

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17628 of 2008

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Vibha Sinha, wife of Late Binay Kumar Sinha, resident of New Area,
Patalpuri, Near Dangi Lodge, P.O. & District- Nawadah

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of
Personnel and Administrative Reforms, Government of Bihar, Patna
2. The Commissioner, Magadh Division, Gaya
3. Collector-cum- District Magistrate, Nawadah
4. The Additional Collector, Nawadah
5. The Establishment Deputy Collector-cum- Deputy Collector Land
Reforms, Nawadah Collectorate, Nawadah

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashish Giri

For the Respondent/s : Mr. AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 16-03-2017 Heard Sri Ashish Giri, learned counsel for the
petitioner and learned AC to AAG-4.

The petitioner, invoking writ jurisdiction of this
Court under Article-226 of the Constitution, has prayed for the
following reliefs:

- (i) “To issue an appropriate writ/order/direction in the
nature of certiorari for quashing the decision taken in
the meeting of the District Compassionate
Committee, Nawadah of which the respondent no.3
is the Chairman held on 8.8.2008 to the extent
whereunder the Committee has rejected the request
of the petitioner for reconsideration of her case for
appointment of Class-III post as contained in
Annexure-10.
- (ii) To issue an appropriate writ/order/direction in the



nature of certiorari for quashing the decision of the District Establishment Committee, Nawadah taken in its meeting held on 4.5.2006 to the extent it deprives the petitioner of appointment on Class-III post on the basis of an incorrect finding given at Column-5 thereof that the petitioner had committed six mistakes in the Written Test as contained in Annexure-2.

- (iii) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to modify the appointment order of the petitioner as contained in Annexure-3 and appoint her on Class-III post w.e.f the date of her initial appointment in the light of the evaluation conducted by the Examination Committee finding only 4 mistakes in her written test and thus recommending her for appointment against Class-III post as is evident from Annexure-8.
- (iv) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to pay and provide all consequential benefit to the petitioner consequent upon her appointment against Class-III post viz. arrears of salary , increments etc.
- (v) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to pay the cost of the present proceedings.
- (vi) To any other relief or reliefs to which the petitioner is found to be entitled in the facts and circumstances of the case.”

Short fact of the case is that the husband of the petitioner was of Class-III employee in the Collectorate of



Nawadah and while he was in service, in the year 2005 he left for heavenly abode. Thereafter, the petitioner being widow of the deceased employee applied for appointment on compassionate ground. It is case of the petitioner that the District Compassionate Committee, Nawadah after examining the merit of the case recommended the petitioner to be appointed against Class-III post. However, subsequently, the District Establishment Committee took a decision on 04.05.2006 for appointing the petitioner against Class-IV post. Since the decision was against the recommendation of the District Compassionate Committee, the petitioner firstly filed a representation for being appointed against Class-III post and finally in the month of May, 2007, she joined as Class-IV employee, but that was under protest. A plea has been taken that once the District Compassionate Committee recommended for appointment of the petitioner against Class-III post, there was no reason to appoint the petitioner against Class-IV Post. He further submits that under the right to information Act, the petitioner has got information that the District Appointment Committee had considered the case of the petitioner on merit on the basis of written examination, in which it was found that the petitioner had committed only four mistakes. However, subsequently, the District Establishment Committee again examined the matter and



erroneously it was held that the petitioner had committed six mistakes, which was beyond five and the petitioner was incapable for being appointed against Class-III post.

Learned counsel for the petitioner tried to persuade the Court to examine the written answer papers submitted by the petitioner before the authority concerned, which has been brought on record as Annexure-8 to the writ petition and same copy has been brought on record as Annexure-B to the counter affidavit.

Learned AC to AAG-4, opposing the prayer of the petitioner, submits that in normal course, the appointment on compassionate ground is an exception to Articles 14 and 16 of the Constitution of India. He submits that said provision has been prescribed only for the purpose of providing immediate financial relief to the family of bereaved employee. Once the petitioner was offered Class-IV post, there was no reason to allow the claim of the petitioner to be appointed against Class-III post. The learned State Counsel has also placed reliance on a Division Bench order of this Court, copy of the same has been brought on record as Annexure-A to the counter affidavit. He emphasizes that in case of compassionate appointment, a person may not claim for particular post.

Besides hearing learned counsel for the parties, I



have also perused the material on record. It is true that there is no dispute that the case of the petitioner was recommended for being appointed against Class-III post, but fact remains that finally the petitioner was offered for Class-IV post. Subsequently, she has already joined in the year 2007, of course on protest. In paragraph-4 of the counter affidavit, a stand has been taken that the petitioner has committed six mistakes in the written examination. To the counter affidavit, no rejoinder has been filed on behalf of the petitioner. Moreover, this Court, while exercising writ jurisdiction, is not in a position to examine the answersheet to ascertain as to whether the petitioner has committed four mistakes or six mistakes. Moreover, the Court is of the considered opinion that the appointment on compassionate ground is an exception under Articles 14 and 14 of the Constitution of India. The compassionate appointment is made for providing immediate financial relief to the bereaved family. The Court may not pass a different order than the order passed by a Division Bench , on which reliance has been placed by the learned State Counsel, which has been brought on record as Annexure-A to the counter affidavit i.e. the order passed in L.P.A. No.1209 of 2002. At this juncture it would be just and proper to quote the order passed in L.P.A. No.1209 of 2002, which is as follows:



“This appeal is directed against the order dated 7.4.2000 passed by the learned Single Judge whereby he has allowed the writ petition filed by the respondent petitioner and directed the respondents to appoint her on Class-III post on compassionate ground.

The appeal is barred by limitation.

Having heard the parties and perused the averments made in paragraph nos. 3 to 5 of the limitation petition; we are of the view that there is no intention or laches on the part of the State. Accordingly, the limitation petition is allowed and delay in filing the appeal is condoned.

The husband of the private respondent was an employee of the State Government in the department of Statistics and Evaluation, who died on 29.11.1996. Thereafter respondent-petitioner filed an application for her appointment on compassionate ground. The matter was considered by the Committee and the Committee recommended for her appointment on Class-III post. The matter was placed before the appointing authority and the appointing authority (sic) of calculation and letter writing of respondent petitioner. When she failed in both the matter, the appointing authority took a decision that she is not fit for class-III post and accordingly ordered for appointment on Class-IV post.

The respondent aggrieved by the aforesaid decision filed a writ petition and the learned single Judge allowed the same merely on the ground that the Committee had recommended her appointment on class-III post and the



appointing authority cannot deny her appointment on class-III post.

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.

In the result, the appeal is allowed and the order passed by the learned Single Judge is set aside.

If the respondent petitioner is agreeable to join class-IV post, she may join the same.”

Considering the facts and circumstances, particularly the fact that the petitioner has already been provided appointment, there is no reason to pass any favourable order.



The writ petition stands dismissed.

(Rakesh Kumar, J)

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