

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2200 of 2002

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Dinesh Mahato Son Of Late Shiv Narayan Mahto, Resident Of Village Dawan Tola, P.S And District Khagaria.

... .. Petitioner/S

Versus

- 1.The State Of Bihar.
- 2.The Engineer-In-Chief Cum Special Secretary, Department Of Public Health And Engineering, Government Of Bihar.
- 3.The Executive Engineer, Public Health And Engineering Division, Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh, Adv, Mr. Sheel Bhadra Jha, Adv and Mr. Kundan Kumar Sinha, Adv
For the Respondent/s	:	Mr. Manoj Kumar Yadav AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 12-10-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 09.07.2001 passed by Executive Engineer, Public Health Engineering Division, Khagaria, by which compassionate appointment of petitioner made in the year 1993 on the post of Nalkup Khalasi as work charge employee has been terminated.

3. Briefly stated, the facts of the case is that father of petitioner sheo Narayan Mahato was appointed as a work-charge employee on the post of Nalkup Khalasi on 08.09.1977 as a class-IV employee under the Work Charge Establishment.

4. After serving for more than 13 years as a work



charge employee father of petitioner died on 30.10.1990. Petitioner made an application for his appointment on compassionate ground and District Establishment Committee recommended for his appointment on the post of Nalkup Khalasi under work charge establishment vide order dated 30.04.1993 as enclosed in Annexure-1 and pursuant to which petitioner was issued appointment letter and he joined on the post of Nalkup Khalasi.

5. The services of petitioner along with others have been absorbed under the regular establishment from the date of issuance of letter dated 05.08.1999 issued by the respondent- Executive Engineer as contained in Annexure-2.

6. Petitioner was served office order dated 09.07.2001 issued by Executive Engineer by which service of the petitioner has been terminated on the ground of circulars issued by the State Government dated 05.10.1991, 15.01.1994 and 21.07.1999, issued by the State Government pursuant to judgment and order dated 27.03.2001 passed by this Court in LPA No. 1501 of 1999.

7. The above officer orders have been issued by the State Government when the matter with respect to appointment on compassionate ground of work charge employee was being



considered and it was held that dependant of work charge employee cannot be appointed on compassionate ground in the regular establishment and that order has attained finality. Pursuant to said order of Division Bench different Govt. orders were issued in which it was stated that any compassionate appointment made of dependants of work charge employees in the regular establishment should be terminated forthwith.

8. It has been submitted on behalf of petitioner that said Govt. orders as well as order passed by Division bench is not applicable in his case as he was not appointed in the regular establishment rather he was appointed on compassionate ground in work charge establishment by the competent authority as his father died in service as an employee of work charge establishment.

9. It has been further submitted that a circular was issued vide memo no. 1344 dated 04.02.1949 by which it was ordered that employees appointed under the work charge establishment and who continued for a period of one year and above are entitled for all the benefits of the temporary Govt. servants. In the said circular, it has been stated that after one year the post on which employee is working under work charge establishment will be automatically converted into permanent



establishment and the work charge employee who was working on said post will become a regular employee under permanent establishment and same was notified by the order dated 26.04.1950 that all such circulars shall be deemed to have been declared to be ruled under Article 309 of the Constitution of India.

10. Counter affidavit has been filed on behalf of respondent in which it has been stated that deceased father of petitioner was initially appointed as plumbing Khalasi in work charge establishment under the Executive Engineer, P.H. division, Sheikhpura, vide office order 07.10.1977 and died on 30.10.1990 as a work charge employee.

11. The dependants of work charge employee are not entitled for the benefit of appointment on compassionate ground. Department of Personnel and Administrative Reforms, Govt. of Bihar has issued circulars/guidelines for appointment on compassionate ground. Services of petitioner was terminated on the ground that his appointment on compassionate ground was against the instruction/circular of the State Government. The issue that dependants of deceased employee under work charge establishment are not entitled for compassionate appointment under the regular establishment has been finally



decided.

12. It has been submitted on behalf of petitioner that the case of petitioner is not covered by decision of this Court or guided by instructions/guidelines/schemes framed by State Govt. as the State Govt. has framed the schemes in respect of dependants of regular Govt. employee who died during service period and for their appointment under regular establishment. Case of petitioner is that he was appointed under work charge establishment on the recommendation of District Compassionate Committee as his father was working under work charge establishment and he died as a work charge employee.

13. The submission of petitioner is correct to that extent that case of petitioner is not covered by the judgment and order of this Court as well as different circulars/schemes framed by the State Govt. for compassionate appointment of the dependants of employees working under regular establishment. As such those circulars and schemes and order dated 23.03.2001 passed in LPA No. 1501 of 1999 as contained in Annexure-C, passed by Division Bench of this Court is not applicable in the case of petitioner as he was appointed as a work charge employee under work charge establishment and subsequent to policy decision of Govt. his services were



regularized under the regular establishment, however, no guidelines/circulars/schemes have been brought by the petitioner before this Court under which there is any provision for appointment on compassionate ground of employees working under work charge establishment and he died as a work charge employee. Compassionate appointment cannot be claimed as a matter of right nor it is a condition of service but same flows from the scheme framed by the Govt. for appointment of dependant of deceased Govt. employee who died in harness. There is no scheme of compassionate appointment of dependants of deceased work charge employee working under work charge establishment, as such the initial compassionate appointment of petitioner as a work charge employee under work charge establishment on death of his father was illegal and his initial appointment being illegal, his subsequent regularization under the regular establishment and his continuation on said post for 13 years does not confer any right upon him as his initial appointment itself was void *ab initio*. In order to seek any relief from court of law, it is incumbent upon petitioner to show that he has a legal right and there is corresponding obligation on respondents to enforce it. Petitioner having no right of compassionate appointment no



relief can be granted to petitioner by this Court although petitioner has served as work charge employee and thereafter has been regularized under regular establishment for a considerable period. There is no merit in this writ petition. The same is dismissed, however, without any cost.

(S. Kumar, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30.10.2018
Transmission Date	N.A.

