

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13787 of 2014

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1. Avinash Kumar Verma S/o Late Nageshwar Prasad Resident of Village-
Parshurampur, P.S.- Parsauni, District- Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Personnel and Administrative
Department, Bihar, Patna.
2. The Principal Secretary, Personnel and Administrative Department, Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The Sub- Divisional Officer, Belsand, Sitamarhi.
5. The Block Development Officer, Parsauni.
6. The Circle Officer, Parsauni,

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Adv. Mr. Shashi Shekhar Kumar Prasad, Adv. Mr. Om Prakash Kumar, Adv.
	:	Mr. Jay Prakash Sharma, Adv.
For the State	:	AC to G.P.-21

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 01-07-2017

The present writ application has been filed for issuance of a writ in the nature of certiorari, to quash the letter bearing memo no. 753 dated 12.6.2014, as contained in Annexure 12, issued under signature of Circle Officer, Riga, intimating the petitioner that the Deputy Collector, District Establishment, Sitamarhi, through his letter bearing Memo no. 3541/Establishment dated 21.5.2014, has rejected the petitioner's application for compassionate appointment and has directed to return the original certificates of the petitioner on the ground that the elder brother of the petitioner is in government



service. Further prayer has been made for calling for the records of the proceedings related to the petitioner's compassionate appointment including letter no. 3541/Establishment dated 21.5.2014, by which the claim of the petitioner for compassionate appointment has been rejected and for quashing of the same. Thirdly, prayer has been made for issuance of a direction to the respondent authorities to appoint the petitioner on compassionate ground forthwith.

The factual matrix of the case is that the father of the petitioner was Head Clerk in the Circle Office, Riga, who died in harness on 19.6.2011, leaving behind his wife, two sons and a married daughter. The petitioner is the younger son of the deceased employee.

The petitioner being a graduate, made a representation on 24.10.2011, with a prayer for compassionate appointment, along with annual income certificate issued by the Circle Officer, Parsauni, as contained in Annexures 3 and 3/1, showing his annual income as Rs. 45,000/- . Though the elder brother of the petitioner, who got married on 06.07.2006, is employed in C.R.P.F., but he has not been looking after his mother. The elder brother has also sworn an affidavit stating that he does not have any objection if the petitioner is appointed on compassionate ground. The petitioner also swore an affidavit that he will look after his mother, if he is appointed on compassionate



ground.

It is submitted by Mr. Siddhartha Prasad, learned counsel for the petitioner that the District Compassionate Committee chaired by Collector, Sitamarhi, considered the application of the petitioner in its meeting dated 14.2.2012. In the said meeting, the minutes of which has been brought on record as Annexure 7, the petitioner's name was at serial number 7 of the agenda, which reflects that it was resolved that an enquiry report be obtained from the S.D.O., Belsand, with regard to the certificate no. 17 dated 4.8.2011, granted by the Circle Officer, Parsauni, and the fact that the elder brother of the petitioner is employed in CRPF, who is separate from his mother and the petitioner. The District Compassionate Committee directed for placing the matter in the next meeting. Consequently, the S.D.O., Belsand, submitted a report to the Collector, vide letter no. 799 dated 7.6.2012, as contained in Annexure 8, to the effect that on the basis of statement of the mother of the petitioner, as well as statement of several villagers, who all have equivocally stated that late Nageshwar Prasad Verma's elder son resides separately from the family and he is not having any concern with the family. In the circumstances, the younger son of the deceased employee, i.e. the petitioner can be appointed on compassionate ground. The S.D.O., Belsand further stipulated in the report that he fully agrees with the view of the Circle



Officer, Parsauni, but by the time the matter was placed in the next meeting of the District Compassionate Committee dated 30.3.2013, the constitution of the committee changed. However, the Committee vide resolution dated 30.3.2013 (Annexure 9), decided to take instruction from General Administration Department, whether the petitioner can be appointed in view of the recommendation of the SDO, though the elder brother of the petitioner is employed in CRPF. The said clarification whether the petitioner can be appointed in view of the fact that his elder brother is employed in CRPF, was sought for by the Collector, Sitamarhi vide letter no. 930, dated 11.9.2013 (Annexure 10), from the Principal Secretary, General Administration Department, Government of Bihar, Patna but in the said communication for clarification, this fact has deliberately not been incorporated that brother of the petitioner is separate and that the petitioner's appointment on compassionate ground has been recommended by the Circle Officer, Parsauni as well as by the S.D.O., Belsand. Consequently, as it appears from the counter affidavit filed on behalf of respondent nos. 3 and 4 that the General Administration Department, vide Memo no. 15783 dated 19.11.2014, as contained in Annexure B to the counter affidavit, intimated to the Collectors, Vaishali/East Champaran/Supaul/Gaya that in view of the letter of the General Administration Department issued vide letter no.



1781 dated 10.05.2010 and in view of the order dated 27.7.2004, passed in C.W.J.C. Nos. 6668 and 7044 of 2003, if one of the dependants of the deceased employee is gainfully employed then the other dependant cannot be appointed on compassionate ground.

Though in the counter affidavit, the respondents have brought the minutes of the resolution of the District Compassionate Committee dated 27.1.2014, wherein, the name of the petitioner appears at serial number 5. It has been decided that in view of the guidelines of the General Administration Department, since the elder brother of the petitioner is already in service, he cannot be appointed on compassionate ground and hence, directed for return of all his original certificates. The said minutes have never been supplied to the petitioner and the petitioner came to know about this fact for the first time, on filing of the counter affidavit. Hence, it is prayed by learned counsel for the petitioner for quashing of the same as neither the General Administration Department was informed about the recommendation of the Circle Officer, Parsauni and S.D.O., Belsand nor the claim of the petitioner has been finally decided by the District Compassionate Committee in its meeting dated 27.1.2014, taking into account the recommendations of the Circle Officer, Parsauni and S.D.O., Belsand. Hence, it is submitted that the guidelines issued by the General Administration Department was on the basis of



insufficient information supplied by the Collector vide letter no. 930 dated 11.9.2013 (Annexure 10).

The petitioner has received Memo no. 753 dated 12.6.2014, issued by the Circle Officer, Riga (Annexure 12), to the effect that the Deputy Collector, District Establishment, Sitamarhi, through his letter bearing Memo No. 3541/Establishment dated 21.5.2014 has rejected the application of the petitioner for appointment on compassionate basis, while returning the original certificates of the petitioner, on the ground that the elder brother of the petitioner is in government service. The said letter no. 3541 dated 21.5.2014 has never been supplied to the petitioner, nor has been brought on record by way of counter affidavit, in spite of the fact that prayer for calling of the said letter and quashing of the same has been made in the present writ application, which suggests the casual manner in which the respondent authorities are considering the bonafide claim of the petitioner.

It is further submitted that this is not in dispute that the father of the petitioner was Head Clerk in the Circle Office, Riga, who died on 19.6.2011 and within the stipulated time, the petitioner preferred an application for appointment on compassionate ground. Hence, the case of the petitioner has neither been considered in true perspective nor the order rejecting the claim of the petitioner has been



communicated to the petitioner.

Learned counsel for the petitioner has relied upon an unreported judgment dated 11.8.2011, passed in C.W.J.C. No. 8549 of 2009 (Shyam Kumar Kapar Vs. The State of Bihar & Ors.), wherein, it was observed that the crucial test shall be that the elder brother of the petitioner, though employed, is not supporting the other members of the family and is separate in mess and residence. Moreover, the family of the deceased is in dire straits, and under such circumstances, the consideration of the claim of other dependent cannot be denied. In the said circumstances, liberty was granted to the petitioner in the said case to represent before the authorities and the respondents were directed to hold enquiry and then pass a reasoned and speaking order, recording a finding that if the petitioner and his mother were residing with his elder brother and that they were receiving financial support from the elder brother sufficient for them to survive and then only the claim of compassionate appointment shall be denied.

It is submitted by learned counsel for the respondent State that in view of the guidelines issued vide letter no. 16969 dated 30.10.2013, by the General Administration Department, appointment on compassionate ground cannot be provided to the petitioner, since the elder brother of the petitioner is employed in CRPF. However, learned counsel admits the fact that brother of the petitioner was



separate in mess and business and was not taking care of the rest of the dependents of the deceased employee which was certified by the Circle Officer, in his report dated 4.8.2011, which led to deferment of the consideration of the claim of the petitioner by the District Compassionate Committee which directed for enquiry with regard to the aforesaid fact by the S.D.O., Belsand, who vide his report dated 7.6.2012, agreed to the certification of the Circle Officer, Parsauni, recommending for appointment of the petitioner on compassionate ground, since claim of the petitioner was supported by his mother and several villagers.

Having heard learned counsels for the parties, this is not in dispute that the petitioner's father was a Head Clerk in the Circle Office, Riga, who died in harness and the petitioner applied for compassionate appointment within the stipulated time. This court is not disputing the fact that the General Administration Department issued guidelines that if one of the dependents of the deceased employee is gainfully employed then the other dependent cannot be provided compassionate appointment, but the purpose of providing compassionate appointment is to provide for bread earning to the grief-stricken family to mitigate the hardship, once it is found that the financial condition is not sufficient to tide over the crisis.

This Court, in the case of *Ashok Kumar Choudhary Vs.*



State of Bihar reported in *2000(4) PLJR 651 (DB)*, while considering the compassionate appointment where the mother and father both were in service and upon death of one of them, one of the dependents claimed for compassionate appointment, held as follows:

“13.....The sole purpose of appointment on compassionate ground is to tide over the financial crisis in case of emergency. If at the relevant time the family has financial resources to meet the hardship, then no dependant can be appointed on compassionate ground.If one of the spouses dies and the other spouse retires then the dependant is to be appointed on compassionate ground even though the source of livelihood is available to the family in the shape of pension and other retiral benefits.....

Thus, the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources of livelihood or not at the relevant time to meet the hardship, and once it is found that the financial condition is sufficient to tide over the crisis then no appointment can be made on compassionate ground and the question whether the other spouse is continuing in service or has retired is wholly immaterial.”

Following the said view, this Court, in the case of Shyam Kumar Kapar (supra), while considering the claim of younger son of the deceased employee, whose claim for appointment was rejected, as his elder brother was in service, directed the authorities to conduct an enquiry and consider the case and if the financial support from the



elder brother is found to be sufficient for the survival of the family, only then the compassionate appointment can be denied. Relevant portion of the order reads as follows:

“.....The crucial test shall therefore be that if as a matter of fact the elder brother of the petitioner though employed, is not supporting the other members of the family and is separate in mess and residence, and the family of the deceased is in dire straits due to financial penury when the consideration of the claim cannot be denied. In each case it shall be a question of fact for the claimant to satisfy the respondents in an enquiry.

Liberty is granted to the petitioner to represent before the authorities. The respondents are obliged to hold an enquiry and then pass a reasoned and speaking order recording a finding if the petitioner and his mother was residing with his elder brother and that they were receiving financial support from the elder brother sufficient to entitle them to survive in which event only the claim for compassionate appointment shall be denied. The petitioner naturally has to be associated with the enquiry with the opportunity to meet any queries. This shall be without prejudice to the rights of the respondents to require the petitioner to fulfill all other conditions of eligibility for compassionate appointment.....”

In the present case, the claim of the petitioner is on a much better footing than the claim in Shyam Kumar Kapar (supra), where the court directed to consider the claim of the younger brother, with a rider, that if the financial assistance given by the elder brother is



found to be inadequate for survival of the dependent family. In the present case, not only the Circle Officer, Parsauni and S.D.O., Belsand, but several villagers have also supported the fact that elder brother of the petitioner is posted in CRPF and is separate from the family and is not supporting the family at all. In the similar manner, in the case of *Bharat Prasad Vs. The State of Bihar & Ors.* (SJ) reported in *1998(1) PLJR 125*, without deciding the validity of the guidelines issued by the Personnel Administrative Department, which stipulated for non grant of compassionate appointment if other member of the family is gainfully employed, this Court directed for consideration of the case of the petitioner of the said case, if the petitioner submits legal evidence to show that the brother who was gainfully employed was separate from his deceased father. Paragraph 4 reads as follows:

“4. I am not going to decide the validity of the guideline issued by the Deputy Secretary, Personnel and Administrative Reforms Department, vide letter dated 18th February, 1995. The petitioner is given liberty to file a representation before the concerned head of the Zila Parishad, Motihari enclosing therein any decision of a Court of law or any other legal evidence to show that the two brothers of the petitioner were legally separated from the father of the petitioner. If such evidence is filed by the petitioner within two months from today, then the concerned officer of the Zila Parishad, Motihari will consider the case



of the petitioner for compassionate appointment in the light of clarification made by letter no. 859 dated 18th February, 1995. Decision in one or other way is to be taken within a period of two months from the date of receipt of such representation.”

However, considering the above view, the Division Bench of this Court in the case of *Vishal Kumar Vs. The State of Bihar and Ors.* reported in *2004(2) PLJR 453*, while considering the case of Bharat Prasad (supra) held that the State is not under obligation to offer a job to the dependent if the other member of the family is gainfully employed. Similarly, this Court is also conscious of the order dated 28.4.2017 passed in LPA No. 1382 of 2014 in the case of Subodh Kumar Tiwary Vs. The State of Bihar and Ors. where it was held that compassionate appointment is not a fundamental right or a constitutional right under Article 14 and 16 of the Constitution of India and the Court cannot be unmindful of the fact that wherever there is an employed family member in a family, invariably affidavits are produced to show separation, but such affidavits have no value unless separation is a judicial separation. The relevant portion of the order reads as follows:

“.....If the other bread-earners are not willing to take care of the family, the obligation cannot be saddled upon the State-authorities to provide employment to otherwise unemployed or unemployable children of a government servant,



especially when compassionate appointment is not a fundamental right or a constitutional right under Article 14 and 16 of the Constitution of India. The Court cannot be unmindful of the fact that wherever there is an employed family member in a family, invariably affidavits are produced to show separation. But, that is a sham, because such affidavits have no judicial value, unless separation is by judicial means.....”

Considering the above mentioned case laws, the cases of Subodh Kumar Tiwary (supra) and Vishal Kumar (supra) are not applicable to the case of the petitioner. In the present case, the employed brother of the petitioner was posted outside the State. He filed an affidavit being a responsible government servant that he has no objection if the petitioner is being appointed. In view of the certification of the Circle Officer that the elder brother is separate from the family, the District Compassionate Committee entrusted enquiry to the S.D.O., Belsand and the SDO, Belsand, who after examining several villagers and widow of the deceased employee, came to a conclusive finding that the elder brother was separate from the family who was not taking care of the other dependents and thereafter, recommended for the appointment of the petitioner on compassionate ground, hence, the case of the petitioner ought to have been considered in the light of the said recommendations because the separation and non-support of the deceased widow and the petitioner,



is being supported by two responsible officers, after due enquiry. In the present case, while deferring the consideration of the claim of the petitioner and seeking guidelines from the General Administration Department through letter no. 930/Estb. dated 11.9.2013, unfortunately, the Collector did not mention about the recommendation of the Circle Officer, Parsauni, and the S.D.O., Belsand, hence the reply to such guidelines sought for, was not in true perspective. In spite of such guidelines, the above quoted judgment suggests that this Court has directed for consideration and the case of the petitioner comes within such parameters.

The casual manner in which the case of the petitioner has been considered gets reflected from the fact that in spite of the fact that the petitioner claimed in paragraph 1 of the writ petition that letter no. 3541 dated 21.5.2014, by which the claim of the petitioner was rejected, has not been brought on record with the counter affidavit when it is specific case of the petitioner that it was never supplied to him. In the circumstances, this court has no option but to hold such letter as non-est.

In view of the discussions made above, the minutes of the District Compassionate Committee, Sitamarhi dated 27.1.2014, as contained in Annexure C, whereby, the claim of the petitioner was rejected without taking into account the recommendations of the



Circle Officer, Parsauni and the S.D.O., Belsand, is hereby quashed. Since Letter No. 3541 dated 21.5.2014 issued by the Deputy Collector, District Compassionate Committee has not been brought on record, treating the same as non-est without questioning or deciding the validity of the guidelines of the General Administration Department issued vide letter no. 16969 dated 30.10.2013, the respondent authorities are directed to consider afresh the claim of the petitioner for appointment on compassionate ground in view of the aforesaid guidelines as well as in view of the recommendation of Respondent No. 06, the Circle Officer, Parsauni dated 4.8.2011 and that of Respondent no. 04, S.D.O., Belsand dated 7.6.2012, within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, the writ application is allowed to the extent indicated above.

(Dinesh Kumar Singh, J.)

Rakhi

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

