

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13690 of 2015

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1. The Union of India, through the D.G. - cum - Secretary, Department of Posts, Dak Bhawan, New Delhi.
 2. The Chief Postmaster General, Bihar Circle, Patna.
 3. The Assistant Director (Staff & Recruitment), O/o the Chief Post Master General, Bihar Circle, Patna.
 4. The Sr. Superintendent of Post Officer, Gaya Division, Gaya.

.... Petitioner/s

Versus

1. Suresh Prasad Yadav Son of Late Raghubir Prasad Yadav, Resident of Village and P.O. Gurpa, P.S. - Fatehpur, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar(ASG)
For the Respondent/s : Mr. Hemant Kumar Karn, Advocate
Mr. Jayant Kumar Karn, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 12-01-2017

The Union of India has filed the writ application assailing the decision of the Central Administrative Tribunal, Patna Bench, Patna dated 26th February, 2013. By virtue of order passed in O.A. No. 888 of 2011, the Tribunal has given a direction upon the petitioners to consider the case for compassionate appointment of the Private respondents on the basis of the previous circulars and instructions and by ignoring the 2011 instruction, which was in vogue.

A very pointed submission supported by a Supreme Court decision has been made by the Assistant Solicitor General representing the Union of India as a petitioner in this case. The



Judgement in question is MGB Gramin Bank Vs. Chakrawarti Singh reported in (2014) 13 SCC 583. The Hon'ble Supreme Court after considering the various judgments and decisions concluded as under:

“15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc. the application has to be considered in accordance with the scheme. In case the scheme does not create any legal right, a candidate can not claim that his case is to be considered as per the scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In SBI, this Court held that in such a situation, the case under the new scheme has to be considered.

16. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eye of the law. The appeal is allowed and the impugned judgments of the High Court are set aside.

17. The respondent may apply for consideration of his case under the new scheme and the appellant shall consider his case strictly in accordance with Clause-14 of the said new scheme within a period of three months from



the date of receiving of application. With these observations, the appeal stands disposed of.’’

The law is that the rule, regulation or instruction relating to compassionate appointment has to be applied on the date of the consideration. It can not relate back to the date of death of an employee.

By virtue of the impugned order, the Tribunal has done just this contrary to what the Apex Court has laid down by asking the petitioners to apply the previous superseded instructions and ignoring the 2011 instruction, which was in vogue when the decision on the claim of the private respondent was being taken.

The impugned order dated 26th February, 2013 passed in O.A. No. 888 of 2011, therefore, is set aside. The case of the private respondent can only be considered in terms of the new scheme or instruction in place.

The writ application is allowed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Sudha/Rajesh

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

