

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5727 of 2014

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Satish Kumar Dutt, Son Of Late Baleshwar Singh, Resident Of Village
Adai, P.S. Kouch, District Gaya

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The District Magistrate, Gaya Cum Chairman, District Compassionate Appointment Committee, Gaya
3. The Additional District Magistrate Cum Secretary, District Compassionate Appointment Committee, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Lakshmi Kant Sharma

For the Respondent/s : Mr. Shashi Shekhar Kr. Prasad, AC to SC-13

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 05-01-2015

Heard the parties.

2. The petitioner is aggrieved by a part of the resolution dated 07.10.2013 of the District Compassionate Committee, Gaya communicated vide Memo no. 2133 dated 24.10.2013 under the signature of the respondent District Magistrate-cum- Chairman, District Compassionate Committee, Gaya, as contained in Annexure-1, whereby the claim of the petitioner for his compassionate appointment has been rejected.

3. Learned senior counsel appearing on behalf of the petitioner has submitted that on 25.04.2004 the father of the petitioner, namely, Baleshwar Sharma lost his life in an attack allegedly made by the extremists at village- Arai in the district of Gaya. Therefore, the petitioner is entitled for his appointment on compassionate ground in the light of the policy decision dated 12.01.2001 (Annexure-4) of the State Government. It is also contended that two other persons were also killed in the aforesaid



incident and their dependants have been appointed on compassionate ground. It is further contended that the petitioner had moved earlier before this Court in C.W.J.C. No. 20648 of 2010 seeking direction to the respondent State and its functionaries to appoint him on compassionate ground in view of death of his father on 25.04.2004 at the hands of the extremists. The aforesaid writ petition filed on behalf the petitioner was disposed of by an order dated 29.07.2013 (Annexure-10) directing the respondent District Magistrate-cum-Collector, Gaya to dispose of the application filed on behalf of the petitioner in terms of the policy decision of the State Government. It is next contended that without taking into consideration the aforesaid direction of this Court, the claim of the petitioner has been rejected by the impugned communication dated 24.10.2013 (Annexure-1).

4. Learned A.C. to SC-13, appearing on behalf of the respondents, has strongly opposed the prayer made on behalf of the petitioner and has supported the impugned order. It is contended that the issue raised on behalf of the petitioner for compassionate appointment on the ground of death of a family member in an attack made by the extremists had come up for consideration in C.W.J.C. No. 7719 of 2005 as also C.W.J.C. No. 11098 of 2005, but a co-ordinate Bench of this Court, after taking into consideration the scheme of the State Government as also taking into consideration the mandate of Article 14 of the Constitution of India, has rejected the claim for compassionate appointment of the petitioners of those cases. It is further pointed out that following the aforesaid decisions, recently another co-ordinate Bench of this Court by order dated 06.07.2014 passed in



C.W.J.C. No. 20788 of 2013 (Annexure-E to the supplementary counter-affidavit filed on behalf of the respondent no. 2 and 3) has rejected the claim for compassionate appointment. It is also pointed out that in view of the judicial pronouncement made by this Court earlier in the year 2007, a communication was made on 21st May, 2008 (Annexure-F to the supplementary counter-affidavit) modifying the earlier policy decision of the State Government.

5. After having heard the parties and taking into consideration the materials available on record, this Court finds that indisputably, late Baleshwar Sharma father of the petitioner was not a government servant, but he died on 25.04.2004 at village Arai in the district of Gaya and since then more than 10 years have already elapsed. This Court further finds that the respondent District Magistrate, while passing the impugned order dated 24.10.2013 (Annexure-1) has taken into consideration the judicial pronouncements made by a Bench of this Court on 02.04.2007 and 17.04.2007 in C.W.J.C. No. 7719 of 2005 and 11098 of 2005, which also have been brought on record as Annexure-B & A respectively to the counter-affidavit filed on behalf of the respondent no. 2 and 3. Learned Single Judge [Coram: Navin Sinha, J, as His Lordship then was] while passing the order dated 02.04.2007 has taken into consideration the earlier decision of the State Government as also the mandate of Article 14 of the Constitution of India and has held as follows:-

“This Court notices that the State Government has a policy for providing appointment on compassionate ground to the family of a government servant who is deceased in service. The object is salutary to provide relief to the family of the deceased faced with sudden loss of the bread winner and compete



loss of source of income. This is only in recognition of the services rendered by the employee to the government. The act is that of a benevolent employer. There is thus a nexus on which the policy is based. Presently such is not a case. If the petitioner be eligible for appointment on compassionate ground notwithstanding that her husband was not in government service and that he did not die in service but merely for the reason that he was killed in some extremist activity, this will open a flood gate for appointment on compassionate grounds. Where will the line for grounds of compassionate appointment be then drawn. It will become a source of recruitment with all its attendant ills of nepotism. Employment in government service will be turned into private fiefdom, which is exactly what the notification dated 12.1.2001 seeks to do. Providing of appointment on compassionate ground will require payment of salary, allowances and other government benefits having monetary implication followed by grant of pension, family pension etc.. This shall all be at the expense of unwilling tax payer and one who may himself have been denied the right to apply for and compete for appointment in government service, a right guaranteed to him under Article 14 of the Constitution of India by virtue of one such post taken away by the State.

It is well settled law that if a benefit has been given to one person which does not meet the sanctity and requirement of law that cannot be a ground to demand similar treatment more so by approaching a court law and demanding equality under Article 14 of the Constitution of India that will virtually amount to putting Article 14 of the Constitution of India in reverse gear.”

6. This Court further finds that recently a Bench of this Court [Coram: Jyoti Saran,J] while passing the order

dated 16.07.2014 (Annexure-E to the supplementary counter-affidavit filed on behalf of the respondent no. 2 and 3) has taken a similar view and has rejected the claim of compassionate appointment on such ground.

7. It is well settled that public employment is a national wealth and that cannot be doled out by the respondent State and its functionaries in contravention of Articles 14 and 16 of the Constitution of India. Furthermore, the State is the custodian of tax payers money and therefore, its every action/decision must be for the advancement of the cause of public at large.

8. For the reasons recorded above, this Court does not find any good ground to interfere with the impugned order/resolution dated 24.10.2013 (Annexure-1) passed by the respondent District Magistrate-cum- Chairman, District Compassionate Committee, Gaya, rejecting the claim of the petitioner for his compassionate appointment. Hence, the writ petition has to fail and is, accordingly, dismissed, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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