

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6332 of 2017

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1. Devendra Choudhary S/o Late Sulo Devi W/o Late Jay Shanker Choudhary
Resident of Mohalla- Shastri Nagar, Vidyapith Path, Lane No-3A, P.O.- Ramana
Kanhali, P.S.- Mithanpura, District- Muzaffarpur- 842002 (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Director-in- Chief, Department of Health, Govt. of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The District Establishment Committee, Muzaffarpur.
5. The Deputy Collector, Establishment, Muzaffarpur.
6. The Civil Surgeon-cum- Chief Medical Officer, Muzaffarpur.
7. The In Charge Medical Officer, Primary Health Center, Mushari, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Ojha, Adv.
Mr. Md. Waliur Rahman, Adv.
For the Respondent/s : Mr. Birju Prasad- GP13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-11-2017

Heard Mr. Ajit Kumar Ojha learned counsel for the petitioner
and Mr. Birju Prasad, GP 13 for the State.

The petitioner is aggrieved by the decision of the District
Compassionate Committee, Muzaffarpur, taken in the meeting held
on 21.12.2016 whereby the claim of the petitioner for compassionate
appointment was rejected on grounds that he was aged 43 years and
one month which exceeded the maximum age limit for



entry in Government service. The decision in so far as the petitioner is concerned, appears at Serial No. 14 of the proceedings, a copy of which is impugned and forms part of Annexure-2 series.

Mr. Ojha learned counsel for the petitioner has relied upon an advisory of the Department of Personnel and Administrative Reforms as contained in the Circular dated 25.7.1998, a copy of which has been placed on record vide Annexure-4 to the supplementary affidavit to submit that even when paragraph 3 of the circular empowers the Committee to relax the age in compassionate appointment yet such a decision has been taken.

In view of the Circular of the Personnel and Administrative Reforms dated 25.07.1998, learned State counsel was directed to seek instructions and whereafter the counter affidavit and supplementary counter affidavit has been filed which gives no explanation as to why power has not been exercised by the Committee in terms of the Circular dated 25.07.1998.

A rejoinder to the counter affidavit has been filed by Mr. Ojha today enclosing another proceeding of the District Compassionate Committee, Muzaffarpur to submit that whereas there are no less than 3 instances where the Committee has approved the appointment of persons on compassionate grounds even after they have crossed their age for entry in Government service but a same consideration is being



denied to the petitioner. In reference to the widow of Ajit Kumar whose name appears at Item No.2 at page 6, the case of Guddu Sah son of late Ram Naresh Sah, who appears at Serial No. 2 at page 7 and one Sachindra Prasad Singh son of late Ram Swarup Singh whose name appears at serial No. 1 of page 8 he submits that each of these persons are aged more than 40 years and yet they have been appointed on compassionate ground. It is thus submitted that the petitioner has been discriminated.

Mr. Prasad learned State counsel while trying to defend the said action is not in a position to explain this variance in the opinion of the District Compassionate Committee, Muzaffarpur.

I have heard learned counsel for the parties and I have perused the records.

A bare perusal of the proceedings of the District Compassionate Committee, Muzaffarpur held on 03.09.2016 placed on record vide Annexure-4 to the rejoinder confirms that the power vested in the District Compassionate Committee under the Circular dated 25.7.1998 of the Department of Personnel and Administrative Reforms to relax the maximum age limit, has been exercised by the District Compassionate Committee, Muzaffarpur to grant appointment to some similarly placed applicants but the same exercise has been withheld in so far as the case of the petitioner is concerned. Mr. Ojha



is right and there cannot be a pick and choose attitude by the District Compassionate Committee, Muzaffarpur nor it can be permitted to act in a discriminate and arbitrary manner. A power vested in the District Compassionate Committee to relax the maximum age limit in case of compassionate appointment has to be given its full interpretation and cannot have a restricted exercise. Conformingly, the District Compassionate Committee, Muzaffarpur while rejecting the case of the petitioner for compassionate appointment on grounds that he has crossed the maximum age limit for entry in Government service, has acted not only in contravention of the circular of the Department of Personnel and Administrative Reforms dated 25.7.1998 which vests power in the Committee to relax the maximum age but is also contrary to its own decision taken in the meeting held on 03.09.2016.

For the reasons discussed and in view of the clear stipulation present in the circular dated 25.7.1998 of the Department of Personnel and Administrative Reforms, the decision of the District Compassionate Committee chaired by the District Magistrate, Muzaffarpur in so far as it proceeds to reject the claim of the petitioner for compassionate appointment on age ground, is quashed and set aside. The matter is remitted back to the Committee to consider the claim of the petitioner in the light of the stipulation present in the circular dated 25.07.1998 as well as its own decision in



similar circumstances taken on 03.09.2016 and pass appropriate orders within a maximum period of six weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	07.12.2017
Transmission Date	NA

