

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1909 of 2016

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1. Ritesh Kumar Son of Kedar Singh Resident of Village - Sahjadpur, P.O. Era,
Police Station - Atari, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, Patna.
4. The District Magistrate-Cum-Chairman, District Compassionate Committee,
Nalanda at Biharsharif.
5. The Civil Surgeon-Cum-Chief Medical Officer, Nalanda at Biharsharif.
6. The Superintendent of ANM School, Biharsharif, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh, Adv.

For the Respondent/s : Mr. Santosh Kr. Jha- GP3

Mr. Rakesh Kumar Singh learned A.C. to G.P.15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-03-2017

Heard Mr. Mukesh Kumar Singh, learned counsel for the
petitioner and Mr. Rakesh Kumar Singh learned A.C. to G.P.15 for
the State.

The petitioner while questioning the order of the District
Compassionate Committee, Nalanda bearing Memo No.21/MU dated
17.12.2011 whereby his claim for compassionate appointment on
account of the death of his mother in harness has been rejected, also
questions the subsequent decision bearing Memo No.4/MU dated
27.6.2015 whereby the District Compassionate Committee, Nalanda
on reconsideration of the matter has again rejected the claim of the



petitioner but on a different ground. Copy of the orders dated 17.12.2011 and 27.6.2015 of the District Compassionate Committee, Nalanda are impugned at Annexures-1 and 2 respectively to the writ petition.

Facts briefly stated leading to the impugned order is that both the parents of the petitioner were Government servant and while the father superannuated in the year 1998, the mother of the petitioner late Leela Singh @ Leela Shrivastava working as the Sister Tutor, ANM School, Biharsharif, Nalanda died in harness on 11.4.2011 leaving behind the petitioner, another son Raj Kumar and one married daughter. A copy of the certificate is enclosed at Annexure-3 to the writ petition.

The petitioner applied for compassionate appointment but his claim was initially rejected by the District Compassionate Committee, Nalanda presided by the District Magistrate, Nalanda vide resolution dated 17.12.2011, a copy of which is impugned at Annexure-1 to the writ petition. The name of the petitioner appears at Serial No. 14 of the list and the reasons assigned for rejection of the claim is in reference to a policy decision of the General Administration Department bearing No. 3/C-2-2067/890 KA 12392 dated 5.10.1991 which inter alia provided that if both the parents of an applicant are Government servant(s) and if one of them died while the other



continues in service, then the legal heir of the deceased Government servant would not be entitled to compassionate appointment.

A similar issue came up for consideration in a case arising from **C.W.J.C.No.2059 of 2006 (Bagish Chandra Jha Vs. State)** when a bench of this Court vide judgment and order passed on 5.4.2011, in reference to an earlier Division Bench judgment rendered in the case of **Jyoti Kumari vs. State of Bihar** reported in **2005 (4) PLJR 507** has clarified the legal position to hold that in such cases where both the parents are Government servant and while one of them deceased in harness, the other continues in service, then the children of the deceased Government Servant would not be entitled to compassionate appointment but in case where both the parents are Government servant and while one dies in harness, the other one has already superannuated, meaning thereby, he/she, is no more in service, in that case the applicant would be entitled to a consideration. A copy of the judgment has been enclosed at Annexure-10 to the writ petition. It is perhaps taking clue from the legal position settled that the petitioner again made an attempt before the District Compassionate Committee but this time the claim has been rejected inter alia on grounds that there has been interpolation in the service book in so far as the date of birth of the deceased Government servant i.e. the mother is concerned. A copy of the impugned resolution



rejecting the claim dated 27.6.2015 is impugned at Annexure-2 to the writ petition.

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

In so far as the legal position is concerned I shall reproduce the relevant portion of the opinion of the Bench on the issue raised and discussed in the case of **Bagish Chandra Jha** (supra) and which is as follows:

“In the considered opinion of this Court the view taken by the District Compassionate Appointment Committee cannot be sustained in view of the policy laid down by the State Government, wherein it has been only provided that:

“(ड) यदि पति- पत्नी दोनों सरकारी सेवा में हो और किसी एक की मृत्यु हो जाय तो वैसी स्थिति में अनुकम्पा के आधार पर नियुक्ति का लाभ उनके परिवार के किसी आश्रित को नहीं मिलेगा ।”

The said provision of the Government circular dated 5.10.1991 would leave nothing for speculation that in order to deny consideration of the case of compassionate appointment of a dependent, a finding has to be recorded that at least the other spouse is still continuing in Government service. Since the father of the petitioner had already retired on 31.10.1996, it cannot be said that he had continued in service in terms of the Government circular dated 5.10.1991 on the date of death of the mother of the petitioners i.e. 30.9.2003 giving a cause of action to the petitioner for his appointment on compassionate ground.

It is this aspect of the matter which has been decided by this Court earlier in the case of Dilip Kumar Das vs. The State of Bihar & ors., reported in 2000(2) PLJR 203, and again in the Division Bench of this Court in the case of Jyoti Kumari (supra), wherein the Division Bench while approving the law laid down in the case of Dilip Kumar Das (supra) has held as follows:

“6. According to the said provision, when both husband and wife are in Government



employment and one dies while other remains in employment, then no benefit of compassionate appointment can be given to any of the dependents of the deceased employee. Thus, the condition precedent for non-applicability of the aforesaid provision is that at the time of death of one spouse, the other spouse is in employment. If the other spouse has already retired then the said clause, on the face of it, appears to be non-applicable.”

Since the solitary reason for rejection of the case of the petitioner was the alleged retirement of the father of the petitioner, this Court will have no hesitation in allowing this writ petition by quashing the impugned resolution No.3 dated 27.12.2005 and remitting the matter back to the District Compassionate Appointment Committee, Sitamarhi to re-examine the case of the petitioner strictly in accordance with the Government policy which was in existence on the date of death of mother of the petitioner i.e. 20.11.2002.

The District Compassionate Appointment Committee headed by the Collector of Sitamarhi District must take its decision in the case of the petitioner within a period of three months from the date of receipt/ production of a copy of this order and if a recommendation is made by the Committee, the competent appointing authority shall also do the needful taking into consideration that there is no delay on the part of the petitioner in seeking compassionate appointment and that the petitioner’s case for compassionate appointment was wrongly rejected on incorrect interpretation of the Government policy dated 05.10.1991.”

There is no dispute that the petitioner indeed was entitled to a consideration for compassionate appointment and his claim was wrongly rejected by the District Compassionate Committee, Nalanda vide the resolution dated 17.12.2011. Even though the legal position



in this regard stood settled as back as in the year 2005 and reiterated by this Court in the case of **Bagish Chandra Jha**(supra) on 5.4.2011 yet the respondents turn a blind eye to the settled legal position resulting in unwarranted litigation of present kind. The situation in so far as the present case is concerned, is even worse for even when the petitioner has endeavoured to shake the conscience of the respondents by raising his claim, this time it is rejected on charge of interpolation in the service book vide resolution dated 27.6.2015. There cannot be a better instance of an arbitrary action by the Committee for compassionate appointment. The photocopy of the service book is produced by Mr. Mukesh Kumar Singh and which shows no tampering save and except that while the date of birth in figures reads as '2.10.1951', while recording it in words, the month is incorrectly recorded as 'January' in place of 'October'. Meaning thereby the date of birth of the deceased Government employee was advanced by 10 months to her disadvantage. There is neither any overwriting in the service book nor the recording grants any advantage to the deceased Government servant. On the contrary, her age was advanced by 10 months by the person responsible for recording the same. It is rather unfortunate that for such simple typographical mistake and despite the law being settled by the High Court, yet the District Compassionate Committee has proceeded to arbitrarily reject the claim of the



petitioner erroneously.

For the reasons so discussed, the decision of the District Compassionate Committee, Nalanda dated 17.12.2011 impugned at Annexure-1 together with the subsequent resolution dated 27.6.2015 impugned at Annexure-2 cannot be upheld and is accordingly set aside. Accordingly, the District Compassionate Committee is directed to take a decision on the claim of the petitioner on its merits within a maximum period of three months 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	21.3.2017
Transmission Date	NA

