

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12705 of 2010

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Rajan Kumar Singh, S/O Late Fatte Singh R/O Village + P.O.- Kachnar, P.S.-
Siswan, Distt.- Siwan

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The Director, Land Acquisition and Rehabilitation, Water Resources
Department, Govt. Of Bihar, Patna
4. The District Compassionate Committee, Aurangabad through its Chairman,
District Magistrate, Aurangabad
5. The District Magistrate, Aurangabad
6. The Special Land Acquisition Officer, Soneyojna, Aurangabad

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Prasad Singh, Senior Advocate
For the State : Mr. Madhukar Mishra, A.C. to S.C. 31

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 18-02-2016

I have heard parties and perused the records of this case.

The petitioner seeks direction to the respondents to
appoint him on compassionate ground on appropriate post in
Government service.

Petitioner's father was working as Amin (Mapak) in the
Special Land Acquisition Office, Sone Yojna, Aurangabad under
Water Resources Department, Govt. of Bihar, Patna and he died in
harness on 9.05.2006. Thereafter, the petitioner duly applied for his
appointment on class III or Class IV post. The petitioner's mother and
brother also sworn affidavit on 11.07.2006 that they do not have any



objection if the petitioner is given appointment on compassionate ground. The respondent no.6, vide annexure-2, had written to the respondent no.3, the Director, Land Acquisition and Rehabilitation, Water Resources Department, Govt. of Bihar requesting necessary action for appointment to the petitioner. On 30.07.2009, a meeting of District Compassionate Appointment Committee, Aurangabad was held under the Chairmanship of the District Magistrate, Aurangabad, a copy of the proceeding of the meeting dated 30.07.2009 has been appended as Annexure-4. Petitioner's application was rejected on the ground that the service of the father of the petitioner was marked as temporary in the application form. However, the Director, Land Acquisition and Rehabilitation vide Annexure-5, which is a letter dated 15.10.2009, requested the District Magistrate, Aurangabad to reconsider the case of the petitioner appending therewith noting of the departmental Secretary in another matter which speaks in clear terms that the policy of Government has changed and if the service of the deceased employee is found to be pensionable then his dependent would also be entitled for appointment on compassionate ground. Despite such noting of departmental Secretary indicating change in Government policy, the District Compassionate Appointment Committee vide Annexure-7 has again rejected the case of the petitioner on the ground that the deceased employee was not

confirmed and it has further been stated that in place of sending the request for reconsideration, an order indicating confirmation of the deceased employee should have been sent. Therefore, whenever such order would be received, the matter would be reconsidered.

However, in my view, the District Compassionate Appointment Committee should have considered the request which was based upon the change in policy of the State as indicated in the document appended with Annexure-5 that if the service of deceased employee is pensionable then the benefit of compassionate appointment should be given to the dependents of his family.

Admittedly, the deceased employee rendered his service for about 27 years and after his death in harness, the widow is getting family pension and has got other death-cum-retiral dues also. Rule 58 of the Bihar Pension Rules lays down in clear terms that, for getting pension, the employment must be substantive and permanent, however, Rule 59 of the aforesaid Rules further lays down that, even though that condition is not fulfilled, the State Govt. may declare that any specific kind of service rendered in a non-gazetted capacity to be qualifies for pension. It appears that a decision was taken by the State Govt. that if the service of temporary or officiating Government servant who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under Rule 59 of

Bihar Pension Rules. A reference is made to Memo No. Pen 1024/69/11779F., dated 12.08.1969. Perhaps in that background itself, there has been change in the Govt. policy as indicated by the departmental Secretary in his noting which is found in Annexure-5.

Admittedly, the petitioner's mother is getting family pension after the death of his father. Family pension can only be admissible if the pension is admissible to the deceased employee. Thus, it can be safely construed that in view of Rule 59 of the Bihar Pension Rules even though the service of father of the petitioner was not confirmed, family pension was allowed and other retiral benefits have also been allowed to the widow of the deceased.

Now, the question would be, if the pension is admissible then why the dependent of the deceased employee would not be entitled for compassionate appointment? Perhaps to answer this, there has been change in the policy as indicated in the documents appended with Annexure-5 written by the Director, Land Acquisition and Rehabilitation. However, in place of considering that, the District Magistrate has considered another issue and has stated in Annexure-7 that unless order confirming the service of the deceased employee is not received, there cannot be any consideration for appointment of the petitioner on compassionate ground. Now, the position is that neither the respondents are passing any order regarding considering the



services of the deceased employee as confirmed and at the same time, the District Compassionate Appointment Committee has not considered the changed policy of the State Government as indicated in Annexure-5 that if the employee's dependent is getting family pension, then dependent should also be entitled for compassionate appointment.

In such a situation, this Court would dispose of this writ application directing the District Compassionate Appointment Committee to consider the case of the petitioner for appointment on compassionate ground after verifying the change in policy of the State Govt. as indicated in the document appended with Annexure-5 as it has clearly been stated in the counter affidavit also filed on behalf of respondent nos. 3 and 6 particularly in paragraph 7 that there has been such change in the policy. If it is found by the District Compassionate Appointment Committee that there has been such change in the policy, then there would be no reason for not considering the appointment of the petitioner on compassionate ground in accordance with law.

However, let the respondent nos. 2 and 3 also send a copy of such decision of the State Government to the District Magistrate so that the same be considered by him.

It is made clear that a decision in this regard should be

taken within a period of two months from the date of receipt/production of a copy of this order and the same should immediately be communicated to the petitioner.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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