

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16896 of 2016

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Kundan Kumar, Son of Late Shiv Nandan Prasad, Resident of Village- Shah Salempur, P.O. + P.S. Bbarh, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Arts Culture & Youth Department, Govt. of Bihar, Patna.
2. The Deputy Secretary to the Government, Arts, Culture & Youth Affairs Department, Bihar, Patna.
3. The Director, Student & Youth Welfare, Department of Arts, Culture & Youth, Govt. of Bihar, Patna.
4. The Manager, Bihar State Sports Authority, Rajendra Nagar Stadium, Patna.
5. The District Magistrate, Patna.
6. The Additional District Magistrate, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh, Adv.
Mr. Sushil Kumar Ray, Adv.

For the Respondent/s : Mr. Prashant Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-07-2017

Heard Mr. Amaresh Kumar Singh, learned counsel appearing for the petitioners and Mr. Prashant Kumar, learned Assisting Counsel to Government Advocate No.11 for the State.

With the consent of the parties the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order bearing Memo No.436/Establishment dated 8.2.2016 of the Establishment Deputy Collector, Patna in so far as it proceeds to reject the claim of the petitioner for compassionate appointment, inter alia, on grounds that it was raised belatedly.



The facts of the case leading to this writ petition is that the father of the petitioner was working as a Clerk –cum- Typist in Moinul Haque Stadium, Rajendra Nagar, Patna which comes under the administrative jurisdiction of the Department of Art, Culture and Youth, Government of Bihar. The father of the petitioner suddenly went traceless while returning from office to his residence on 21.11.1996. The mother of the petitioner lodged a *Sanha* bearing *Sanha* No.685 of 1996 which was made diary entry on 31.1.1997. The Inspector cum Officer Incharge, Police Station, Barh, Patna submitted an enquiry report on 9.10.2003 before the Senior Superintendent of Police, Patna in reference to his Memo No.1145/DCB dated 8.9.2003 that in spite of expiry of 7 years since the father of the petitioner went traceless, he has not been found and the apprehension is that he has been killed. The Superintendent of Police, Patna in turn vide Memo No.1294/DCB dated 16.10.2003 addressed to the Deputy Secretary to the Government, department of Arts, Culture and Youth gave him information that the father of the petitioner has remained traceless.

The information given by the mother of the petitioner to the Officer Incharge, Barh, Patna, the report given by the Officer Incharge, Barh to the Senior Superintendent of Police, Patna dated 9.10.2003 confirming the traceless position of the father of the



petitioner as well as the information given by the Senior Superintendent of Police, Patna to the Deputy Secretary, Department of Art, Culture and Youth dated 16.10.2003 all form part of Annexure-1 series.

It is in these circumstances where the father of the petitioner went traceless and was not to be found that the mother of the petitioner represented before the District Magistrate, Patna for grant of compassionate appointment to one of her family members to bail out the family from distress. A copy of such application is present at Annexure-2 and which request was acted upon as confirmed from the letter of the Additional District Magistrate addressed to the Manager, Bihar State Sports Authority present at Annexure-3.

The mother of the petitioner on her part also gave reminders vide Annexures 4 and 5 and the process was set in motion for grant of compassionate appointment as confirmed from the letter of the Deputy Secretary to the Government, department of Art Culture and Youth addressed to the Manager, Moinul Haque Stadium, Rajendra Nagar, Patna bearing Memo No.531 dated 26.8.2009 present at Annexure-6 asking him to forward the application of the petitioner for compassionate appointment along with the documents mentioned in the letter.



It is in compliance of the direction present at Annexure-6, the mother of the petitioner deposited the required documents as confirmed from Annexure-7. It is thereafter that vide letter dated 16.6.2015 the Director, Department of Student and Youth Welfare forwarded the claim of the petitioner for compassionate appointment before the District Magistrate, Patna vide letter bearing Memo No.522 dated 16.6.2015 present at Annexure-8 with reminder to him vide Annexure 9 which is a letter dated 13.1.2016. The District Compassionate Appointment Committee headed by the District Magistrate, Patna vide its decision present at item no.54 at running page 30 of the proceedings, has rejected the claim on two counts, namely:

- (a) Absence of documents to confirm the traceless condition of the father of the petitioner; and
- (b) The claim was raised belatedly.

I have heard learned counsel for the parties and I have perused the records and in my opinion the reasons assigned by the District Compassionate Appointment Committee to reject the claim of the petitioner is not sustainable on either of the two counts. In fact, once the case of the petitioner for compassionate appointment has been forwarded by the department itself after drawing satisfaction on the claim, the District Compassionate Appointment



Committee has no jurisdiction to raise objections either on the foundation of the claim or on technicalities of absence of documents supporting the traceless condition of the father of the petitioner. It is not in every case that a police case has to be instituted or an FIR lodged. In fact once an information to such effect was given by the mother of the petitioner before the local police station, it was for the local police station to have either recorded it as diary entry or institute a formal FIR. The mother of the petitioner had done her bit.

Apart therefrom, the very presence of the recommendation of the Officer Incharge, Barh to the Senior Superintendent of Police, Patna vide letter dated 9.10.2003 forming part of Annexure-1 series and its acceptance by the Senior Superintendent of Police in his letter dated 16.10.2003 addressed to the Deputy Secretary of the department again a part of Annexure-1 series, is sufficient confirmation of the traceless condition of the father of the petitioner and if it had continued for a period of 7 years, it has to be held to be an unnatural disappearance.

In any view of the matter, once the department has satisfied themselves on the claim raised by the petitioner for compassionate appointment, the District Compassionate Appointment Committee has no business to reject the claim of the petitioner on technicalities of absence of papers or non-institution of



a police case.

Even the second objection raised by the Committee on the issue of delay, is again unsustainable considering the fact that it is no sooner that the traceless condition of the father of the petitioner was confirmed by the Senior Superintendent of Police in 2003 that immediately thereafter the mother of the petitioner raised a claim for compassionate appointment and which has been rightly acted upon by the department without raising objections on delay. A mere completion for formalities in such circumstances, cannot be cited a reason for disallowing the claim.

In my opinion once the department has found the claim of the petitioner genuine enough for its recommendation, the District Compassionate Appointment Committee has no business to apply its mind on the merits of the case on hyper technicalities.

A somewhat similar situation arose in CWJC No.59 of 2016 (**Kamleshwari Paswan vs. The State of Bihar**) where the claim of the said petitioner was rejected on grounds of delay, even when the application was filed by the said petitioner within the prescribed period. The relevant extract is reproduced hereinbelow:

“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.”

For the reasons and discussions above the decision of the District Compassionate Appointment Committee, Patna chaired by the District Magistrate, Patna in so far as it proceeds to reject the claim of the petitioner impugned at Annexure-10, is quashed and set aside. The District Compassionate Appointment Committee, Patna is directed to consider the case of the petitioner afresh without resorting to hyper technicality and pass appropriate order within a period of 8 weeks from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19-08-2017
Transmission Date	NA

