

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9787 of 2016

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1. Suman Lal son of Late Ramyash Ram, Resident of village Bhadwar, P.O Bhadwar, P.S. Chandi(Koilwar) District- Bhojpur at Arah.

.... Petitioner/s

Versus

1. The State of Bihar through the principal Secretary, Revenue and Land Reforms Department Govt. of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department Govt. of Bihar, Patna.
3. The Dy. Secretary, General, Administration Department, Govt. of Bihar, Patna.
4. The District Magistrate Cum Chairman District Compassionate appointment committee, Buxar.
5. The Additional Collector, Buxar
6. Dy. Collector, Land Reforms Dumraon, District-Buxar.
7. The Circle Officer, Rajpur, District, Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Chandra Prasad Bharti, Adv.

For the Respondent/s : Mr. Md. Harun Quareshi A.C. to S.C.1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-11-2017

Heard Mr. Ram Chandra Prasad Bharti, learned counsel for the petitioner and Mr. Md. Harun Quareshi A.C. to S.C.1 for the State.

The petitioner is aggrieved by the part of the order passed by the District Compassionate Committee, Buxar in the proceedings held on 25.2.2016 whereby his claim for compassionate appointment has been rejected inter alia on grounds that it was filed belatedly. The decision in so far as the petitioner is concerned is present at item No.9 of the proceedings and which notices that since the death took place on 04.02.2007 and the application is filed after a delay of 8 years, the



petitioner was not entitled to the relief.

With the consent of the parties the writ petition has been heard with the view to final disposal at the stage of admission.

Facts are not in dispute. The father of the petitioner serving as a Revenue Karamchari in the Circle Office, Rajpur in the District of Buxar was removed from service vide order dated 29.10.2001. He questioned his removal before this Court in C.W.J.C. No. 12559 of 2002 but since he deceased during the pendency of the writ petition on 4.2.2007 that the writ petition was dismissed. The mother of the petitioner in the circumstances moved this Court in C.W.J.C.No.11390 of 2009 questioning the removal and which writ petition was disposed of vide judgment and order passed on 7.9.2009 vide Annexure-1 with liberty to the mother of the petitioner to question the order before the Commissioner of the Division. The mother of the petitioner questioned the removal order before the Commissioner, Patna Division who vide order passed on 4.2.2013 while taking note of the issues raised, found the punishment of dismissal disproportionate to the allegations and after noting that, a similarly placed delinquent for the same allegation, had been punished with stoppage of six annual increments with cumulative effect, modified the order of punishment of dismissal to an order of stoppage of six annual increments with the cumulative effect with the further



direction that the deceased employee would not be entitled to any further pay and allowances other than what he had drawn by way of subsistence allowance during the suspension period.

It is not in dispute rather confirmed from the proceedings present at Annexure-7 to the rejoinder that in view of the order passed by the Commissioner, Patna Division which in fact resulted in a deemed reinstatement of the deceased employee to the post and since he died in harness, that the widow was made entitled to the death cum terminal benefits and which has been allowed by the District Magistrate, Buxar vide order passed on 22.08.2015 at Annexure-7.

It is in view of this development which had taken place whereunder the dismissal order stood modified to effect in deemed reinstatement by virtue of the order passed by the Commissioner, Patna Division, that this petitioner applied for appointment on compassionate ground and which has been rejected by the District Compassionate Committee, Buxar on the advisory issued by the General Administration Department on a misinterpretation of the guidelines on the issue which mandates an application to be filed by a dependent within 5 years of the death of the employee.

Undoubtedly, the stipulation present in the guidelines require a dependent to file his application within 5 years of the death of a Government employee but the period of 5 years so stipulated in the



guidelines is not be mechanically applied rather it is to be seen in context with the cause of action arising in a case. In so far as the present case is concerned, the father of the petitioner was removed from service on 29.10.2001 and he died while contesting his removal which contest was pursued by his widow to result in the modification of the order of dismissal in an order of stoppage of increments with cumulative effect under the order of the Divisional Commissioner, Patna at Annexure-2 which was passed on 04.02.2013 and following which order the retiral benefits were also paid to the widow. In view of the order passed by the Divisional Commissioner and once the respondents following the same have rightly allowed the death cum retiral benefits to the widow, the claim of the compassionate appointment, equally arises since it becomes a case of death in harness. The order of the Divisional Commissioner was passed on 04.02.2013 and soon thereafter, the petitioner has raised his claim for compassionate appointment which is much within the period of 5 years from the date of the said order. In my opinion, in the changed circumstances, it is a misconstruction of the stipulations by the respondents to deny him this benefit on grounds of delay because the entitlement of the petitioner in the present case has to be counted from the date the termination order was modified under the order of the Divisional Commissioner on 04.02.2013.



In the circumstances discussed, the decision of the District Compassionate Committee as taken in the meeting held on 25.2.2016 in so far as it relates to the petitioner at item No.9 cannot be upheld and is accordingly quashed and set aside. The matter is remitted to the District Compassionate Committee, Buxar to consider the claim afresh and take it to its logical conclusion in accordance with law, within a period of 3 months from the date of receipt/production of a copy of this order.

The writ petition is allowed

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.12.2017
Transmission Date	NA

