

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25683 of 2019

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Seraj Anwar Son of Late Anwar Ali Resident of Mohalla-Idgah, Post Office and Police Station-Dehri-on-Sone, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Personal and Administrative Reforms Department, Govt. of Bihar, Patna
2. The Secretary, Department of Law, Govt. of Bihar, Patna
3. The Registrar General, Patna High Court, Patna.
4. The Compassionate appointment Committee, through its Secretary, Civil Court, Aurangabad.
5. The District and Sessions Judge, Aurangabad.
6. The Registrar, Civil Court, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. M. Ashraf, Advocate Mr. Kamendra Pd. Singh, Advocate
For the H.C	:	Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Md. Raisul Haque (SC-10)

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 05-02-2026

Heard learned counsel for the parties.

2. The petitioner has filed the instant application for
the following relief (s) :-

“1. (i) For quashing of the order No. 33/2018 dated 20.04.2018 issued by the District and Sessions Judge (Respondent No. 5). Aurangabad communicated to the petitioner vide Memo No. 562/2018 dated 20.04.2018 whereby and where-under the claim of the petitioner for appointment on compassionate ground has been rejected (Annexure-8).

(ii) For the issuance of a writ in the nature of mandamus directing the respondents, especially respondent Nos. 3, 4 and 5 to appoint the



petitioner on compassionate ground, whose father died in harness on 28.11.2015.

(iii) For the issuance of any other writ/order/direction as may be considered fit and proper in the facts and circumstances of the case.”

3. The case of the petitioner in brief is that the father of the petitioner who was posted and working as Clerk in Civil Court at Aurangabad died in harness on 28.11.2025. The petitioner being the eldest son filed his application for appointment on compassionate ground on 18.5.2016 enclosing with his application all the relevant documents. Not having been appointed, the petitioner filed CWJC no.3136 of 2018, which was disposed of by order dated 12.3.2018 (Annexure-6) directing the petitioner to file a representation before the District and Sessions Judge, Aurangabad, which was directed to be disposed of within the time fixed.

4. It is submitted by learned counsel for the petitioner that pursuant to the direction of this Court as contained in order dated 12.3.2018, the petitioner filed an application on 26.3.2018 which was rejected by order dated 20.4.2018 passed in Order no.33 of 2018 by the District & Sessions Judge, Aurangabad. It is this order which has been challenged by the petitioner in the instant writ application with the further prayer for directing the respondents to appoint



the petitioner on compassionate ground.

5. It is submitted by learned counsel for the petitioner that the main ground for rejection of the petitioner's application for his appointment on compassionate ground, as evident from the order impugned, is that a restriction was imposed by the High Court that appointment on compassionate ground shall be considered with the restriction that the total strength of compassionate appointees would not exceed 3% of the sanctioned strength of the cadre in which such appointment is being considered. It is submitted that though the limit was raised to 5%, the respondents erred in applying this said restriction for the reason that the same would not be applicable in case of the petitioner for the reason that the father of the petitioner died on 28.11.2015 and the scheme prevalent on the date of death would be applicable. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Indian Bank & Ors. vs. Promila & Anr; (2020) 2 SCC 729**.

6. Learned counsel for the respondents opposes the writ application and submits that the application of the petitioner was considered by the respondent concerned and taking into consideration all aspects of the matter, a detailed



order giving sound reasons has been passed. There is no illegality in the order impugned and as such the writ application be dismissed.

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

8. The relevant facts in brief are that the father of the petitioner who was working as a Clerk in the Civil Court, Aurangabad having died in harness, the petitioner applied for appointment on compassionate ground which came to be rejected by the order impugned on 20.4.2018 mainly for the reason that the restriction imposed in appointment on compassionate ground to the extent that the strength of compassionate appointees would not exceed 3% of the sanctioned strength of the cadre in which such appointment is being considered would cross in case the petitioner was appointed.

9. It may be observed here that the said restriction of imposing the ceiling limit of 3% was introduced some time in January, 2016. It is also not in dispute that the father of the petitioner died on 28.11.2015.

10. In the case of **Indian Bank** (*supra*) relied on by learned counsel for the petitioner, the Hon'ble Supreme Court



has held as follows :-

“3. There has been some confusion as to the scheme applicable and, thus, this Court directed [Indian Bank v. Promila, (2020) 2 SCC 735] the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court [Promila v. Indian Bank, 2008 SCC OnLine P & H 2267] appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank v. M. Mahesh Kumar [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] , qua what would be the cut-off date for application of such scheme.

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

5. An aspect examined by this judgment [Canara Bank v. M. Mahesh Kumar; (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.”



11. In view of the facts and circumstances stated herein above, in the opinion of the Court, the respondents have erred in placing the restriction of 3% which was introduced for the first time several months after the death of the employee/father of the petitioner. It is the scheme prevalent on the death of the employee which would be applicable.

12. In view of the facts and circumstances stated herein above, the order impugned dated 20.4.2018 passed by the respondent no.5 is not sustainable and is accordingly set aside.

13. The respondents are directed to consider the application of the petitioner for appointment on compassionate ground at the earliest preferably within a period of two months from the date of receipt/production/communication of a copy of this order.

14. The writ application stands allowed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.02.2026.
Transmission Date	

