

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No 1435 of 2012
IN
Civil Writ Jurisdiction Case No 6334 of 2007**

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Alok Kumar S/O Sri Nageshwar Prasad Sharma R/O Village- Sataparsa, P.S.-
Dhanarua, District- Patna

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.... Appellant/s

Versus

1. The State Of Bihar through Secretary Human Resources Development
Department, Govt. Of Bihar, Patna
2. The District Magistrate, Patna
3. The District Superintendent of Education, Patna

.... Respondent/s

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For the Appellant/s : Mr Shivendra Kishore, Sr Advocate with
Mr Jai Kishor Poddar, Advocate

For the State : Mr Amarendra Kumar, AC to AAG 3

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 07-08-2015

The appellant, in this intra-Court appeal, was the writ petitioner. He had challenged the order of the Collector of the District – Patna directing cancellation of his appointment on compassionate ground as also instituting criminal case against him for having obtained the said appointment by practicing fraud.

2 We have heard learned counsel for the appellant and learned counsel for the State and with their consent, this appeal is being disposed of at this stage itself.

3 The family of the writ petitioner/appellant consisted of his

father Shri Nageshwar Prasad Sharma, his mother Smt Satyabhamini Devi, his elder brother Raj Kumar and his three younger sisters. Father Nageshwar Prasad Sharma, it is now not disputed, was in State Government service. Mother was Assistant Teacher in Government school. She died on 26.07.1992 in an accident after having served for 15 years on permanent post of Assistant Teacher. At that time, the writ petitioner/appellant was a student having completed Intermediate and was major. Upon death of his mother, he made an application for compassionate appointment. Compassionate appointment having been made upon his application (Annexure 2 to the writ petition), he started working in Government School. It is a matter not in dispute that upon death of his mother, his father started receiving family pension and the other retiral dues were shared between petitioner's elder brother Raj Kumar and petitioner who were nominees in the service for the said purpose.

4 Subsequently, to the authorities, it revealed that writ petitioner's father was in fact in Government service. It also revealed that his elder brother, at the relevant time, was already employed in Border Security Force (for brevity, *BSF*). These facts undisputedly denied the right of the writ petitioner/appellant to get compassionate appointment. He was, accordingly, noticed. His defence was that in his application for compassionate appointment, he had written that his father was in service and an agriculturist. He produced a *Panchnama*

(family arrangement) which is said to have been executed in 1985 whereby his father and his late mother had agreed to a separation. Not only they had separated but they separated their children as well. As per the said *Panchnama*, the elder son and one daughter became the responsibility and went with the father. The writ petitioner/appellant and other two daughters, upon partition, came to the share of the mother. His plea now is that parents having been separated, he had no connection with his father. His further defence was that in the application itself, he had shown his father to be in service and agriculturist.

5 The District Magistrate –cum- Collector, Patna enquired into the matter, examined the original records. Upon examining the original application, he came to a finding of fact that the entry with regard to his father being in service was clearly an entry made later in a different pen and a different ink. It was not there originally. Originally, it was only stated that his father was an agriculturist. The Collector, on enquiry, having found that the writ petitioner/appellant had secured undue favour of compassionate appointment by playing fraud, directed cancellation of his appointment and removal from service and also for taking criminal action against the writ petitioner/appellant. This is what was assailed in the writ proceedings before this Court unsuccessfully.

6 We have gone through the order of the learned Single

Judge, who has with his usual thoroughness, examined every aspects of the matter. We are not persuaded to take a different view of the matter.

7 We may only add that had the *Panchnama* been a genuine document then the fact that the father was receiving family pension would not have been there nor would be there that the death –cum–retiral dues be divided as between the two sons for the two sons had also been partitioned. The death had taken place in 1992 and the *Panchnama* is said to be of the year, 1985. There is yet another matter. The writ petitioner/appellant had not disclosed that his elder brother was already in gainful employment of BSF. We are of the view that had the fact that, the father was in State Government service, the elder brother came to be employed in BSF being mentioned, then it was impossible for him to get the employment on compassionate ground. In either event, either he had wrongly got the favour of compassionate appointment contrary to law or he had played fraud to get the same. In either event, the consequence would be dismissal from service.

8 We find no reason to interfere. This appeal is dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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