IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15140 of 2016

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Md. Zamiruddin, son of Late Salauddin, resident of Village- Bhatta, P.S.- Kashichak, District- Nawada.

.... Petitioner

Versus

1. The National Insurance Company Limited through, General Manager, 3 Mddletone Street, Kalkatta- 700071.
2. The General Manager, the National Insurance Company, 3 Mddletone Street, Kalkatta- 700071.
3. The Regional Manager, National Insurance Company Limited, 4th Floor Sone Bhawan, Bir Chand Patel Marg, Patna- 800013.
4. The Divisional Manager, National Insurance Company Limited, Division Office, Hazaribag.
5. The Branch Manager, National Insurance Company Limited, Rajendra Nagar, Nawada, District- Nawada.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Devendra Prasad Singh, Adv.

For the Respondent/s : Mr. Rupak Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-04-2018

Heard Mr. Devendra Prasad Singh, learned counsel appearing for the petitioner and Mr. Rupak Kumar, learned counsel appearing for the Insurance Company.

The writ petition was filed praying for a writ in the nature of mandamus commanding the respondents to appoint the petitioner on Class III or Class IV post on compassionate ground on account of his father dying in harness from the post of Records Clerk with Nawada Branch Office of the Insurance Company.

It is while the writ petition is pending that the claim has been disposed of by the respondent Insurance Company vide order as communicated through letter dated 12.8.2016 and which has been impugned at Annexure 7 to I.A.No. 2585/2018. The claim has been disposed of in reference to the circular dated 20.4.2015 placed on record at Annexure R-5 which had been made effective from 1.11.2014 and since the death of the father of the petitioner took place prior thereto that it was held that the petitioner was not eligible for such consideration.

I have heard learned counsel for the parties and have perused the records. Interestingly each of the learned counsel has relied upon the same judgment rendered by the Supreme Court in the case of **Canara Bank & Anr. Vs. M. Mahesh Kumar & ors**., since reported in 2015(3) PLJR (S.C.) 197, to support their stand.

The issue lies in a very narrow compass and while it is advocated by Mr. Devendra Prasad Singh, learned counsel for the petitioner, that even if the claim of the petitioner for compassionate appointment was not acceptable under the scheme dated 30.9.2002 which, inter alia, provided for monetary compensation in lieu of compassionate appointment as manifest from the advisory dated 18.4.2008 at Annexure R-2 to the counter affidavit, yet since the application of the petitioner for compassionate appointment was filed after the scheme for compassionate appointment was reintroduced vide circular dated 20.4.2015 at Annexure 5 through application dated

6.8.2016, the claim is worthy of consideration and for which learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of **M. Mahesh Kumar** (supra). The argument has been resisted by Mr. Rupak Kumar placing reliance on the observation of paragraphs 5, 11 and 17 to submit that where the scheme has been made effective from 1.11.2014 with specific stipulations to such effect at Clause 8 of the scheme enclosed at Annexure R-5, a delayed application by the petitioner would not bring him with the purview of the scheme of compassionate appointment.

Having heard learned counsel for the parties and having perused the materials on record, in my opinion, the principles advocated by Mr. Rupak Kumar appearing for the Insurance Company is supported by the opinion of the Supreme Court expressed in the case of **M. Mahesh Kumar** (supra) for it is the scheme in force on the date on which the cause of action arises i.e. the death in harness of an employee, that the right of the legal heirs have to be determined and not on the basis of scheme introduced subsequently which was in force when such application is made. The argument of Mr. Singh that since the scheme introduced through the circular dated 20.4.2015 is in supersession of the earlier scheme and seeks to reopen the facility of compassionate appointment, all pending cases on the said date, is entitled to the benefit, in my opinion, is not in tune with the legal position. The opinion of the Supreme Court at paragraph 11 of the judgment in the case of **M. Mahesh Kumar** (supra) very clearly confirms that it is the scheme in force when a cause of action arises which would be relevant for consideration of a claim of such kind and not on the basis of any scheme subsequently introduced even if in supersession of a previous scheme and even if giving a relief of a different kind especially when the scheme so subsequently introduced is not questioned on classification.

For the reasons so discussed, I am not persuaded to interfere with the decision of the respondent Insurance Company as impugned at Annexure 7 and consequentially the writ petition as well as interlocutory application are disposed of.

It goes without saying that the Insurance Company would consider and dispose of the claims to which the petitioner is found entitled on the basis of the scheme which was in force on the date of death of the employee, in accordance with law.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.04.2018
Transmission Date	NA