

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8729 of 2015

=====

Sanjay Kumar Son of Late Ram Nandan Prasad, Resident of Village - Runni, P.O.
- Bhanaspatti, P.S. - Runni Saidpur, District – Sitamarhi Petitioner

Versus

1. The State of Bihar.
 2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
 3. The Principal Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna.
 4. The Commissioner-cum-Principal Secretary, Department of Home, Government of Bihar, Old Secretariat, Patna.
 5. The District Magistrate, Sitamarhi.
 6. The Superintendent of Police, Sitamarhi.
 7. The Sub - Divisional Officer, Sitamarhi Sadar, Sitamarhi.
 8. The Circle Officer, Runni Saidpur, Sitamarhi.
 9. The Officer-in-charge, Police Station - Runni Saidpur, Sitamarhi.
- Respondents

=====

Appearance :

For the Petitioner : Mr. Kumod Kumar Shrivastaw, Advocate

For the Respondents : Mr. Pankaj Kumar Singh, AC to GA 9

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 21-02-2018

Heard counsel for the petitioner and the State.

2. The petitioner has prayed for quashing order dated 13.4.2015 (Annexure 1) by which his appointment on compassionate ground was denied.

3. At the very outset, it is noticed that this is a gross case of total apathy shown by the respondent authorities in respect of petitioner's claim for compassionate appointment.

4. The brief undisputed pleadings of the case is that treating the date of birth as 3.2.1944, father of the petitioner, Late Ram Nandan Prasad, was made to superannuate with effect from 28.2.2002. Since the said date of birth was not as per the service records, petitioner's mother Urmila Devi filed C.W.J.C.No. 10383



of 2007. The same was disposed of on 11.5.2012 with a direction to respondent no.7 to pass appropriate order as per the year of the birth of the father of the petitioner entered in the police record, which was created at the time of his initial appointment as Dafadar. The Court further directed that the same year of birth should be entered in the service book of the father of the petitioner and once it is made, necessary consequential benefit be allowed to the petitioner arising out of such entry. One fact relevant to be noticed is that the writ petition had been filed by the wife of the deceased employee, i.e., mother of the instant writ petitioner. It appears from the records that the corrections were made on the basis of the date of birth of the petitioner's father entered in the service record by order dated 13.1.2013, Annexure 3 of the writ petition.

5. Since, in the meantime, on 4.4.2005 petitioner's father also passed away, he could make his application for compassionate appointment only after the necessary correction was made in the service record regarding date of birth of the his father. The date of birth of petitioner's father was corrected/rectified on 19.1.2013, as 3.9.1954 and as per the said correction, his father was due to superannuate in 2012. The petitioner thereafter made his application for appointment on compassionate ground on 9.2.2013. As prior to the issuance of Annexure 3, the petitioner could not have made his application for compassionate appointment as till



that date no correction or rectification of the mistake in date of birth of the petitioner's father was done.

6. It appears from Annexure 6, i.e., order dated 24.6.2013, passed in MJC No. 6076 of 2013 that though petitioner's case for appointment on compassionate ground had been recommended by the Circle officer (CO), Runnisaidpur, but the District Compassionate Committee did not consider the same. In view of the said situation, this Court in the said contempt proceedings, directed the Collector, Sitamarhi, and the District Compassionate Committee, Sitamarhi, to take appropriate decision in the matter of compassionate appointment as per the recommendation of the Circle officer, Runisaidpur, within a reasonable time, not exceeding two months from the date of receipt/production of a copy of the order before the Collector, Sitamarhi.

7. Pursuant thereto, a decision was taken by the authorities on 28.1.2014 (Annexure 7) wherein the entire background of the petitioner's claim being made for compassionate appointment pursuant to the aforesaid order dated 11.15.2012, passed in C.W.J.C.No. 10383 of 2007 and order dated 24.6.2013, passed in MJC No. 6076 of 2013, have been considered. The authorities in the said order have also taken note of the fact that even though the application has been made five years after the date



of death of the deceased employee, the same was required to be considered in view of background of the case, wherein the date of birth of the deceased employee has been corrected pursuant to the orders passed by this Court. Thus, having considered the claim of the petitioner being within time, the same was rejected by assigning reason that he was not matriculate in the light of the Circular issued by the Joint Secretary, Finance Department, Bihar, Patna, vide Memo no. 2937 dated 31.3.2011.

8. Annexure 10 is the letter dated 14.1.2015, issued by the Deputy Secretary to the Government of Bihar in the Department of Personnel and Administrative Reforms, wherein it has been clarified with respect to the petitioner's claim that since the application has been made prior to 5.3.2014, on which date the minimum qualification of Matriculation has been introduced, the minimum qualification of 8th pass prevalent at the time of submission of application for compassionate appointment, i.e., on 9.2.2013, would be applicable in the petitioner's case.

9. It appears that petitioner's case has been reconsidered by the respondents vide order which is 13.4.2015 (Annexure 1). Surprisingly, this time respondents have rejected the claim of the petitioner by assigning the reason that since the application has not been made within five years from the death of the employee, the same cannot be considered.



10. This Court would only notice that petitioner's case was already considered by the respondents with reference to the orders of this Court dated 11.15.2012, passed in C.W.J.C. No. 10383 of 2007 and order dated 24.6.2013, passed in MJC No. 6076 of 2013 as well as the fact that date of birth of deceased employee was rectified by them on 19.1.2013. While considering the petitioner's claim on the earlier occasion, no such bar was considered applicable in his case, in the background of the case, wherein the date of birth of petitioner's father has been corrected/rectified on 19.1.2013 and in view of the various orders passed in favour of the petitioner including order dated 24.6.2013, passed in the MJC No.607/2013, the petitioner's claim was found to be within time. Only other reason assigned by the respondents is that the petitioner was non matriculate at the time of submission of his application, i.e., 9.2.2013. In view of Annexure 10, which is a letter dated 14.1.2015, issued by the Deputy Secretary to the Government of Bihar in the Department of Personnel and Administrative Reforms, the said reason is unsustainable in light of the clarification issued by the respondents in the letter itself. Considering the aforesaid background, the petitioner cannot be denied consideration of his claim by assigning the reason that his application for compassionate appointment has not been made within five years from the date of death of the deceased employee.



Since respondent authorities themselves while considering the petitioner’s claim pursuant to the same application by Annexure 7 have found the petitioner’s claim legally enforceable. In view of the background as noted above, the other reason which was assigned on the earlier occasion is also not available with the authorities inasmuch as, being 8th pass, the petitioner’s case is fit to be considered in light of the departmental letter, dated 14.1.2015 (Annexure 10).

11. In view of the aforesaid situation, this writ petition is allowed. The respondent authorities being the District Magistrate and the District Compassionate Appointment Committee would be obliged to consider the claim of the petitioner without having regard to the delay and the facts on the basis of which the claim has been rejected by the order dated 13.4.2015. Such decision should be taken by respondent authorities preferably within a period of three months from the date of receipt/production of a copy of this order.

12. The writ petition is allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	27.2.2018
Transmission Date	NA

