

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

**Civil Writ Jurisdiction Case No.10236 of 2013**

Vijay Kumar, S/O Late Parshuram Singh, R/O Village- Balhan, Post- Amnaur,  
P.S.- Amnaur, District- Saran At Chapra

.... .... Petitioner

Versus

1. The State of Bihar, Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Old Secretariat, Patna
3. The Principal Secretary, General Administrative Department, Government of Bihar, Patna
4. The Director General Of Police, Bihar, Old Secretariat, Patna
5. The Joint Secretary, General Administrative Department, Government of Bihar, Patna
6. The Inspector General Of Police (Welfare), Bihar, Patna
7. The Assistant Inspector General Of Police (Welfare), Bihar, Patna
8. The Superintendent of Police (A), Special Branch, Bihar, Patna

.... .... Respondents

**Appearance:**

For the Petitioner : Mr. Yugal Kishor, Senior Adv.  
: Mr. Sanjay Kumar, Adv.

For the Respondents : Mr. Prabhakar Jha, G.P.-27

**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 22-08-2016**

1. In this case, the petitioner is challenging the order dated 11.11.2011 regarding serial No.15 of the proceeding and order dated 09.04.2012 passed in respect of serial No.29 of the proceeding (Annexures-6 and 8 respectively), whereby and whereunder the claim of the petitioner for appointment on

compassionate ground has been rejected on two occasions on the ground that two brothers of the petitioners are in employment; one is in Government service and another is in private sector.

**2.** The father of the petitioner died on 02.08.2010 while working as Assistant Sub-Inspector, Special Branch of Bihar Police in Siwan district, leaving behind five sons and his wife. The petitioner applied for appointment on compassionate ground having annexed an affidavit of “No Objection” from his rest brothers. The Inspector General of Police (Welfare), Bihar, Patna, respondent No.6 vide office letter dated 16.5.2011 recommended for the appointment of the petitioner in 4<sup>th</sup> grade. The elder brother, who is employed in Central Government Services, has sworn an affidavit, making a statement that he is not looking after his family members and having no connection with the business of the rest of the family members and any earning by brother and mother will not have any connection with him.

**3.** The case of the petitioner along with others was placed before the Central Compassionate Appointment Committee on 28.09.2011, where the case of the petitioner was considered by the Central Compassionate Appointment Committee, rejected his claim on the ground that the eldest son of the deceased-employee is a

Government Servant and second son is employed in a Private Company, in such situation, two family members are gainfully employed.

4. After rejection of the claim of the petitioner, the mother of the petitioner personally met the Director General of Police, respondent No.4 for reconsideration of the case of the petitioner in light of Mukesh Kumar's case as the case of the petitioner is identical to Mukesh Kumar's case and he has been appointed on compassionate ground. In pursuance of the aforesaid request, the case of the petitioner was again placed before the Central Compassionate Appointment Committee to reconsider the case of the petitioner and other similarly situated persons. Accordingly, the case of the petitioner again reconsidered by the Central Compassionate Appointment Committee and rejected the claim of the petitioner for compassionate appointment by reiterating the earlier ground.

5. Learned counsel for the petitioner submits that as the case of the petitioner and Mukesh Kumar is identical. Hence, the petitioner is entitled to same treatment as has been given to Mukesh Kumar. He further submits that in the recommendation of Mukesh Kumar noting has been recorded that Manish Kumar employed in



the Government service was leaving separately, and as such the claim of Mukesh Kumar was approved for appointment on compassionate ground. Therefore, the ground of rejection with respect to the present petitioner's case is completely inconsistent with the decision which was taken in the case of Mukesh Kumar as in the case of Mukesh Kumar his eldest brother was employed in Government service, only because an entry has been made that his eldest brother has separated from family became a ground of his appointed, similarly in the case of the petitioner also his eldest brother has given an affidavit of having no connection with his mother and other family members, is by and large the same thing and same fact as that of Mukesh Kumar.

6. Learned counsel for the petitioner further submits that the case of the petitioner is in better pedestal in view of the fact that Mukesh Kumar had filed the application for compassionate appointment while he was minor and when he became major his case was considered and has been given appointment on compassionate ground, whereas in the present case, when the petitioner filed the application for compassionate ground he was major.

7. In support of his submission, learned counsel for the

petitioner has placed reliance on the following judgments, which will be considered at the later stage:-

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- (i) Rajesh Kumar Ram vs. Uttar Bihar Gram Bank and analogous cases (C.W.J.C. No.10371 of 2012)
  - (ii) Sunny Kumar Singh vs. The State of Bihar & Ors (C.W.J.C. No. 8956 of 2013)
  - (iii) Rajesh Kumar vs. The State of Bihar and Ors. (C.W.J.C. N o.1537 of 2013)
  - (iv) Rajiv Kumar Manjhi vs. The State of Bihar & Ors. (C.W.J.C. No.15600 of 2009)
  - (v) Santosh Kumar vs. The State of Bihar and Ors, reported in 2013(1) PLJR, 454.

On the strength of the aforesaid judgments, learned counsel for the petitioner submits that the petitioner should be given the benefit of compassionate appointment.

**8.** Whereas, learned counsel for the State has objected the claim of the petitioner, stating that his two brothers are employed,



so the family is no longer in penury and in financial distress. The basic principle that when a bread-earner dies, sudden crisis arises in the family and in order to mitigate the financial distress the compassionate appointment is conferred to one of the family members. The compassionate appointment is not an idea of source of appointment, it is meant to tide over the sudden financial crisis which arises on account of sudden demise of bread-earner and in exceptional circumstances when the family is unable to pull the financial burden.

9. He further submits that in the present case two brothers of the petitioners are in service, the question of any financial distress does not arise.

10. In support of the submission, learned counsel for the Stated has placed reliance on the judgment of this Court in the case of *Vishal Kumar vs. The State of Bihar & Ors.*, reported in *2004(2) PLJR, 453* and in the case of *Ashok Kumar Choudhary vs. The State of Bihar & Ors.*, reported in *2000(4) PLJR 651*

11. Having heard learned counsel for the parties, the whole object of granting compassionate appointment is to tide over the sudden crisis. The object is not to give a member of such family



a post much less a post for post held by the deceased. Mere death of an employee in harness does not entitle the family to have compassionate appointment when the family has sufficient source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only, if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate appointment. The basic idea of compassionate appointment is to tide over the emergency crisis.

**12.** The employment is a national property and is to be shared by all on the basis of their merit and qualification. No one should be discriminated on irrational ground. The Public office is required that the post be filled up by open invitation on the basis of merit. In law there is no other mode of appointment in the Government Service. The Constitutional mandate does not permit entry through backdoor or preference on the ground of caste, creed or being a dependant of the Government employee. The Constitution prohibits giving preference in the matter of



employment on the ground of descent, and that would violate the equality clause. Article 14 of the Constitution of India guarantees the equality. The equality before the law is a dynamic concept having many facets. Unequal should not be treated equal and equal should not be unequal, but the Article-14 does not prohibits classification on the basis of reasonable differentia. The classification is permissible only where there is nexus between the basis of classification and the object of the statutory provision. Article 16 is one of the facets of the basic concept of equality enshrined in Article 14.

**13.** In *Umesh Kumar Nagpal vs. State of Haryan and Ors.*, reported in (1994) 4 SCC 138, the Hon'ble Supreme Court has elaborated the purpose of compassionate appointment and held that the basic idea is to grant the relief to the family on account of sudden death of the bread winner. The family comes in the financial distress and in order to release from the financial distress the benefit is extended so that the family cannot be become penury. The basic idea is to mitigate the sudden financial hardship faced on account of sudden demise of the bread-winner. The appointment on compassionate ground is not a matter of course but it is given to the family of the deceased-employee in a special facts and

circumstances of the case.

**14.** It will be relevant to quote paragraph Nos. 2 and 3 of the said judgment, which read as under:-

*“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The*



*object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.*

3. *Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.”*

15. The concept of granting relief on compassionate appointment came for consideration before this Court in the case of ***Ashok Kumar Choudhary vs. The State of Bihar & Ors.*** reported in ***2000(4) PLJR, 651***, where the wife and husband were the Government employees but the husband superannuated from service and wife died. Claim was made for appointment on compassionate ground, which the Government did not accept. As the matter was referred by the Single Bench for the authoritative pronouncement by the Division Bench, in such manner, the Division Bench has an occasion to deal with the matter. The Court held that the object of giving appointment on compassionate ground is to tide over the financial crisis when the employee dies in harness and it is not mode of the appointment only because bread earner was an employee will not *ipso facto* be basis of appointment, but has to be looked into financial conditions of the family, only on account of human consideration the State provides employment to a

person to the family. If the family has a background of sound financial resources, in that circumstance, the reason for granting compassionate appointment is not made out.

16. It will be relevant to quote relevant paragraphs of the said judgment, which read as follows:-

*“9. The experience showed that in many cases on the death of a Government employee the family is in a financial distress and needs immediate financial help. Taking into consideration this aspect of the matter purely on humanitarian ground to tide over the financial crisis due to the death of the bread-earner, provisions have been made by the Central Government, State Government and other Corporations to provide employment on compassionate ground to the dependants on the death of a Government employee in class- III and IV posts (non manual and manual). The Apex Court has upheld the said provisions on the ground that the object of compassionate appointment is to enable the family to tide over the sudden crisis and the object is not to give a member of the family a post on the ground of descent...”*

13. According to the aforesaid provision, if both the husband and wife are in Government Service and one of them dies; in that situation the benefit of appointment on compassionate ground will not be available to the dependant of the family. If the aforesaid sub-clause 1 (Anga) is read in isolation



*without considering the other provisions of the Circular/Instructions including the application form as contained in Annexure-1 and the object of appointment on compassionate ground, then the submission advanced on behalf of counsel for the petitioner has some force, but after taking into consideration other provisions of the circular/instruction and the object of compassionate appointment, I am not inclined to accept the submission advanced on behalf of the petitioner. If any statutory provision which is subject matter of consideration is clear and unambiguous, then the plain meaning has to be given, unless the said meaning defeats the object of provisions of leads to anomaly, absurdity and inconsistency. ...Thus in my view the said clause cannot be interpreted to mean that if one of the spouses has retired at the time of death of the other spouse, the dependant will be appointed on compassionate ground. Even if the other spouses has retired at the time of death of the death of the deceased employee but is recipient of the retrial benefits and the pension, even in that case no appointment could be given to the dependant on compassionate ground for the simple reason that the family is not in financial crisis for which appointment is to be made.*

*Thus the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources of livelihood or not at the relevant time to meet the hardship and ones it is found that the financial condition is sufficient to tide over crisis, then no appointment can be made on compassionate ground*

*and the question whether the other spouses is continuing in service or has retired is wholly immaterial.*

*16. Before parting with this case I may mention that unfortunately at present a wrong impression has been created that compassionate appointment is one of the modes of appointment as a result of which the dependants of each and every Government employee irrespective of availability or non-availability of financial resources at the relevant time are applying for appointment on compassionate ground. Due to modernization, computerization and privatization the number of Government posts in Class III and class-IV are dwindling. The posts in class-III and Class-IV are not being increased proportionate to the growth of the population. In many offices a long list of appointment on compassionate ground is being maintained and it will take 10-20 years to exhaust the list thereby closing the doors for the candidates who have no fortune of being the dependent of a Government employee. No doubt, sympathy and benevolence has some role to play in the matter of appointment on compassionate ground but it cannot play the role to such an extent that it destroys the concept of equality forming the basic feature of the Constitution. Time has come to consider as to whether this mode of appointment be substituted by other financial help at the time of the death of an employee in harness.”*

**17.** The Court has dealt with the provisions of the compassionate appointment with respect to death of one of the



spouse and held that the said clause cannot be interpreted to mean that if one of the spouses has retired at the time of death of the other spouse, the dependant will be appointed on compassionate ground. Even if the other spouses has retired at the time of death of the deceased employee, but he is recipient of the retiral benefit and the pension, in that case, no appointment could be given to the dependant on compassionate ground for a simple reason that the family is not in financial crisis for which appointment is to be made. The crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources of livelihood or not at the relevant time to meet the hardship, and once it is found that the financial condition is sufficient to tide over the crises, then no appointment can be made on compassionate ground when other spouse is continuing in service or has retired is wholly immaterial.

18. This Court in another judgment in the case of *Vishal Kumar vs. The State of Bihar and Ors.* reported in *2004(2) PLJR, 453*, where one of the person was in the job of Rural Engineering Organization Department, but the plea was taken that the brother and father were separated and the evidence was offered, to the effect. The Court has held that the logic of law does not apply even if there will be rivalry within the family as in that case between the

father and the son or between siblings, a job can be offered on the principle of compassionate appointment only to one person and when one is gainfully employed, there is no obligation to offer a job in an otherwise backdoor entry.

**19.** It will be relevant to quote paragraph No.4 of the aforesaid judgment, which reads as under:-

*“4. The court is afraid, this logic of law will not apply for if there will be rivalry within the family as in the present case between the father and the son or between siblings, a job can be offered on the principle of compassionate appointment only to one person and when one is gainfully employed, there is no obligation to offer a job in an otherwise backdoor entry employment.”*

**20.** Learned counsel for the petitioner has placed reliance on the judgment of *Santosh Kumar vs. The State of Bihar and Ors. (supra)*, where the Court has held that if at the time of death a son is in employment will not be a ground for rejecting the application of the dependant son, who was not in service and is entitled for appointment in dying-in-harness as he will fall within the meaning of the definition of the family being dependant on the deceased. However, in this case, the judgment of the Hon’ble Supreme Court in the case of *Umesh Nagpal (supra)* was not brought to the notice



of the Court and the Court has not considered the concept and the purpose of granting compassionate appointment, in such view of the matter, this judgment cannot be pressed into service also on account of the fact that the Division Bench, as mentioned hereinabove, has taken contrary view as in the case of *Santosh Kumar(supra)* and assessed the judgment of the Single Bench to be *per in curium*.

**21.** Learned counsel for the petitioner has placed reliance on another judgment passed in *Rajesh Kumar vs. The State of Bihar and Ors. (surpa)* where the Court has held that irrespective of any number of family members employed, one of the family members will be compulsorily appointed on compassionate ground, is contrary to the view taken by the two Division Bench Judgments, as aforesaid, and also to the judgment of the Hon'ble supreme Court in the case of *Umesh Nagpal (supra)*, so this judgment also cannot be pressed into service.

**22.** Another judgment relied upon by the learned counsel for the petitioner is the judgment passed in the case of *Rajeev Kumar Manjhi vs. The State of Bihar & Ors. (supra)* , where the Court has held that any appointment on compassionate ground can be made strictly in terms of the policy regulating the same. If the



policy dated 18.02.1995 provides for consideration of the claim of a second son notwithstanding the elder son being in employment, but subject to the satisfaction of the authorities with regard to destitute and penury of the family because the employed was not looking after the family and the widow was also suffering on that count, the claim of compassionate appointment cannot be shut outright and the Court has remanded back the matter for proper inquiry. So in this case also the concept of family was taken into consideration.

**23.** In the case of *Sunny Kumar Singh vs. The State of Bihar & Ors. (surpa)*, relied upon by learned counsel for the petitioner, where also the question arose that when one of the family members is in employment, can another member of the family be given the appointment on compassionate ground. The court has taken cognizance of the decision of this Court in the case of *Rajeev Kumar's case (surpa)* including the decision of *Ashok Kumar Choudhary's case (supra)*. In the body of the judgment, the concept propounded in the case of *Rajeev Kumar's case (supra)* has been accepted in toto without dealing with view taken by two Division Bench's Judgments, as has been stated hereinabove.

**24.** In the present case, two brothers of the petitioner are already in job; eldest brother is in Government employment and



second brother is employed in Private Sector, claiming that he should be given the same treatment as has been to Mukesh Kumar as in that case also one of the brother of Mukesh Kumar was in Government employment, plea was taken of separation, the authority was directed for his appointment on compassionate ground. Article-14 of the Constitution of India is a positive concept cannot be applied in negativity as has been held by the Hon'ble Supreme Court in the case of *Panchi Devi vs. State of Rajasthan and Others*, reported in **2009(2) SCC 589** and in the case of *Kerala State Electricity Board v. Saratchandran, P. & Ors.* reported in **2009, S.C. 191**.

**25.** In view of the aforesaid discussions, it is clear that two brothers of the petitioners are employed and in view of the judgment of the Hon'ble Supreme Court in the case of *Umesh Nagpal (supra)* and the consistent view taken in catena of decisions that the compassionate appointment cannot be a source of employment, rather it is a scheme for the family to mitigate the financial distress in the event of sudden death of bread-earner. Merely because the bread-earner has died cannot be a ground to give compassionate appointment, the same can be given subject to the financial condition of the family, when the family itself is sufficient to get over the financial crisis, in such circumstances,

granting the benefit of compassionate appointment will not serve the purpose.

**26.** In such view of the matter, this court does not find any merit in the present writ application. Accordingly, this writ application is dismissed.

**(Shivaji Pandey, J)**

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