

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10994 of 2012

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Vijay Kumar, son of Late Indradeo Singh, resident of Village-Ramji Chak,
Bhatahari, P.O. Biyapur, P.S. Maner, District Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Chief Engineer (Mech.), National Highway, Bihar, Patna
3. The Superintendent Engineer (Mech.), National Highway, Mach Division,
Muzaffarpur, Bihar
4. The Executive Engineer (Mech.), National Highway, Mach Division,
Muzaffarpur, Bihar
5. The Chairman District Compassionate Appointment Committee-Cum-District
Magistrate, Muzaffarpur, District – Muzaffarpur.

.... Respondents

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Appearance:

For the Petitioner/s	: Mr. Sharda Nand Mishra, Advocate Mr. Dhananjay Kumar Gupta, Advocate Mr. Deepak Kumar, Advocate
For the State	: Mr. Arun Kumar, A.C. to G.P.-1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-12-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In the present case, the petitioner is claiming compassionate appointment on the ground that his father was employed and continued to discharge the duty in the work charge establishment in the Road Construction Department, who was first appointed vide memo no.3082 dated 30.12.1982 and his services



was extended on 16.06.1984 and continued to discharge the duty in the work charge establishment till he died on 21.03.2009.

3. The petitioner is claiming that his father had continued for such a long period and in view of notification dated 26.04.1950 the persons working in the work charge establishment for more than one year will be treated to have been the member of permanent establishment of the State Government and treating his father on permanent basis he should be given the appointment on compassionate ground. The claim of the petitioner for compassionate appointment was considered by the District Compassionate Appointment Committee, Muzaffarpur, which rejected the claim of the petitioner vide memo no.372 dated 04.04.2012, wherein the reason has been assigned that his father remained on work charge establishment through out his career, never was made permanent, led to rejection of the claim for compassionate appointment, which the petitioner has challenged in the present writ application.

4. The compassionate appointment is not the source of appointment but is given in the event when the bread earner dies and the family faces financial crisis and adversity, to tide over financial crisis, the Government has come forward with the scheme of



compassionate appointment, in proper cases the appointments are extended to the family of the deceased-employee, who are in need of help and this principle has been derived from the judgment of *Umesh Kumar Nagpal vs. State Of Haryana* reported in **1994(4) S.C.C. page 138**, where the Hon'ble Supreme Court has laid down the principles with respect to granting the benefit of compassionate appointment.

5. The question, in the present case, is that whether a person can be given the appointment of compassionate ground though his father died while he was not brought to the regular establishment. Admittedly, in the present case, the family of the deceased-employee is not getting the family pension as the condition laid down in Rule-58 of the Bihar Pension Rules, 1950 is not satisfied and one of the conditions in Rule-58 of the Bihar Pension Rules, 1950 is that for being entitled for pension the employee must be in permanent service and if this essential element is missing the family members or wife of the deceased-employee will not get the family pension.

6. In such circumstances, it has to be examined whether the compassionate appointment can be given to the persons whose father has died in harness while performing the duty on work charge



establishment. There is no dispute on the principle that once the person is brought in permanent establishment the period of working in the work charge establishment will be counted for the purposes of pensionary benefit including the benefit arising from the A.C.P. but the person will have to be made permanent in actuality only than he can be able to claim the pension or the family will be entitled for pensionary benefit.

7. Leaned counsel for the petitioner has placed reliance on the judgment of this Court dated 20.02.2015 passed in C.W.J.C. No.16929 of 2014, wherein the deceased-employee was in the work charge establishment and also placed reliance on a decision rendered in the case of *Most. Baby Devi vs. State of Bihar*, reported in *2012(3) PLJR, 910*, wherein the Court has directed that the husband of the petitioner would be treated to be in regular employee till his death and directed to pay retiral dues to the heirs of the deceased-employee for the period the deceased-employee had discharged the duty. But, the aforesaid judgment of Most. Beby Devi (supra) in fact has been overruled in the judgment rendered in the case of *The State of Bihar and Ors. vs. Bimli Devi* reported in *2016(1) PLJR, 452*, and the Hon'ble Judge who has passed the order in Anju Kumari (C.W.J.C. No.3982 of 2015) and Vishwapati Devi (C.W.J.C.



No.16929 of 2015 has taken a different view in the case of *The State of Bihar through Chief Secretary and Ors. vs. Sanjay Kumar*, reported in *2017(4) PLJR, page 601* and the Hon'ble Judge has held that only in the event of his getting in regular establishment the family would get the pensionary benefit. I myself has taken this view while deciding the case in C.W.J.C. No.7462 of 2011 and I have held that the pensionary benefit can only be given when all the conditions of Rule-58 of the Bihar Pension Rules, 1950 are satisfied.

8. Learned counsel for the petitioner has also placed reliance on the judgment rendered in the case of *Saraswati Devi vs. State of Bihar and Ors.* reported in *2017(3) PLJR, page 645* and this Court in Division Bench has taken a view that the period of work charge establishment will also be counted for the purposes of family pension. There is no quarrel on this principle once the person is brought to the regular establishment the period he has discharged the duty in work charge establishment will also be counted for the purposes of pensionary benefit. Admittedly, the family cannot get a pensionary benefit if the family does not satisfy the conditions of Rule-58 of the Bihar Pension Rules, 1950. In such circumstance, it will be too stretching argument to allow the claim of the petitioner for compassionate appointment.



9. Learned counsel for the petitioner has also placed reliance on the decision of the Full Bench of this Court rendered in the case of *State of Bihar and another vs. Bhagwan Singh (since dead)* reported in *2014(4) PLJR, 229*, wherein the Court has held that the person will only be entitled for pensionary benefit when he made permanent employee, but the period of work charge establishment will also be counted for the purposes of pensionary benefit. So this judgment does not help the petitioner in any away.

10. In such view of the matter, this Court does not find any merit in this writ application. Accordingly, this writ petition is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	14.12.2017
Transmission Date	N/A.

