

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15383 of 2014

=====

Gunjan Kumar Son of Late Upendra Prasad Singh @ Upendra Singh Resident of
Village Malthia, P.S. Wazirganj, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administrative Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Personnel Administrative Reforms, Government of Bihar, Patna
3. The Secretary, Department of Personnel Administrative Reforms, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Personnel Administrative Reforms, Govt. of Bihar, Patna.
5. The Divisional Commissioner, Magadh Division, Gaya.
6. The Collector cum Chairman, District Compassionate Appointment Committee.
7. The Additional Collector (Special), District- Gaya.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Birendra Prasad, Advocate
For the Respondent/s : Mr. SUNIL KR. MANDAL (SC-3)
: Mr. Bipin Kumar, AC to SC-3

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 02-02-2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing the part of order of the proceeding dated 26.07.2014 by which case of petitioner for appointment on compassionate ground was rejected on the ground that elder son of petitioner is in Government Service and further to direct respondent authorities to consider appointment of petitioner on compassionate ground in the light of Government Circular and decision of this



Hon'ble Court. Father of petitioner was Upper Division Clerk Gaya Collectorate, Gaya, suddenly died in harness on 02.05.2014 due to failure of heart. Mother of petitioner filed an affidavit on 20.05.2014 recommending the name of petitioner for appointment on compassionate ground and sister of petitioner also filed an affidavit that she had no objection in petitioner being given compassionate appointment. The Circle Officer, Wazirganj vide letter dated 24.05.2014 issued unemployment certificate, stating therein the elder brother of petitioner is only employee who is in Government Service. The elder brother of petitioner is in Army services. The mother of petitioner filed an affidavit on 27.05.2014 stating therein that elder son, namely, Kundan Kumar is in Army Service and is living separately since last three and half years during the life time of deceased employee and is not a dependant of deceased employee. Superintendent of Police, Gaya has issued a character Certificate regarding clean antecedent and Circle Officer, Gaya has also quantified the total income of petitioner's family at Rs. 6000/- per annum from all sources. Petitioner has passed matriculation examination in 1st Division in the year 2010 and Intermediate Science Examination in the year 2012 and petitioner submitted application for compassionate appointment before the competent authority in the



light of Circular No. 13293 dated 05.10.1991. After completing all requirements and reports from different authorities the application of petitioner was placed before the District Compassionate Committee in its meeting dated 17.07.2014 at serial No. 4 and same was rejected on the ground that elder brother of petitioner is in Government Service, as such petitioner is not entitled for compassionate appointment.

It has been contended on behalf of learned counsel for the petitioner that deceased employee was the only source of income and livelihood of his family which included mother, unmarried daughter and petitioner as elder brother of petitioner was in Army service during life time of deceased employee and he was living separately, as such cannot be included as dependant of deceased employee. It has been submitted that rejection of case on compassionate appointment of petitioner is in violation of Circular No. 13293 dated 05.10.1991 and Circular No. 3546 dated 09.06.2008 as well as judgment and orders passed by this Hon'ble Court in different cases.

A counter affidavit has been filed on behalf of respondent Nos. 5, 6 and 7 in which they have supported rejection of claim of petitioner on the ground that one of the family members of deceased is already under employment in Government Service, as



such petitioner cannot have claim for compassionate appointment and rejection is on valid and lawful ground. It has been further stated that employed son is duty bound to maintain his mother and if not maintaining his mother then it is open for the mother to claim maintenance in accordance with law, and as such, question of financial hardship to the family of deceased employee does not arise. It has been submitted on behalf of learned counsel for the petitioner that as per Circular of Personal and Administrative Reforms Department of Bihar dated 18.06.2008 in which it has been clearly stated that if any member is employed in Government Service even then the recommendy of widow of deceased employee has to be considered for compassionate appointment if he satisfies the indigent and financial crunch of the family and there is no other source of livelihood of the family. Counsel for the petitioner has relied upon a judgment and order passed by this Hon'ble Court in C.W.J.C. No. 8956 of 2013 dated 03.09.2014 in which similar issue had arisen and the relevant abstract of the order passed in said case is being quoted below:-

The facts are not in dispute that the case
of the petitioner for compassionate appointment
after the death of his father in harness has come



up for consideration before the Committee on two occasions but the same has not found favour. However, it transpires that the order passed by the Committee which has been questioned in this writ application is the repetition of the previous order and it does not disclose the consideration by the Committee on the points on the basis of which the matter has been reverted back for consideration by the Administrative Department. The issue as to whether when one of the dependants of the deceased employee is already in government employment, the grant of appointment on compassionate ground can be allowed in favour of the other dependant has fallen for consideration before this Court in the decisions relied upon by the learned senior counsel for the petitioner. It would be seemly here to take into notice the decision by the learned single judge of this Court in the case of **Rajeev Kumar Manjhi Vs. The State of Bihar in**



CWJC No. 15600 of 2009 decided on 18.08.2011, a copy of which as aforementioned is annexed as Annexure-15 by the petitioner. From the perusal of this judgment, it appears that while considering the same issue this court has considered the decision in the case of **Vishal Kumar Vs. The State of Bihar 2004 (2) PLJR 453 (DB)**, which has been strongly relied upon by the learned counsel for the State-respondents and also the another decision of this Court in the case of **Ashok Kumar Choudhary Vs. The State of Bihar 2000 (4) PLJR 651 (D.B)** and it has been held thereafter as follows:-

“...Any appointment on compassionate ground can be made strictly in terms of the policy regulating the same. If the policy dated 18.02.1995 provides for consideration of the claim of a second son



notwithstanding the elder son being in employment, but subject to the satisfaction of the authorities with regard to the destitute and penury of the family because the employed brother was not looking after the family of the widow was also suffering on that count, the claim for compassionate appointment cannot be shut outright...”

“...Thus, the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources of livelihood or not at the relevant time to meet the hardship, and once it is found that the financial



condition is sufficient to tide over crisis, then no appointment can be made on compassionate ground and the question whether the other spouse is continuing in service or has retired is wholly immaterial.”

“.....The touchstone for the exercise of the power therefore is that does the family have other sources of survival or is it left destitute. In each case therefore it is a question of fact to be arrived at after an enquiry....”

In view of the aforesaid decision, the impugned decision of the Committee dated 06.03.2012 (Annexure-9) is quashed and matter is remanded back to the District Compassionate Appointment Committee for a decision afresh



after calling for a proper inquiry report from a responsible functionary of the government and thereafter to take the decision in the light of the observation in the decision as mentioned above. It is expected that the Committee will bestow its consideration and take final decision expeditiously and preferably within four months from the date of receipt/production of this order.

With aforesaid observations and directions this writ petition is disposed of.

(S. Kumar, J)

veena/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

