

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.59 of 2016

Kamleshwari Paswan, Son of late Kokil Paswan, Resident of Village and Post Office- Paharpur, Police Station- Baliya, Sub-Division- Balia, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Begusarai.
3. The Deputy Collector, Establishment, Begusarai.
4. The Sub-Divisional Officer, Balia, District- Begusarai.
5. The Circle Officer, Balia, District Begusarai.
6. The Officer-in-Charge, Balia Police Station, District- Begusarai.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Advocate

For the Respondent/s : Mr. Vivek Anand Amritesh, AC to SC-28

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-05-2017

Heard Mr. Jitendra Kumar Roy, learned counsel appearing for the petitioner and Mr. Vivek Anand Amritesh, learned Assisting Counsel to Standing Counsel No.28 for the State.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the letter no.751 dated 13.4.2015, whereby the District Compassionate Appointment Committee, Begusarai chaired by the District Magistrate, Begusarai has rejected the claim of the petitioner for compassionate appointment on grounds that his claim was time barred inasmuch as while the death of the father of the petitioner took place on 28.1.2008, the recommendation made in his favour on 20.6.2014 was after more than five years stipulated under the guidelines. A copy of the decision of the District Compassionate Appointment Committee has been placed on record



vide Annexure-C to the counter affidavit filed on behalf of the respondent no.5 and its communication is made vide letter dated 13.4.2015 impugned at Annexure-1 to the writ petition.

The case in hand is an addition to State generated litigation. Even when there is no dispute nor claim of the petitioner is barred by disqualification, the State proceeds to disqualify him on limitation when the fault lies entirely with the State. The guideline contained in the letter of the Personnel and Administrative Reforms Department has been placed on record vide Annexure 'A' to the counter affidavit of respondent nos.2 to 5 and clause 6 thereof prescribes 5 years period within which an applicant for compassionate appointment should file his application.

Adverting to the case in hand and the arbitrariness in the decision of the District Compassionate Appointment Committee, Begusarai as reflecting from the decision impugned can be gathered from the fact that the father of the petitioner who was a Chaukidar with the Baliya Police Station in the district of Begusarai expired in harness on 28.1.2008 leaving behind three sons and one daughter. The petitioner filed an application for compassionate appointment together with necessary papers including affidavits of his brothers supporting his claim, copies of which are placed at Annexure-2 series. The affidavits leave no room for confusion that a claim was raised towards compassionate appointment as back as on



19.10.2012. This fact is not even contested by the respondents and is confirmed from the records so produced by the State Counsel which contains these affidavits. May be the petitioner is not well versed with the rules to understand that these affidavits should have been filed with a covering application in prescribed form but nonetheless the claim was raised within the stipulated period of 5 years and the affidavits form part of the record so produced by the State Counsel. In fact paragraph 2 of the affidavit so filed by the petitioner very clearly prays for a compassionate appointment in his favour and which relief is supported by the affidavits filed by his brothers. As I have said may be these affidavit should have been accompanied with a formal application but that technicality neither wrests the right of the petitioner nor a belated filing of formal application could have been rejected on grounds of limitation.

In fact once the petitioner had filed his claim for compassionate appointment in the year 2012, it was for the office to have assisted the petitioner in completing the necessary formalities. In fact it is in furtherance of the affidavit so filed by the petitioner that the matter has progressed and a formal recommendation was made on 20.6.2014 which recommendation of the Circle Officer containing all the details forms part of the proceedings so produced by Mr. Amrritesh and is also a part of the counter affidavit. It is this belated action in completion of formalities, entirely attributable to



the respondents, which is assigned a ground to take away the right vested in the petitioner for compassionate appointment. It is not a case where the petitioner has woken from a slumber and it is also not a case where the claim is beyond the stipulated period. The claim for compassionate appointment was raised by the petitioner within the stipulated period and it is the time taken by the respondents in completion of formalities which has gone beyond the period of 5 years and has given an excuse to the District Compassionate Appointment Committee to reject the case of the petitioner.

In this regard I am reminded of the judgment of the Supreme Court since reported in **AIR 1981 SC 1681 (Hindustan Sugar Mills vs. State of Rajasthan)** and the observation of the Supreme Court would be an advice for the respondents to refrain from obstructing lawful claims on technicalities. The relevant part of the Judgment in **Hindustan Sugar Mills** (supra) is reproduced hereinbelow:

“..... . We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal technicalities, for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand.”

In my opinion, the petitioner has been unnecessarily subjected to undue harassment at the hands of the respondents for apparently no



justifiable reason.

For the reasons and discussions aforementioned the decision of the District Compassionate Appointment Committee chaired by the District Magistrate, Begusarai in so far as it proceeds to reject the claim of the petitioner on limitation, is quashed and set aside. The District Compassionate Appointment Committee, Begusarai is accordingly directed to consider the case of compassionate appointment of the petitioner without resorting to hyper technicality and now that the necessary formalities stand completed, the District Compassionate Appointment Committee would be advised to take the issue to its logical conclusion which should be done within a period of three months from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

Let the records so produced by Mr. Vivek Anand Amritesh, learned Assisting Counsel to Standing Counsel No.28 be returned to his custody.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26-05-2017
Transmission Date	NA

