

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7669 of 2016

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Govind Kumar Ray, S/o Late Sitaram Rai, Resident of village- Humayupur, P.S.-
Bajpatti, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Registrar, Co-operative Societies, Bihar, Patna.
2. The Registrar, Co-operative Societies, Bihar, Patna.
3. The Assistant Registrar, Co-operative Societies, Bihar, Patna.
4. The Joint Registrar, Co-operative Societies, Tirhut Division, Muzaffarpur.
5. The Collector-cum-District Magistrate-cum -Chairman, District Compassionate Committee, Sitamarhi.
6. The Additional Collector, District Establishment, Sitamarhi.
7. The District Co-operative Officer, Sitamarhi.
8. The Assistant Registrar, Co-operative Societies, Sitamarhi Sadar Anchal, District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Adv.

For the Respondent/s : Ms. Neetu Jha, A.C to G.A-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-07-2018

Heard Mr. Sanjeev Kumar, learned counsel appearing on
behalf of the petitioner and Ms. Neetu Jha, learned Assisting
Counsel to Government Advocate No.12 for the State.

The writ petition is filed praying for issuance of a writ in
the nature of certiorari for quashing the order dated 05.03.2016
bearing Memo No.194 dated 08.03.2016 of the respondent No.6,
whereby the claim of the petitioner for appointment on
compassionate ground has been rejected holding the claim as time
barred. The communication impugned at Annexure 5 of the
District Establishment Deputy Collector, Sitamarhi is resting on



the decision of the District Compassionate Appointment Committee which has taken such decision in its meeting held on 14.1.2016 and in so far as the case of the petitioner is concerned, it finds reference at item no.47 at running page 80 of the writ proceedings and enclosed at Annexure 'D' to the counter affidavit.

Facts of the case lie in a very narrow compass and briefly discussed is, that the father of the petitioner Sitaram Rai died in harness while holding the post of Peon in the Office of respondent No.8 i.e. the Assistant Registrar Cooperative Societies, Sitamarhi. The death took place on 12.12.2005, which is manifest from the death certificate enclosed at Annexure-1 to the writ petition. According to the petitioner, since he was a minor at that stage with his date of date of birth being 12.01.1991 that he waited until he attained majority to file an application for compassionate appointment on 10.12.2010 which was much well within the period stipulated in the circular of the Department of Personnel and Administrative Reforms dated 27.04.1995 which, inter-alia, prescribes 5 years limit for filing of such application. A copy of the application is enclosed at Annexure-2 to the writ petition and is accompanied with the covering letter which is dated 10.12.2010 and is addressed to the Assistant Registrar, Co-operative Societies, Sitamarhi. The application was received on the same date i.e



10.12.2010 which is confirmed from the receiving so present thereon. The claim of the petitioner was examined by the parent department and was recommended by the Assistant Registrar, Co-operative Societies, Sitamarhi, Sadar through letter bearing Memo No.309 dated 13.12.2010. The Assistant Registrar has very clearly mentioned that the death of the employee took place on 12.12.2005 and his son, the petitioner herein has filed his application for compassionate appointment on 10.12.2010 which letter of the Assistant Registrar confirms that the application was filed within the stipulated period of five years. The letter of recommendation by the Assistant Registrar bears Memo No.309 dated 13.12.2010 and is addressed to the Registrar, Co-operative Societies, Bihar, Patna. Perhaps the matter was considered within the department and the claim being found within the parameter drawn in the circular dated 27.04.1995 that the Assistant Registrar, Cooperative Societies, Bihar, Patna through his letter bearing Memo No.5450 dated 22.09.2014 forwarded the application of the petitioner together with the enclosure to the District Magistrate –cum-Chairman, District Compassionate Committee, Sitamarhi at Annexure-4. Paragraph 2 of the letter confirms that the application was received on 10.12.2010 which is within five years of the death of the employee on 12.12.2005. The claim of the petitioner was



considered by the District Compassionate Committee on 29.11.2014 and even though the parent department had expressed no doubt on the claim advanced by the petitioner rather clarified the position which is present in recommendation yet an unnecessary bogie was raised by the District Compassionate Committee treating the claim of the petitioner as delayed simply because the recommendation by the parent department was made after stipulated period of five years. Such is the remarks present at item no.51 of the proceeding dated 29.11.2014 enclosed at Annexure-B to the counter affidavit. An unwarranted inquiry was directed and the Additional Collector while submitting his report before the Collector -cum- Chairman, District Compassionate Committee through letter dated 27.05.2015 has cast doubts on the filing of the application simply because there is an overwriting on the date mentioned by the petitioner in his application form at Annexure-2 which, according to the respondents, reads as '18.12.2010'. It is riding on the ghost so created that a recommendation was made for rejection of the claim as belated and mechanically, the Collector -cum- Chairman, District Compassionate Committee has proceeded thereon to reject the claim made by the petitioner for compassionate appointment on grounds that it was filed beyond the period of five years as



manifest from the remarks present against his consideration at item No.47 of the proceedings dated 14.01.2016 at Annexure 'D' to the counter affidavit. The decision so taken is communicated to the petitioner through the letter impugned dated 08.03.2016 of the District Establishment Deputy Collector, Sitamarhi at Annexure-5 and feeling aggrieved the petitioner is before this Court.

I have heard learned counsel for the parties and I have perused the record and I would not hesitate in recording that the case in hand is another addition to the chain of unwarranted litigation generated by the State. Even when there exists no doubt on the claim raised by the petitioner that simply on the overwriting present in the date mentioned by the petitioner in his application form and since the parent department had forwarded the application of the petitioner belatedly on 22.09.2014 i.e. after lapse of almost four years since the filing of the application by the petitioner as manifest from Annexure-4 that it gave a ground to the District Compassionate Committee to find fault in the application of the petitioner when there existed none.

The circular of the Personnel and Administrative Reforms Department relied upon by the respondents to reject the claim of the petitioner dated 27.04.1995 simply prescribes the period of filing of an application at paragraph 6 'within five years of the date



of death'. The stipulations would mean that a claim has to be raised by a dependant of a Government employee seeking compassionate appointment within five years. Annexure 2 to the writ petition very clearly demonstrates that an application in this regard was filed by the petitioner on 10.12.2010 and which bears the receiving of the respondents on even date i.e. 10.12.2010. In fact, even the application for such appointment in prescribed format was filed on 10.12.2010 which was enclosed with said letter but unfortunately for the petitioner, the date had an overwriting and does create a confusion thereon but whatsoever be the confusion, stood resolved by the covering letter which is clearly mentioned as '10.12.2010' and bears receiving on the same date. The claim is supported by the recommendation of the Assistant Registrar present at Annexure-3 addressed to the Registrar Co-operative Societies, Bihar, Patna which is a letter dated 13.12.2010 and recommends such appointment. The letter very clearly mentions the date of receiving of the application on 10.12.2010. The matter got delayed in the intra-departmental consideration and it is after a lapse of almost four years that the Assistant Registrar, Cooperative Societies forwarded the application of the petitioner for compassionate appointment with favourable recommendation and while doing so clearly mentioned the receipt of the application



on 10.12.2010. The recommendation of the Assistant Registrar before the Registrar, Co-operative Societies dated 13.12.2010 at Annexure-3 and a formal recommendation of the Assistant Registrar to the District Magistrate cum Chairman, District Compassionate Committee on 22.09.2014 at Annexure-4 each of the documents confirms the receiving/filing of the application for compassionate appointment on 10.12.2010.

In my opinion, in the circumstances so eloquent, there lay no occasion for any doubt or for postponement of the claim of the petitioner by the District Compassionate Committee as having done on 29.11.2014 to result in an unwarranted inquiry which resulted in report of Additional Collector, Sitamarhi dated 27.05.2015 which is apparently de-hors the materials on record and has resulted in an illegal rejection by the District Compassionate Committee in the meeting held on 14.01.2016 vide item No.47. Annexure-5 is a confirmation of such illegality.

The records of the proceedings leave no room for confusion that not only a claim for compassionate appointment was raised by the petitioner within the prescribed period of five years rather even an application in the prescribed format was submitted within the stipulated period and thus an unwarranted ghost was created by the respondent District Compassionate



Committee which has resulted in perversity as impugned herein. Reference in this regard is made to an opinion expressed by this Court in the case of **Kamleshwari Paswan vs. The State of Bihar** arising from **CWJC No.59 of 2016**, wherein this Court has held that if a claim is raised by an applicant for compassionate appointment within the stipulated period of five years and if for any reason, the follow up process results in expiry of the period in completion of formality i.e. requiring the applicant to file an application in prescribed format after collecting documents, it does not take away the right of the applicant to such appointment because the claim had been raised within the stipulated period and the rest of the exercise is only for completion of paper work. It is the substance of the claim, which is important and not the procedural part thereof.

My views find support from a judgment of the Supreme Court reported in **(2012)7 SCC 248 (Shreejith L. Vs. Director of Education, Kerala)** para 23, 24 and 38.

For the reasons discussed, the decision of the District Compassionate Committee taken in its meeting dated 14.1.2016 in so far as it rejects the claim of the petitioner for compassionate appointment by holding it time-barred, is held illegal and consequentially the communication of such decision by the District



Establishment Deputy Collector, Sitamarhi through his letter bearing Memo No.194 dated 8.3.2016 impugned at Annexure-5 is a perpetuation of such illegality and each of the two orders are accordingly quashed and set aside. The matter is remitted to the District Compassionate Committee, Sitamarhi to take a decision in the light of observation made, within a period of 6 weeks from the date of receipt/production of a copy of this judgment.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02-08-2018
Transmission Date	NA

