

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1254 of 2016

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Subham S/o Late Prem Kumar Dubey, resident of Mohalla- Road No. 14, Ashok
Nagar, P.S.- Kankarbagh, District- Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Department of Higher Education, Government of Bihar, Patna.
3. The Joint Secretary, Department of Higher Education, Government of Bihar,
Patna.
4. The Director, Department of Higher Education, Government of Bihar, Patna.
5. The Director, Bihar Rastra Bhasha Parishad, Saidpur, Patna-4

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Nawal Kishore Prasad, Adv.

For the Respondent/s : Mr. Anil Kumar Verma, AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-07-2017

Heard Mr. Nawal Kishore Prasad, learned counsel for the
petitioner and Mr. Anil Kumar Verma, AC to AAG-9, for the State.

The petitioner is aggrieved by the order dated 19.10.2010
passed by the Director (Higher Education), Human Resources
Department, Govt. of Bihar, Patna and the order bearing Memo No.
543 dated 24.11.2010 passed by the Director, Bihar Rastra Bhasha
Parishad, Patna whereby his application for compassionate
appointment has been rejected.



The peculiar facts leading to the impugned order briefly stated is that the father of the petitioner was employed as Junior Proof Reader in the respondent Bihar Rastra Bhasa Parishad under the department of Higher Education, Govt. of Bihar. The father of the petitioner died in harness on 31.10.2001 leaving behind his widow, two sons and two daughters inclusive of the petitioner. An application was filed for compassionate appointment on 26.9.2002 by the petitioner, a copy of which is placed at Annexure 1. The application of the petitioner was forwarded by the Director, Bihar Rastra Bhasa Parishad to the Director, Higher Education vide his letter dated 14.6.2003, present at Annexure 2. The application of the petitioner was rejected by the Department of Higher Education vide letter No. 1178 dated 8.12.2003, inter alia, on grounds of the petitioner being a minor on the date of filing of the application as it reflects from the letter dated 23.1.2004 of the Director, Bihar Rastra Bhasa Parishad, as contained in Annexure 3, who by the same letter again recommended the case pointing out the fact that the petitioner had attained majority on 1.1.2004 for appointment in Government service. The mother of the petitioner also vide her letter addressed to the Director, Bihar Rastra Bhasa Parishad received on 11.6.2004 renewed her request for appointment of her son, the petitioner herein, on compassionate ground, while referring to the rejection of the earlier application on



ground of minority and pointing out that her son had attained majority on 1.1.2004. The Director in continuation of his earlier letter as contained in Annexure 3 again recommended the case of the petitioner for appointment on compassionate ground before the Director, Higher Education vide his letter no. 363 dated 27.6.2006 present at Annexure 5. Since the recommendation was not acted upon by the Director, Higher Education that he chose to move this Court by filing C.W.J.C.No. 16254/2006 and which was disposed of vide judgment and order dated 2.7.2010 with the direction to the Director, Higher Education to consider the claim of the petitioner for appointment on compassionate ground and dispose of the same within three months of receipt of the order, a copy of which is placed at Annexure 6. The prayer of the petitioner was rejected by the Director (Higher Education), Human Resources Department vide order dated 19.10.2010 in reference to Memo No. 13293 dated 5.10.1991 to hold that since the petitioner was a minor on the date of death of his father, he was not entitled for appointment nor any post can be kept vacant for so long period. The order of the Director, Higher Education dated 19.10.2010, as contained in Annexure 7, was communicated to the petitioner by the Director, Bihar Rastra Bhasa Parishad vide his letter dated 24.11.2010 present at Annexure 8. Feeling aggrieved he again moved this Court through C.W.J.C.No. 4492/2011 which



unfortunately got dismissed for non-prosecution on 21.7.2011 and even the restoration application arising from M.J.C.No. 3976/2012 was dismissed for non-compliance of peremptory order passed by the Bench. These facts are apparent from the orders present at Annexures 9 and 10. It is thereafter that the present writ petition has been filed with a prayer to quash the order of the Director, Higher Education, impugned at Annexure 7.

A preliminary objection was raised by the learned counsel for the State of Bihar as to the maintainability in view of the order passed at Annexures 9 and 10 but the facts as discussed in the supplementary affidavit filed on behalf of the petitioner is a sufficient explanation that the delay cannot be entirely attributable to the petitioner, even if the matter has not been pursued before this Court by his counsel. The case of the petitioner certainly cannot be prejudiced for a lapse which is attributable to the circumstances beyond his control. Learned State Counsel in support of his contention that the post cannot be reserved for compassionate appointment has relied upon a Division Bench judgment of this Court reported in 2017(2) PLJR 403 (**Maroon Khatoon & anr. v. the State of Bihar & ors.**).

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



While the sequence of events is sufficient indication of undue harassment faced by the petitioner it is also indicative of the lack of knowledge in the Director of Higher Education in relying upon a superseded resolution of the Department of Personnel and Administrative Reforms bearing Memo No. 13293 dated 5.10.1991 which stood superseded and modified by the resolution of the Department of Personnel and Administrative Reforms bearing letter no. 2822 dated 27.4.1995. The trouble for the petitioner has continued even thereafter as reflected from the pleadings. In my opinion, there is absolutely no element of delay or lapse on the part of the petitioner or his mother in approaching the authorities for compassionate appointment as is evident from the application vide Annexure 1 which was filed on 26.9.2002 within a year of the death of the father. Even if the petitioner was a minor at the relevant time, the renewed prayer by the mother vide her application dated 11.6.2004 at Annexure 4 on attainment of majority by this petitioner as well as recommendation of the Director, Bihar Rastra Bhasa Parishad on 23.1.2004 vide Annexure 3 as well as his subsequent recommendation dated 27.6.2006 vide Annexure 5 are sufficient ground that the claim of the petitioner for compassionate appointment was being pursued by the department on his attainment of majority.

Here I deem it necessary to discuss the policy decision



present in the resolution of the Department of Personnel and Administrative Reforms, as contained in their letter no. 2822 dated 27.4.1995 which by modifying the earlier resolution no. 13293 dated 5.10.1991 does at paragraph 6 clearly stipulate that a dependant of a Government employee, who has died in harness, can file his application within five years period of the death of the employee. Meaning thereby, the father of the petitioner having died in harness on 31.10.2001, he would be well within time in filing an application for appointment on compassionate ground until 30.10.2006. The said resolution at paragraph 7 amends the resolution No. 13293 dated 5.10.1991 to that extent. It is rather unfortunate that a high authority holding the post of Director, Higher Education is oblivious of this legal position. Even if the petitioner was a minor when he filed his application on 26.9.2002, the renewal of the claim by the mother of the petitioner vide Annexure 4 on 11.6.2004 on attainment of majority by the petitioner on 1.1.2004 as well as recommendation by the Director, Bihar Rastra Bhasa Parishad in such situation on 23.1.2004 and 27.6.2006 vide Annexures 3 and 5 are all recommendations made prior to expiry of five years limitation period. As I have said it is rather unfortunate that even when the scheme fully supports the claim of the petitioner for compassionate appointment, it has been rejected by an authority holding the post of Director, Higher Education by



placing the reliance on a superseded notification. The observation of the Director, Higher Education that a post cannot be held reserved for a claimant, is true on its legal principles, but where an application is filed by a claimant within the stipulated period of five years, this principle would not apply.

The other infirmity which is found in the order of the Director, Higher Education is that even when the circular relied upon by him dated 5.10.1991 at paragraph 3 gave no limitation period for filing an application, the limitation was introduced only through the subsequent resolution dated 27.4.1995 which at paragraph 6 restricted such application to a period of five years from the date of death.

The judgment relied upon by the learned State Counsel though sound on principle would not be applicable to the present case.

For the reasons so discussed, the order dated 19.10.2010 of the Director (Higher Education), Human Resources Department, impugned at Annexure 7, together with its communication by the Director, Bihar Rastra Bhasa Parishad vide his letter no. 543 dated 24.11.2010, impugned at Annexure 8, cannot be upheld and are accordingly quashed and set aside. The Director (Higher Education), Human Resources Department is accordingly directed to act upon the application filed by the petitioner for compassionate appointment and take to its logical conclusion within a period of three months from the



date of receipt/ production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2017
Transmission Date	NA

