

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1354 of 2016

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Smt. Kiran Devi D/o Late Sudhir Mehtar @ Mallick Resident of Village + P.O.-
Daparkha, P.S.+Anchal- Triveniganj, Distt- Supaul.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Dept. of General Administration, Govt. of Bihar, Patna.
2. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The District Compassionate (Appointment) Committee through the Collector, Supaul.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwari, Adv.

For the Respondent/s : Ms. Vijay Laxmi Srivastava, AC to SC-23

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-07-2017

Heard Mr. Dhananjay Kumar Tiwari, learned counsel for the petitioner and Ms. Vijay Laxmi Srivastava, AC to SC-23, for the State.

The writ petition was filed seeking, inter alia, a direction in the nature of mandamus to respondent no.1 i.e. Principal Secretary, Department of General Administration, Govt. of Bihar, Patna to consider the application of the petitioner for compassionate appointment in the light of the recommendation of the District Compassionate (Appointment) Committee headed by the Collector, Supaul, a copy of which is present at Annexure 1, wherein the name of the petitioner appearing at serial No.13 stands recommended with the request for condonation of delay in filing the application. The



recommendation made by the District Compassionate (Appointment) Committee is followed by a letter of the District Magistrate, Supaul addressed to the Principal Secretary, General Administration Department dated 29.9.2015 to the same effect.

A counter affidavit has been filed on behalf of the State enclosing an advisory of the General Administration Department issued to the District Magistrate, Supaul, as contained in the letter of the Under Secretary dated 11.12.2015 on the subject and with an advice that he should proceed in the matter in accordance with the stipulations present in the circulars and not in contravention thereof.

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

The brief facts leading to the writ petition is that the father of the petitioner employed as a Sweeper in Primary Health Centre, Kishanpur died in harness on 11.3.2010 leaving behind three daughters from the first wife who had expired, inclusive of the present petitioner and his widowed second wife. For the reasons at the discretion of the widow of the deceased employee Manju Devi, no application was filed by her for compassionate appointment. Under the circular issued by the Department of Personnel and Administrative Reforms bearing No. 2822 dated 27.4.1995, a copy of which is present at Annexure 'B' to the counter affidavit, an application for



compassionate appointment would be made only within a period of five years since the death of the Government servant. In other words, an application to such effect could be filed in the present case latest by 10.3.2015 as the death of the father came on 11.3.2010. While the situation thus existed that a policy decision was taken by the General Administration Department to include the married daughter within the category of dependant as reflected from their letter dated 10.12.2014, a copy of which is enclosed in the application so filed by the petitioner vide Annexures 3 series at running Page-40. It is in view of the policy decision so taken by the General Administration Department to include the married daughters that this petitioner being the eldest amongst the three daughters from the first wife of the deceased employee, after obtaining no objection from the sisters as well as her step mother, the widow Manju Devi, as confirmed from the affidavits present at running Page-23, 25, 26 and 29, all dated February, 2015, filed her application present at Annexure 3, but in the process of collection of documents required for such application, the prescribed period expired when the application was received on 8.4.2015 as confirmed from running Page-21. Even the recommendation acknowledges that the application was received on 9.4.2015. In other words, the application was belated by less than 30 days of expiry of five years. It is taking note of the peculiarity of the



situation that the District Magistrate as the Chairman of the District Compassionate (Appointment) Committee vide his letter dated 29.9.2015 sought guidelines from the Principal Secretary, General Administration Department for condonation of delay in exceptional circumstances. The request for condonation of delay has been rejected by the department and communicated vide letter dated 11.12.2015 of the Under Secretary, General Administration department, present at Annexure 'A' with an advice to the District Magistrate, Supaul to follow the circular and not in contravention thereof.

The issue would be whether in view of the stipulation present at paragraph 6 of the circular dated 27.4.1995 of the Department of Personnel and Administrative Reforms prescribing a five years limitation period of filing any such application since the death of the Government servant, the application of the petitioner would require a consideration by condonation the delay.

It is not a case covered by the guidelines of 1995 exclusively rather a right was created in the petitioner by virtue of the policy decision dated 10.12.2014 whereby married daughters were included as dependents for the purpose of compassionate appointment.

The documents on record enclosed with the application form present at Annexures 3 series would show that no sooner did the



petitioner gather knowledge of the policy decision of the State Government in its General Administration Department to accord benefit of compassionate appointment to the married daughters on 10.12.2014 that she got in the process of procuring documents and a cursory glance thereof would show that most of the documents were obtained on various dates in February, 2015 which is much within the prescribed period of five years. Considering that the policy decision so taken by the General Administration Department on 10.12.2014 has no circulating date, the exercise undertaken by the petitioner to act thereupon for obtaining the benefit arising therefrom soon thereafter and to file her application which was admittedly filed after the expiry of five years but within less than a month thereafter, requires a pragmatic disposal.

In my opinion, once the General Administration Department had taken a decision to accord benefit of compassionate appointment to the married daughters as manifest from the circular dated 10.12.2014, a reasonable time should have been accorded to such married daughters, who would come within the zone of consideration on this ground for filing such application, notwithstanding stipulated period of five years so prescribed in the circular in force dated 27.4.1995. A policy decision which is in the nature of beneficial legislation has to accord equal benefits to all and



in so far as the case of the present nature is concerned, admittedly since the prescribed period was to expire within three months of the enforcement of such circular, the request so made by the District Magistrate, Supaul in his letter dated 29.9.2015 to the Principal Secretary, General Administration Department ought to have been considered with a pragmatic approach.

In the peculiar circumstances existing where admittedly steps have been taken by the petitioner to seek appointment on compassionate ground in the light of the circular dated 10.12.2014 within the stipulated period of five years but the period expired in the process of filing of application, which was filed on 8.4.2015, in my opinion, the case of the petitioner has made out an exception from general rule for application of limitation so prescribed in the circular issued by the Department of Personnel and Administrative Reforms dated 27.4.1995. The cause of action for the petitioner had arisen on 10.12.2014 when under the circular of the Department of Personnel and Administrative Reforms, she became entitled to seek compassionate appointment and the fact that the application was filed on 8.4.2015 i.e. in less than four months of such eligibility, there was no delay in filing.

Having heard learned counsel for the parties and considering the peculiarity of grievance so raised by the petitioner in



the background of the facts accompanied, I find that the case of the petitioner is fit for consideration on condonation of the period in the backdrop of the fact that the application for appointment on compassionate ground was filed within a reasonable time of invocation of the policy decision dated 10.12.2014.

For the reasons so discussed, the District Magistrate, Supaul as the Chairman of the District Compassionate (Appointment) Committee is directed to consider the case of the petitioner afresh 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	AFR
CAV DATE	NA
Uploading Date	31.08.2017
Transmission Date	NA

