IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.969 of 2017

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Shahid Akhtar Son of Late Akhtarul Hasan Ansari, Resident of Mohalla-Karimchak, P.O.- Chapra, P.S.- Chapra Town, District- Saran at Chapra presently posted as Accountant, Saran Treasury at Chapra.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Law Department, Govt. of Bihar, Old Secretariat, Patna.
4. Secretary-Cum-Chairman, Finance Department Grievance Redressal Committee, Old Secretariate, Patna.
5. Additional Secretary-Cum-Chairman Finance Department Grievance Redressal Committee, Old Secretariat
6. The Joint Secretary, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
7. The Deputy Secretary, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
8. The Under Secretary, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
9. The Treasury Officer, Saran at Chapra.
10. The District Magistrate Cum Collector, Saran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate
		Ms. Shally Kumari, Advocate
		Mr. Sanjay Kumar Verma, Advocate
For the Respondent/s	:	Mr. Parijat Saurav, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
Date : 13-03-2026

1. Heard Mr.Siya Ram Shahi learned counsel for the petitioner and Mr. Parijat Saurav, learned counsel for the respondents.

2. The petitioner has filed the instant application for the

following reliefs:-

> *"(i) For issuance of an appropriate writ in quashing the Memo no. 786 dated 08.09.2016 issued by Finance Department, Grievance Redressal Committee contained in Annexure-2 at Page-47 whereby the petitioner's representation seeking grant of ACP benefit in terms of the Govt. Resolution dated 08.01.2016 contained in Annexure-3 of the Supplementary Affidavit at Page-68 with reckoning his regular service of 20 years, has been rejected.*
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> *(ii) The petitioner has also prayed for grant of 1st ACP benefit w.e.f. 11.07.2002 in the Pay Scale of Rs. 6500-10500 and 2nd ACP benefit w.e.f. 11.07.2010 in Pay Band of Rs. 9300-34,800 with Grade Pay of Rs. 5400/-.*
>
> *(iii) The petitioner has also prayed for direction to grant all the consequential benefits."*

3. The case of the petitioner in brief is that his father who was an employee in the Treasury cadre having died in harness, the petitioner being a graduate was appointed on compassionate ground as a Typist on 10.7.1990 in the Directorate of Treasury and Accounts in the pay scale of Rs. 1200-13-1800. He joined on 11.7.1990. The petitioner passed his Hindi Noting and Drafting test on 21.2.1992 and also successfully cleared his accounts examination for clerk.

4. It is the case of the petitioner that after the 6th Pay

Revision, he was put in the pay scale of Rs. 5000-8000 with effect from 1.1.1996 in light of the judgment dated 26.7.2001 in the case of **Dhananjay Sharma vs. State of Bihar; 2001(4)PLJR 533.** He was granted the benefit of the 1st ACP (Assured Career Progression) in the pay scale of Rs. 5500-9000 on 11.7.2002. After 7th Pay Revision, he was put in the pay band of Rs. 9300-34,800 with pay grade of Rs. 4600 with effect from 1.4.2007. He is at present working as Accountant in Saran Treasury at Chapra. The petitioner who was initially appointed as a Typist on compassionate ground and posted in the Saran Treasury, after merger of his post, the petitioner was designated as Clerk. In terms of the Memo no. 7063 dated 28.9.2000, the nomenclature of Treasury Clerk was changed to Treasury Accountant.

5. It is submitted by learned counsel appearing for the petitioner that the petitioner moved before the respondents for grant of benefit of financial upgradation as provided in the resolution dated 8.1.2016 of the Finance Department, Government of Bihar. However, the respondent Government of Bihar, came out with a notification contained in letter no. 2856 dated 6.4.2016, misinterpreting the Finance Department resolution no. 163 dated 8.1.2016 and held that clerks appointed

on compassionate ground as in the case of the petitioner are not Accounting Clerks and are thus not entitled to the benefits of the said financial upgradation. On the application having been filed by the petitioner under the provisions of the Bihar State Litigation Policy, 2011, the Grievance Redressal Committee of the Finance Department in its meeting held on 8.9.2016 was pleased to reject the same. As such, the instant writ application for the reliefs prayed for as stated herein above.

6. It is submitted by learned counsel appearing for the petitioner that in the case of Dhananjay Sharma (supra), this Court while allowing the application and quashing orders/letters impugned directed the State- respondents to implement the recommendation of the Fitment Appellate Committee forthwith positively within one month. Further direction was given to the respondents to pay to the petitioner the pay scale of Rs. 5000-8000 which they were admittedly getting by virtue of interim orders passed by this Court from time to time. The said judgment on being challenged in LPA no. 165 of 2002 (The State of Bihar & Anr. versus Dhananjay Sharma & Ors.) was dismissed on 27.4.2010 and the S.L.P.(Civil) no. 1381 of 2011(The State of Bihar & Anr. versus Dhananjay Sharma & Ors.) preferred by State of Bihar, was also dismissed on

12.5.2011. It is the case of the petitioner that vide order dated 20.7.2011 passed in CWJC no. 817 of 2007, the writ application filed by Prabhat Sankar Poddar, reducing his pay scale of Rs.5000-8000 to Rs. 4000-6000, was set aside. Similar relief was granted to the petitioner Anit Kumar Singh vide judgment dated 25.10.2016 passed in CWJC no. 5021 of 2011 (Anit Kumar Singh vs State of Bihar). It is finally submitted that even the appeal (LPA no. 767 of 2017) preferred against the judgment dated 25.10.2016 was dismissed.

7. In view of the facts and circumstances of the case, learned counsel for the petitioner submits that the respondents have erred in rejecting the application filed by the petitioner and by denying him the scale of Rs. 5000-8000 and grant of financial upgradation under the ACP Scheme.

8. The application is opposed by learned counsel for the respondents. It is submitted that in similar matters in cases filed by persons appointed on compassionate ground, the matter came up for consideration before this Court and by order dated 5.4.2016 passed in CWJC no. 3165 of 2014 (Bali Ram Singh & Ors. versus the State of Bihar & Ors.) no relief was granted to the petitioners therein. It was further submitted that so far as the judgment dated 25.10.2016 passed in CWJC no. 5021 of 2021

(Anit Kumar Singh versus the State of Bihar) is concerned, though the letter impugned was set aside, however, the State of Bihar preferred an appeal (LPA no. 767 of 2016). Learned counsel for the respondents further submitted that the petitioner was appointed on compassionate ground as Typist in Saran Treasury. The post of Typist which was sanctioned in the Treasury on being merged with the post of Clerk on 15.1.1993, the petitioner was designated as a Clerk. The Fitment Appellate Committee in its report had observed that those Collectorate staff who had opted as Treasury cadre in the year 1979 were to be treated on a different footing from other incumbents. Only 269 old employees were recommended the replacement scale of Rs. 1400-2600 ie the revised scale of Rs. 5000-8000. It was submitted that as per the report, as the number reduced due to attrition, the post would get retracted back to the scale of Rs. 4000-6000. It was submitted that so far as the case of persons like the petitioner appointed as Accounts Clerk on compassionate ground is concerned, having been appointed in the pay scale of Rs. 1200-1800 from 1.4.1986, he is entitled to get 1st ACP of Rs. 4500-7000, 2nd ACP of Rs. 5000-8000, and 3rd ACP of Rs. 5500-9000. It was submitted that the petitioner not being entitled for the relief prayed in his representation, the

Grievance Redressal Committee rightly rejected the same by its order dated 8.9.2016. There is no merit in the instant writ application and the same be dismissed.

9. Heard learned counsel for the petitioner and learned counsel for the respondents.

10. Bereft of unnecessary details, it may be mentioned here that on his father namely Akhtarul Hasan Ansari, an employee of the Treasury Cadre having died in harness, the petitioner came to be appointed on compassionate ground as a Typist on 10.7.1990. He joined in the Saran Treasury as a Typist on 11.7.1990. The petitioner cleared his Half Yearly Examination for Clerks in the year 1991 and passed his Hindi Noting and Drafting test on 21.2.1992.

11. On introduction of the ACP Scheme in the year 2003, the petitioner was granted the benefit of the first ACP Scheme with effect from 11.7.2002. After the 6th Pay Revision, the petitioner was put in the pay scale of Rs. 5000-8000 which he availed from 1.4.1997 to 10.7.2002. He was granted the benefits of the 1st ACP in the pay scale of Rs. 5500-9000 and he remained in the said pay scale from 11.7.2002 to 31.3.2007. After the 7th Pay Revision, the petitioner was put in the pay band of Rs. 9300-34,800 with a grade pay of Rs. 4600 with effect

from 1.4.2007.

12. It may be observed here that in the year 1993 vide Finance Department letter no.10 dated 15.1.1993, after merger of posts, the petitioner was designated as a Clerk. On the petitioner filing his representation dated 28.4.2016 under the Bihar State Litigation Policy, 2011 for grant of pay scale of Rs. 5000-8000 and for financial upgradation under the ACP Scheme on the basis of the Finance Department Resolution no. 163 dated 8.1.2016, the same came to be rejected in the proceedings contained in memo no. 7186 dated 8.9.2016.

13. On perusal of the order/decision impugned it would transpire that the reasons given therein were that pay scale of Rs. 5000-8000 with effect from 1.1.1996 had been given only to those clerks who had been appointed in the Treasury cadre by exercise of option in the year 1979. In this respect, it may be mentioned here that the petitioner was appointed on compassionate ground as a Typist on 11.7.1990. It was only in the year 1993, after merger of his post that the petitioner was designated as a Clerk.

14. The issue of the scale of pay of one Prabhat Sankar Poddar being reduced from Rs. 5000-8000 of Rs. 4000-6000 on ground that he was appointed as a Treasury Clerk on

compassionate ground in May, 1988 and that he had not opted for Treasury Cadre in the year 1979, came up for consideration by this Court in **CWJC no. 817 of 2007 (Prabhat Shankar Poddar versus State of Bihar)**. Placing reliance on the judgments in the case of Dhananjay Sharma (supra)**,** this Court quashed the impugned order with a direction to the respondent authorities to grant to the petitioner therein pay scale of Rs. 5000-8000 with effect from 11.1.1996 with a further direction to refund the amount recovered from him. Relevant part of the order dated 20.7.2011 passed in CWJC no. 817 of 2007 is reproduced herein below for ready reference:-

> "*5. <u>Having perused the impugned order dated 16.11.2006, Annexure-1 it is quite evident that scale payable to the petitioner has been reduced to Rs.4000-6000/- only on the ground that he was appointed as Treasury Clerk on compassionate ground in May 1988 and had not opted for Treasury Cadre in 1979.</u> There is no dispute that petitioner was appointed as Treasury Clerk in the scale of Rs.1400-2600/- which was also being paid to other Treasury Clerks who opted for Treasury Cadre in 1979. In terms of the recommendation of the Pay Revision Committee the scale of Rs.1400-2600 was revised to Rs.4000-6000/-. Appointment having been made at a later date cannot be a ground for*

reducing the pay scale. This Court under orders dated 26.07.2001, Annexure-2 appreciating the fact that petitioner and others were appointed in the scale of Rs.1400-2600/- revised scale whereof is Rs.4000-6000/- quashed the different order/resolution reducing the scale to Rs.4000-6000/- with specific direction to allow the petitioner and others the scale of Rs.5000-8000/-. <u>While admitting L.P. A. No.165 of 2002 interim order dated 17.02.2004 was passed approving payment of salary to the petitioner in the higher scale of Rs.5000-8000/-, in my opinion, therefore, there was hardly any occasion for the State respondents under the impugned order dated 16.11.2006 and Finance Department letter dated 13.03.2007, Annexure-13 to again reduce the pay scale of the petitioner from 5000-8000/- to 4000-6000/-. Accordingly, the impugned order dated 16.11.2006, Annexure-1 as also the Finance Department letter no.1693 dated 13.03.2007, Annexure-13 is quashed with direction to the respondent authorities to grant the petitioner pay scale of Rs.5000-8000/- with effect from 1.1.1996</u> and the amount already recovered should also be refunded to him within a reasonable time.

6. The writ application is, accordingly, allowed."

(emphasis supplied)

15. At the cost of repetition, it may be stated here that the

petitioner was appointed on the pay scale of Rs.1200-1800 under the 5th Pay Revision, in which scale he remained from 11.7.1990 to 31.3.1997. With the 6th Pay Revision, he was put in the pay scale of Rs. 5000-8000 which he availed from 1.4.1997 to 10.7.2002. He was granted the benefit of the 1st ACP and remained in the scale of Rs. 5500-9000 from 11.7.2002 to 31.3.2007.

16. The order dated 20.7.2011 passed in CWJC no. 817 of 2007 was challenged in LPA no. 2006 of 2011 (State of Bihar versus Prabhat Shankar Poddar) and the said appeal was dismissed in limine by order dated 5.12.2013. Even the review application (Civil Review no. 182 of 2014; State of Bihar vs. Prabhat Shankar Poddar) was dismissed for default on 23.9.2015.

17. The Finance Department, Government of Bihar, came with the letter no. 2856 dated 6.4.2016 bringing out distinction between a Treasury Clerk appointed directly and the Clerk of treasury appointed on compassionate ground. By the said letter, it was directed that if the benefit of resolution no. 163 dated 8.1.2016 which has been denied to the petitioner in the instant case, has been given to clerks of treasury appointed on compassionate ground, the same be recovered.

18. The letter no. 2856 dated 6.4.2016 came to be considered in **CWJC no. 5021 of 2011 (Anit Kumar Singh vs. State of Bihar)** wherein the learned Single Judge by judgment dated 25.10.2016 allowed the writ petition, set aside the letter no. 2856 dated 6.4.2016 and directed for payment of all consequential benefits to the petitioner therein. The relevant portion of the judgment dated 25.10.2016 is reproduced herein below for ready reference:

> *"Primarily, the Court is of the opinion that Annexure-18 is exactly in the teeth of order passed in C.W.J.C. No. 817 of 2007, which was finally settled by the Division Bench. There was no occasion for the State authority to again create a distinction between the Treasury Clerk appointed directly and the Clerk of the Treasury, who were appointed on compassionate ground. Normally, after the appointment on compassionate ground, an employee may not be discriminated with other employee. Since the dispute was already set at rest and respondents themselves had taken the plea in the counter affidavit that one similar matter was pending before this Court and this Court had decided the issue, thereafter the State authority may not be allowed to create any distinction and deny the relief, which has been sought for in the present writ petition, similar to the reliefs, which were*

claimed in earlier writ petitions.

By way of referring to an order dated 26-07-2001 passed in C.W.J.C. No. 3063 of 1992 passed by a Single Bench of this Court, Sri Anil Kumar Sinha, learned Govt. Advocate - 1 had tried to distinguish the case, however; Sri Shahi, learned counsel for the petitioners has argued that the said order is per incurium, since it was contrary to the order passed in C.W.J.C. No. 817 of 2007, which was approved by the Division Bench. The Court is in agreement with the submission of Mr. Shahi.

Accordingly, the writ petition is allowed and order contained in Annexure- 18 i.e. letter no. 2856 dated 06-04-2016 is also set aside.

All the consequential benefits, in view of setting aside the impugned order and allowing the writ petition shall be provided to the petitioners within a period of three months from the date of receipt/production of a copy of this order.

(emphasis supplied)

19. The appeal ***(LPA no. 767 of 2016; State of Bihar vs. Anit Kumar Singh)*** preferred against the judgment dated 25.10.2016 passed in CWJC no. 5021 of 2011 was dismissed on 27.9.2018. Relevant part of the judgment dated 27.9.2018 passed in LPA no. 767 of 2017 is reproduced herein below for ready reference:

"2. We have heard the learned counsel for the respective parties at length and perused the impugned judgment and order passed by the learned Single Judge.

2.1. At the outset, it is required to be noted that as such the issue has already been decided by a Bench of this Court in C.W.J.C. No. 817 of 2007 (i.e. Prabhat Shankar Poddar vs. The State of Bihar and Ors.) which came to be confirmed by a Division Bench of this Court and it was held to not to grant benefit of ACP to those employees who were appointed on compassionate ground.

3. However, it appears that thereafter the State came out with a Notification/Order contained in Letter No.2856 dated 06.04.2016 by which it was decided that the persons appointed on compassionate ground shall not be entitled to ACP. It appears that the aforesaid order was absolutely in teeth of the earlier decision of the learned Single Judge confirmed by the Division Bench. We are also of the opinion that there should not be any discrimination in granting the benefit of ACP, once a person is appointed in the department, may be on compassionate ground.

3.1. Any person appointed, may be on compassionate ground, on completion of certain years, as per the Assured Career Progression Scheme, Rule 2003, shall be entitled to the first and second ACP as per the Rule 2003.

4. Under such circumstances, as such, no error has been committed by the learned Single Judge in setting aside the order/notification contained in Letter No. 2856 dated 06.04.2016 and holding that the original writ petitioner shall be entitled to ACP as per Rule 2003, we are in complete agreement with the view taken by the learned Single Judge and no interference is called for by this Court in intra court appellate jurisdiction.

5. Under such circumstances, the present appeal is dismissed." (emphasis supplied)

20. **Civil Review no. 44 of 2019 (The State of Bihar versus Anit Kumar Singh**) filed praying for a review of the judgment dated 27.9.2018 passed in LPA no.767 of 2017 was also dismissed vide judgment dated 31.7.2019. The relevant part of the judgment dated 31.7.2019 is reproduced herein below for ready reference.

"15. On these grounds, it has been asserted by the State/petitioners that in none of the litigations, the distinction between such inductees as Treasury Clerks and compassionate appointees was taken note of and there was no application of mind with respect to the distinction between Treasury Clerks and Clerks in Treasury.

16. On hearing the parties, we are of the *view that though there does appear to be some distinction between two class of employees and the government could have treated them separately so far as pay-scale is concerned, but once a decision has been taken to afford such benefits of the scheme of financial progression available to all Treasury Clerks, any further distinction on the basis of source of appointment would amount to reverting such persons who have been the recipients of the benefits to a lesser scale and if such a decision is taken, recovery would have to be effected. This would unnecessary create litigation which is neither advisable nor expedient.*

17. <u>These issues/arguments were available to the State/petitioners and from the judgment of the Division Bench, it appears that such argument was advanced and answered by holding that the circular/notification dated 06.04.2016, not granting the benefits of ACP to compassionate appointees, was in teeth of the earlier decisions of the learned Single Judge, which was affirmed by the Division Bench as also by the Supreme Court.</u>

18. <u>The impugned judgment has also taken note of the fact that there should not be any discrimination in grant of the benefit of ACP. Once a person is appointed in the department, even though on compassionate grounds, he would be entitled for the benefits.</u>

19. The power of review inheres in every Court of plenary jurisdiction but such power is only for preventing miscarriage of justice or to correct grave and palpable errors committed by it. There are definite limitations to exercise of the power of review and it could be exercised only on the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within the knowledge of a person seeking review, or could not be produced by him at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of record is found or on any such analogous grounds. A review of a judgment cannot be made on the ground that the decision was erroneous on merits as this would fall in the domain of appeal.

20. From the arguments advanced on behalf of the State/petitioners, it appears that the review has been sought as if for the purpose of re-hearing and for a fresh decision in the case. The grounds for review were available to the State/petitioners which was never agitated. Even otherwise, we are of the view that taking any other decision in not extending the benefits of a benevolent scheme to compassionate appointees would not be just and proper, once the issue has been set at rest till the Supreme Court. Once appointment is made on a post, the source of appointment looses its significance, specially for

> *the purposes of application of beneficent provisions. The distinction between the Treasury Clerks and Clerks in Treasury also appear to be specious and does not have any rationale.*
>
> *21. Thus, for the reasons that the judgment under review does not suffer from any palpable error of record or that it is a result of oversight, we are not inclined to interfere/review the judgment.*
>
> *22. The petition is dismissed for the reasons aforesaid."*
>
> (emphasis supplied)

21. So far as the order impugned contained in Memo no.7816 dated 8.9.2016 is concerned, perusal of the same would show that the representation of the petitioner has been rejected mainly on the ground that the petitioner who was appointed as a Clerk on compassionate ground through the Directorate of Treasuries and Accounts and posted in the Treasury, could not have been treated at par with the clerks who opted for the Treasury Cadre in the year 1979. It may be observed here that the petitioner could not have opted for the Treasury Cadre in the year 1979, having been appointed on compassionate ground as a Typist in the year 1990.

22. Further from perusal of the relevant part of the judgment dated 25.10.2016 passed in CWJC no.5021 of 2011,

this Court held that normally after appointment on compassionate ground, an employee may not be discriminated with other employees. In view of the matter already having been settled in another similar matter, the State authority may not be allowed to create any distinction and deny the relief. LPA no.767 of 2017 preferred against the order dated 25.10.2016 was dismissed. In the Civil Review no.44 of 2019 preferred for review of the order passed in the LPA, this Court observed that once a decision has been taken to afford such benefit of the scheme of financial progression to all the Treasury Clerks, any further distinction on the basis of source of appointment would create unnecessary litigation which was neither advisable nor expedient. Taking note of the fact that in the judgment under review the Court had held that once a person is appointed in the Department, even though on compassionate grounds, he would be entitled for the benefits of the ACP, the Court dismissed the review application. The Court finally held that taking any other decision in not extending the benefit of a benevolent scheme to compassionate appointees would not be just and proper once the issue has been set at rest till the Supreme Court.

23. Taking note of the judgments of this Court in the case

of Prabhat Shankar Poddar vs. The State of Bihar & Ors. (order dated 20.7.2011 in CWJC no.817 of 2007), Anit Kumar Singh & Ors. vs. The State of Bihar & Ors. (judgment dated 25.10.2016 in CWJC no.5021 of 2011), The State of Bihar & Ors. vs. Anit Kumar Singh & Ors. (judgment dated 27.9.2018 passed in LPA no.767 of 2017) and The State of Bihar & Ors. vs. Anit Kumar Singh & Ors. (judgment dated 31.7.2019 passed in Civil Review no.44 of 2019), the distinction between Treasury Clerk appointed directly and the Clerk of Treasury who are appointed on compassionate ground having been done away with, in the opinion of the Court, the respondents committed an error in their order contained in Memo no.7186 dated 8.9.2016 rejecting the representation filed by the petitioner.

24. As such, the order contained in Memo no.7186 dated 8.9.2016 issued by the Finance Department, Grievance Redressal Committee cannot be sustained and is hereby set aside. Further the petitioner is held entitled for grant of ACP benefits in terms of the Government resolution contained in Memo no.163 dated 8.1.2016.

25. The respondents shall calculate the ACP benefits payable to the petitioner accordingly and shall pay the

consequential amounts within a period of three months. Along with the amount paid, the respondents shall also provide to the petitioner the details of calculation.

26. The writ application is accordingly allowed.

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	8-1-2026
Uploading Date	13-3-2026
Transmission Date	