

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1326 of 2015

In
Civil Writ Jurisdiction Case No. 4617 of 2015

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Pawan Kumar Upadhyay, aged about 36 years, Son of Late Ramakant Upadhya, resident of Village- Mainpura, Police Station- Ara Sadar District- Bhojpur, Ara.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna
4. The Superintendent of Police, Patna
5. The Superintendent of Police, Khagaria

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha, GA-1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY**

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

6 09-10-2017 Seeking exception to an order dated 30.03.2015 passed by the writ Court in C.W.J.C. No. 4617 of 2015, this appeal has been filed under Clause 10 of the Letters Patent.

Claim for compassionate appointment of the appellant was rejected by the respondent only on account of the fact that the employee, who was working in the police department and bread winner of the family disappeared in the year 2003 and in the year 2015 the claim for compassionate appointment of the writ petitioner cannot be considered. However it was lost sight of



by the writ Court that it was not a case of death of the employee, but it was a case where the employee had come to the office and after performing his duty, his whereabouts was not known and after passing of more than 7 years, a presumption can be drawn about his death under law and thereafter on such presumption, in the year 2014 application for compassionate appointment was filed and pending adjudication of the application for compassionate appointment, writ petition was filed in year 2015 and the policy of the State Government is that the claim for compassionate appointment can be filed within five years of the death of the employee.

That being the position, the claim of the writ petitioner could not have been entertained in the year 2008, as the employee was missing since 2003 and had not died and, therefore, it would be only in 2010, the cause of action for seeking compassionate appointment will arise in such a case.

We accordingly direct that in case the writ petitioner files a representation for grant of compassionate appointment, the respondent shall consider the claim in the peculiar facts and circumstance and looking to the nature of the claim and take a decision with regard to compassionate appointment as the employee concerned was originally working in the police



department, within a period of three months.

This appeal stands disposed of with the aforesaid direction.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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