

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7128 of 2016

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1. Jhona Devi, wife of Late Ramkrit Sharma, resident of Village Bhawanpur, P.S. Tekari, District- Gaya.
 2. Abhishek Kumar, son of Late Ramkrit Sharma, resident of Village Bhawanpur, P.S. Tekari, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
2. Director General and Inspector General of Police, Bihar, Patna.
3. Inspector General of Police, Muzaffarpur Zone, Patna.
4. Deputy Inspector General of Police, Muzaffarpur Range, Muzaffarpur.
5. District Magistrate, Muzaffarpur.
6. Senior Superintendent of Police, Muzaffarpur.
7. Deputy Collector, Establishment, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani, Adv.

Mr. Ajay Kumar, Adv.

For the Respondent/s : Mr. Md. Raisul Haque, Adv.

Mr. Krishna Kant Singh, A.C. to S.C.-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-07-2018

Heard Mr. Sanjay Parasmani learned counsel for the petitioner and Mr. Krishna Kant Singh A.C. to S.C -10.

Despite pendency of the matter for 2 years before this Court and in spite of the adjournment given on 26.06.2018 yet the respondent District Compassionate Committee through its Chairman, the District Magistrate, Muzaffarpur has not bothered to file counter affidavit. While passing the order on 26.06.2018, it was made clear that any failure on the part of the District Magistrate, Muzaffarpur in



ensuring compliance of the order to file counter affidavit would result in disposal of the writ petition on the basis of materials on record.

It is thus that the matter has been taken up with a view to final disposal taking note of the materials on record.

Heard learned counsel for the parties.

The writ petition has been filed with the prayer to quash the minutes of the meeting dated 02.02.2016 of the District Compassionate Committee, Muzaffarpur whereby the candidature of the petitioner for compassionate appointment has been rejected on grounds of delay.

Bare essential facts necessary for disposal of the writ petition as noted from the writ petition is that the father of the petitioner was appointed as a Constable in the year 1982. A police case was instituted against him giving rise to Dehri P.S case No. 306 of 1998. The criminal case put on trial resulted in acquittal of the deceased employee vide judgment and order passed in Sessions Trial No. 195 of 1999 Tr. No. 10 of 1999. Along side a departmental proceeding was initiated leading to termination on 14.06.2006. The appeal of the deceased employee was also rejected vide Memo No.97 dated 24.01.2007. The memorial met the same fate but during the pendency, the father of the petitioner died on 31.08.2008. The death is confirmed from the death certificate dated 15.09.2008 at Annexure-2. The



departmental proceeding was questioned by the widow along with her son (not the petitioner herein) giving rise to CWJC No. 18748 of 2008. The dismissal order was quashed with the consequential deemed reinstatement of the deceased employee from the date of termination on 14.06.2006. In view of the deemed reinstatement of the petitioner, it was held that the deceased employee died in harness and thus would be entitled to all consequential benefits including payment of retiral dues. The relevant extract of the order passed in CWJC No. 18748 of 2008 is reproduced herein below for ready reference:

“In the facts and circumstances, it cannot but be found that there was no material. Department cannot wash away the evidence of P.W.3 in the criminal case whereby he does not identify the said employee as the perpetrator of the crime. If that be so that the gravaman of the charge as against the said employee in the departmental proceedings collapses. That being so, the only conclusion that can be drawn is that the order of dismissal was wrong as there was no material to justify the said decision. That being so, the order of dismissal cannot be sustained and has to be set aside and, accordingly, the appellate order and the order rejecting memorial has also to be set aside. The effect would be that it would be deemed that the said employee late Ramkrit Sharma would be deemed to be in service and died without dismissal order being there. If the date of his death is prior to his date of superannuation in normal course then it would be deemed that he died in harness and necessary consequential action would have to be taken by the authorities in that regard. If date of death is after his regular superannuation, which does not appear to be the case, the petitioners would be entitled to all consequential reliefs as such including payments of retiral dues. The respondents are directed to give effect to the judgment of this Court within three months from the date of production of a copy of this order before the authority concerned.”



It is since the widow and her son were held entitled to all consequential benefits flowing from the order of deemed reinstatement including post retiral dues that along side a right came to be vested in the legal heirs of the deceased employee to claim Compassionate Appointment as he was held died in harness. Accordingly, an application was filed by the other son, the petitioner No. 2 herein on 11.02.2014 i.e. within a year of passing of the judgment and order in C.W.J.C. No. 18748 of 2008 whereby legal heirs were held entitled to all consequential benefits flowing to them as a consequence of deemed reinstatement and which obviously would also include a prayer for Compassionate Appointment. The said application has been rejected by the District Compassionate Committee in its meeting held on 02.02.2016 counting the limitation period prescribed in the circular dated 27.04.1995 mechanically. It was held that the application was belated filed in 2014 though the death of the husband on 31.08.2008. The relevant extract of the decision of the Compassionate Committee taken in its meeting held on 02.02.2016 is impugned at Annexure-4 and which is followed by the communication dated 14.03.2016 of the Senior Superintendent of Police, Muzaffarpur which is impugned at Annexure- 5.

I have heard the learned counsel for the parties and I have perused the records.



No doubt a limitation of 5 years has been prescribed in the circular dated 18.07.1995 to be counted from the date of death but in the extraordinary circumstances that engages this Court in the present writ petition, the limitation period has to be counted from the date the cause of action has arisen.

The sequence of events discussed above shows that the deceased employee was dismissed from service on 14.06.2006 and while pursuing the remedy available to him to question the orders before the Superior Authorities, he died on 31.08.2008. The cause was pursued by his legal heirs i.e. the widow of the deceased employee and his son and which has resulted in the quashing of the punishment order passed by a coordinate bench in CWJC No. 18748 of 2008 which also entitles the petitioners herein to all consequential reliefs and payment of retiral dues. The judgment and order was passed on 21.06.2013 and has attained finality as intimated.

Obviously, it is only when the punishment order was quashed by this Court and since the deceased employee was held deemed reinstated in service from the date of termination that the death was held in harness and made the legal heirs of the deceased employee entitled to the terminal benefits which included a plea for Compassionate Appointment. It is not in dispute that it is within 1 year of the passing of the judgment and order of this Court on



21.06.2013 that an application was filed by the petitioner No. 2 on 11.02.2014 for compassionate appointment. No doubt if the limitation period is to be counted from the date of death in 2008, the application is belated but the situation is different in the present case for until the passing of the judgment and order by this Court, the deceased employee facing termination, had no entitlement for his surviving heirs. The cause of action thus arose for these petitioners only on 21.06.2013, when the employee was held reinstated and his death was held in harness. It is soon thereafter that the application have been filed which should have been considered in the back drop of the circumstances discussed. Unfortunately, the District Compassionate Committee has been rather mechanical in rejecting the application which suffers a complete non application of mind. Perhaps it is for this reason that they have not chosen to file counter affidavit in this case.

Be that as it may the decision of the District Compassionate Committee taken in its meeting that held on 02.02.2016 together with its communication by the Senior Superintendent of Police through his letter dated 14.03.2016 impugned at Annexure -4 and 5 respectively to the writ petition cannot be upheld and are held per se illegal and accordingly quashed and set aside. The application of the petitioner for compassionate appointment is held validly filed and accordingly



let the District Compassionate Committee, Muzaffarpur take a decision on the prayer of the Compassionate Appointment made by the petitioner No. 2 on its merit and dispose of the same within 3 months from the date of receipt of the production of a copy of this order.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.08.2018
Transmission Date	NA

