

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.525 of 2015
IN
Civil Writ Jurisdiction Case No. 8919 of 2007

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Kanti Devi widow of Late Sita Ram Raut resident of Village- Madhubani, P.S.
Phenhara, District- East Champaran.

.... Appellant

Versus

1. The State of Bihar.
2. The Engineer-in-Chief-Special Secretary, Public Health Engineering Department,
Govt. of Bihar Patna.
3. The Superintending Engineer, P.H.E. Circle, Motihari.
4. The Executive Engineer, P.H.E. Division, Bettiah, East Champaran.
5. The Assistant Engineer, P.H.E. Sub. Division, Narkatiaganj, East Champaran.
6. The Sub Divisional Officer, P.H.E. Sub. Division, Narkatiaganj, East
Champaran.
7. The Junior Engineer, P.H.E. Branch, Gonaha, East Champaran.
8. The Accountant General, Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Suman Kumar, Adv.
Mr. Amar Nath Singh, Adv.
For the Respondent/s : Mr. S.Raza Ahmad, AAG-5
Md. Kamil Akhtar, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 29-10-2018

Heard Mr. Suman Kumar, learned counsel for the appellant
and Mr. S.Raza Ahmad, learned AAG-5, for the State.

This intra-Court appeal arises from the judgment and order
dated 12.12.2013 of a learned Single Judge in C.W.J.C.No.
8919/2007, whereby the writ petition was dismissed, inter alia, for the
reason that the legal heir of a deceased work charge employee is not
entitled to the benefit of compassionate appointment. It is taking note
of a Full Bench decision on the issue that the writ petition has been



dismissed on merits.

The facts leading to the present proceedings are in a very narrow compass. The father-in-law of the appellant- writ petitioner, namely, Niranjana Raut was appointed as a Store Chaukidar vide office order No. 350 dated 5.6.1969 which is manifest from the relevant extract of the service book enclosed with the counter affidavit filed in the present appeal by the State at Annexure 'B'. The notings thereon clearly indicate that the father-in-law of the appellant was appointed as a Store Chaukidar on regular basis. We are constrained to observe as such because of the stand thereafter taken by the State in the counter affidavit, where in a reference is made to the extract of the acquittance roll placed at Annexure 'C' to submit that the father-in-law of the present appellant was a regular work charge employee. This fact thus becomes relevant, in the nature of the dispute which arises for consideration i.e. whether or not the appellant- writ petitioner is entitled for appointment on compassionate ground.

There is absolutely no dispute with the legal position as it stands today under the judgments in question as to the status of a work charge employee and the benefits admissible to the legal heir of a work charge employee. However, since the issue raised herein is distinct and the issue of work charge comes in for reference in a different context, the earlier judgment on work charge would not



apply to the present case.

Reverting to the service book, it stands confirmed that the father-in-law of the appellant- petitioner was appointed as a Store Chaukidar on regular basis on 5.9.1969 and has been also granted earned leave as a regular employee. The reference made by the respondents to Annexure 'C' which is an acquittance roll further strengthens the case of the appellant because it gives the name of the permanent employees who were posted in a work charge establishment and which includes the name of the father-in-law of the appellant- petitioner at serial no. 27. In fact the acquittance roll further confirms the status of the father-in-law because it gives the salary structure of the father-in-law of the appellant which again confirms his appointment as a permanent employee.

It is not in dispute that the father-in-law of the appellant- petitioner deceased in harness. An application was filed by the son i.e. the husband of the present appellant- writ petitioner for compassionate appointment. Now in case the father-in-law was a work charge employee there was no question of extending the benefit of compassionate appointment to his son but it was extended and his son i.e. the husband of the appellant was provided with a compassionate appointment. It however remains unanswered as to why the husband of the appellant- writ petitioner was provided with compassionate



appointment in a work charge establishment which is de hors the circulars regulating the issue of compassionate appointment. Unfortunately the son i.e. the husband of the appellant- writ petitioner also deceased in harness on 5.7.1997 after rendering 12 years of service. It is thereafter that the problem for the appellant- writ petitioner started because when she filed an application for payment of retiral benefits as well as for compassionate appointment on the death of her husband in harness, nothing was forthcoming. She approached this Court through C.W.J.C.No. 1853/2002 which writ petition was disposed of vide order dated 16.12.2004 with a direction to the respondents to consider the grievance of the appellant for payment of retiral benefits as well as other benefits to which she was found entitled. A copy of the order is placed at Annexure 1 to the present appeal.

The claim of the appellant- petitioner was rejected by the Engineer-in-Chief cum Special Secretary vide order bearing Memo No. 1738 dated 25.4.2005, inter alia, on grounds that the dependents of a work charge employee were not entitled to the benefit of pension, gratuity, compassionate appointment etc. which order was put to question by the appellant- writ petitioner through the writ petition in question bearing C.W.J.C.No. 8919/2007. Unfortunately the writ petition filed in the year 2007 came up for consideration for the first



time on 27.6.2011 when the respondents were directed to file their counter affidavit and on the next date i.e. 12.12.2013 it is taking note of the view expressed in a Full Bench judgment, the reference of which is not present, that the writ petition was dismissed. Feeling aggrieved the appellant- writ petitioner is before this Court.

This matter after being posted on different dates came up for consideration before this Bench on 20.8.2018 and when this Court taking note of the circumstances existing required an answer from the State as to how the son i.e. the husband of the present appellant- writ petitioner was provided with compassionate appointment in a work charge establishment on the death of his father who was a regular Government employee. Since the writ petition was lacking on documents regarding nature of appointment of the father-in-law of the appellant- writ petitioner as well as of her husband, the State was accordingly directed to furnish the necessary papers by way of affidavit and rather fairly, Mr. Ahmad, learned State Counsel, has placed on record the service book of the father-in-law of the appellant- writ petitioner which goes to confirm that he was a permanent Government employee. This single document puts to an end to all confusion because if the father-in-law of the appellant- writ petitioner was a regular employee and held permanent post under the State Govt., on his death in harness, his son i.e. the husband of the



present appellant should have been provided with a compassionate appointment in a permanent establishment and not in a work charge establishment, which act of the State in our opinion is an act of fraud on the right vested in a dependent of a Government employee, under the circular regulating such appointment.

It is unfortunate that the appellant coming from a lower rung of the society who may not be aware of either the correct factual position, the nature of appointment of the father-in-law or her husband or her legal right, has been taken for a ride by the State Government taking the benefit of such ignorance. This is unsustainable and unexpected of a welfare State. In the undisputed situation noted where the father-in-law of the appellant- writ petitioner was a regular employee in the State Government holding a permanent post, his son i.e. the husband of the appellant could not have been provided with an appointment on compassionate ground on the death of his father in harness in a work charge establishment which act is dehors the circular bearing no. 6694 dated 17.5.1980 of the State Government which was in force when the husband of the appellant was provided with compassionate appointment on 4.12.1985 vide Annexure 'A' to the counter affidavit of respondent no.2 and clearly stipulates for appointment on a Class III/ IV post under the State Government. In fact the reference of this circular finds mentioned in the appointment



letter of the late husband of the appellant at Annexure 'A'.

In such circumstances where the husband of this appellant-writ petitioner though entitled to the benefit of compassionate appointment in a regular establishment, was given an appointment in a work charge establishment, the action of the respondents can only be termed as illegal, arbitrary and malafide exercise of power.

Misery does not come alone and for the appellant-writ petitioner, it came with the death of her husband in 1997. Now since the respondents had provided her husband with an appointment on compassionate ground in a work charge establishment, her prayer for retiral benefits as well as for benefit of compassionate appointment was rejected by the order impugned in the writ petition on the ground that her husband was a work charge employee and thus, she was not entitled to the benefit of a regular employee. Perhaps technically the stand taken by the State is correct because the dependent of work charge employee may not be entitled to such benefits although we would reserve our opinion on this issue because as informed, this issue is pending consideration before a larger Bench of this Court. The case of the petitioner however is not to be guided by the issue pending before the larger Bench rather the issue in hand is whether at all, the husband of the appellant-petitioner could have been provided with compassionate appointment in a work charge establishment. The



answer obviously has to be in negative because a dependent of a regular employee who dies in harness cannot be given the benefit of compassionate appointment in work charge establishment and the circular dated 17.5.1980 which was in force and is referred to the order of appointment of the late husband of the appellant dated 4.12.1985 at Annexure 'A', is in conformity with our opinion. As we have already observed, the act of the State to provide the late husband of the appellant- writ petitioner with compassionate appointment in work charge establishment was de hors not only the very circular regulating such appointment but an act of fraud committed on a family of a deceased Government servant.

In that view of the matter, we would not permit the State to wriggle out the situation to deny the writ petitioner the benefit of compassionate appointment because had they taken correct steps in accordance with Rules and regulations regulating the issue of compassionate appointment at the opportune time, the husband of the appellant- writ petitioner would have been provided with a compassionate appointment in a regular establishment and on his death in harness his widow, the appellant- writ petitioner would have been entitled to the same benefit as admissible to a dependant of a regular employee.

In the aforesaid view of the matter, the order rejecting the



claim of the petitioner passed by the respondent Engineer-in-Chief impugned in the writ petition at Annexure 2 series dated 25.4.2005 cannot be upheld because it is founded on a fraud committed by the State themselves in not providing the husband of the appellant with a compassionate appointment in regular establishment and the order rejecting the plea of the appellant- writ petitioner is a perpetuation of this fraud. In such view of the matter, while quashing the order dated 25.4.2005 passed by the Engineer-in-Chief cum Special Secretary, Public Health Engineering Department, we would remit this matter to the respondent concerned particularly respondent nos. 2 to 4, for reconsideration of the issue of compassionate appointment of this appellant in the light of the observations made hereinabove and for passing appropriate order in accordance with law within a period of three months from the date of receipt/ production of a copy of this order. The judgment and order passed by the learned Single Judge in C.W.J.C.No. 8919/2007 is accordingly set aside.

The appeal is allowed with the direction above. No order as to costs.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2018
Transmission Date	NA

