

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10932 of 2011

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Nand Kumar Choudhary, S/O Late Tulsi Choudhary, R/O M/H -
Mehogowda, Block - Agigaon, P.O. - Kirkiri, P.S. - Azimabad, Distt. -
Bhojpur.

.... Petitioner/s

Versus

1. State of Bihar through its Chief Secretary, Bihar, Patna.
2. Secretary-Cum-Commissioner, Minor Irrigation Deptt., Govt. Of Bihar
Null Visasaraiya Bhawan, New Secretariat, Patna.
3. Dy. Secretary Minor Irrigation Deptt., Govt. of Bihar, Visasaraiya
Bhawan, New Secretariat, Patna.
4. Dy. Secretary, Minor Irrigation Deptt., Govt. Of Bihar, Visasaraiya
Bhawan, New Secretariat, Patna.
5. Executive Engineer, Tubewell Division, Near Patna Airport Road, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Dr. Pankaj, Advocate.

For the Respondent/s : Mr. Majid Mahboob Khan, AC to AG 12.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

5 07-02-2018 Heard learned counsel for the petitioner and learned
counsel representing the State.

2. Grievance of the petitioner in the present case is that
his application submitted to the authorities of the State on
16.01.2009 to grant appointment on compassionate ground to him
has not at all been considered by the authorities. Father of the
petitioner was a Choukidar in Minor Irrigation Design Circle,
Patna who, as per office record, has passed away on 30.07.2007



during his service period. Learned counsel submits that even though, as per records, he was aged about 42 years in the year 2011 at the time of filing of the Writ Application but, due to typographical error, he has been stated to be 32 years in the affidavit sworn by the petitioner. Learned counsel, however, submits that his application may be considered by relaxing the rule as regards the age for such consideration.

3. On the other hand, learned counsel representing the State submits from the counter affidavit that the father of the petitioner died on 30.07.2007 leaving behind his three sons, one of them is the petitioner. Wife of the deceased employee had pre-deceased him. All the three sons were major and were living separately since their father's life time. After death of their father, the second son Sri Shiv Kumar Choudhary @ Bhim Choudhary was authorized by the other two brothers as successor to receive the benefits of late Tulsi Choudhary (the deceased employee).

4. It is further stand of the State that an application dated 18.02.2011 of the eldest son Sri Nand Kumar Choudhary (the petitioner) was received in the office on 19.07.2011 regarding appointment on compassionate ground. The application was not in a proper format and No Objection Certificate of other two brothers was also not attached. Learned counsel submits that since the three



brothers were living separately from the father they cannot be said to be dependants and there being no material to show that any of the dependants of the deceased employee was living in a condition of destitution due to his death in harness, it would not be just and proper to exercise discretion of this Court under Article 226 of the Constitution of India to direct consideration of the case of this petitioner after about 10 years from the date of death of the deceased employee.

5. Having heard learned counsel for the parties and upon perusal of the records I am of the considered opinion that the facts stated in the counter affidavit having remained uncontroverted and that more than 10 years have gone past from the date of death of the employee concerned and there was no material even to *prima facie* show that the family or any of the dependants of the deceased was living in a condition of destitution due to his untimely death, it would not be just and proper for this Court to exercise its discretion under Article 226 of the Constitution of India to issue a writ of mandamus.

6. It is well settled that compassionate appointment is not a mode of recruitment in service, therefore, issuing any direction at this stage for considering the case of the petitioner would be contrary to the scheme of Articles 14 and 16 of the



Constitution of India.

7. The Writ Application has no merit. It is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

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