

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19212 of 2016

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Parmbir Singh son of Late Kamlesh Kumar Singh resident of village + P.O. - Rabalpur, P.S. - Panjwara, District - Banka.

.... Petitioner

Versus

1. The Department of Industries, through the Principal Secretary, Government of Bihar, Patna.
2. The Principal Secretary, the Department of Industries, Government of Bihar, Patna.
3. The Managing Director, the Department of Industries, Government of Bihar, Patna.
4. The Under Secretary, the Department of Industries, Government of Bihar, Patna.
5. The State of Bihar through the District Magistrate, Jamui cum Chairman District Compassionate Appointment Committee, Jamui, District Jamui.
6. The District Industrial Centre, Jamui, District - Jamui.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sumeet Kumar Singh, Adv.

For the Respondent/s : Mr. Zaki Haider, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-01-2018

Heard Mr. Sumeet Kumar Singh, learned counsel appearing for the petitioner and Mr. Zaki Haider, learned AC to SC-9, for the State.

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

In sum and substance the petitioner is aggrieved by the action of the respondents more particularly the decision of the District Compassionate Committee, Jamui chaired by the District Magistrate, Jamui in so far as it has ignored the eligibility of the petitioner for appointment on a Class III post while recommending his



compassionate appointment against a Class IV post which has resulted in the appointment order issued under the signature of the Director, Industries, bearing Memo No. 1973 dated 25.5.2016, a copy of which is enclosed at Annexure 11 to the writ petition.

Shorn of unnecessary details, the brief facts leading to the grievance raised herein is that the father of the petitioner died in harness while holding the post of General Manger, District Industries Centre, Jamui on 3.6.2012. The petitioner filed his application for compassionate appointment on 12.9.2013 which was forwarded but the District Compassionate Committee, Jamui while considering the matter in its meeting held on 5.7.2014 vide Annexure 5 found the application wanting on certain testimonials and thus, postponed the consideration which took place in the meeting held on 28.11.2015 and vide the decision present at paragraph 2, the recommendation was made for appointment against Class IV post with a rider that in case there was a post vacant in Class III and the petitioner held the requisite qualification for such appointment, a revised recommendation would be forwarded on or before 31.12.2015. Such stipulation is present at paragraph 2 (ii) of the proceedings dated 28.11.2015 at Annexure 6.

Since the petitioner at the time of filing his application for compassionate appointment had obtained the requisite qualification



for appointment on a Class III post i.e. holding an Intermediate qualification with additional knowledge of Computer Application as per Annexure 7 that he immediately filed a representation before the Director, Industries, which was received on 17.12.2015 and made a request for sending a revised recommendation in the light of the facts pleaded therein. A copy of such representation is at Annexure 8. The request made by the petitioner was not acted upon by the Director, Industries and the matter proceeded in the light of the recommendation present at Annexure 6 resulting in issuance of an appointment order bearing Memo No. 1973 dated 25.5.2016 at Annexure 11 on a Class IV post.

Feeling aggrieved the petitioner filed another representation before the Director, Industries, a copy of which is enclosed at Annexure 12 drawing his attention to his earlier representation filed in the light of the stipulations present at paragraph 2(ii) of the proceedings of the Compassionate Committee in the meeting held on 28.11.2015. The grievance so raised was placed before the Public Grievance Cell as manifest from Annexure 13 and the decision of the Public Grievance Redressal Officer dated 28.6.2016 is present at Annexure 13/A whereby the request of the petitioner for reconsideration of his claim for appointment on compassionate ground against a Class III post has been rejected on grounds that an



appointment order had already been issued against a Class IV post and once issued, there was no provision to reopen the matter. Feeling aggrieved the petitioner is before this Court.

Mr. Singh, learned counsel for the petitioner, has drawn the attention on amendment to the Bihar Collectorate Clerical Cadre (Recruitment and Conditions of Services) (Amendment), Rules, 2013, a copy of which is placed at Annexure 17 to submit that the prescribed qualification under the Rules is an Intermediate (10+2) pass or equivalent with knowledge of computer operation and computer typing. He submits that while there is no dispute that the petitioner has cleared his Intermediate examination, in so far as his knowledge in computer operation and computer typing is concerned, the certificate at Annexure 7 would confirm this position. Learned counsel next in reference to the stipulation present in the decision of the Compassionate Committee dated 28.11.2015 at Annexure 6 has made reference to paragraph 2(ii) to submit that the District Compassionate Committee very clearly had directed the department to send a revised recommendation in case any of the applicant held the prescribed qualification for being appointed on a Class III post provided there was a vacancy available on Class III post and the applicant had the prescribed qualification but such revised recommendation had to be sent by 31.12.2015. Learned counsel has next invited the attention of



this Court to Annexure 15 to submit that the vacancy position is clear from the information given by the Joint Director, Agriculture that there were no less than 12 vacancies against a Class III post in between the period 1.6.2015 to 31.12.2015 which is the period in which the petitioner's case was put for consideration for appointment. It is thus the submission of Mr. Singh that the petitioner possessed with the prescribed educational qualification and knowledge in computer operation and 12 vacancies available in Class III post, his case was fit for consideration for such appointment but it is wholly due to laches of the respondents that despite representation made by the petitioner vide Annexure 8 they have ignored the same to appoint the petitioner on Class IV post and even his representation against the appointment vide Annexure 11 has been rejected on frivolous ground vide Annexure 13/A.

Responding to the argument of Mr. Singh, Mr. Haider, learned AC to SC-9, has simply referred to paragraphs 1 to 12 of the counter affidavit filed on behalf of the State and paragraph 3 of the supplementary counter affidavit to submit that since the petitioner has not obtained the certificate of computer operation and computer typing from a reputed institute, that his case has been considered against Class IV post. It is further argued that the scheme of compassionate appointment is an equity based decision of the State



Government to bail out the family in distress by loss of bread earner and thus, the petitioner having already been given appointment against Class IV post on which he has joined, there is no occasion for reopening the matter.

I have heard learned counsel for the parties and have perused the records.

The only issue which falls for consideration is whether the petitioner has been denied his rightful claim of appointment against a Class III post. Mr. Haider, learned counsel appearing for the State, is very correct on principle that an applicant for compassionate appointment cannot have a choice as that would be contrary to the very scheme of compassionate appointment. There is absolutely no dispute on the argument advanced by Mr. Haider but the problem for him arises from the proceedings of the District Compassionate Committee itself which gives an opening to the petitioner for appointment against a Class III post as manifest from Annexure 6 which very clearly asks the department to send a revised proposal in case any of the applicant to compassionate appointment, possessed the requisite qualification and there were vacancies for such appointment by 31.12.2-15. For the purpose I deem it necessary to reproduce paragraph 2(ii) of the proceedings dated 28.11.2015 in so far as it concerns the petitioner.



“2(ii) समिति द्वारा यह निर्णय भी लिया गया कि यदि आवेदक द्वारा समर्पित राष्ट्र मुक्त विद्यालयी मुक्त शिक्षा संस्थान के उच्चतर माध्यमिक विद्यालय परीक्षा इंटरमीडिएट (10+2) उत्तीर्ण के समकक्ष हो तथा विभागीय नियमावली एवं परिपत्रों के तहत लिपिक संवर्ग के पद पर नियुक्ति की अहर्ता रखते हो तथा विभाग में वर्ग 3 का पद रिक्त हो तो संबंधित विभागीय नियमावली/परिपत्र तथा संबंधित प्रमाण पत्रों की प्रतियों के साथ नियुक्ति प्राधिकार दिनांक 31.12.2015 तक नवीन अनुशंसा भेज सकेंगे। परन्तु नवीन अनुशंसा भेजे जाने की स्थिति में जिला अनुकम्पा समिति के अगले निर्णय तक समूह ‘घ’ के पद पर नियुक्ति नहीं की जा सकेगी क्योंकि सेवाकाल में मृत सरकारी सेवकों को वर्ग -3 एवं वर्ग -4 के पदों पर अनुकम्पा के आधार पर नियुक्ति की प्रक्रिया से संबंधित कार्मिक एवं प्रशानिक सुधार विभागीय पत्रांक 1393 दिनांक 05.10.1991 की कंडिका (9) (क) क अनुसार अनुकम्पा के आधार पर किसी पद पर नियुक्ति होने पर पुनः उसे अनुकम्पा का दुबारा लाभ देते हुए उसकी प्रोन्नति अथवा संवर्ग परिवर्तन नहीं किया जा सकेगा।”

There would have been no obstacle in the argument advanced by Mr. Haider if this decision had not been taken by the Committee but once the Committee has taken a decision in this regard then it is binding on them and they can neither shirk on the responsibility to consider the grievance raised by the petitioner vide Annexure 8 nor any other technicality can come to their rescue. Annexure 13/A is a clear indication that the grievance of the petitioner was noticed and was rejected as in the meantime the appointment order has already been issued. The rejection is also a conformity of the position that no objection was raised as regarding reputation of the



institution fromwhere the petitioner had obtained his certificate of computer operation and computer knowledge which is now being raised in the counter affidavit as an after thought.

In fact the amended Rules, a copy of which is at Annexure 17, also does not make any stipulation regarding reputation of the institution from which the applicant had to obtain his certificate of computer operation and computer typing. Now where Rules are silent as to reputation of the institution imparting the courses of computer operation and computer typing, this cannot be introduced by way of opposition to a claim in the counter affidavit.

It is undisputed that the petitioner holds an Intermediate qualification and also holds a certificate in computer operation and computer typing as manifest from Annexure 7 and which qualification has been obtained by him much prior to his filing of application for compassionate appointment. The vacancy position at Annexure 15 also confirms not less than 12 vacancies on Class III posts on the date the matter was being considered by the Committee for appointment. The information thus sought by the District Compassionate Committee, Jamui in its meeting held on 28.11.2015 for consideration of the case of the applicant for compassionate appointment on Class III post as evident from paragraph 2(ii) of the proceedings stood satisfied in so far as the petitioner was concerned and although he



raised his voice much prior to issuance of appointment order as manifest from Annexure 8, which is a representation received in the office of the Director, Industries, on 17.12.2015 but a laid back attitude of the Industries Department has denied the petitioner a consideration for appointment against Class III post.

Even if an applicant for compassionate appointment does not have a right to a particular post but once the doors have been thrown open for such consideration as manifest from the proceeding of the District Compassionate Committee held on 28.11.2015 at Annexure 6 as confirmed from paragraph 2(ii) thereof in so far as it concerns the petitioner, they cannot retract their steps and are bound by the said decision.

In the circumstances discussed, the petitioner has made out a case for consideration of his application for compassionate appointment against a Class III post and since the petitioner satisfies the conditions stipulated at paragraph 2(ii) of the proceedings of the District Compassionate Committee present at Annexure 6, I hereby direct the Director, Industries, to recommend the claim of the petitioner for appointment against a Class III post before the District Compassionate Committee, Jamui and take appropriate steps in this regard in the light of the representation of the petitioner present at Annexure 8 and Annexure 12 and the decision of the District



Compassionate Committee present at paragraph 2(ii) of the proceedings dated 28.11.2015 which exercise be completed within a period of three months from the date of receipt/ production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.01.2018
Transmission Date	NA

