पत्रांक–भवन/विधि–विविध–01/2026.....10467(M)
03/11/26

पीत पत्र के बदले में

संयुक्त सचिव,
प्रभारी, अराजपत्रित स्थापना प्रशाखा–ट4,
भवन निर्माण विभाग, बिहार, पटना ।

समादेशवाद संख्या–10062/2017 टुनटुन कुमार पासवान बनाम बिहार राज्य एवं अन्य मामले में माननीय उच्च न्यायालय, पटना द्वारा पारित न्यायादेश से संबंधित है, की मूल प्रति आवश्यक विधिक कार्रवाई हेतु संलग्न कर प्रेषित की जा रही है।

अतः अनुरोध है कि न्यायालय द्वारा पारित न्यायादेश के आलोक में आवश्यक विधिक कार्रवाई करने की कृपा की जाय।

अनु0–यथोक्त।

(मृदुला कुमारी)
सरकार के उप सचिव,
भवन निर्माण विभाग,
बिहार, पटना।

बिहार सरकार
भवन निर्माण विभाग

ज्ञापांक–भवन/स्था0–04–लि0–29/2022...10669(M) पटना, दिनांकः– 13/11/26

प्रतिलिपिः– अनुलग्नकों की छायाप्रतियों के साथ सभी मुख्य अभियंता/सभी अधीक्षण अभियंता/सभी कार्यपालक अभियंता, भवन निर्माण विभाग, बिहार को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

2. कृपया माननीय उच्च न्यायालय, पटना द्वारा विषयगत समादेशवाद में दिनांक–01.09.2026 को पारित न्यायादेश का अनुपालन सुनिश्चित किया जाए।

3. आई0टी0 मैनेजर, भवन निर्माण विभाग, बिहार, पटना को विभागीय बेवसाईट पर अपलोड करने हेतु प्रेषित।

अनु0–यथोक्त।

13.11.26

(अवधेश नंदन सिन्हा)
सरकार के संयुक्त सचिव

पत्रांक–भवन/विधि–विविध–01/2026.....10407(4)Dms
03/11/26

पीत पत्र के बदले में

संयुक्त सचिव,
प्रभारी, अराजपत्रित स्थापना प्रशाखा–04,
भवन निर्माण विभाग, बिहार, पटना ।

समादेशवाद संख्या–10062/2017 टुनटुन कुमार पासवान बनाम बिहार राज्य एवं अन्य मामले में माननीय उच्च न्यायालय, पटना द्वारा पारित न्यायादेश से संबंधित है, की मूल प्रति आवश्यक विधिक कार्रवाई हेतु संलग्न कर प्रेषित की जा रही है।

अतः अनुरोध है कि न्यायालय द्वारा पारित न्यायादेश के आलोक में आवश्यक विधिक कार्रवाई करने की कृपा की जाय।

अनु0–यथोक्त।

2/11/2026

(मृदुला कुमारी)
सरकार के उप सचिव,
भवन निर्माण विभाग,
बिहार, पटना।

प0पत्र: 04
अधीक्षक
04.11.26.

श्री सोनिया जी कृपया सभी EE/SE को परिचालित करें।
04.11.26

1518
04/11/26

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10062 of 2017

1. Tuntun Kumar Paswan and Anr S/o Late Hari Nandan Paswan, R/o Baluahi, Ward No. 26, P.O.- Koshi College, P.S.- Khagaia, District- Khagaria.
2. Aamir Hassan, S/o Late Md. Shamaul Hassan, R/o Vill.- Sheikhpura, P.O. P.S.- Bolia Belown, District- Katihar.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Building Construction Department, Bihar, Patna.
3. The Superintending Engineer, Building Construction Department, Building Circle, Purnea.

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr. Siyaram Pandey, Advocate
For the State : Mr. Subodh Kumar, A.C. to S.C.-26.

CORAM: HONOURABLE MR. JUSTICE KUMAR MANISH

CAV JUDGMENT
Date : 01-09-2026

1. Heard learned counsel for the petitioners and learned counsel for the State.

2. This writ application has been filed for the following reliefs:

   i. For quashing the office order dated 26.05.2017 as contained in Annexure- P/3 whereby the petitioners have been reverted from the post of Junior Accounts Clerk/Lower Division Account Clerk to the post of Lower Division Clerk on the ground that they were appointed on compassionate ground in the pay scale of 3050-4590 which is now corresponding scale of Lower Division Clerk.

   ii. For declaration that the pay scale is attached to the post held by the employee and the employees are entitled for the pay scale for the post on which they were appointed and regularized.

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iii. For declaring the action of the Respondent Superintending Engineer to be in the teeth of decision taken by District Appointment Committee and also in the teeth of order of the Hon'ble Division Bench passed in **LPA No. 206/2014** as contained in (Annexure- 4) whereby taking note of Government Resolution No. 3111 dated 25.03.2015 the Hon'ble Court has been pleased to hold that all Accounts Clerk whether appointed on compassionate ground or otherwise to be entitled for the same pay scale.

iv. Any other order/orders for which the petitioners are found entitled to in the facts and circumstances of the present case.

3. The petitioners are presently posted as Junior Account Clerk/Junior Division Accounts Clerk under Building Circle, Building Construction Department, Purnea. Petitioners father were working under Building Circle (BCD), Purnea and died-in-harness and thereafter the petitioners were appointed on compassionate ground on the post of Junior Account Clerk /Junior Division Account Clerk.

4. The petitioner no. 1 was appointed as Junior Accounts Clerk against the vacant post with applicable allowances from time to time vide Memo No. 06 dated 03.01.2014. Similarly, the petitioner no. 2 was appointed as Junior Account Clerk in PB-1-5200-20200 Grade Pay Rs. 1900 which is corresponding pay scale of Rs. 3050-4950 vide Memo No. 768 dated 18.10.2014. Both the petitioners gave joining against vacant sanctioned post on which they were appointed.

5. The petitioners on the basis of their length of service, efficiency and qualification were given the benefit of being in the cadre of Accounts Clerk. They were further

given the benefit of increments and other facilities available to a regularly appointed person.

6. It is submitted that the petitioners were getting the pay scale and other allowances in PB-1-5200-20200 Grade Pay-1900 which is corresponding pay scale of Rs. 350-4590/- in terms of their letter of appointment as Junior Accounts Clerk since their appointment. The pay scale of Junior Accounts Clerk and Senior Accounts Clerk was in dispute since merger of the two posts and re-designation of the post of Junior Accounts Clerk and Senior Accounts Clerk as Accounts Clerk. This dispute was settled by the Resolution of the Finance Department being Resolution No. 3111 (v) dated 25.03.2015 whereby those who were appointed till 27.09.1999 were given the revised pay scale of Rs. 4500-7000/- w.e.f. 01.01.1996 and corresponding revised pay scale but those who were appointed on or after 28.09.1999 were given the pay scale of 4000-6000/- and revised pay in pay band of Rs. 2400/-.

The petitioners were appointed after 27.09.1999 so they came in the category of lower scale of Rs. 4000-6000/- as per decision of the government.

7. On the basis of the said Resolution No. 3111 dated 25.03.2015 the petitioners were given the Grade Pay of 2400/- and consequential pay fixation was made. In the light of the said resolution of the Finance Department dated 25.03.2015, the consequential order was issued granting the benefit of the pay scale as decided by the Finance Department and it was entered in the service book by the authority concerned and consequential pay fixation order was issued and the District Accounts Officer confirmed the pay scale as it was in consonance with the decision of the government.

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8. It is respectfully submitted on behalf of the petitioners that the appointment of petitioners on compassionate ground in the pay scale PB-1-5200-20200, Grade Pay 1900 (corresponding pay scale of Rs. 3050-4590/-) was the conscious decision of the District Compassionate Committee on terms of payable allowance from time to time.

Again, it was the decision of the Government to put the Accounts Clerk appointed after 28.09.1999 in the pay scale of Rs. 4000-6000/- or PB-1+ Grade Pay of 2400/- of which the petitioners received the benefit.

Much after the appointment of petitioners, the Respondents Superintending Engineer in the absence of any concealment or misrepresentation by the petitioners unilaterally decided to shift the petitioners from the post of Junior Accounts Clerk/Lower Division Accounts Clerk to Lower Division Clerk on the ground that the scale of Lower Division Clerk is corresponding to the scale of Rs. 3050-4590/- on which compassionate appointment is to be given ignoring the fact that the petitioners were appointed in the cadre of Accounts Clerk and they are entitled for the benefits accrued to the post of Accounts Clerk/Junior Division Accounts Clerk on which they were appointed.

9. The Respondent Superintending Engineer, Building Circle, Purnea vide his Office order dated 26.05.2017 reverted petitioners to the post of Lower Division Clerk on the basis of the fact that they were appointed on compassionate ground in the Grade Pay of 1900/- and consequently the upgraded pay scale in grade pay of 2400 was reduced to the grade pay of Rs. 1900 and direction has been issued by consequential order for recovery of alleged excess amount.

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It is necessary to point out that revision of pay scale of the post of Accounts Clerk on which the petitioners were appointed as back as in the year 2014 will not disqualify the petitioners from getting its benefit in the absence of any concealment of facts or misrepresentation on their part. The name of Petitioners figure at serial 1 and 2 respectively of the impugned order dated 26.05.2017.

10. It is submitted that the issue of pay scale has not only been settled by the government but also by the Hon'ble Division Bench in LPA No. 206 of 2014. The Hon'ble Court giving reference of the same resolution of the Finance Department being Resolution No. 3111 dated 25.03.2015 has settled the pay scale of Accounts Clerk of which the Petitioners have received the benefit. The Hon'ble Division Bench upheld the order dated 06.08.13 passed by Hon'ble Single Judge in C.W.J.C. No. 12124/2011.

Further it has been held by the Hon'ble Court that all accounts Clerk whether appointed on compassionate ground or otherwise are entitled for the pay scale of Accounts Clerk still over reaching the authority of the higher authorities and the order passed by the Hon'ble Court the Respondent Superintending Engineer had taken arbitrary decision of reverting the petitioners to the post of Lower Division Clerk on unfounded grounds.

11. It is a settled principle that an employee gets the pay scale of the post held by him. The Petitioners were appointed as Lower Division Accounts Clerk so they deserve to get the revised scale of this post. Merely because the Petitioners were appointed in the corresponding pay scale of Rs. 3050-4590/-(Grade Pay 1900) they

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may not be reverted in different cadre on the post of Lower Division Clerk much after their appointment on the ground that compassionate appointment is to be given on the scale of Rs. 3050-4590/- and is corresponding scale.

12. It is submitted and stated that resolution dated 25.03.2015 upgrading the scale of all appointees to the post after 28.09.1999, the petitioners are fully covered by this Resolution which is contained as (Annexure- 4) to this Writ Petition. Moreover, legal position settled by this Hon'ble Court in **LPA No. 206/2014 (the State of Bihar vs. Ram Janam Jha and others)** removed the differentiation between the regular appointees and those appointed on compassionate ground following the process of appointment.

13. **Per contra**, it is submitted on behalf of the State that on scrutiny, a reasoned order has been passed by the Finance Department vide memo no. 5483, dated 11.07.2016 in pursuance of order passed in **CWJC No. 10585 of 2015** and the Finance Commissioner ordered that appointment on post of Accounts Clerk is to be made by holding examination and further it was directed that the compassionate appointment is to be done in Lower Division Clerk only.

No appointment on post of Accounts Clerk can be made under compassionate appointment category.

14. It is submitted that Letter No. 4025, dated 15.05.2017 was issued by the Building Construction Department where the aforesaid reasoned order dated 11.07.2016 along with previous orders of the Finance Department dated 22.01.2003 and 20.12.2000

were referred and accordingly, order was passed to take action for corrective measures and for recovery.

15. It is further submitted on behalf of the State that in compliance of the aforesaid order and the letter of Finance Department, instructions were issued to all Superintending Engineers vide Letter No. 951, dated 22.05.2017 and thus, he Order No. 6/17-18, dated 08.06.2017 was issued where the corrective steps have been taken.

16. It is submitted that vide letter contained in memo no. 531, dated 22.01.2003, the Finance Department has instructed that in order to reorganize the Cadre constitution, the cadre unification was abolished since 20.12.2000 and the Lower Division Clerk and Upper Division Clerk were divided in pay scale of Rs. 3050-4590/- and Rs. 4000-6000/-. It was also instructed that persons appointed prior to 20.12.2000 were to be treated as Upper Division Clerk.

17. Vide aforesaid Finance Department letter, it was also instructed that since 01.04.2001, unification in accounts cadre will not be effective and it was instructed that persons on compassionate ground will not be appointed on scale more than Rs. 3050-4590/-.

18. It is submitted that the petitioners have been allowed the pay scale to which they are legally entitled and there is no illegality in the impugned order.

19. It is stated and submitted that the petitioners had been appointed on compassionate ground which is allowed to the dependents of a government servant who dies in harness and for which there had been government decision from time to time and prominently vide memo no. 13293, dated 05/10/1991, where, it has also

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been provided that a person can be appointed on Class III post where the pay scale is 1200/- to 1800/-.

20. It is further stated and submitted that since the year 1977, when scheme for compassionate appointment was launched, it was a condition that the appointment could be made on a post where there is no requirement of Bihar Public Service Commission or later the Bihar State Staff Selection Commission etc. and thus, it is apparent that post of class III were available for compassionate appointment in a limited manner.

21. The appointment on compassionate ground is by way of compassion to the deceased government employee for mitigating the sudden demise of the employee for the family of the government servant and such appointment is made as an exception to Article 14 and 16 of the Constitution of India.

The Letter No. 3385, dated 20/06/2001 issued by the Personnel and Administrative Reforms Department, Government of Bihar with regard to determination of pay scale of the persons being appointed in Class III on compassionate ground, takes into consideration the earlier circular vide memo no. 13293, dated 05/10/1991 and on consideration, the determination has been made stating that the corresponding scale of Lower Division Clerk of 1200/- to 1800/- would be equivalent to 3050/- to 4590/- after Sixth Pay Revision.

Accordingly, the Letter No. 531, dated 22/01/2003 issued by the Finance Department, Government of Bihar, on consideration, clearly states that if there had

been appointment on compassionate ground above Rs. 3050/- to 4590/-pay scale after 20/12/2000, the irregularity was to be corrected.

The mistake or any irregularity can be corrected by the employer at any stage and the petitioners cannot claim that they are entitled to the post of Junior Accounts Clerk as a matter of right.

22. It is submitted on behalf of the State that the case of the petitioners is different from the facts in **LPA No. 206 of 2014,** where claim of the petitioners was that the Accounts Clerk in the Water Resources Department were to be treated at par with the Accounts Clerk in other Departments of the State and regarding parity in payment. Whilst in the instant matter, the basic eligibility to be appointed on compassionate ground at the accounts clerk post is involved and the same has been found against the government policy.

23. It is submitted that in accordance with Government Policy, the petitioners could not have been granted the pay scale as being demanded by them and they are entitled to Lower Division Clerk post on Compassionate appointment as an exception to the general rule and the petitioners cannot claim higher pay scale as entitlement in violation of government policy.

24. Similar grievance was raised in ***CWJC No. 12147 of 2013 (Pankaj Kumar Versus The State of Bihar & Others***) which was dismissed vide order dated 11.04.2014 against which the writ petitioner has preferred **LPA No. 1303 of 2014.** The aforesaid **LPA No. 1303 of 2014**, vide order dated 23.02.2018 partly allowed to

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the extent of recovery and upheld the decision of the **CWJC No 12147/2013** dated 11.4.2014.

25. Having heard learned counsel for the petitioners and learned counsel for the State, the primary question that falls for determination in the present writ application is whether the petitioners, having been appointed on compassionate grounds after the de-merger of the clerical cadre, can claim as a matter of right, a higher pay scale of ₹4000–6000/- (or Grade Pay ₹2400/-) attached to the post of Upper Division Clerk / Junior Accounts Clerk, or whether their entitlement is strictly confined to the basic pay scale of ₹3050–4590/- (Pay Band-1, ₹5200–20200/- + Grade Pay ₹1900/-) attached to the post of Lower Division Clerk.

26. The contention of the petitioners relies primarily on the premise that their selection/recommendation process for compassionate appointment was initiated prior to or under notifications preceding the de-merger, and that other employees appointed under distinct selection processes or schemes were extended higher pay scales. The petitioners further invoke the doctrine of *"Equal Pay for Equal Work"* to seek parity with direct recruits and other clerical personnel receiving the higher scale.

27. The legal issues raised herein are no longer *res integra*. The core controversy regarding the entitlement of compassionate appointees to the pre-demerger pay scale of ₹4000–6000/- versus the post-demerger scale of ₹3050–4590/- has been conclusively settled by the **Full Bench of this Court in CWJC No. 23831 of 2018**

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(Ravi Shankar Kumar v. The State of Bihar & Ors.) and its connected cases, decided on 27.08.2025.

28. In **Ravi Shankar Kumar (supra)**, the Full Bench exhaustively analyzed the statutory notifications and policy framework governing clerical cadres in the State of Bihar, specifically:

i. **Finance Department Resolution No. 8825 & 8826 dated 20.12.2000:** Whereby the unified cadre of Assistant/Clerk was demerged into Lower Division Clerk (LDC) in the pay scale of ₹3050–4590/- and Upper Division Clerk (UDC) in the pay scale of ₹4000–6000/-. Clause 5(i) explicitly mandated that all future direct recruitment would take place only at the lowest entry-level post of LDC.

ii. **General Administration Department Letter No. 3385 dated 20.06.2001:** Which clarified that post-sixth pay revision, compassionate appointments against Class-III posts (previously in the ₹1200–1800/- scale) would be made strictly in the replacement pay scale of ₹3050–4590/- (LDC).

29. The Full Bench in **Ravi Shankar Kumar (supra)** reconciled the conflicting views previously taken by different Division Benches of this Court and laid down the following binding legal principles:

The law laid down by the Division Bench in **Smt. Mosarrat Arra Khanam & Ors. v. The State of Bihar (LPA No. 100 of 2012)** represents the correct position of law. The judgment in **Avinash Kumar Chakerworty v. The State**

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of Bihar (LPA No. 167 of 2016) was declared *per incuriam* as it failed to consider the earlier binding Division Bench decision in ***Smt. Mosarrat Arra Khanam*** and the explicit mandate of Clause 5 of Resolution dated 20.12.2000.

The Full Bench categorically held that the doctrine of ***"Equal Pay for Equal Work"*** has no application in these matters. Direct recruits appointed pursuant to BPSC Advertisement No. 4/1998 constituted a distinct and isolated group whose selection process commenced prior to de-merger under advertised conditions. Compassionate appointees cannot claim legitimate parity with such direct recruits.

Mere pendency of an application for compassionate appointment or a recommendation by the District Establishment/Compassionate Committee prior to de-merger does not create a vested right to be appointed against a pre-demerger post. Post 20.12.2000, all available clerical vacancies automatically stood converted to entry-level LDC posts in the pay scale of ₹3050–4590/-.

The decision in **Binit Kumar & Ors. v. The State of Bihar (CWJC No. 9921 of 2017)**, which pertained to the Accounts Clerical Cadre and Finance Department Resolution No. 3111 dated 25.03.2015, rests on entirely distinct service rules and has no application to general clerical/LDC appointments.

30. Applying the aforesaid authoritative principles to the present case, petitioner No.1 Tuntun Kumar Paswan was appointed on compassionate grounds after the cut-off date of 20.12.2000. By operation of law and executive instructions, the only entry-