

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22046 of 2014

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Abhishek Lavanya S/o - Late Jagdish Prasad Resident of Village + P.O. - Oue, P.S.-
Aungari, District - Nalanda.

.... Petitioner/s

Versus

1. The Union of India through the Registrar General and Census Commissioner, India, Ministry of Home Affairs, 2-A, Man Singh Road, New Delhi - 110011.
2. The Under Secretary to the Government of India, Ministry of Home Affairs, Office of the Registrar General, India, Ad. III Section, 2-A Man Singh Road, New Delhi - 110011.
3. The Director of the Census Operations, Bihar, Ministry of Home Affairs, Bihar State Co-operative Bank Building, Ashok Raj Path, Patna - 800004.
4. The Joint Director of the Census Operations, Bihar, Ministry of Home Affairs, Bihar State Co-operative Bank Building, Ashok Raj Path, Patna - 800004.
5. The Deputy Director of the Census Operations, Bihar, Ministry of Home Affairs, Bihar State Co-operative Bank Building, Ashok Raj Path, Patna - 800004.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhav Roy, Advocate
Mr. Kanti Jha, Advocate
For the Respondent/s : Mr. Sanjay Kumar, ASG
Mr. Renuka Sharma, CG-6

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 26-04-2016

Heard learned counsel for the parties.

The challenge in the writ application is to the order

dated 14.07.2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') in O.A. No. 928 of 2011, by which the Original Application filed by the petitioner has been dismissed.

The petitioner has moved before the Tribunal for quashing of the order dated 28.11.2011 of the Joint Director of Census Operations, Bihar, Patna by which his prayer for appointment on compassionate ground has been rejected. The petitioner is son of late Jagdish Prasad, who died in harness on 28.09.2007, while working on the post of Upper Division Clerk in the office of the Director of Census Operations, Bihar, Patna leaving behind his widow, four sons and three daughters. The petitioner being the youngest son of the deceased submitted his application for appointment on compassionate ground which was rejected in January, 2010 against which he filed O.A. No. 421 of 2010, which was disposed off by the Tribunal by order dated 25.08.2011 directing the respondents to pass a speaking order in the matter. Pursuant to the same, the request of the petitioner was again rejected by order dated 28.11.2011 which is impugned in the present writ application.

Learned counsel for the petitioner submits that the respondents cannot deny such appointment on the basis of a Rule which has come into effect subsequent to the cause of action which accrued on 28.09.2007 due to the death in harness of his father. It is submitted that the case of the petitioner was required

to be considered as per the old Rules and further that no enquiry was conducted regarding indigent condition of the family as also details regarding brothers of the petitioner. It is submitted that the decision of the authorities also does not disclose about the year of the vacancies for which the case of the petitioner has been considered.

Learned counsel for the respondents submits that the application of the petitioner was considered by the Competent Authority and after proper scrutiny it was rejected. It is submitted that the same was also in accordance with the scheme for compassionate appointment framed by the Ministry of Defence dated 22.01.2010 and 14.05.2010 directing for weightage point system covering parameters such as amount of family pension, terminal benefit, monthly income of earning members, movable/immovable properties, number of dependents, unmarried daughters, minor children and the left over service of the deceased employee. It is submitted that on all these parameters, the petitioner has been able to score only 42 weightage merit points which is far below the cut off limit of 60 points as decided by the Review Committee of the office of the Registrar General of India. It is submitted that the authorities after getting the matter enquired have come to a finding that the family of the petitioner does not fall in the category where there is a financial crisis justifying such appointment on compassionate ground.

Having considered the rival contentions, we do not



find any merit in the submissions of learned counsel for the petitioner. Perusal of the order dated 28.11.2011, by which the request of the petitioner for appointment on compassionate ground has been rejected, discloses due consideration both on facts as well as in law. The death of the father of the petitioner having occurred on 28.09.2007 and the petitioner being the youngest son having three elder brothers who are Advocate, Fitter and in business and the mother having received 6.7 lakhs as terminal benefits and also getting monthly pension of Rs. 5,733 (pre-revised) and the family having agricultural land from which approximately Rs. 20,000/- per annum is the income coupled with the fact that the petitioner himself is an adult aged 30 years and thus not in the category of dependent child, do not make out a case where the family is in dire need of financial support, which is the basic requirement for giving appointment on compassionate ground. A perusal of the office Memorandum dated 5th May, 2003 of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India bearing No. 14014/19/2002-Estt(D) sets a time limit for making compassionate appointment, the salient feature of the same being that if compassionate appointment to genuine and deserving cases, is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial condition of the family to arrive at a decision as to whether a particular case warrants extension by one



more year, for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year. The maximum time prescribed for keeping a person's name under consideration for offering compassionate appointment was fixed as three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and second year. It was further provided that after three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again. Thereafter, the authorities have also taken note of the guidelines relating to awarding points on various heads to come to an objective finding with regard to the person deserving such appointment. The impugned order of the authorities dated 28.11.2011 has referred to the Office Memorandum dated 5th May, 2003 and has found that after three years it was not possible to keep the consideration alive and further his case not having been found deserving was rejected on merit and only due to the order of the Tribunal dated 25.08.2011 in O.A. No. 421 of 2010, a fresh reconsideration was done. The factual background with regard to the family and its income being discussed in detail in the said order clearly indicate that the authorities have given due consideration with regard to the

request of the petitioner for appointment on compassionate ground. We also find that the order is well discussed requiring no interference and the same has rightly been upheld by the Tribunal while dismissing the O.A. No. 928 of 2011 by order dated 14.07.2014.

In this connection, we may refer to the decision of the Hon'ble Supreme Court in the case of **SBI v. Raj Kumar** reported as **(2010) 11 SCC 661**, where it has been held that compassionate appointment is not a source of recruitment and is an exception to the general rule where recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. It has also been held that the appointment under any scheme can be made only if the same is in force and not after it is abolished/withdrawn.

In the present case though no scheme or guideline, post the death of the father of the petitioner, has been referred in the impugned order dated 28.11.2011 and only the Office Memorandum dated 5th May, 2003 has been taken note of, the contention of the learned counsel for the petitioner that consideration had to be only as per the scheme existing at the relevant time, does not have any substance. However, even if the authorities had considered any guidelines issued after the death of the father of the petitioner but before consideration of his case, the same, in light of the order of the Supreme Court in the case of **SBI**

v. Raj Kumar (supra) could not have been said to be impermissible.

Accordingly, the order of the authorities impugned dated 28.11.2011 and the decision of the Tribunal dated 14.07.2014 passed in O.A. No. 924 of 2011 does not warrant any interference and the writ petition stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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