

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9123 of 2013

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1. Amrendra Kumar Tripathi S/O - Late Shambhu Tripathi R/O - Village - Sarwali,
P.S. - Karpi, District - Arwal

2. Bhimendra Choudhary S/O - Late Sudarshan Singh R/O - At And P.O. - Aathar,
P.S. - Nawanagar, District - Buxar

3. Santosh Kumar S/O - Late Vijay Prasad R/O - Mohalla Near Govt. Bus Stand,
P.S. - Aurangabad (T), District - Aurangabad

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Chief Secretary, Bihar

3. The Principal Secretary, General Administration, Govt. Of Bihar, Patna

4. The Principal Secretary, Personal And Administrative Reforms Department,
Govt. Of Bihar, Patna

5. The Chairman-Cum-District Magistrate, District Compassionate Appointment
Committee, District - Aurangabad

6. The District Magistrate, Aurangabad

7. The District Magistrate, Jehanabad

8. The Sub-Divisional Magistrate, Jehanabad

9. The Circle Officer, Goh, District - Aurangabad

10. The Circle Officer, Madanpur, District - Aurangabad

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Sunil Kumar, adv.

: Mr. Sushant Kumar, adv.

For the Respondent/s : Mr. Sanjeev Kumar Singh, A.C. to S.C.12

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 02-05-2016

1. In the present case, the petitioners are challenging the order dated 08.03.2013 passed by the Chief Secretary, General Administration, Government of Bihar, as also the order passed by the District Magistrate, Aurangabad, in Case No.31 of 2013 on 06.05.2013, which has been communicated to the petitioners vide memo no.176 dated 06.05.2013.



2. In the present case, litigation relates to the placement of the petitioners in class-III post after being appointed on class-IV post. It has been claimed that the cases of certain persons along with these petitioners were taken into consideration and were granted the appointment on compassionate ground on class-III post, whereas these petitioners were given appointment on compassionate ground on class-IV post. When an objection was raised about the discriminatory action on the part of the respondents in giving the benefit of class-III post, the Compassionate Appointment Committee again considered the cases of these petitioners and rectified the mistake earlier committed by them and petitioners were given class-III post alike to others.

3. Whereas, learned counsel for the State has submitted that initially the petitioners were selected on class-IV post they joined the said post, now the matter got exhausted and the petitioners cannot be adjusted on class-III post, which amounts to giving a promotion from class-IV to class-III post.

4. To understand the case, it will be relevant to advert short facts for proper appreciation to adjudicate the matter. In the present case, the father of petitioner No.1 was posted as Jansewak at Haspura Block, District-Aurangabad, died in harness on 02.08.2002



leaving behind his widow, two sons and two daughters. The petitioner No.1 being the eldest son applied for the appointment on compassionate ground. In the application form, he has shown his qualification as M.A., LLB. The application of the petitioner No.1 was forwarded vide letter No.1055 dated 23.12.2002 by the Block Development Officer, Haspura, with a recommendation for appointment on class-III post.

5. The father of Petitioner No.2 was working as Revenue Karamchari and was posted in Navinagar, District-Aurangabad, who died in harness on 06.08.2004 leaving behind his widow, four sons and one daughter. Petitioner No.2 being eldest son applied for the appointment on compassionate ground. At the time of filing of application the petitioner No.2 was Graduate. The Circle Officer, Navinagar vide letter No.429 dated 27.08.2004 forwarded the application of petitioner No.2 with a recommendation for appointment on class-III post.

6. Similarly, the father of petitioner No.3 was working as Office Superintendent and was posted in Aurangabad Collecterate, who died in harness on 14.08.2004 leaving behind his widow, two sons and two daughters. The petitioner No.3 being eldest son applied for the appointment on compassionate ground. At the time of filling

up the application the petitioner No.3 was Graduate.

7. It appears from the material on record that on 03.11.2004 a meeting of District Compassionate Appointment Committee was convened and in the said meeting the applications of the petitioners were considered and the District Compassionate Appointment Committee recommended for appointment on class-IV post to all the petitioners, which is apparently clear from the proceeding of District Compassionate Appointment Committee. After recommendation, the Office of the District Magistrate issued an order dated 08.04.2005, showing the appointment of the petitioners on class-IV post. Accordingly, the petitioners have joined their respective post in the District of Aurangabad. The petitioner No.1 joined the post on 27.04.2005. Petitioner No.2 joined the post on 11.04.2005 and petitioner No.3 joined the post on 25.4.2005, but they were not satisfied with the manner they were treated as the persons having a lesser qualification have been appointed on Class-III post, by the same District compassionate Appointment Committee, but the petitioners having better qualification, have been appointed on class-IV post, so the petitioner No.1 vide letter dated 01.04.2005, petitioner No.2 vide letter dated 02.09.2013 and petitioner No.3 vide letter dated 22.4.2009 raised written objections. In pursuance



thereof, the cases of the petitioners again considered by the District Compassionate Appointment Committee on 07.06.2006 and recommended for appointment on class-III post, which is apparently clear from the recommendation dated 07.06.2004 (Annexure-4 to the writ application).

8. In pursuance of the said recommendation, the District Magistrate, Aurangabad, vide his office order containing Memo No.277 dated 06.12.2005 appointed these petitioners on class-III post. While the petitioners were discharging their duties as Clerk in their respective departments one Brajesh Kumar approached this Court in C.W.J.C. No.15917 of 2007, making a prayer that he should be appointed on compassionate ground against class-III post by modifying the earlier order of appointment against class-IV post. He has given example of four persons, namely, Dhananjay Kumar, Santosh Kumar, Amrendra Kumar Tripathi and Bhopendra Choudhary and claimed that they were initially appointed on class-IV post, but on the recommendation of the District Compassionate Appointment Committee, the District Magistrate appointed them on class-III post. So, if they were given the benefit that certainly he is also entitled for the same benefit, any deprivation will amount to a hostile discrimination in between same class of the persons. This



Court did not find any substance in his claim, rejected his claim, but found fault the appointments of Dhananjay Kumar, Santosh Kumar, Amrendra Kumar Tripathi and Bhopendra Choudhary and their services do not become a precedent, the Court has taken very stern view by holding that once a person has been appointed on class-IV post the claim of that employee get exhausted and again he cannot be promoted to class-III post, placing reliance to the judgment of *Umesh Kumar Nagpal vs. State of Haryana & Ors.* reported in *(1994(4) SCC page 138)*, there the Court has taken a view that the appointment on compassionate ground cannot be a source of appointment, but merely it is a solace to a bereaved family whose bread earner died in harness. Compassionate appointment is to mitigate the financial constraint so that the bereaved family may not become penury and on that reason the family of the deceased-employee is given the appointment. This Court found difficulty to pass order against these petitioners as they were not a party to the writ application and without their being heard any order adverse to the petitioners may not have been right exercise of power. In such circumstances, the Court directed the Principle Secretary, Personnel and Administrative Department, to look into these aspects of the matter, examine the case of the aforesaid persons, if it is found that reappointment on class-III post after being appointed on class-IV

post which is not permissible, then pass an appropriate order for reverting them to class-IV post, but of course after following the principle of natural justice.

9. On receipt of this order the Principal Secretary, Personnel and Administrative Department examined the case of all the persons and found that these petitioners were first appointed on class-IV post and later on their position has been improved by reappointing them in class-III post, but before arriving to a finding the petitioners were given show cause to explain about the manner of appointment in class-III post. In pursuance thereof, the petitioner No.1 submitted his explanation to the Under Secretary, which was placed before the Principal Secretary, there the plea was taken by petitioner No.1 that he has a better marks and better qualification than to Rekha Prakash and Ashok Kumar Singh, their cases for compassionate appointment was considered by the same Compassionate Appointment Committee, they were accommodated in class-III post and claimed that the subsequent order passed by the District Magistrate, appointing him on class-III post, is nothing but mere rectification of earlier mistake committed by them.

10. The matter was considered by the Principal Secretary and finally arrived to a finding that once petitioners appointed on



class-IV post now their position cannot be improved by reappointing on class-III post as the appointment on compassionate ground is only to provide immediate succor to the bereaved family and no person can claim appointment on compassionate ground on a particular post as a matter of right. Even after recording the aforesaid finding the Principal Secretary sent an order to the District Magistrate to take action in accordance with law. When the District Magistrate received the order of the Principal Secretary he again given a show cause notice to the petitioners and after receipt of the same each of the petitioners filed their respective explanations individually, but the point urged by them was common which was taken by petitioner No.1 before the Principal Secretary. They took the plea that the petitioners were discriminated as Ashok Kumar Singh and Rekha Prakash having lesser qualification than the present petitioners have been appointed on class-III post, but the petitioners have been appointed on class-IV post. Subsequent order of the District Magistrate, appointing them on class-III post is nothing but rectification of earlier mistake committed by them.

11. Learned counsel for the petitioners submits that the petitioners have a better qualification than Rekha Prakash and Ashok Kumar Singh, but the same Compassionate Appointment Committee



appointed Rekha Prakash and Ashok Kumar Singh on class-III post whereas these petitioners were appointed on class-IV post. Therefore, subsequent action of the District Magistrate, appointing the petitioners on class-III post is nothing but a rectification of earlier mistake committed by them. Learned counsel for the petitioners further submits that it is a case of demotion, in such view of the matter, before passing the order against the petitioners the competent authority ought to have conducted a full fledged inquiry, mere asking explanation cannot be treated to be following proper procedure. He further submits that the petitioners have not played any foul, misrepresentation or any act of illegality. They were appointed 8 years earlier, now stripping of the benefit of class-III post will be inequitable and arbitrary.

12. Whereas learned counsel for the State has submitted that the object of compassionate appointment is only to mitigate the financial crisis faced by the bereaved family whose bread earner died in harness and on that account under the scheme of compassionate appointment family is being given a financial cushion so that they can live properly and honourably without any hindrance. He further submits that the appointment on compassionate ground cannot be claimed as a matter of right. The same only can be granted



under the scheme or Rules framed by the State Government, if the Rules and Regulations are not available; in those circumstances, it prohibits to appoint a person on compassionate ground. The appointment on compassionate ground has to be earned by following the guidelines issued by the Government of Bihar. He has placed reliance on Clause-9(ka), where it has been provided that once a person is appointed on compassionate ground again he cannot claim for promotion or change of position on compassionate ground.

13. On the strength of this Clause, learned counsel for the State submits that the petitioners were appointed on class-IV post, now their position cannot be improved on class-III post and so much so that the action was taken in pursuance of the order passed by this Court and this Court affirmatively held that once the person has been appointed his position cannot be improved on the ground of compassionate appointment. The benefit of compassionate appointment is nothing but to give an immediate succor to the bereaved family.

14. Having considered the rival contentions of the parties, it is an admitted fact that father of these petitioners were Government employees and they have died in harness. These petitioners applied for the appointment on compassionate ground.



The Compassionate Appointment Committee recommended the case of the petitioners for class-IV post whereas some persons such as Rekha Prakash and Ashok Kumar Singh were appointed on class-III post. The petitioner No.1 joined the post on 27.4.2005, petitioner No.2 joined the post on 11.4.2005 and petitioner No.3 joined the post on 25.4.2005 and that too without raising any objection, though they have earlier raised objection, but subsequently it appears from the record that they have considered their situation, thought it better to join class-IV post.

15. It is well known principle of law that the persons cannot be appointed on compassionate ground unless there is a scheme for granting such benefit to the dependent of the bread-earner, as the appointment on compassionate ground cannot be treated to be one of the mode of recruitment of service, rather it is an exception to the normal Rules, as Article 16 of the Constitution of India prohibits discrimination on the basis of caste and sex, but looking to the predicament of the family the Government has framed the scheme of compassionate appointment. It is an exception not a Rule so much so does not create a vested right, but it is meant to mitigate the financial crisis of the deceased-employees' family as the family has plunged destitution on account of the demise of bread-

earner.

16. In the case of *Umesh Kumar Nagpal vs. State of Haryana & Ors.* reported in *1994(4) SCC page 138*, the Hon'ble Supreme Court held that the whole object of granting compassionate employment is 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.

17. The compassionate appointment cannot be made in absence of Rule or Regulations issued by the Government or the Public Authority. The request is to be considered strictly in accordance with Government Scheme, no discrimination as such has

laid with the authority to make compassionate appointment *de hors* to the scheme.

18. Further in the case of *M.G.B. Gramin Bank vs. Chakrawarti*, reported in *2014(13) S.C.C. 583*, the Hon'ble Supreme Court held that the consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

19. In view of the aforesaid judgments, it is admitted fact that in pursuance of the decision of the District Compassionate Appointment Committee the petitioners have joined the post. The Scheme for compassionate appointment specifically provides in clause-9 that once a person has joined the post there cannot be any change of the cadre, meaning thereby, it has got exhausted. Persons cannot say that because others have been appointed in class-III post his position should also be improved. In the present case, the authority of his own has not taken any action, but when one Brajesh



Kumar Singh has approached this Court in C.W.J.C. 15197 of 2007, raising grievance about these petitioners that they first joined the class-IV post, when they filed a representation their position was improved as class-III post. The Court has taken a very serious view of the matter and held that once a person has joined the post of class-IV his position cannot be improved from class-IV post to class-III post, thereupon the authority has taken action.

20. It will be relevant to quote certain paragraphs of the judgment, which are as follows:-

“The submission as with regard to the discrimination of the case of the petitioner has two facets. The appointment of the petitioner was made in the year 2007, whereas, the decision of the District Compassionate Appointment Committee to review those cases was taken in the year 2005, therefore, it was open for the petitioner to refuse such appointment and not to join the Class-IV post of peon. The petitioner did not do so and, in fact, happily joined the post of Peon offered to him and after joining the said post, he had filed this writ application on 6.12.2007 for claiming parity with the aforementioned four persons. To that extent, the petitioner will be bound by the principle of estoppel, inasmuch as, he had already accepted the appointment on Class-IV post and therefore he cannot be allowed to reprobate and reprobate in the matter of appointment from Class-IV post to Class-III pos.

The other aspect, which would really make the case



of the petitioner distinguishable, is that the petitioner wanted to be appointed against a Class-III post of Teacher. The post of Teacher in all the schools, whether, primary, middle or secondary have been governed by the statutory Recruitment Rules, which require a person to be trained. The Government executive order of relaxation of training being contrary to the statutory Recruitment Rules, the same cannot be at least made basis for issuing a direction by this Court. In the case of other four persons, they were not seeking appointment on the post of Teacher but on any other Class-III post. How far that decision of review by the Establishment Committee was correct, inasmuch as, those four persons were also already appointed on Class-IV post, is a matter of concern and should be looked into by the competent authority but, that cannot be a ground for perpetuating an illegality by also appointing the petitioner on a Class-III post. Article 14 and 16 to the Constitution of India as with regard to equality and equal opportunity in public employment cannot be enforced in a negative manner...

Before parting with, this Court must notice the submission of the learned counsel for the petitioner that if the appointment of the petitioner on a Class-III post was not permissible, the case of four persons, who were given favorable treatment of being allowed to take the Class-III post after being appointed on Class-IV post on compassionate ground, should also be reviewed.

There is a difficulty for this Court to straightway pass an order against them inasmuch as, none of the four persons have been impleaded party to this writ application but, then, as the case of these four persons may become bad precedent for the State and its functionaries, this Court

would direct the Principal Secretary of the Personnel and Administrative Department to look into this aspect of the matter and examine the case of the aforesaid four persons and if it is found that their reappointment on Class-III post after being appointed on Class-IV post was not permissible, he would pass an appropriate order for reverting them to Class-IV post but, of course, after following the principles of natural justice”.

21. It is not so that authority has taken *ex-parte* decision, but the fact remains that the petitioners were given liberty at two stages to defend their cases; first at the level of the Chief Secretary and second at the level of District Magistrate, both the authorities did not find favour with them and rejected the claim of the petitioners.

22. In view of the discussions made hereinabove as well the direction of this Court so much so that the petitioners have also been given opportunity to defend themselves, this Court does not find any error in the order either in the order dated 8.03.2013 or in the order dated 6.5.2013. Accordingly, this petition is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	
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