

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3070 of 2025

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Sujit Kumar Chaudhary Son of Late Ramdeo Chaudhary, Resident of Village-
Pahar Chak, P.S. Muffasil, District Begusarai, at present posted as Prakhand
Teacher at Utkramit Middle School, Hardiya, District Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Begusarai.
5. The District Programme Officer (Establishment), Begusarai.
6. The District Magistrate cum Chairman, District Compassionate Appointment Committee, Begusarai.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 3076 of 2025

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Pankaj Kumar Son of Late Ram Chandra Sharma Resident of Village-
Bazidpur, P.S - Barh, District - Patna, at Present Posted as Nagar Teacher at
Arya Sanskritik Middle School, Malsalami, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Patna.
5. The District Programme Officer (Establishment), Patna.
6. The District Magistrate Cum Chairman, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 5504 of 2025

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Manoj Kumar Son of Late Ram Naresh Singh, Resident of village- Bagdov,
P.S. Nayagaon, District- Begusarai.

... .. Petitioner/s

Versus



1. The State of Bihar
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Begusarai.
5. The District Programme Officer (Establishment), Begusarai.
6. The District Magistrate cum Chairman, District Compassionate Appointment Committee, Begusarai.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 3070 of 2025)

For the Petitioner/s : Mr. Shailesh Kumar Sharma, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-08
Mr. Sanjay Kumar, AC to SC-08

(In Civil Writ Jurisdiction Case No. 3076 of 2025)

For the Petitioner/s : Mr. Shailesh Kumar Sharma, Advocate
For the Respondent/s : Mr. Kinkar Kumar, SC-09
Ms. Vagisha Pragya Vacaknavi, Advocate
Ms. Sushmita Sharma, Advocate

(In Civil Writ Jurisdiction Case No. 5504 of 2025)

For the Petitioner/s : Mr. Shailesh Kumar Sharma, Advocate
For the Respondent/s : Ms. Kumari Amrita, GP-03
Mr. Rajesh Kumar, AC to GP-03

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 03-08-2026

This Court has heard Mr. Shailesh Kumar Sharma, learned Advocate for the petitioners in all the three cases whereas, the State is represented through Mr. Kinkar Kumar, learned Standing Counsel No. 09, Ms. Kumari Amrita, learned Government Pleader No. 03 as also junior counsels representing in the matter.

2. The facts of the cases are not in dispute that they are wards/dependents of the deceased teachers, who died prior to coming into force of the 2006, Rules for appointment of



teachers, i.e. The Bihar Primary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as, “Rules, 2006”).

3. The petitioners in all the three cases have made their applications for appointment on compassionate ground prior to coming into force of Rules, 2006; but by one reason or other, *inter alia* owing to ban imposed by the Government in Human Resources Department vide Departmental Letter No. 2039 dated 17.11.2003 and Letter No. 626 dated 16.04.2005, their appointments were not considered and subsequently, their names were recommended for appointment on Class III post by the District Compassionate Committee after 01.07.2006.

4. Consequently, the petitioners were duly appointed as Prakhand/Nagar Teacher on fixed pay. The petitioners in pursuant to their appointment letters joined on their respective post. However, on being dissatisfied with the action of the State Government in extending appointment to the post of Prakhand/Nagar Teacher on fixed pay, contrary to their recommendation made by the District Compassionate Appointment Committee, the petitioners preferred writ petitions.

5. It would be worth noting here that in case of CWJC No. 3070 of 2025, the petitioner had filed CWJC No. 13821 of



2010, which was disposed off with a direction to the District Magistrate, Begusarai to take necessary decision and communicate the outcome of such decision, whereupon, the matter was again placed before the District Compassionate Committee, who vide Memo No. 955 dated 06.07.2015 reiterated his earlier decision to appoint the petitioner on Class III post, which was to be executed by the Education Department.

6. Notwithstanding the aforesaid fact, when no action was taken, the petitioner in CWJC No. 3070 of 2025 filed another writ petition bearing CWJC No. 9882 of 2019, which came to be disposed off with a direction to the District Programme Officer, Begusarai, to consider the case of the petitioner in the light of the order of the co-ordinate Bench of this Court in CWJC No. 8963 of 2018 (***Chandra Shekhar Azad & Ors. Vs. The State of Bihar & Ors.***). The petitioner also preferred MJC No. 2511 of 2019 and while the same was pending consideration, in the meanwhile, the District Programme Officer (Establishment), Begusarai, has come up with an order contained in Memo No. 1908 dated 11.07.2019, rejecting the claim of the petitioner.

7. Similarly in CWJC No. 3076 of 2025, on being



aggrieved with the action of the respondents preferred CWJC No. 6146 of 2009, which also came to be disposed off with a direction that in pursuant of a recommendation made in his favour by the District Compassionate Appointment Committee, his appointment be made strictly in accordance with the Government instruction dated 17.10.2008. However, the order of the learned Single Judge came to be set-aside by the Division Bench in Letters Patent Appeal, which order was also questioned before the Hon'ble Apex Court in Civil Appeal arising out of SLP (C) No. 34174-34175 of 2013, which was finally disposed off vide order dated 03.04.2017, analogously with the case of *Mukesh & Anr. Vs. State of Bihar & Ors., (2017) 5 SCC 383*, granting liberty to approach the State Government for suitable reliefs, in terms with the order passed in SLP (C) No. 29655 of 2010 (*Rajiv Ranvijay Kumar & Ors. Vs. State of Bihar and Ors.*).

8. So far the petitioner in CWJC No. 5504 of 2015 is concerned, the petitioner on being aggrieved, has preferred CWJC No. 24351 of 2018, which was finally heard and disposed off directing the District Programme Officer, (Establishment), Begusarai, to consider the case of the petitioner vide order dated 01.05.2019. However, the District Education



Officer/District Programme Officer never passed any order in compliance of the order of the Hon'ble Court.

9. Adverting to the aforesaid facts, Mr. Sharma, learned Advocate for the petitioners submitted that the large number of persons identical to the present writ petitioners had approached this Court and finally the matter reached to the Hon'ble Apex Court in Civil Appeal No. 4776-4777 of 2017 ***Mukesh*** (supra), which was finally heard and disposed off with an observation that the persons, whose names were recommended prior to 01.07.2006 are entitled to appointment on Class III and Class IV post or will be entitled for continuation of teacher on a regular pay scale and with respect to those, in their favour recommendations have been made after 01.07.2006, they have been extended liberty to approach the State Government for suitable relief in terms of the order passed in SLP (C) No. 29655 of 2010.

10. The State Government in the aforesaid background, after proper deliberation issued its decision to make appointment as per the recommendation of the District Compassionate Appointment Committee on Class III and Class IV posts, in all the cases where government servant died prior to 01.07.2006 and they were party before the Hon'ble Supreme



Court in the case of **Mukesh** (supra) and others analogous cases. The aforesaid decision has been taken in the light of the Memo No. 38 dated 12.01.2018 issued by the Special Secretary, Education Department, Government of Bihar.

11. It is further contended that, in the meanwhile, the State of Bihar aggrieved with the order passed in CWJC No. 6282 of 2009 by a learned Single Judge preferred LPA No. 1472 of 2015 (*The State of Bihar & Ors Vs. Rhituraj Saraubh*), which was dismissed by the Division Bench of this Court vide judgment/order dated 18.04.2018 and observed that the State Government to act on the recommendation of the District Compassionate Committee, insofar as, it concerns the petitioners of the case, in view of the Memo No. 38 dated 12.01.2018 issued by the State Government and its Education Department. The respondents in compliance with the order passed by the Division Bench appointed the writ petitioners of the concerned cases to their respective regular post of teachers in the regular pay scale.

12. Learned Advocate for the petitioners further submitted that with respect to some of the other similarly situated persons, who were though appointed to the post of Assistant Teachers under the regular pay scale vide Memo No.



120 dated 01.02.2018 by the order of the District Education Officer, Madhepura; such order was subsequently recalled vide Memo No. 167 dated 07.02.2018. The said order was challenged by the employees concerned in CWJC No. 8963 of 2018 **Chandra Shekhar Azad** (supra), where the learned Court considering the order passed in the case of **Rhitoraj Saraubh** (supra) vide judgment dated 11.05.2018 has directed the respondents to consider the representation of the petitioners strictly taking into consideration the decision of the Hon'ble Apex Court, especially, in view of the direction passed by the Hon'ble Apex Court in the case of **Mukesh** (supra).

13. Learned Advocate for the petitioners further referred various decisions passed by learned co-ordinate Bench of this Court as well as the Division Bench in support of their claim and contended with all his vehemence that their cases are also fully covered with the decisions passed by the learned Division Bench of this Court in the of **Rhitoraj Saraubh** (supra) and **Chandra Shekhar Azad** (supra).

14. Non consideration of the case of the petitioners and/or rejection of their claim for their appointment to the regular post of Class III, despite the admitted fact that in their cases, the deceased employees died prior to 01.07.2006, much



before coming into force of Rules, 2006, the action of the respondents is wholly arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India.

15. Referring to the letter contained in Memo No. 38 dated 12.01.2018, it is submitted that the respondents have clarified the position that in case the death of the deceased employee took place prior to 01.07.2006 and recommendations have been made by the District Compassionate Appointment Committee for appointment to the post of Class III post in regular pay scale, they ought to be appointed on the recommended post and not on the fixed honorarium/pay. In the case of ***Rhitoraj Saraubh*** (supra), the learned Division Bench has rightly observed that once the advisory under Memo No. 38 dated 12.01.2018 has been issued by the State Government, it binds the authorities of the State for ensuring its compliance.

16. Any subsequent order modifying the earlier letter contained in Memo No. 38 dated 12.01.2018 or withdrawing the same with retrospective date is *per se* illegal and a move to undone the action taken by the State and its authorities, in compliance of the order of this Court and on nullity. Hence, the order rejecting the claim of the petitioners, under Memo no. 336 dated 07.03.2019, is wholly illegal and unsustainable in the eyes



of law and fit to be set-aside.

17. Per contra, learned Advocates for the State unanimously submitted that the Hon'ble Supreme Court in the case of **Mukesh** (supra) held that only those applicants, whose cases were recommended for appointment on compassionate ground prior to 01.07.2006 would be entitled for appointment on the regular post in regular pay scale, and other applicants who were appointed after 01.07.2006 will not be entitled for relief of regular pay scale. Though liberty was extended to the persons who were appointed after 01.07.2006 to approach the State Government, and in some of the cases, despite the admitted position that they were appointed after 01.07.2006, were extended the benefit of regular pay scale, but the same is in the humble submission of the learned Advocate for the State is contrary to the mandate of **Mukesh** (supra). Besides, it is further argued that if any illegality has been committed, the same cannot be perpetuated. Right to Equality cannot be claimed by the petitioners to commit another illegality, as the Right to Equality has a positive concept.

18. The case of the petitioners are not identical to those of **Chandra Shekhar Azad** (supra), as in their cases, they were duly appointed against the regular post in the regular pay



scale, but subsequently such orders were withdrawn and they have been brought under the cadre of Prakhanda/Nagar Teacher on fixed pay. In such circumstances, the Court directed in the matter not to interfere in their recommendation for appointment to the post of Assistant Teacher in regular pay scale. In the light of the aforesaid decision, the State under compelling circumstances, took a decision to extend the benefit of regular pay scale.

19. It is further argued that after coming into force of Rules, 2006, no appointment could be possible against a regular vacant post of Assistant Teacher, which is a dying cadre. The appointments of the petitioners were only possible to the post of Prakhanda/Nagar Teacher in the light of Rule 10 of the Rules, 2006; which have been done in the case of the petitioners. The claim of the petitioners are said to be unjustified and contrary to the mandate of the Hon'ble Apex Court in the case of **Mukesh** (supra).

20. This Court has carefully heard the learned Advocates for the respective parties and also meticulously perused the decisions referred hereinabove. The facts are not in dispute and it does not require any further deliberation. The only question for consideration before this Court as has arisen as to



whether the claim of the petitioners are similar to those of the said identically situated persons. In their cases, admittedly the recommendation for their appointment against the regular post in regular pay scale was made after 01.07.2006. Summingly, they were allowed appointment against a contractual post in fixed pay scale, but on challenge, they ultimately succeeded, and in their cases, the State authorities have accepted their recommendations and allowed their appointment to the regular post in the regular pay scale.

21. It is trite law that the persons have no legal right to seek appointment on compassionate grounds, as these appointments are not a source of recruitment and they are made to provide succor to a family of employee who died in harness. However, the same is possible if any rules or any scheme is formulated in this regard. It is not in dispute that in the case at hand, the claim of the appointment of the petitioners is to be considered in the light of the Rules, 2006; which categorically provides appointment on the post of Prakhanda Teachers, Panchayat Teachers and Nagar Panchayat Teachers etc., on a fixed pay in case of death of the employee, who died in harness.

22. The claim of the petitioners are mainly based on the premise that once the deceased employee died prior to



01.07.2006, their cases ought to be considered, in the light of the rules applicable with respect to compassionate appointment at the time of death of the employees and not the date on which recommendation is made. The recommendation for appointment on compassionate grounds is a fortuitous act and thus, in no circumstances, it governs the fate of the petitioners. Moreover, in the case of the petitioners, even when the recommendations were made for appointment against the regular post in regular pay scale, the same has not been accepted by the State and its authorities.

23. The dispute involved in the present cases as raised in various cases, including in the case of ***Rajiv Ranvijay Kumar*** (supra) and ***Viswanath Pandey Vs. The State of Bihar, CWJC No. 7218 of 2007***. However, when the matter has later on reached to the Hon'ble Supreme Court in the case of ***Mukesh*** (supra), the Hon'ble Court has given a quietus to such dispute by holding as follows:-

“3. By the impugned judgment, a Division Bench of the High Court correctly held that the appellants have no legal right to seek appointment on compassionate grounds. Compassionate appointments are not a source of recruitment and they are made to provide succour to the family of an employee who dies in harness. In the State of Bihar compassionate appointments are



governed by instructions issued by the Government. Some of the appellants were recommended for appointment to Class III posts on a regular basis by the District Compassionate Committee. However, they were appointed as Prakhanda Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. on a fixed pay. The appellants could not have been appointed on a fixed pay and they are entitled for appointment to either on Class III or Class IV posts on regular basis or payment of regular pay scale in the posts of as Prakhanda Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. in which they are working at present. Some of the appellants who were recommended for appointment to Class III posts but were appointed as Prakhanda Teachers/Panchayat Shikshaks/Nagar Shikshaks, etc. on fixed pay are similarly situated to Vishwanath Pandey and they are entitled to be appointed on a regular pay scale.

4. The other appellants who were appointed after 1-7-2006 are not entitled to the relief granted to those who were recommended for appointment to Class III or Class IV posts prior to that date. A Full Bench of the Patna High Court in State of Bihar v. Rajeev Ran Vijay Kumar [State of Bihar v. Rajeev Ran Vijay Kumar, held that the dependants of the deceased government employees do not have a legal right to be appointed in government posts. Their appointments on compassionate grounds shall be in accordance with the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as "the Rules") which came into force w.e.f.



1-7-2006. Rule 10 of the said Rules provides for employment on compassionate grounds to the dependants of teaching/non-teaching employees against available vacancies of Panchayat Teachers/Block Teachers/Prakhand Teachers, etc. Such appointments can be made only on a fixed pay by the committee constituted under the Rules.

5. The appellants who have not been recommended for appointment to Class III or Class IV posts prior to 1-7-2006 are not covered by Vishwanath Pandey case . On the other hand, they are squarely covered by the judgment of the Full Bench of the Patna High Court. They are not similarly situated to those who were recommended for appointment to Class III posts prior to 1-7-2006. The appellants, who were appointed after 1-7-2006, the date on which the Rules came into force, are not entitled to claim appointment on regular pay scales. It is relevant to note that the judgment of the Full Bench of the High Court of Patna was challenged before this Court. The said SLP was withdrawn with liberty granted to the petitioners therein to approach the Government for suitable relief.”

24. On plain reading of the aforesaid decision, it is imperative that it has left no room for any confusion that in cases where the recommendations was made prior to 01.07.2006, would entitle the applicant to a Class III or Class IV post on regular basis or for continuance as teacher in a regular scale but, at the same time, the Hon’ble Supreme Court has



extended liberty to those persons, in whose cases their recommendations were made after 01.07.2006 to approach the State Government for suitable relief in terms of the order passed by the Hon'ble Supreme Court on the S.L.P. preferred by the writ petitioner **Rajiv Ranvijay Kumar** (supra). It is only such observation of the Hon'ble Supreme Court which gave birth to the advisory issued by the State Government in the Department of Education under Memo No. 38 dated 12.01.2018.

25. The aforementioned Memo No. 38 dated 12.01.2018 was subjected to consideration by the learned Division Bench of this Court in the case of **Rhituraj Saraubh** (supra), in LPA No. 1472 of 2015, where the Court in no uncertain terms held that such resolution is loud and clear and concludes that in case the death of a Government teacher has taken place prior to 01.07.2006 and recommendation has been made by a competent District Compassionate Committee for appointment of his dependent against a regular post in a regular pay scale under the Government, then that recommendation has to be acted upon and the appointment has to be provided against a regular Class III or Class IV or against the post of a teacher against a regular pay scale. It would be worth benefiting to quote the relevant paragraphs which would, in the opinion of this Court, would



certainly guide to reach a fair and final conclusion in the matter.

“A cursory glance to the advisory issued by the Education Department at paragraph 1, would leave no room for any confusion that a conscious decision has been taken by the State Government in consideration of the cases of present kind in which deaths of teaching/non-teaching employees had taken place prior to 1.7.2006 to resolve that in case the District Compassionate Committee makes a recommendation in case of a Government teacher deceased prior to 1.7.2006 for appointment of his dependents on Class III or Class IV or for appointment against the post of a teacher then the appointment of the dependant has to be made in terms of the recommendation of the District Compassionate Committee against a regular post and against a regular pay scale. The resolution is loud and clear and concludes that in case the death of a Government teacher has taken place prior to 1.7.2006 and recommendation has been made by a competent District Compassionate Committee for appointment of his dependent against a regular post and against a regular pay scale under the Government, then that recommendation has to be acted upon and the appointment has to be provided against a regular Class III or Class IV or against the post of a teacher against a regular pay scale.

In our opinion, this resolution puts at rest all speculations and all disputes and in fact renders this appeal infructuous for once the Education Department itself has acted on the liberty of the Supreme Court to clarify the issue.



this contest is rendered academic. Another interesting aspect of the matter which we need to record is, the affidavit of the Principal Secretary of the Education Department filed on 11.4.2018. Now even though he admits to issuance of the notification dated 12.1.2018 in the light of the order passed by the Supreme Court in the case of Mukesh (supra) and even though he admits to revisit the issue of compassionate appointment in the light of the direction issued in C.W.J.C.No. 560/2015 but yet he does not shoulder the responsibility of taking this case to its logical conclusion in the light of his own clarification dated 12.1.2018 qua the recommendation of the District Compassionate Committee, Patna.

For the reasons so discussed, we are certainly not persuaded with the argument of Mr. Anjani Kumar, learned AAG-4, to interfere with the opinion expressed by the learned Single Judge rather the advisory bearing memo no. 38 dated 12.1.2018 of the State Government in its Education Department binds them to act on the recommendation of the District Compassionate Committee, Patna dated 30.10.2006 in so far as it concerns these petitioners and we would remind the Principal Secretary, Education Department of the time stipulated in the order of the learned Single Judge which continues to binds him for ensuring its compliance and for taking the matter to its logical conclusion.

In result, the Letters Patent Appeal is dismissed with no order as to costs.”

emphasis supplied

26. Identical issue has also come up for consideration



before another Division Bench of this Court in ***Chandra Shekhar Azad*** (supra), on a reference made by a Bench of this Court, when it expressed its difficulty in accepting the contention of learned Senior Counsel for the petitioner that once the post of Assistant Teacher in regular cadre is dying cadre, in view of the judgment of the Hon'ble Supreme Court in the case of ***State of Bihar & Ors. versus Bihar Secondary Teachers Struggle Committee, Munger & Ors. (2019) 18 SCC 301***, it cannot be enhanced by allowing the persons to be appointed against such post of Assistant Teacher, and thus finding it difficult to accept the judgment rendered by the different Bench, referred the matter to a larger Bench to consider the following issues, which are extracted hereinbelow:-

“17. It appears that in view of the judgment of the Hon'ble Supreme Court in the case of Bihar Secondary Teachers Struggle Committee (supra), the learned Writ Court expressed its difficulty in accepting the contention of learned Senior Counsel for the petitioners that the addition to the dying cadre is permissible. The learned Writ Court took a view that the strength of the cadre which is dying cannot be enhanced and since the earlier decision was rendered by this Court relying upon the judgment of the Hon'ble Division Bench, in view of the pronouncement of the Hon'ble Apex Court now, the cadre of Assistant Teacher is a dying cadre, therefore, the basis of



the order of this Court requires reconsideration. The learned Writ Court therefore, expressed its desire to refer the matter to a larger Bench to consider the following issues:—

- 1. “Whether the post of Assistant Teacher is a Dying Cadre after 2006?*
- 2. Whether the Court can induct any teacher in Dying Cadre after 2006?*
- 3. Whether the petitioners, who were regularized pursuant to the judgment of the Division Bench on declaration of law by the Apex Court, can claim that the judgment inter-party is binding and therefore, they have right to continue on regular post of Assistant Teacher on compassionate ground notwithstanding the post of Assistant Teacher is a Dying Cadre?*
- 4. Whether the compassionate appointment against any Dying Cadre is permissible?*
- 5. Whether the judgment of the Apex Court in the case of State of Bihar v. Bihar Secondary Teachers Struggle Committee (Supra) is settler on the point that the cadre of Assistant Teacher is a Dying Cadre and applies to the case of the present petitioners.*
- 6. In addition thereto, the larger Bench has to consider the judgment of the Apex Court which*



was the basis for taking decision dated 19.07.2019 by the respondents, as contained in Annexure-16 to the writ petition.”

27. The learned Division Bench while answering the questions referred hereinabove primarily held that after coming into force of Rules for Appointment of Teachers 2006, the cadre of Assistant Teacher is a dying cadre. However, with respect to the second question, it is observed that if the equity, justice and conscience requires a constitutional Court to direct the State Government to induct one as a teacher in dying cadre, it may be done, and there cannot be made any bar on the exercise of constitutional power of the Court in issuing such direction in the given facts and circumstances of the case. The issue number four which is important for the present lis; the learned Division Bench has answered that in terms of mandate of the judgment of the Hon'ble Supreme Court in the case of **Mukesh** (supra), appointment on compassionate ground in the dying cadre of Assistant Teacher was permissible only in the cases where recommendation for appointment was made by the committee prior to 01.07.2006. But in view of the liberty granted to take a decision in respect of those, whose cases had been recommended after 01.07.2006, if the State Government took a decision vide Memo No. 38 dated 12.01.2018 to appoint those



persons, who were wards of the Government Teachers, and they died prior to 01.07.2006, and by virtue of such decisions, those persons have already been appointed, there is nothing on the record to show that it was a result of a wrong understanding of the judgment of the Hon'ble Supreme Court.

28. The learned Division Bench further while negating the stand of the State that the cadre of the Assistant Teacher is a dying cadre and, as such, no further appointment could be made on such posts categorically answered that such argument is not available with the State Government and would not apply to the facts of the present case. Once such plea of dying cadre was raised in the case of the ***Bihar Secondary Teacher Struggle Committee & Ors.*** (supra) by way of a submission only to contest the pay of equal pay for equal work for Niyojit Shikshak. Finally, while answering the question number six with respect to application of departmental Letter No. 336 dated 07.03.2019, as well as Letter contained in Memo No. 944 dated 19.07.2019, the Court held as follow:-

“33. A bare reading of Annexure '16' would show that the same has been issued in the light of the judgment of the Hon'ble Supreme Court in the case of Mukesh (supra). It is true that in the case of Mukesh (supra) the Hon'ble Supreme Court held that only those applicants whose cases were



recommended for appointment on compassionate ground prior to 01.02.2006 would be entitled for appointment on the regular post in regular pay-scale and the other appellants who were appointed after 01.07.2006 will not be entitled for relief of regular pay-scale but at the same time liberty was granted to those appellants to approach the State Government for suitable relief in terms of the order passed in S.L.P. (c) No. 29655 of 2010 as noticed above. In S.L.P. (C) No. 29655 of 2010 which arises out of the judgment of the Hon'ble Full Bench of this Court in the case of Rajeev Ran Vijay Kumar (supra). In the case of Rajeev Ranvijay Kumar (supra) the State Government took a plea that if the appellants withdraw the appeal, the State would be considering their cases keeping in view the facts and circumstance of the each case. In view of that statement of the State, Rajeev Ran Vijay Kumar and others, who were the petitioners/appellants, withdrew the Special Leave Petition with liberty to move the authorities concerned. Thereafter, the State respondents considered their cases and appointed them as Assistant Teacher in the cadre. Therefore, the whole reading of the judgment of the Hon'ble Apex Court in the case of Mukesh (supra) would show that by granting liberty these petitioners were also placed in the same position as Rajeev Ran Vijay Kumar (supra) and it was open for the Government to consider their cases. Under these circumstances, if the State Government considered their cases and granted them the benefit of compassionate appointment as Assistant Teacher and upon reconsideration once



again pursuant to the judgment of this Court in C.W.J.C. No. 8963 of 2018 if the petitioners have been recommended for appointment as Assistant Teachers in the cadre, by taking a plea that it was result of misunderstanding and an exercise in violation of the judgment of the Hon'ble Apex Court as contained in Annexure '16' to the writ application, the petitioners cannot be ousted from the cadre.

29. A bare meticulous reading of the above referred decision in the case of **Chandra Shekhar Azad** (supra), it is imperative that the learned Division Bench in sum and substance categorically held that since it was open for the Government to consider their cases in the light of the liberty extended by the Supreme Court in the case of **Mukesh** (supra), as well as **Rajiv Ranvijay Kumar** (supra), and under these circumstances, if the State Government considered their cases and granted them the benefit of compassionate appointment as Assistant Teacher, now they cannot be allowed to take a plea that it was a result of misunderstanding and exercise in violation of the judgment of the Hon'ble Apex Court.

30. This Court has also come across various other decisions, including the decisions rendered in the case of **Rhitoraj Saraubh** (supra), **Chandra Shekhar Azad** (supra), the copies of which have been brought on record. In consequence thereof, the petitioners of those cases have been appointed



against the regular post in regular pay scale.

31. The Court time and again has cautioned the State and its authorities while reiterating the settled principle that equals must be treated equally, and if persons similarly placed are treated differently without any rational, it would amount to violation of Article 14 of the Constitution of India. If two sets of employees stand on the same footing, in terms of the date of the death of the deceased employees, the date of their recommendation and their eligibility and applicability under statutory rules, besides the identical liberty extended by the highest Court of the land, the State cannot in the opinion of this Court, extend a benefit to one group and deny it to the another group without demonstrating a valid distinction. Equality does not allow selective or partial implementation of policy or the advisory taken by the State, as has been done while issuing Memo No. 38 dated 12.01.2018, extending liberty to those in their cases, the recommendations have been made even after 01.07.2006, and thus it has rightly been held by the learned Division Bench in the case of ***Rhituraj Saraubh*** (supra) that such letter binds the State authorities for ensuring its compliance and for taking the matter to its logical conclusion, in the light of the principle discussed in the rulings.



32. The State being a model employer is expected to show fairness in action. In ***Balram Gupta Vs. Union of India & Anr., AIR 1987 SC 2354***, the Apex Court has observed that as a model employer, the Government must conduct itself with high probity and candour with its employees. It would be worth benefiting and opposite at this stage to reproduce paragraph no. 65 of the decision, while the Court emphasizing the role of State as a model employer in case of ***Bhupendra Nath Hazarika & Anr. Vs. State of Assam & Ors., (2013) 2 SCC 516***, has observed as follows:-

“65. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretised. We say no more.”



33. In State of *Haryana & Ors. Vs. Piara Singh & Ors.*, (1992) 4 SCC 118, the Hon'ble Supreme Court has significantly ruled that the main concern of the Court in such matter is to ensure with the rule of law and to see that the State and the executive act fairly and give a fair deal to its employees consistent with the requirements of Article 14 and 16 of the Constitution of India.

34. In the light of the aforesaid deliberation and discussion, this Court has no hesitation to hold that the decision dated 07.03.2019 contained in Letter No. 336 and any other consequential letter debarring the cases of identically situated persons, with those of the petitioners, who have been appointed against regular post in regular pay, irrespective of their recommendation have been made after 01.07.2006, by exercising the liberty granted to the State in *Mukesh* (supra), the same is wholly arbitrary, illegal and discriminatory besides such action does not withstand the test of Article 14 of the Constitution of India. The authorities must not forget that recommendation by the District Compassionate Committee is an administrative and fortuitous act. Hence, there may be various reasons depending upon the facts of each and cases, which may lead to delay in making recommendation and for which, the



wards and dependent of the deceased employee cannot be penalized. It is in this premise, the State was extended the power to do justice, with those persons.

35. In view of the reasons disclosed hereinabove, this Court is of the opinion that the cases of the petitioners are also identical to those of ***Chandra Shekhar Azad*** (supra) and ***Rhituraj Saraubh*** (supra), in whose favor, pursuant to the order of this Court, the State Government and its authorities have taken a decision to extend the benefit of regular pay scale and, as such, the petitioners are also entitled to get similar treatment with those of the petitioners of the said case.

36. Accordingly, this Court directs the Additional Chief Secretary, Education Department, Government of Bihar, Patna, as well as the Director, Primary Education, Government of Bihar to consider their cases afresh by treating at par with those of the cases of ***Rhituraj Saraubh*** (supra), ***Chandra Shekhar Azad*** (supra), and extend all the consequential benefits, including the regular pay scale, as has been given to them, preferably within a period of three months from the date of receipt/production of a copy of this order.

37. The impugned orders by which the claim of the petitioners have been negated on the ground of dissimilarity are



hereby set aside.

38. All these writ petitions stand allowed.

39. The parties shall bear their own cost.

(Harish Kumar, J)

shivank/sumit-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2026
Transmission Date	NA

