

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23403 of 2013

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Pankaj Kumar son of Late Ashok Kumar Sinha, resident of Mohalla - Station Road,
Abhaypur, P.O. and Police Station - Piri Bazar, District - Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Director, Health Services, Filaria Control Unit, Govt. of Bihar, Patna.
3. The Assistant Director, Health Services Filaria Control Unit, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ADITYA NARAIN SINGH

Mr. KUNDAN KUMAR SINHA

For the Respondent/s: Mr. SUBHASH PD. SINGH, GA 7

Mr. DILIP KUMAR, AC to GA 7

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 23-01-2015

A K Tripathi, J.

There is serious default on the part of the office of the Assistant Director, Health Services, Filaria Control Unit, Government of Bihar, in the way they have has gone about dealing with the claim of the petitioner for compassionate appointment.

2. Soon after the death of the father of the petitioner, the mother made an application for appointment of the present petitioner on compassionate ground. This is within months of the death of the employee. No communication was made by the department on the status of such application for many a years. After patiently waiting for indulgent consideration when nothing came out of it, the petitioner along with the mother approached the High Court. Directions were issued upon the respondents in the previous writ application to file counter

affidavit, on many an occasions, but nothing came out of it and because of mis-handling by the counsel, matter stood dismissed for default. A fresh writ application has been filed now.

3. From the counter affidavit filed on behalf of the State, three things have been held out - one that the application for compassionate appointment was not in the prescribed form, that the father of the petitioner was missing for a long time from service for which notice had been issued to him and third that he was demoted from the post which he held.

4. So far as non-filing of application in the prescribed form is concerned, the petitioner or the mother was never informed of the inadequacy at any point of time. The minimum which a Government servant owed to the citizen was to point out the inadequacy in the application or claim for such appointment. It is mandatory and not obligatory.

5. Absence of prescribed format also cannot be made a ground for rejecting the claim of the petitioner because none of the rules or the policy talks about the same being a ground for rejection. In fact, recently in a decision rendered by the Hon`ble Apex Court in the case of **Shreejith L. Vs. Deputy Director (Education) Kerala and others, (2012) 7 SCC 248**, their Lordships have held, especially in paragraph 24 and 38, that absence of prescribed format cannot be a ground for rejection of the claim for appointment on compassionate ground. Paragraph 24 and 38 are being reproduced for ready reference:

“24. We regret our inability to accept that submission. The Manager of the school had on receipt of the application from Respondent 4 not only acknowledged the request for appointment but also recognized that Respondent 4 possessed the requisite qualification for appointment as a Hindi teacher. The request was not, however, granted as



no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application was moved and who was supposed to consider the request, did not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the prayer, by the beneficiary of the appointment made in derogation of the rights of Respondent 4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and provided the information which the Manager required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of any untimely demise in the family. Inasmuch as the Assistant Education Officer and even the High Court found Respondent 4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The civil appeal is, therefore, liable to be dismissed.

38. Having said that, we have no manner of doubt that in case an application is made by the legal heirs of a deceased employee claiming the benefit of the scheme for compassionate appointment, the deficiencies and defects, if any, in the said application ought to be pointed out to the



person concerned to enable him to remove the same within a reasonable time. But if the defects are not removed within the time granted, an adverse inference could be drawn against the person in default. On the contrary, where an application is filed, entertained and eventually declined for a reason other than the form in which the same ought to have been filed, the rejection cannot be supported before the higher authority or in the court on the ground that application was non est as the same was not in the prescribed form. The application for appointment filed on behalf of the respondent could not therefore have been rejected on the ground that the same was not in the prescribed form.”

6. The other two objections about prolonged absence of the father of the petitioner or his reversion from the post held by him does not amount to severance of master-servant relationship. Therefore, he continued to be a Government servant.

7. It is not the case of the State that father of the petitioner was removed or dismissed from service. Therefore, such objection was misplaced objection.

8. The Court was inclined to take a serious view of the omission on the part of respondent No.3 in sitting over the claim and right of the petitioner to frustrate it. However, on an assurance being given by the counsel for the State, if the petitioner files an application in the prescribed format, the same will be considered dispassionately. This must be without any of the objections raised in the present writ application, because they have already been held to be invalid objections. Decision thereafter will be taken within a period of eight weeks of filing of such an application.

9. Writ application stands allowed with above direction.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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