

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.566 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 18434 of 2012

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Vishal Kumar Sinha S/O- Late Vijay Shankar Prasad, Resident Of Village + P.O.-
Rajapur, P.S.- Darunda, Dist- Siwan.

.... Appellant

Versus

1. The State Of Bihar.
2. The District Magistrate-Cum-Collector, Siwan, District- Siwan
3. The Dy. Collector (Establishment), District- Siwan
4. The District Compassionate Appointment Committee Siwan, Represented
Through The District Magistrate-Cum-Collector, Siwan, District- Siwan

.... Respondent/s

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Appearance:

For the Appellant	:	Mr. Shri Prakash Srivastava, Advocate. Mr. Santosh Bharti, Advocate. Mrs. Annu Priyadarshini, Advocate.
For the Respondents	:	Mr. Gyan Shankar, AC to GP-2.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 24-08-2016

The challenge in the present Letters Patent Appeal is to
an order dated 23.01.2014 passed by learned Single Judge of this
Court, whereby the writ application was dismissed with the
observation that if the appellant files an application before the
competent authority, he will be given an appointment letter on the
corresponding post or else the appellant is free to compete in any
examinations depending on his eligibility and skill instead of

accepting what the appellant feels in degrading job for him.

2. The father of the appellant was working against Group 'C' post in Siwan District. He died in harness on 17.02.2011. The petitioner applied for appointment on compassionate ground which was considered by the District Compassionate Appointment Committee. The Committee recommended appointment of the appellant against Group 'C' post. The letter of appointment dated 23.08.2012 was to the effect that the appellant has to appear in the computer proficiency test and if he does not qualify, he will be appointed against Group 'D' post. The appellant could not qualify computer proficiency test and thereafter he filed a writ application in this Court for seeking appointment against Group 'C' post alleging that the condition of qualifying the computer proficiency test is against the recommendation of the District Compassionate Appointment Committee.

3. On the other hand, such claim of the appellant did not find favour of the learned Single Judge. Still aggrieved with the decision, the appellant has filed this present appeal before this Court. It is contended that since District Compassionate Appointment Committee has recommended the appellant for appointment to Group 'C' post, therefore, the Appointing Authority cannot put a condition

which is against the recommendation of the Committee.

4. On the other hand, learned counsel for the respondents refers to a Division Bench judgment of this Court vide **L.P.A. No. 1209 of 2000 (The State of Bihar and Ors. Vs. Madhuri Kumari Sinha)** decided on 28.02.2001. In the said case, the committee recommended appointment of Group 'C' post but the Appointing Authority put a condition that the candidate has to qualify the "calculation and letter writing test" which the candidate failed and thus the appointment was offered against Group 'D' post. The Division Bench has held as under:

"We disagree with the view taken by the learned Single Judge. The appointment on compassionate ground is not a mode of appointment. However, such appointment is made to militate the hardship of the family members of the deceased employee. If the dependent has some other source of income then he is not entitled to appointment on compassionate ground only on the basis of the death of the employee. The person concerned cannot claim a particular post. It is for the appointing authority to consider what post is to be offered after taking into consideration the efficiency and merit of the candidate concerned. In this case, the respondent was found unable to write or make calculation accordingly offered class-IV posts.

In that view of the matter, the decision taken by the appointing authority offering class-IV post to the respondent-petitioner cannot be said to be arbitrary or in violation of the well settled principles governing the appointment on

compassionate ground.”

5. In addition thereto, we may mention that the Hon’ble Supreme Court in the case of *Umesh Kumar Nagpal Vs. State of Haryana and others* reported as (1994) 4 SCC 138 has held that appointment on compassionate ground can be offered to a class lower than the class in which the deceased employee was working. The Court has held as under:

“2. ... 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. XXX.

4. XXX.

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.”

6. In view of the aforesaid judgment as well, the very offer of appointment to the appellant against Group ‘C’ post is runs

counter to the judgment of the Umesh Kumar Nagpal Vs. State of Haryana (supra) as well.

7. In view of the above facts, we find no error in the order passed by the learned Single Judge. Accordingly, present Letters Patent Appeal is dismissed.

8. At this stage, the learned Counsel for the appellants prays for liberty to permit him to be appointed against Group ‘D’ post. We do not find that any direction can be issued at this stage but liberty is given to submit a representation to this effect. If a representation is submitted, the competent authority shall consider the same and pass an appropriate order within a period of two months from the date of receipt of the representation.

(Hemant Gupta, J)

Mishra/-

(Ahsanuddin Amanullah, J)

AFR/NAFR	N.A.F.R.
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