

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.615 of 2022

In

Civil Writ Jurisdiction Case No.7258 of 2018

Manoj Kumar Tiwari Son of Kamta Prasad Tivari resident of Village Bheldi, Anchal Parsa, District Saran at Chapra presently posted as Prakhhand Teacher in Rajkiya Middle School Kolhua Daraunda Under Block Daraunda, District-Siwan.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Director, Primary Education, Government of Bihar, New Secretariat Building, Patna.
3. The Secretary, Primary Education, Government of Bihar, New Secretariat, Building, Patna.
4. The District Magistrate, Siwan, District -Siwan.
5. The District Education Officer, Siwan, District- Siwan.
6. The District Programme Officer (Establishment), Siwan, District- Siwan.
7. The Block Development Officer, Daraunda Block, District- Siwan.
8. The Block Education Officer, Daraunda Block, District- Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Kumar Singh, Advocate
For the Respondent/s : Mr. Ram Vinay Prasad Singh, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-04-2025

The appellant has assailed the order of the learned Single Judge dated 22.08.2022 passed in CWJC No. 7258 of 2018.

2. Appellant's father died on 11.04.2005 while he was serving as a Teacher in the Education Department, State of Bihar whereas appellant had submitted application for



compassionate appointment in the year 2005 itself. His name is stated to have been recommended for compassionate appointment by the Compassionate Appointment Committee on 31.12.2005, thereafter he was appointed on 05.06.2007 under the Bihar Panchayat Elementary Teachers (Employment and Service Conditions), Rules-2006 insofar as invoking Rule-10. It is necessary to reproduce Rule-10 and it reads as under:-

“10. Employment on compassionate basis.

The dependants of teachers/employee other than teachers may be employed on compassionate basis against the available vacant posts of Panchyat teacher/Block teacher according to prescribed qualification. Employment on compassionate basis will be done by the above mentioned committee in the light of norms and conditions prescribed by Personnel and Administrative reforms Department regarding appointment on compassionate basis untrained dependants shall have been trained within 6 years of their employment.”

3. The aforementioned rule is applicable to such of those teachers/employees who were working in Panchayat Department and these Rules are not applicable to State Departments. On the other hand, appellant's father was working in Education Department as a teacher on a permanent post, whereas Bihar Panchayat Elementary Teachers (Employment and Service Conditions), Rules-2006 are with certain qualification and conditions. When the appellant's father was working in Education Department there was no point in



considering the appellant's name for compassionate appointment in the Panchayat Department. In other words, in terms of relevant Compassionate Appointment Rules or Regulations issued by General Administration Department (GAD) was required to be adhered to insofar as providing compassionate appointment to Group-C or Group-D post (Class-III and Class-IV post). From inception, they have committed error, resultantly the appellant has not been extended the benefit of pay scale attached to a particular post. On the other hand, he has been extended consolidated pay insofar as discharging the duties of a Block Teacher post. In other words, nature of compassionate appointment is against a post which carries consolidated pay. The appellant should have been extended post which carries a particular pay scale and in the government service. These material information have not been apprised by the respective officers-respondents and so also the learned Single Judge.

4. Taking note of these facts and circumstances, the appellant has made out a case that he is entitled to particular pay scale for the Block Teacher post and it does not carry any pay scale, in that event any Group-C category post in Bihar Panchayat. The same shall be extended from the date of his



appointment. Question of delay may not arise in view of the Hon'ble Supreme Court decision in the case of ***M.R. Gupta vs. Union of India*** reported in ***(1995) 5 SCC 628***. However, appellant is not entitled to monetary benefits, three years prior to the date of filing of CWJC No. 7258 of 2018. In other words, appellant is entitled to have the benefit of pay scale and monetary benefits from the year 2015 with reference to the date of filing of writ petition. This principle has been laid down in the aforementioned Supreme Court decision in ***M.R. Gupta (cited supra)***. The concerned authority is hereby directed to undertake the above exercise and assign a particular pay scale under Group-C/Class-III post from the date of his appointment and proceed to grant annual increment from time to time, further ACP benefit, if any. The above exercise shall be undertaken and benefits shall be extended to the appellant within a period of six months from the date of receipt/production of a copy of this order. It is made clear that appellant is not entitled to arrears/difference of salary attached to a Group-C/Class-III post from the date of his appointment till three years prior to filing of CWJC No. 7258 of 2018.

5. To the above extent LPA is allowed while quashing the order of the learned Single Judge 22.08.2022 passed in



CWJC No. 7258 of 2018.

6. Pending I.A., if any, stands disposed of.

7. At this stage, learned State counsel Mr. Ram Vinay Prasad Singh, AC to GA-12 submitted that already a decision has been taken that appellant is not entitled to particular pay scale. The same cannot be appreciated for the reason that the appointing authority to the appellant and other officers have ignored the relevant law insofar as compassionate appointment to a regular post. There is no policy decision of compassionate appointment of a regular holder of the post in a particular department to appoint on compassionate ground on contractual basis or on consolidated pay. In fact, cost is warranted in the present case having regard to the fact that the appellant has approached this Court only in the year-2015, therefore, it is not a case for imposition of cost.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2025
Transmission Date	NA

