

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6434 of 2016

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1. Ashok Kumar son of Late Ram Prasad Ram, Resident of Gayaghat, Uttari Gali,
P.S. Alamganj, P.O. Gulzarbagh, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary-cum-Finance Commissioner, Finance Department,
Government of Bihar, Patna.
3. The Director (Press and Stationary), Finance Department, Government of Bihar,
Patna.
4. The Deputy Secretary, (Press and Stationary), Finance department, Government
of Bihar, Patna
5. The Superintendent, Secretariat Press, Government of Bihar Gulzarbagh, Patna.
6. The district Compassionate committee, Patna through the district collector, Patna
cum-chairman.
7. That Deputy Collector, Establishment, Patna, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anju Jha, Adv.

For the Respondent/s : Mr. Rakesh Kumar Srivastava, A.C. to G.P.15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-05-2018

Heard Ms. Anju Jha, learned counsel for the petitioner and Mr.

Rakesh Kumar Srivastava, A.C. to G.P.15 for the State.

The writ petition was filed seeking a writ in the nature of mandamus to command the respondents to appoint the petitioner on compassionate grounds. It is the case of the petitioner that even though that recommendation, was made by the District Compassionate Committee, Patna chaired by the by District Magistrate, Patna in favour of the petitioner for his compassionate



appointment as manifest from the proceedings dated 25.11.2016, a copy of which has been placed on record vide Annexure -A of the counter affidavit of the respondents where the name of the petitioner appears at serial No. 15, since, no follow up action was taken that the petitioner approached this Court and while the State counsel was directed to place on record the developments following the recommendation that a counter affidavit is filed on behalf of respondent Nos. 2,3 and 4 on 17.05.2018 enclosing letter dated 21.11.2017 of the Deputy Secretary, Finance Department whereby on ground of delayed filing of the application by the petitioner his claim has been rejected.

It is after taking leave that the petitioner has filed an Interlocutory Application bearing I.A No. 4081 of 2018 to question the said order dated 21.11. 2017 of the Deputy Secretary, Finance Department and to question the same in the present proceeding. The prayer of the petitioner to question the order dated 21.11.2017 present but at Annexure- E is allowed.

I.A. No. 4081 of 2018 is allowed.

Facts of the case lie in a very narrow compass and are not in dispute. The father of the petitioner while serving on a Class IV post of Machine Fly Boy in Secretariat Press, Gulzarbagh, Patna died in



harness on 19.01.2005. In tune with the stipulations present in the Circular of the Department of Personnel and Administrative Reforms bearing No. 2822 dated 27.4.1995, a copy of which is placed on record vide Annexure-D to the counter affidavit filed on 17.05.2018 and which inter alia prescribes a five year period for filing of application for compassionate appointment that the petitioner filed an application for such consideration on 29.12.2008 before the Superintendent, Secretariat Press, Gulzarbagh, Patna. Since, the mother of the petitioner was shaky on the candidature of the petitioner that even though the matter was taken up by the District Compassionate Committee, Patna in the meeting held on 26.06.2015 vide Annexure-8, no final decision was taken as manifest from the remarks present against item No. 89, and the matter was postponed. Similar, situation existed when the matter was considered on 30.01.2016 as manifest on the proceeding enclosed at Annexure- 11 wherein name of the petitioner appears at serial No. 9 and again the matter was adjourned due to such confusion. Ultimately the issue was resolved and the mother of the petitioner recommended the case of the petitioner for appointment following which the District Compassionate Committee in its meeting held on 23.09.2016 enclosed at Annexure- A to the counter affidavit filed on 25.10.2016



recommended the case of the petitioner for appointment. The name of the petitioner appears on serial No. 15 of the proceedings.

As noted above, since no consequential action was taken that the petitioner is before this Court and it is only when learned State counsel was directed to ascertain the current status that a second counter affidavit is filed on 17.05.2018 enclosing a letter dated 21.11.2017 of the Deputy Secretary, Finance rejecting the claim of the petitioner on grounds of delay, as according to him, the application was filed beyond five years.

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

It is rather peculiar that even though the case of the petitioner has been considered by the District Compassionate Committee on not less than three occasions and when each aspect of his eligibility was under test but no objection taken as to his right to such appointment, the Finance Department in its usual litigant manner has raised an issue which never arose in the case of the petitioner. A cursory glance of the letter of the Superintendent, Secretariat Press, Gulzarbagh, Patna at Annexure- 3 would confirm the right of the petitioner when it clearly mentions in the opening paragraph that the application of petitioner was received on 29.12.2008. May be, the completion of formalities



consumed some time, but then the circular of the DOPT relied upon by the Finance Department to reject the claim as time barred dated 27.04.1995 simply requires an applicant to file his application within five years of death which indeed was filed and it is in this undisputed situation that the District Compassionate Committee, Patna considered the claim of the petitioner in its meeting held on 26.06.2015 vide Annexure-8, meeting dated 30.01.2016 vide Annexure 11 and ultimately vide Resolution dated 23.09.2016 at Annexure A to the first counter affidavit made recommendation in favour of the petitioner. This Court in its judgment rendered in the case of **Kamleshwari Paswan versus State of Bihar & Ors.** arising from **CWJC No. 59 of 2016** has held that in case an application is filed by an applicant within five years of the death, it would satisfy the requirements on the limitation prescription present in the Circular dated 27.4.1995 and a mere delay in completion of the formality would not take away the right of such applicant. It is unfortunate that the position being settled and with no such stipulation present in the letter dated 27.04.1995 and even in the undisputed position noted in the letter of Superintendent, Secretariat Press, Gulzarbagh present at Annexure- 3 on the receipt of the application of the petitioner on 29.12.2008 i.e with the period of 5 years, that an unnecessary



objection is raised by the Finance Department to disqualify the petitioner.

The objection thus present in the letter of the Deputy Secretary, Finance dated 21.11.2017 at Annexure E is set aside. It is informed by Mr. Srivastava that it is the Finance Department who has to take recommendation of the District Compassionate Committee, Patna to its conclusion. The Principal Secretary, Finance Department, the respondent No.2 is thus directed to take the recommendation of the District Compassionate Committee, Patna as present in its Resolution dated 23.09.2016 at Annexure- A in so far as it concerns the petitioner at Serial No.15 to its conclusion and considering the delay, let the exercise be completed within six weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	01.06.2018
Transmission Date	NA

