

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.7287 of 2014**

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Jiwendra Kumar Son of Late Bhogilal Yadav Resident of Village- Parsauni, Post-  
Ganaura, P.S- Marona, District- Supaul.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Industry Department, Government of Bihar, Patna.
2. The Director, Industry Department, Government of Bihar, Patna.
3. The Managing Director, Handloom and Handicraft Corporation, Udhog Bhawan, Gandhi Maidan, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Suman Kumar Mishra, Adv.  
For the Respondent/s : Mr. Ajeet Pratap Singh, SC15  
For the Corporation : Mr. P.K. Verma, Sr. Adv.  
Mr. Anand Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**

CAV JUDGMENT

**Date: 15- 10 - 2015**

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application is for issuance of a direction to the respondents to appoint the petitioner on compassionate ground on the ground that the father, an employee of Handloom and Handicraft Corporation (hereinafter to be referred to as 'the Corporation') had died in harness on 1.8.2009. Learned counsel for the petitioner has submitted that after the death of the father of the petitioner who was appointed as a Clas-4 post in the Corporation on 16.2.1990 and had died in harness on 1.8.2009. the petitioner had filed an application for appointment on compassionate ground on

15.8.2009 but, despite the fact that the petitioner was eligible in all respect and was also having the qualification of intermediate, he was not appointed.

3. In this case, a counter affidavit has been filed on behalf of the Corporation wherein it has been stated that the Corporation, having been already gone under liquidation and in fact Company Petition No. 4 of 2009 having been filed before this Court for winding up the Corporation, which is a company within the meaning of Companies Act, the appointment of the petitioner on compassionate ground was not permissible. In this regard, it has been also stated that the Corporation was not only running in loss for several years but was also not in a position to pay the salary to the working employees of the Corporation.

4. Learned counsel for the petitioner, in reply to the aforesaid stand taken in the counter affidavit of the Corporation, it comes out with a plea that the appointment on compassionate ground was made even in the year 2011 by way of appointment of Raju Kumar and Pawan Kumar and, as such, the plea of the poor financial condition of the Corporation or the Corporation going under liquidation was unsustainable.

5. This Court on 13.2.2015, having noted the aforesaid submission, had directed the Corporation to file its further



supplementary counter affidavit explaining as to how when the Company was under winding up proceeding, appointment of Raju Kumar and Pawan Kumar was made. The respondents, thereafter, was sought to explain that such appointment was made only to comply the direction of this Court in CWJC No. 18068 of 2010 and the further direction given in the contempt application, MJC No. 1503 of 2011.

6. On perusal of the order dated 4.11.2010 in CWJC No. 18068 of 2010 this court would find that the learned single Judge had passed an order on 4.11.2010 that since the Company had not been wound up by the High Court as on 4.11.2010, the case of the two petitioners of CWJC No. 18068 of 2010 Raju Kumar and Pawan Kumar should be considered. To that extent, it would be relevant to quote the order of this Court dated 4.11.2010, which reads as follows:-

*“Heard learned counsel for the petitioners and the Bihar State Handloom and Handicraft Corporation Ltd.(hereinafter referred to as the Corporation).*

*2. Petitioners are the sons of the employees of the Corporation who died in harness. After the death of the bread winner petitioners applied for appointment on compassionate ground. Application of petitioner no.1 for such appointment is contained in Annexure-1 to this application. So far petitioner no.2 is concerned, he filed application soon after the death of his father i.e. 5.11.2006 and when appointment was not made, he submitted reminder under representation dated 5.6.2008, Annexure-6.*

*3. It is submitted on behalf of the Corporation that no*

*useful purpose will be served by considering the case of the petitioners for appointment on compassionate ground as the serving employees of the Corporation are not being paid salary since long and application has been filed for the winding up of the Corporation before this Court bearing Company Petition No.04 of 2009 in which notices have been issued.*

*4. Till date affairs of the Corporation have not been wound up by the High Court and in consideration of such fact it is directed that the Managing Director of the Corporation should consider the case of the petitioner for appointment on compassionate ground after obtaining necessary recommendation from the Compassionate Committee, as early as possible, in any case within three months from the date of receipt/production of a copy of the order before the Managing Director.*

*5. The writ application is, accordingly, disposed of.”*

7. It appears that when the Corporation had not appointed either of the two persons being the petitioners of CWJC No. 18068 of 2010, a contempt proceeding was initiated and the Managing Director of the Corporation, on the threat of contempt, had appointed Raju Kumar and Pawan Kumar by an order dated 28.9.2011 with a condition that payment of salary shall not be made to them alike the other employees of the Corporation till its financial position improves.

8. It was in this background that this Court on 9.3.2015 had tried to ascertain the financial condition of the Corporation by recording the following order:-

*“Having regard to the submission of Mr. P.K. Verma, learned senior counsel appearing for the Handloom and*



*Handicraft Corporation submits that the Corporation has become virtually sick and is not in a position to offer any appointment on compassionate ground to the petitioner and that the precedent cases relied by the petitioner of similar appointment on compassionate ground were made only on account of threat of contempt proceeding, this Court would direct the Managing Director, present today in person, to personally swear and file a counter affidavit explaining not only full financial condition of the Corporation with the contemporaneous documents including balance-sheet but also explain as to what is the total requirement of the staff in the Corporation for doing the skeleton work and how many appointments on compassionate ground has been made by the respondents ever since the date of death of the father of the petitioner.*

*Mr. Verma prays for and is allowed time till 4.5.2015 to file detailed counter affidavit.*

*Put up this case on 5.5.2015 under the heading "For Orders" for final disposal when Mr. B.N. Prasad, Managing Director of the Corporation, shall again remain present in person."*

9. In pursuance of the aforesaid order, a supplementary counter affidavit has also been filed on behalf of the Corporation wherein it has been stated as follows:-

*"7. That, it is pertinent to mention here that due to financial deficit the unit of corporation are not working and closed. Only Head Office is functioning for some audit and accounts work. There was total 463 employees under class III and IV were working under the corporation and its different units but out of 463 employees 192 has retired and 45 has died and further 43 have gone on deputation in different departments of Bihar Govt. and now a day 183*

*employees are still working under the corporation as on 01.04.2015.*

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8. *That, it is humbly submitted that at present 51 employees are working under head quarter, 7 employees are working at godown of the corporation and 125 employees are working under emporium and different units of the corporation. But, corporation is the not in position to pay salary and allowances to these 183 employees.*
  9. *That, at present only 5 employees of Class III and 4 employees of Class IV are required to be engaged at head quarter of the corporation. And 6 employees of class III and 3 employees of class IV are required for working at godown of the corporation. Therefore, total 18 employees of Class III and IV are required for working at head quarter and godown of the corporation, but corporation is not position to pay the salaries and allowances even to thee 18 employees.*
  10. *That, it is further submitted that there are only 4 appointments were made w.e.f. 2009, namely (1) Pawan Kumar, (2) Raju Kumar, (3) Shambhu Paswan and (4) Sudharma Devi. The first and second appointments were made in compliance with this Hon'ble Court order passed in MJC No. 1503 of 2011 (arising out of CWJC No. 18068/2010) and third and further appointments were made in compliance of this Hon'ble Court's Order passed in CWJC No. 6665/2012 and 9503/2012 respectively.*
  11. *That, as per audited Balance Sheet as on 31-03-2013, it has been reported by the auditor that corporation is Net Loss of Rs. 54,66,04,668.48/- (Rupees Fifty four crore Sixty six lacs Four thousand Six Hundred Sixty Eight and Forty Eight Paise only).*

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12. *That, due to financial crunch of the corporation a company petition No.4 of 2009 was filed by the respondent for liquidation of this corporation, but this company petition was dismissed on 21-06-2012 due to non availability of fund to prepare statement of accounts and balance sheet of the corporation.*
13. *That, it is humbly stated that statement of account and balance sheet for the year 2013-14 and 2014-15 are being prepared by the Chartered Accountant appointed by the corporation. This balance sheet is expected to be completed within two months."*

10. Let it be noted that when the case was again heard after filing of the supplementary counter affidavit, the Managing Director of the Corporation had given an undertaking of making no further appointment without taking prior permission of this Court. The relevant portion of the order dated 6.5.2015 reads as follows:-

*"Heard learned counsel for the parties.*

*This Court must record the undertaking of Mr. B.N. Prasad, Managing Director of the Handloom and Handicraft Corporation that no further appointment shall be made by him in the Corporation in any form either regular or contractual without taking prior permission of this Court.*

*The Managing Director of the Corporation is also directed that whatever admitted retirement benefit has been given to any retired employees of the Corporation in the form of payment of gratuity, leave encashment and provident fund on or after the date of death of the husband of the petitioner the same must be also paid to the petitioner."*

11. It has to be kept in mind that the aforesaid averment made in the supplementary counter affidavit with regard to pitiable

financial condition of the Corporation has not been sought to be controverted by the learned counsel for the petitioner despite service of copy of the supplementary counter affidavit on 5.5.2015.

12. Thus, the fact remains admitted that the Corporation has no financial capacity to employ fresh set of persons including appointment on compassionate ground. By now it is well settled that the appointment on compassionate ground cannot be claimed as a matter of right. In the case of *Life Insurance Corporation Vs Asha Ramchandra Ambekar* reported in *1994 (2) SCC 718* wherein it was held as follows:-

*“The courts should endeavor to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done.”*

13. Yet again in the matter of compassionate appointment, the Apex Court had also gone to hold that in absence of sanctioned and vacant post, the appointment on compassionate ground will be wholly impermissible. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of *Doiwala Sugar Co. Ltd. Vs. Manjeet Singh Negi & Anr.* reported in *2006(9) SCC 381* wherein it was held that no direction can be given by the Court in case of financial constraint of the employer.

14. In the present case, from reading of the supplementary



counter affidavit, there is no iota of doubt that the financial condition of the Corporation is in pitiable condition. An earlier order passed by this Court directing for consideration of appointment on compassionate ground of the employee at a point of time when the Corporation was already under liquidation proceeding before this Court can never be a ground for this Court to perpetuate such a situation. As a matter of fact, the conditional appointment on compassionate ground offered to the two persons under the threat of contempt can also not be a ground for this Court to perpetuate the illegality.

15. Equality before law in fact is a positive concept and it cannot be enforced in a negative manner as was held by the Apex Court in the case of **State of Bihar Vs. Upendra Narayan Singh & Ors.** reported in **2009(5)SCC 65** wherein it was held as follows:-

"67. *By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order - Chandigarh Administration and another v. Jagjit Singh and another [(1995) 1 SCC 745], Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [(1997) 1 SCC 35], Union of India [Railway Board] and others v. J.V. Subhaiah and others [(1996) 2 SCC 258],*



*Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459], State of Haryana v. Ram Kumar Mann [(1997) 1 SCC 35], Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752], Style (Dress Land) v. Union Territory, Chandigarh and another [(1999) 7 SCC 89] and State of Bihar and others v. Kameshwar Prasad Singh and another [(2000) 9 SCC94], Union of India and another v. International Trading Co. and another [(2003) 5 SCC 437] and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others [(2007) 4 SCC 737] ."*

16. As a matter of fact, when the appointment letter of the aforesaid persons has been made under the threat of the contempt itself means that they will not be getting payment of salary till the regularly appointed employees of the Corporation are also paid such salary after overcoming of the financial crisis of the Corporation, no useful purpose will be served in simply giving a tag of employment to the petitioner. The whole purpose of appointment on compassionate ground is to provide immediate means of sustenance and when the salary itself cannot be paid by the Corporation to its regularly appointed employees, there would be no question of fresh appointment on compassionate ground.

17. Finally, it has to be noted that though the company petition has been disposed of by an order dated 21.6.2012 but, then, if the Company Petition was dismissed on the ground that the Corporation had not even funds for preparation of up-to-date statement of the accounts being necessary for prosecuting the

company petition. Thus, even after disposal of the company petition, the position with regard to financial condition of the Corporation remains the same, it would not permit this Court to issue any further direction for appointment of the petitioner on compassionate ground so as to create more of the financial impediment on the Corporation.

18. Thus, for the reasons indicated above, this Court would find that no direction can be given for appointment of the petitioner on compassionate ground especially when he has approached this Court after more than five years of the death of his father.

19. That being so, this application is dismissed but, the undertaking given by the Managing Director of the Corporation to make no further appointment on any ground without receiving the prior approval of this Court, will be strictly given effect to failing which the Managing Director of the Corporation shall become liable for being proceeded and punished for violation of his own undertaking as recorded in the order of this Court dated 6.5.2015.

**(Mihir Kumar Jha, J)**

Patna High Court  
Dated the 15<sup>th</sup> October 2015  
A.F.R./Rishi/-

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