

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16939 of 2008

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Ravindra Kamat @ Ravindra Kamati, s/o Late Mahendra Kamati, resident of village Dhangu Purwari Tol, P.S. Arer, District Madhubani.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The Principal Secretary, Public Works Department, Government of Bihar, Patna.
- 3.The Principal Secretary, Personnel & Administrative Reforms Department, Government of Bihar, Patna.
- 4.The Engineer-in-chief, Road Construction Department, Government of Bihar, Patna.
- 5.The Chief Engineer, Road Construction Department, Government of Bihar, Patna.
- 6.The Superintending Engineer, Road Construction Department, Rastriya Uchch Path Division Gulgarbagh, Infront of Telephone Buldeing, R. Block, Patna.
- 7.The Executive Engineer, Road Construction Department, Rastriya Uchch Path Division Gulgarbagh, Infront of Telephone Buldeing, R. Block, Patna.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

2 28-07-2015 No one appears for the petitioner.

Learned counsel for the State is present.

The prayer of the petitioner in this writ application is for appointment on compassionate ground which was filed on 21.11.2008 after the death of this father late Mahendra Kamati on 11.01.2007, has been sought to be resisted by the Respondents on the ground that the petitioner did not give details of the all of the family members of the deceased employee, inasmuch as, he had in his application in the prescribed proforma

disclosed the name of only his mother and three sons by omitting the name of the second wife and the children out of the aforesaid second marriage of late Mahendra Kamati.

According to learned counsel for the respondents, the petitioner's father had two wives and from first wife he had four sons and one daughter and two sons and two daughters from the second wife. To that extent, the only reason for non consideration of the case of the petitioner for his appointment on compassionate ground can be found in paragraph no. 10 , 12 and 13 of the counter affidavit which reads as follows:-

“That the petitioner has filed an application for appointment on compassionate ground (Annexure-3, 3/1, 3/2 of writ petition for which it is humbly submitted that the petitioner has mislead and intentionally gave incomplete list of family members leaving the minor children of the second wife, who would be considered legitimate and have all the rights of children born from first wife.

That in reply to the statement made in paragraph 9 of the writ petition under reply it is stated that the petitioner has misled and intentionally left the minor children of the second wife of the deceased. As per rule the minor children of the second wife would be considered legitimate and have all the right of children born from first wife. The appointment on compassionate ground is provided to look after the whole family if other means of livelihood is not available.

That in reply to the statement made in paragraph 10 to 13 of the writ petition under reply it is stated that all the retirement benefit due has been paid as recommended by Accountant General Office and office of the Administrator General of Bihar to both the wives of the deceased Mahendra Kamti equally and nothing is due."

From the reading of the aforementioned reasons in the counter affidavit, two things are clear. Firstly, that the department has made payment of post retirement benefit to both the wives but then it has refused to consider the case of appointment of the petitioner on compassionate ground only on the ground that the petitioner did not disclose the names of the second wife and the children out of the second marriage of the deceased employee. That, however, cannot be the reason for not considering the case of appointment of the petitioner on compassionate ground. From the averments made in the counter affidavit, it is also not clear as to whether the case of the petitioner was placed before the District Compassionate Appointment Committee. The Controlling authority before whom the application for appointment on compassionate ground was filed thus



had adopted unjustified approval in keeping the petitioner's case for appointment on compassionate ground pending before him inasmuch as even if he had found certain discrepancy in the application filed by the petitioner as with regard to leaving out the name of second wife out of the second marriage of late Mahendra kamati he could have asked it to be rectified by the petitioner and event of refusing to do so, he could have with his comments forwarded to the competent authority recommending and decision taking authority namely District Compassionate Appointment Committee headed by the Collector of the district which under the policy of the government for making appointed on compassionate ground is the final authority. The respondent controlling authority had to keep in mind that if the petitioner after being appointed on compassionate ground had refused to maintain the children out of the second marriage probably he could have committed violation of the undertaking given for appointment on compassionate

ground.

In that view of the matter, this Court would direct the respondents to consider the case of the petitioner for appointment on compassionate ground, if it has not been done till date.

It is made clear that this Court has not expressed its opinion on the merit of the claim of the petitioner which will have to be examined by the District Compassionate Appointment Committee but then it is also made clear that the father of the petitioner was a Government servant and the petitioner being his son had applied for appointment on compassionate ground within time, such an application, of the petitioner was required to be decided in the manner prescribed in the policy of compassionate appointment.

Thus, this Court would direct the respondents to consider the case of the petitioner on compassionate ground within a fixed time frame of six months from the date of receipt of this order.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

