Nagar, Basti, Gobarsahi Chok Lane No.8, Bhagwanpur, P.S. - Muzaffarpur Sadar, District - Muzaffarpur.
18. Mirtunjay Mani Son of Late Sanjay Kumar, Resident of Village Borwara, P.O. - Bhatauna, P.S. Karja, District - Muzaffarpur.



19. Kundan Kumar Kanhaiya, Son of Late Bansidhar Sinha, Resident of Village Saraiya, P.S. Saraiya, District - Muzaffarpur.
20. Santosh Kumar, Son of Late Baldev Bhagat, Resident of Amrakh, Amarakh, P.S. Muzaffarpur, District - Muzaffarpur.
21. Sanjeev Kumar Jha Son of Late Kalanath Jha, Resident of Village Gram Samar, Ward no. 7, Madsudanpur, Dumri. Mahisautha, P.S. -Nanpur, District - Sitamarhi
22. Zaki Ashraf @ Md. Zaki Ashraf Son of Late Md. Zahirul Islam, Resident of Village Benibad Ward No. 15, NH-57, Near Benibad School, Post Benibad, P.S. Gaighat, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna.
4. The Joint Secretary, Education Department, Government of Bihar, Patna
5. The District Magistrate, Muzaffarpur
6. The Special Secretary, Education Department, Government of Bihar, Patna.
7. The District - Education Officer, Muzaffarpur
8. The District Programme Officer (est.), Muzaffarpur
9. The Block Development Officer, Muzaffarpur sadar, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Madhurendra Kumar, Advocate
For the Respondent/s : Standing Counsel -18

CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

2 25-08-2025 Heard learned counsel for the petitioners and
learned counsel for the State.

2. The petitioners have filed the instant writ
application for the following reliefs:-

*(i) To pay the arrear of salary since the date of
initial appointment on the post of Panchayat/Block/
Nagar Teacher treating the appointment of the*



petitioners as Regular Teacher at Pay Scale-9300-34800, Grade Pay-4200/-.

(ii) To direct the respondent authority to pay the differential salary since the date of initial appointment on compassionate ground in accordance with pay scale 9300-34800, Grade Pay-4200/-, subsequently provided the petitioners by the order issued by the District Education Officer, Muzaffarpur.

(iii) For any relief to which the petitioners are found entitled to in accordance with law.

3. It is the case of the petitioners that petitioners are at present working as Assistant Teacher in different Government School, in the District of Muzaffarpur and are being paid salary in the pay scale applicable for the said post. The petitioners were so appointed on compassionate ground after 01.07.2006 on different dates as per the death of deceased employee, who were also Government servants being Assistant Teachers in different Government schools of the said district having died in harness prior to 01.07.2006, details of which are mentioned hereunder:-

Sl. No.	Petitioner's Name	Name of Father/Mother of the petitioner	Date of death of deceased employee
1	Anil Kumar	Late Shivendra Prasad Singh	30.11.2002
2	Muhammad Afroj Alam	Late Muhammad Daud	12.06.2004



3	Muhammad Javed	Late Ayub Ansari	29.05.2005
4	Ragib Reza	Late Ahmed Reza	21.03.2005
5	Sanjay Kumar Diwakar	Late Ramashish Bhakta	11.06.2006
6	Lalan Kumar Pathak	Late Ramsagar Singh	28.06.2006
7	Sunil Kumar Pathak	Late Joginder Pathak	16.10.2005
8	Santosh Kumar	Late Baldev Bhagat	01.09.2004
9	Abdul Qadir Siddiqui	Late Abdul Rub Siddiqui	06.06.1999
10	Anil Kumar	Late Nageshwar Singh	12.12.2005
11	Raj Kishore Kumar	Late Sitaram Prasad Singh	15.04.2004
12	Raj Kishore Singh	Late Surendra Prasad Singh	13.03.2005
13	Manoj Kumar Chaudhary	Late Raj Kumar Chaudhary	04.05.2005
14	Manish Ranjan	Late Sunaina Sinha	19.06.2006
15	Shambhu Kumar	Late Madhusudan Sahi	06.04.2005
16	Basant Kumar	Late Harendra Prasad Singh	15.06.2006
17	Prity Priya	Late Kishori Sahi	04.05.2004
18	Mrityunjay Mani	Late Sanjay Kumar	06.02.2003
19	Kundan Kumar Kanhaiya	Late Bansidhar Sinha	28.06.2005
20	Santosh Kumar	Late Thakur Ram Krishna Sharma	21.01.2006



21	Sanjeev Kumar Jha	Late Kamal Nath Jha	30.01.2006
22	Zaki Ashraf	Late Md. Zahirul Islam	20.12.2005(as claimed)

4. Petitioners in the present case are aggrieved in the present case for non-payment of differential salary since the date of their initial joining. In support thereof, the requisite documents have been appended as Annexure-6 series.

5. The learned counsel for the petitioners submits that the issue at hand has been settled by the Hon'ble Apex Court. He points out that the Apex Court in the case of the ***Secretary to Govt. Department of Education (PRIMARY) & Ors. Vs. Bheemesh Alias Bheemapa (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 petitioners become entitled for their due salary as payable to the Assistant Teachers as their service condition is governed by the rules and schemes, which was applicable on the date of death of the father/ mother of the petitioners, who had died in harness on different dates, as mentioned above, while they were discharging their duties as Assistant Teacher in different schools of the District-Muzaffarpur.

7. The Director Primary School, Education Department, Government of Bihar, is directed to take a final decision to ensure that the petitioners are paid their due salary in accordance with scheme applicable on the date of death of the father/mother of the petitioners in view of the law laid down in ***Bheemesh Alia 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 within a period of two months from the date of receipt/production of a copy of this



order.

8. Accordingly, the instant writ application stands disposed of.

(Ajit Kumar, J)

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