

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1316 of 2017

Abhishek Kumar S/o Late Rajnandan Prasad, Resident of village -
Mamurabad, P.O. Mirchaiganj, P.S. Nalanda, District - Nalanda

... .. Petitioner/s

Versus

1. The Bihar Police Building Construction Corporation, Kautilya Nagar, Patna through Managing Director.
2. Managing Director, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna.
3. Secretary, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Prasoon Sinha, Sr. Advocate Mr. Prabhat Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 05-01-2026

Heard learned counsel for the parties.

2. The petitioner has filed the instant application for
the following relief:

*“1. That the present petition is
being preferred for issuance of an
appropriate writ/writs order/orders
direction/directions to concern authorities
for consideration and his appointment
against cadre/post in class-3 instead to
class-4 by virtue of death to his father Late
Rajnandan Prasad as an employee of
corporation in light of eligibility suitability
and qualification on basis of facts and for*



other necessary relief/reliefs to the basis of facts and circumstances of case enumerated and stated hereinafter.”

3. The case of the petitioner in brief is that his father who was working in the Bihar Police Building Construction Corporation died in harness on 4.9.1997.

4. The petitioner filed his application for appointment on compassionate ground, however the financial condition of the Corporation being very poor, no appointments were being made. It was only in the year 2014 that on the financial condition of the Corporation improving that a committee headed by the Chief Engineer of the Corporation was constituted to review the applications pending for appointment on compassionate ground.

5. By office order no. 365 of 2015 dated 2.12.2015, 17 applicants including the petitioner herein were appointed on compassionate ground as a Class-IV employee on the post of orderly/peon.

6. The petitioner joined his duties and started discharging the same.

7. It is subsequent to his having joined duties in the above capacity on the Class-IV post that the petitioner has now moved this Court for a direction to the respondents to consider



his appointment against a Class-III post as the petitioner is a Ph.D. It is submitted by learned counsel appearing for the petitioner that the petitioner holding the Ph.D. degree on the date of his application for compassionate appointment, in view of the officer order no. 109 of 2015 dated 30.1.2015, the petitioner should have been appointed on Class-III post instead of Class-IV.

8. In response, it is submitted by learned counsel appearing for the respondents that the employee i.e. the father of the petitioner having died in harness on 4.9.1997, the application of the petitioner came to be filed only in the year 2009 and because of the poor financial condition of the Corporation he was appointed in the year 2015. It is further submitted that the petitioner has no right to be appointed on a particular post or class of post and he also has no right for appointment on a higher post.

9. Heard learned counsel for the parties and perused the material on record.

10. The facts not in dispute are that the father of the petitioner who was working as an employee in the Corporation having died on 4.9.1997, the petitioner filed an application for appointment in the year 2009. As a result of the poor financial



condition of the Corporation, no appointments on compassionate ground was made. On the condition of the Corporation improving, a committee constituted under the chairmanship of the Chief Engineer considered the applications which were pending for appointment on compassionate ground and proceeded to appoint 17 persons including the petitioner herein on 2.12.2015 on a Class-IV post of orderly/peon.

11. It is not in dispute that the petitioner joined the said post and started working thereon and came to file the instant writ application in the year 2017 for a direction to the respondents to consider his appointment against Class-III post instead of Class-IV.

12. The Hon'ble Supreme Court in the case of ***Director of Town Panchayat and Ors. vs. M. Jayabal and Anr.***; 2025 SCC OnLine SC 2794 held as follows:

“CLAIM FOR HIGHER POST

8. *It is not in dispute that after the death of the employees in service, the dependent family members were offered appointment to a post for which an application was made by them. They had joined on that post without raising any objection. Meaning thereby, the financial crisis of the family was over as one of the dependents of the deceased was offered*



appointment on compassionate basis in terms of the policy existing at the time of consideration of their application.

8.1. The next issue which requires consideration by this Court is whether the dependent family member of a deceased employee, after being appointed on a post on compassionate basis, can later on seek indulgence of the employer to appoint him on a higher post.

9. The law on the issue is well-settled. The issue as to whether a second option can be exercised by the dependent family member of the deceased employee, once option for compassionate appointment has already been exercised and the dependent family member of the deceased joined on the post to which appointment was given, was considered by this Court in State of Rajasthan v. Umrao Singh¹⁰. In this case, the deceased was working as Sub-Inspector, CID. On account of his death during service, application for appointment on compassionate basis was made. The dependant was offered appointment on the post of L.D.C. The same was accepted and the incumbent joined on the post. Later, he requested for consideration of his case for appointment on the post of Sub-Inspector, being eligible for the same. This Court



negated the claim holding that once right for consideration for appointment on compassionate post was consummated, any further or second consideration for a higher post on the ground of compassion would not arise. The relevant paragraph 8 is extracted below:

“8. Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of “endless compassion”. Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules



which has no application to the facts of this case.”

(emphasis supplied)

10. In view of the law laid down by this Court, it stands clarified that the once the right of an applicant to be considered for appointment on compassionate grounds has been consummated, no further consideration is warranted. Once dependent of a deceased employee is offered employment on compassionate basis, his right stood exercised. Thereafter, no question arises for seeking appointment on a higher post. Otherwise, it would be a case of ‘endless compassion’.

*WHETHER THE DEPENDANT
OF A DECEASED EMPLOYEE CAN SEEK
EMPLOYMENT ON COMPASSIONATE
BASIS ON A HIGHER POST ?*

11. This Court has also opined on the issue whether a dependent family member of a deceased employee can seek compassionate appointment on a post higher than the post which the deceased was holding, merely on the ground that he fulfils the criteria of such higher post. The opinion expressed is that the same will run contrary to the very object of grant of compassionate appointment, which is provided to enable the



family of the deceased employee to tide over sudden financial crisis. Employment on compassionate basis is provided only on account of humanitarian consideration.

.....

12. Keeping in view the core objective behind appointment on compassionate basis, as has been discussed in a catena of judgments of this Court, it is well settled that compassionate appointment is a relief against immense financial hardship caused by the sudden and unforeseen loss of the earning member of a family. In such event, when a dependant family member of the deceased employee is provided appointment on compassionate basis, it is done in order to ensure that the family members are not subjected to impoverishment. Therefore, such appointment which is arising out of exceptional circumstances, cannot be used as a ladder to climb up in seniority by claiming a higher post merely on the basis that he/she is eligible for such post.”

13. The Hon’ble Supreme Court in the case of ***State of U.P. and Ors. vs. Premlata; (2022) 1 SCC 30*** held as follows:

“10. Thus, as per the law laid down by this Court in the aforesaid



decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependants of a deceased dying-in-harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

10.1. Applying the law laid down by this Court in the aforesaid decisions and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the submissions on behalf of the respondent and the interpretation by the Division Bench of the High Court on Rule 5 of the 1974 Rules, is required to be considered.

10.2. The Division Bench of the



High Court in the present case has interpreted Rule 5 of the 1974 Rules and has held that “suitable post” under Rule 5 of the 1974 Rules would mean any post suitable to the qualification of the candidate irrespective of the post held by the deceased employee. The aforesaid interpretation by the Division Bench of the High Court is just opposite to the object and purpose of granting the appointment on compassionate ground. “Suitable post” has to be considered, considering status/post held by the deceased employee and the educational qualification/eligibility criteria is required to be considered, considering the post held by the deceased employee and the suitability of the post is required to be considered vis-à-vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate ground and the regular appointment. In a given case, it may happen that the dependant of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of Class II or Class I post and the deceased employee was working on the post of Class/Grade IV and/or lower than the post applied, in that case the dependant/applicant cannot seek



the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the breadearner. As observed above, appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided and family would be able to make both ends meet.

10.3. In the present case, as observed hereinabove, initially the respondent applied for appointment on compassionate ground on the post of Assistant Operator in Police Radio Department. The same was not accepted by the Department and rightly not accepted on the ground that she was not fulfilling requisite eligibility criteria for the post of Assistant Operator. Thereafter the respondent again applied for appointment on the compassionate ground on the post of Workshop Hand. The case of the respondent



was considered, however, she failed in the physical test examination, which was required as per the relevant recruitment rules of 2005. Therefore, thereafter she was offered appointment on compassionate ground as Messenger which was equivalent to the post held by the deceased employee. Therefore, the appellants were justified in offering the appointment to the respondent on the post of Messenger. However, the respondent refused the appointment on such post.

11. In view of the above and for the reasons stated above, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the 1974 Rules and in observing and holding that the “suitable post” under Rule 5 of the Dying-In-Harness Rules, 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to be offered considering the educational qualification of the dependant. As observed hereinabove, such an interpretation would defeat the object and purpose of appointment on compassionate ground.”

14. Coming to the facts of the instant case, the petitioner already having been given appointment on Class-IV post in the year 2015 wherein he joined and started working, in



view of the law laid down by the Hon’ble Supreme Court in the judgments referred to herein above, the Court finds no merit in the plea of the petitioner for a direction to the respondents to consider his case once again for appointment against Class-III post.

15. The application is dismissed.

(Partha Sarthy, J)

saurovkrishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	6.1.2026
Transmission Date	NA

