

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5999 of 2021

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Rajesh Kumar Son of Late Harindra Kumar Sing @ Late Harendra Singh
Resident of village and Post Office - Morsarai, District- Rohtas at Sasaram.
... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Higher Education Education Department, Bihar, Patna.
3. The Vice Chancellor, Veer Kunwar Singh University, Ara.
4. The Registrar, Veer Kunwar Singh University, Ara.
5. The Finance Officer, Veer Kunwar Singh University, Ara.
6. The Principal, Shersah College, Sasaram, District- Rohtas.
7. Pay Verification Cell, Education Department, govt. of Bihar through its Authorized Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Garg, Advocate
For the State	:	Mr.Madhaw Prasad Yadaw (Gp23) Mr.Meera Singh, AC to GP-23
For the University	:	Mr. Rajesh Kr. Chaudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-03-2025

Heard Mr. Ashok Kumar Garg, learned counsel appearing on behalf of the Petitioner; Mr. Madhav Prasad Yadav, learned GP-23 for the State and Mr.Rajesh Kumar Chaudhary, Learned counsel for the Veer Kunwar Singh University.

2. The Petitioner in paragraph no.1 of the present writ petition has sought inter alia following relief(s), which is reproduced hereinafter:

“(I) For issuance of an appropriate writ, order or direction in the nature of certiorari for quashing the Memo No.Legal\60\19\Estab.\585\19\1383\ Estab.\19



dated 14.05.2019\20.05.2019 passed by Registrar, Veer Kunwar Singh University, Ara\Respondent no.4 whereby he wrongly held that the petitioner is not entitled to the pay scale of Rs.5500-9900\ - whereas the pay scale for the post of Store Keeper is Rs.5500-9900\ and at present also the respondent authorities are paying pay scale of Rs.5500-9900/ to other similarly situated persons i.e., store keeper of Shershah College, Sasaram. Therefore, the petitioner is also entitled for Pay scale of 9300-34800\-(Grade pay 4600).

(II) For issuance of an appropriate writ, order or direction in the nature of mandamus directing the respondent authorities to pay all the arrear of salary \ differences of salary to the petitioner, which is dues, due to non-payment of admissible pay scale to the petitioner and petitioner is also entitled to get 18% interest over the dues amount.

(iii) For grant of any reliefs the petitioner would be found entitled to in the facts and circumstances of the case.”

3. The brief facts of the case are that the father of the petitioner, namely, late Harinder Kumar Singh, had died in harness on 14.08.2007, while he was working on the post of 'Store Keeper' in Shershah College, Sasaram, which comes under Veer Kunwar Singh University, Ara (hereinafter referred to as the 'University'). The petitioner had applied for considering his appointment on compassionate ground and the Compassionate Appointment Committee vide its decision dated 08.03.2008 had recommended for compassionate appointment of the petitioner, subsequent to which, the Registrar of the University had issued an order for appointment of petitioner vide Memo No. 282 dated 29.03.2008. Thereafter, the petitioner



had joined on 02.04.2008 on the post of 'Store Keeper' in Shershah College, Sasaram. Learned counsel further submitted that Memo No. 1139 dated 18.06.2014 was issued by the Joint Secretary, Education Department, to all the Registrar of the Universities of Bihar for providing the scale of Rs. 5500-9000/- w.e.f. 01.04.2009 to the 'Store Keepers', subsequent to which, a notification was issued by the University *vide* Memo No. 665 dated 22.08.2014 for providing the pay scale of Rs. 5500-9000/- w.e.f. 01.04.1997 to the 'Store Keepers', who have been validly appointed with requisite qualifications against sanctioned posts. Petitioner having not given the said benefit had preferred CWJC No. 13580 of 2017 before a co-ordinate Bench of this Court, which was disposed of on 05.03.2019 with a direction to the petitioner to file detailed representation before the Registrar of the University. Thereafter, the petitioner had filed representation before the Registrar of the University on 01.04.2019, which was rejected *vide* Memo No. 19 dated 20.05.2019, which was communicated to the petitioner and other office bearers of the University. Aggrieved by the said order, the petitioner has filed the present writ petition.

4. Learned counsel appearing on behalf of the petitioner submitted that no doubt the petitioner was appointed



on compassionate ground on 02.04.2008 on the post of 'Store Keeper', which is a Class-III post subsequent to death of his father, who died in harness on 14.08.2007, while he was working as 'Store Keeper', on which date, the Circular dated 20.12.2000 was applicable, which stipulates that all fresh appointment made after 20.12.2000 will be in the pay scale of Rs. 3050/- -Rs. 4500/-. Petitioner has claimed that the said resolution has further been clarified by the State Government as would appear from the information contained in paragraph no. 7 of the counter affidavit filed on behalf of the respondents no. 1 and 2, which informs that the State Government vide its Letter No. 3385 dated 20.06.2001 prescribed the pay scale of Rs. 3050-4590/- to the employees appointed on compassionate ground after 20.12.2000. Learned counsel further submitted that the recommendation of pay revision was also implemented with effect from the date of 01.01.1996 to the non-teaching employee of the Universities and colleges vide Resolution of the State Government contained in Memo No. 1972 dated 12.10.2004. In the said resolution also, the pay scale for Class-III employee appointed on compassionate ground has been prescribed as Rs. 3050-4590/-. Learned counsel further submitted that it is admitted by the respondents no. 1 and 2 in its counter affidavit



that the State Government vide its resolution as contained in Memo No. 2693 dated 27.08.2010 extended the benefits of 6th Pay revision to the non-teaching employees of the Universities and constituent colleges and in Clause-4 of the aforesaid resolution, resolved that the pay fixation of the employees appointed on compassionate ground against the unsanctioned post will be made in the pay scale of Rs. 3050-4590/- after their adjustment against the sanctioned and vacant post. Learned counsel further submitted that in paragraph no. 12 of the counter affidavit, respondents no. 1 and 2 have incorrectly informed that since the petitioner was appointed on the post of 'Store Keeper' on compassionate ground, he is entitled for pay scale of Rs. 5030-4590/- and not for the pay scale of Rs. 5500-9000/-. Learned counsel in support of his grievance, submitted that respondents are making payment of pay scale Rs. 5500-9000/- to similarly situated employees of Shershah College, as well as, other colleges of the Veer Kunwar Singh University. The petitioner has all the requisite qualifications and in this respect the petitioner has further supported his claim considering the fact that from the order dated 14.05.2019/20.05.2019 passed by the Registrar of the University rejecting the representation of the petitioner, it would appear that the claim of the petitioner has



been sent to the Pay Verification Cell on 29.04.2019 vide Letter No. 19 and illegally, the case of the petitioner has not been considered for granting the applicable pay scale for the post of 'Store Keeper' as is being paid to the other 'Store Keepers' of the University. Learned counsel further submitted that the action in not accepting the pay scale of Rs. 5500-9000/- is against the principle of equality and is in violation of Article 14 of the Constitution of India and on these grounds, learned counsel seeks interference of this Court.

5. *Per contra*, learned counsel appearing on behalf of the University submitted that pay scale of the petitioner, who was appointed on the post of 'Store Keeper' on compassionate ground, has been fixed Rs. 3050-4590/- in light of Memo No. 3385 dated 20.06.2021, which has been issued by the Personal and Administrative Reforms Department, Government of Bihar. The date of death of the father of the petitioner, who died in harness, is 14.08.2007 and at that point of time, Resolution dated 20.12.2000 was applicable in the case of the petitioner, which entitles for pay scale of Rs. 3050-4590/-. Later vide Memo No. 2693 dated 27.08.2010, the State Government had extended the benefit of sixth pay revision to the non-teaching employees of the Universities and constituent colleges and after



coming into force of 6th Pay Revision, the petitioner was entitled for pay scale of Rs. 5030-4590/- and not for pay scale of Rs. 5500-9000/-. He further submitted that no infirmity has been made by the Pay Verification Cell of the Government of Bihar, who, after proper consideration, has approved the said pay scale of the petitioner to be in pay scale of Rs. 3050-4590/-.

6. The State Government has also adopted the submissions made on behalf of the respondents no. 3 to 5 and has further reiterated the statements made in the counter affidavit, particularly, those made in paragraphs no. 7, 8, 9, 10 and 11 and have jointly submitted that the writ petition is devoid of merits.

7. Heard the parties.

8. Having considered the rival submissions made on behalf of the parties, as well as, the pleadings made by the rival parties, the issue involved in the present case in view of the law laid down by the Apex Court in the case of *the Secretary To Govt. Department Of Education (PRIMARY) & Ors. Vs. Bheemesh Alias Bheemappa (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 and the Apex Court has held that the determinative fixed criteria is the date of death,



whether the petitioner, whose father had died in harness on 14.08.2007, is entitled for the pay scale applicable to his father on his date of death in view of the fact that petitioner was appointed on compassionate ground and had joined on 02.04.2008.

9. The observation made by the Apex Court in paragraphs no. 17 to 20 in the case of ***Bheemesh Alias Bheemappa (Supra)*** 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."

10. In the present case, the guidelines of the State Government for compassionate appointment guided by the Circular dated 20.12.2000, which was effective on the date of death of the father of the petitioner, which prescribes for pay scale of Rs. 3050-4590/-. The petitioner has not pleaded anywhere or has given any information in respect of the pay scale, which the father of the petitioner was getting at the time of his death or the Rule by which he was governed.

11. I have also perused the terms and conditions in paragraph no. 2 of the Memo No. 1192 dated 23.06.2014, from which, a clear distinction has been made that those, who were appointed on compassionate ground on Class-III post, the



applicable pay scale would be Rs. 3050-4590/-.

12. In view of the above facts and in absence of any information given in the writ petition or in the counter affidavit to resolve, as to what would be the applicable pay scale in light of the law laid down by the Apex Court in case of ***Bheemesh Alias Bheemappa (Supra)*** to the petitioner, I am constrained to hold that the resolution of the State Government in respect of the compassionate appointment applicable on the date of death of the father of the petitioner will be applicable to the petitioner.

13. The law in respect of compassionate appointment is no more *res integra* and reference in this regard can be taken to ***Umesh Kumar Nagpal v. State of Haryana and Others reported in (1994) 4 SCC 138***. It is well settled principle of law that appointment on compassionate ground is one time exercise and the appointee cannot seeks compassion upon compassion claiming a higher pay-scale on misconceived sense of parity. The said proposition of law has been relief in the case of (***Smt. Mosarat Arra Khanam and others vs. The State of Bihar and others***) CWJC No. 10441 of 2010 and analogous cases.

14. A co-ordinate Bench of this Court in CWJC No. 23831 of 2018 (***Ravi Shankar Kumar vs. The State of Bihar & Ors.***) vide judgment dated 01.10.2021 found that the earlier



judgment of Division Bench in CWJC No. 10441 of 2010 (*Smt. Mosarat Arra Khanam and others vs. The State of Bihar and others*) was not considered by the subsequent Division Bench in L.P.A. No. 167 of 2016 (*Avinash kUmar Chakerwarty and others vs. State of Bihar and others*), which has allowed the pay scale of Rs. 4000-6000/- for the persons appointed on compassionate ground on the doctrine of parity in pay-scale. In view of the above conflict, the matter was referred to the Hon'ble the Chief Justice for deciding the said issue by a larger Bench.

15. It has been informed by the parties that the matter is being heard by the larger Bench.

16. Considering the aforesaid information, the relief(s) as prayed for in the present writ petition will be subject to the result of the final disposal of CWJC No. 23831 of 2018 *Ravi Shankar Kumar (supra)*.

17. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	28.03.2025
Transmission Date	N/A

