

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15646 of 2011

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Sanjay Kumar son of Late Anil Kumar Gupta, the then Panchayat Secretary, Paro Block Office, resident of village – Dadar, P.O. Kolluha, Paigambarpur, P.S. Pahiapur, Circle Kanti, District – Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through Collector, Muzaffarpur.
2. Dy. Collector, District Establishment, Muzaffarpur.
3. The Block Development Officer, Paroo, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Upendra Kumar Singh

For the Respondent/s : AC to SC - 19

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 06-04-2016

Heard Sri Upendra Kumar Singh, learned counsel for the
petitioner and learned A.C. to Standing Counsel – 19.

2. The petitioner, who has been appointed as Class IV employee on the compassionate ground, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to direct the respondents to appoint him against Class III post. It has been admitted that the petitioner has already been appointed as Class IV employee on compassionate ground.

3. A plea has been taken that initially the compassionate committee had recommended the name of petitioner for being appointed against Class III post. However, subsequently District Compassionate Committee examined the case of petitioner and other similarly situated persons and thereafter, at subsequent stage, the

petitioner alongwith others were recommended to be appointed against Class IV post. It has been claimed that once the petitioner was recommended for being appointed against Class III post, at subsequent stage, the authority concerned was not authorised to employee the petitioner against Class IV post.

4. By way of filing reply to the counter affidavit, the petitioner has also claimed that one of the similarly situated person namely Smt. Babita Kumari, whose name figures at serial no. 5 in the recommendation list, was also recommended to be appointed against Class IV post, however subsequently, she has been appointed against Class III post. The petitioner has claimed parity with the case of Smt. Babita Kumari.

5. Learned State counsel, by way of referring to averment made in the counter affidavit, submits that the District Compassionate Committee had considered the cases of number of applicants for being appointed on compassionate ground. A fair procedure was adopted to test the eligibility and as per eligibility, the persons, who had acquired higher marks, were recommended for being appointed against Class III post and the persons including the petitioner, who got lesser marks than 15%, were recommended for being appointed against Class IV post.

6. Learned State counsel has also placed reliance on an



unreported judgment of this Court passed in **L.P.A. No. 1209 of 2000** (*The State of Bihar and Ors. V. Madhuri Kumari Sinha*). He submits that the appointment on compassionate ground may not be claimed as a matter of right. He further submits that if at the time of granting appointment, it is found that a candidate, though having requisite qualification, is not up-to mark for being selected as Class III post, certainly he/she can be appointed against Class IV post. In any event, it has been argued that the petitioner, with a view to grant immediate financial relief to the family of deceased employee, has already been provided employment.

7. Besides hearing learned counsel for the parties, I have also perused the material available on record. So far as claim of parity with Smt. Babita Kumari is concerned, the petitioner has not impleaded the said person, as party respondent, in the present writ petition. Moreover, if an illegality is committed by an authority, one may not approach this Court for committing the same illegality. On perusal of recommendation of the District Compassionate Committee, it is evident that number of persons along with petitioner were recommended for being appointed against Class IV post on the basis of their eligibility. It is also not in dispute that petitioner had already joined in the year 2011 itself. Meaning thereby that purpose of providing financial assistance to the family of deceased employee has

already been served.

8. The Court is conscious of the fact that appointment on compassionate ground is an exception to Article 14 and 16 of the Constitution of India.

9. I do not find any ground to interfere with the order.

10. The writ petition stands dismissed.

(Rakesh Kumar, J.)

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