

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7251 of 2017

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Sri Sunit Kumar, S/o Late Ram Lakhan Maharaj, R/o Mohalla- Sahbahor Ke Takia,
P.S.- Malsalami, District- Patna. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resource Department,
Government of Bihar, Patna.
 2. The Director, Primary Education, Government of Bihar.
 3. The District Education Officer, Patna.
 4. The District Education Officer (Establishment), Patna.
 5. The District Programme Officer (Establishment), Patna.
 6. The Block Education Officer, Daniyama, Patna.
 7. The District Magistrate, Patna.
 8. The Block Development Officer, Sadar Patna. Respondent/s
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Appearance :

For the Petitioner/s : Mr. Saroj Kumar Sharma, Advocate
For the Respondent/s : Mr. Kameshwar Kumar, GP-17
Mr. Amit Bhushan, AC to G.P.-17

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 04-04-2018

Heard learned counsel for the petitioner and State.

2. The petitioner is aggrieved by the order as contained in Annexure-10 whereby the services of the petitioner was terminated in the light of Memo No.2685 dated 29.03.2017.

3. Learned counsel for the petitioner submits that the respondents have wrongly applied 1991 Circular for terminating the petitioner. There was no occasion for any disclosure at the time when the petitioner's case for consideration for appointment on compassionate ground was ripe. He submits that the father of the petitioner died 19.09.1990. On the date of death there was no requirement that compassionate appointment is not available to the dependent, if husband and wife, both are in the government service and one of them have died. This restriction was introduced for the first



time vide Circular of the State Government dated 05.10.1991. He submits that the rule applicable on the date of the death of the father of the petitioner was the relevant rule and subsequent change in the Rules and norms for consideration for appointment on compassionate ground cannot operate with retrospective effect to disentitle the petitioner from compassionate appointment. Admittedly, the restriction was introduced by the notification of the Personnel and Administrative Reform Department dated 05.10.1991 and prior to 05.10.1991 there was no such prohibition on compassionate appointment on the ground that the father and mother, both were in job and on death of either of the spouse the dependent is not entitled to compassionate appointment.

4. In view of the above, the Court does not find any justification in terminating the petitioner, who was appointed on compassionate ground on death of his father on 19.09.1990. The respondents have made thorough enquiry and thereafter considered the case of the petitioner for compassionate appointment and after more than two decades they cannot be allowed to question the validity of compassionate appointment and terminate the petitioner and direct any adverse consequences.

5. In the attending facts and circumstances, the Court is of the considered view that there was no question of concealment and misrepresentation or fraud by the petitioner, and as the



notification dated 05.10.1991 is not applicable in the case of the petitioner. The entire decision of the respondents appears to be without application of mind and contrary to the well settled principles of law that the norms applicable at the time when the father of the petitioner died was applicable in the matter of compassionate ground. The subsequent change cannot be a ground to hold the petitioner responsible for suppression of fact, misrepresentation and fraud.

6. This principle is applicable even in the case of compassionate appointment as held out in the case of **Canara Bank & Ano. Vs. M. Mahesh Kumar**, reported in **2015 (3) PLJR SC 197** and in the case of **Union of India Vs. Smt. Meena Devi**, reported in **2015 (2) PLJR 69**.

7. Accordingly, the order as contained in Annexure-10 dated 29.03.2017 is hereby quashed, as a result thereof all the consequential orders passed in the light of annexure-10 shall be treated to be nullity and are also quashed. The respondents are hereby directed to reinstate the petitioner with all consequential benefits.

8. With the aforesaid, the writ application stands allowed.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2018
Transmission Date	

