

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5057 of 2014

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Anil Kumar, Son of Ram Dayal Ram, Resident of Mohalla - Shivganj, Ward No.23, Town Ara, P.S. Sadar Ara, District - Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna
2. The Commissioner, Ara Municipal Corporation, Ara, District Bhojpur, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. L.N.Das, Advocate.

For the Respondent/s : Mr. Bishwa Bhibhuti Kr. Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

7 04-02-2015 Heard learned counsel for the parties.

2. The petitioner in this writ application has sought a relief by way of quashing of an order dated 26.08.2013, passed by the Town Commissioner of Arrah Municipal Corporation (hereinafter referred to as the Corporation) cancelling the earlier appointment of the petitioner on compassionate ground on the allegation that he had made a misrepresentation of his father being dead for the purposes of being appointed on compassionate ground.

3. Mr. L.N. Das, learned counsel for the petitioner has submitted that in the application which was filed by the petitioner for seeking appointment on compassionate ground, he had not shown his father to be dead and in fact the appointment of the petitioner was made on compassionate ground due to death of his



mother, who was the employee of the Corporation. Mr. Das further submits that there appears to be some sort of confusion as with regard to the declaration given by the petitioner at the time of payment of death cum retirement benefit of his mother, wherein, it is alleged that the petitioner had given an affidavit as with regard to his father being dead. Mr. Das, therefore, wants to withdraw this writ application with a leave to explain the whole aspect to the competent authority of the Corporation.

4. Learned counsel for the Corporation on the other hand having filed the counter affidavit has submitted that after the mother of the petitioner had died on 11.11.2012, the petitioner had filed an application for payment of death cum retirement benefit and along with that application he had also submitted an affidavit sworn by him on 31.07.2013, wherein, he had declared that his father Ram Dayal Ram had already died and he was the son of his mother so has to be given the death cum retirement benefit of his mother. According to the learned counsel for the Corporation, this declaration was found to be false because in course of inquiry by the Municipal Inspector, it was reported that the father of the petitioner was alive and his other wife namely, Soni Devi was working in Ward No. 39 of the Corporation.

5. He has thus submitted that the petitioner cannot take any



advantage of declaring his father to be alive in the application which was filed by him on 31.01.2013, seeking his appointment on compassionate ground, wherein, he had shown his father to be alive and also one of the two dependent of the deceased employee, the mother of the petitioner. He has, accordingly, submitted that there cannot be any flaw in the impugned order terminating his services on the ground that he had obtained his appointment by falsely declaring his father to be dead whereas the first right of appointment on compassionate ground was that of his father in capacity of the husband of the deceased employee.

6. In the considered opinion of this court, the facts are very clear, the mother of the petitioner had died on 11.11.2009, and thereafter he had filed an application on 01.02.2013, seeking his appointment on compassionate ground in the prescribed proforma. In that application, he had shown his father to be alive and dependant of the deceased employee. Subsequently, on the basis of this declaration he was appointed by an order dated 28.06.2013. Later on he had filed an application for death cum retirement benefit in which he is said to have enclosed an affidavit dated 31.07.2013, declaring his father to be dead.

7. This affidavit of the petitioner dated 31.07.2013, however, has been produced in the counter affidavit whereas the



petitioner has produced another affidavit in the date of 21.02.2013, in which there is no declaration as with regard to his father being dead but his being the only issue and legal heir of his mother. Let it be noted that the petitioner was already appointed on 28.06.2013 and therefore, his subsequent affidavit dated 31.07.2013, showing his father to be dead having been not controverted by the petitioner by filing any rejoinder to the counter affidavit, this Court would find it difficult to accept the submission of Mr. Das that he had not misrepresented as with regard to death of his father which though may be the only basis of getting the death cum retirement benefit of his mother.

8. The impugned order canceling the appointment of the petitioner, however, proceeds that the petitioner had misrepresented as with regard to the death of his father and that as per the Government policy dated 05.10.1991, it was the father of the petitioner who had the first preferential right of being appointed on compassionate ground. Thus, if the petitioner can still satisfy that he had not made any misrepresentation and/or the affidavit dated 31.07.2013, declaring his father to be dead was not filed neither sworn nor filed by him in the Corporation, he may agitate his right for being appointed on compassionate ground by taking a plea that since his father was not only ineligible for

appointment on compassionate ground as he has already become overage.

9. His such plea could be subjected to an inquiry by way of firstly, making verification from the same oath Commissioner, Mr. D.K. Mishra before whom two affidavits were allegedly sworn by the petitioner, one in the date of 21.02.2013 bearing no. 5877 and the other in the date of 31.07.2013, bearing no. 18526 produced in this writ application and its counter affidavit. If the authorities of the Corporation find that the petitioner had not made any misrepresentation as with regard to death of his father and that his father on account of his becoming ineligible on account of being overage, has no objection in the appointment of the petitioner, the case of the petitioner for his being restored back in service may be considered in accordance with law.

10. As a matter of fact, the Government Resolution dated 05.10.1991, though it prescribes the order of preference of the dependant in which a husband in the case of deceased employee being the wife, has the first right of being considered but then if the father is ineligible and has no objection to the appointment of his son, the petitioner, the appointment of the son being second in the line of dependants and/could also be appointed.

11. Be that as it may, when learned counsel for the

petitioner himself wants to withdraw this application in order to enable the petitioner to move before the competent authority of the Corporation for reconsideration of his case, this application is, accordingly, permitted to be withdrawn with the aforementioned liberty and observations.

(Mihir Kumar Jha, J)

Sujit/-

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