

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17550 of 2014

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Dinanth Singh, son of Hare Ram Singh, Resident of Village – Horha, P.S. Hathouri,
District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Samastipur.
3. Superintendent of Police, Samastipur.
4. S.D.O., Hathauri, District – Samastipur.
5. Officer-in-Charge, Hathouri, Distt – Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mritunjay Prasad Singh, Advocate
For the Respondent/s : Mr. Naman Nayak, AC to AAG 10

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 26-06-2018

Heard learned counsel for the petitioner and the respondent
State.

2. The petitioner seeks a direction upon the respondent to
appoint the petitioner on the post of Dafadar/Choukidar in place of his
uncle Hardeo Singh who as per the case of the petitioner retired from
the post of Dafadar on 31.08.1996. The petitioner's case is that since
the said Hardeo Singh was issueless, the petitioner is the only legal
heir entitled to appointment in place of his uncle.

3. The first application for his appointment appears to have
been made in the year, 2003 which is evident from the communication
dated 18.09.2013 issued by the office of his excellency, the President
of India to the Chief Secretary, Government of Bihar forwarding the
claim of the petitioner. The petitioner's application has been finally



rejected by letter dated 19.08.2014 bearing memo no. 2052 issued by the In-charge, Deputy Collector, General Section, Samastipur.

4. The petitioner's claim has been rejected by assigning the reason that the provision regarding appointment of the legal heirs of Dafadar/Choukidar in his place has been finally abolished and is no longer in existence after 22.11.2004. It is specifically stated that now there is no provision for direct appointment on the post of Dafadar and that the post of Dafadar is now filled up by way of promotion from the post of Choukidar. By assigning the said reasons the claim of the petitioner has been rejected.

5. The said communication dated 19.08.2014 bearing memo no. 2052 issued by the In-Charge Deputy Collector, District General Section, Samastipur has not been challenged by the petitioner. Even the decision of the Home (Police Department) bearing notification no. 12094 dated 22.11.2004, referred to therein, cancelling the earlier practice of giving appointment to dependents of retired Dafadar/Choukidar as a one time measure, has not been challenged. Still the petitioner has prayed for a direction upon the respondents to appoint him on the post of Dafadar on compassionate ground in place of his uncle.

6. It is a trite law that relief cannot be granted so as to go against the order which has not been challenged by the petitioner. The petitioner has failed to ask for any relief for quashing the



decision of the Home (Police Department) dated 22.11.2004 or for quashing of the memo dated 19.08.2014 rejecting the petitioner's application for appointment, relief to the contrary cannot be granted by this Court exercising jurisdiction under Article 226.

7. In such circumstance when there is no challenge to the said orders relief to the extent of allowing the petitioner's claim for appointment in place of his uncle cannot be granted. In this connection this Court would refer to the decision of the Hon'ble Apex Court in the case of **Allahabad District Cooperative Bank Ltd., vs. Vidhya Varidh Mishra** reported in (2004) 6 SCC 482 as also in the case of **K Vasudevan vs. Mohan N. Mali and Ors.**, reported in (2002) 10 SCC 117. The relevant extract of the decision in the case of **K Vasudevan** (supra) is being reproduced :

“5. It is clear that before the High Court there was no challenge to the relaxation as such. What was contended was that the appellant before us had not put in 18 years of service in the senior scale and, therefore, he would not be entitled to the benefit of the relaxation. But the High Court went on further to examine the validity of the circular itself. In our view, such a course was not permissible for the High Court particularly when there is no challenge to the circular relaxing conditions, as was stipulated in the circular dated 12-8-1987. The basis set forth in the circular itself is that those who have completed 18 years of service



need not be insisted upon to possess postgraduate qualification for being considered to extend the selection scale. Such relaxation is a matter of policy with the Government and cannot be treated to be irrational inasmuch as in the view of the Government such teachers possess experience and need to be given due recognition. In the circumstances, we allow this appeal, set aside the order made by the High Court and restore that of the Director of Education, Government of Goa, Panaji, Goa dated 10-8-1993. It is, however, made clear that if any extra payments have been made to the first respondent pursuant to the order made by the High Court, the same shall not be recovered. The appeal is allowed accordingly.”

8. The decision of the Apex Court in the case of **Chandigarh Administration vs. Laxman Roller Flour Mills Pvt., Ltd.**, reported in (1998) 8 SCC 326 is also relevant for the purposes of the instant case. This Court would consider it apposite to reproduce Para 4 of the said judgment which is as follows :

“4. A perusal of the relief extracted above shows that the writ petitioner-respondent never asked for any relief in the writ petition commanding the Chandigarh Administration to issue completion certificate in its favour. Learned counsel for the respondent frankly stated that there



is no allegation in the writ petition to the effect that Chandigarh Administration has illegally withheld the completion certificate. It is settled law that unless the allegations are made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition. We are, therefore, satisfied that in the absence of pleading and prayer in the writ petition, the High Court fell in error in issuing directions to the appellant to issue completion certificate to the writ petitioner-respondent. In such circumstances, we set aside the order of the High Court to the extent it directs the Chandigarh Administration to issue completion certificate to the writ petitioner-respondent. The appeal is thus allowed. There shall not be any order as to costs.”

9. The belated claim for compassionate appointment of the petitioner has been made by way of instant petition 18 years after the retirement of his uncle and about 13 years after his death on 09.06.2005 which is evident from Annexure 3 i.e. affidavit filed by the petitioner. Such belated claim of the nephew of the deceased employee cannot form the basis of any direction in favour of the petitioner. More so since the State has taken stand with reference to the memo no. 3/C2-2067/90 Ka 13293 dated 05.10.1991 which is a government notification issued in the Department of Personnel and Administrative Reforms which declares that the nephew is not a



dependent of the deceased, the petitioner cannot be entitled to appointment on compassionate grounds.

10. The said notification dated 05.10.1991 specifies the relations eligible for compassionate appointment being son, unmarried daughter and widow of son and specifically excludes adopted son, son in law, nephew etc., Thus, the petitioner’s claim for compassionate appointment is also not tenable.

11. For the reasons indicated hereinabove, the writ petition is devoid of any merits and the same is dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18.07.2018
Transmission Date	

