

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4212 of 2008

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Chandeshwar Prasad son of Late Moti Ram, Resident of village-
Manjhauli, P.S.- Vikram, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner Commercial Taxes Bihar, New Secretariat, Patna.
3. The Joint Commissioner (Division), Commercial Taxes, Department
Patna Division, Patna.
4. The Assistant Commissioner, Commercial Taxes, Danapur Circle,
Danapur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s :Mr. Rajendra Kumar Jain, Advocate

For the Respondent/s :Mr. Lalit Kishore, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-10-2018

1. By way of this petition under Article 226 of the
Constitution of India, the petitioner has prayed for an
appropriate writ, direction or order quashing and setting aside
the impugned order dated 03.12.2007 passed by the
Commissioner, Commercial Taxes, Bihar at Patna, by which the
application of the petitioner for appointment on
compassionate ground had been rejected.



2. At this stage, it is required to be noted that having noticed that there are two contrary judgments of the Patna High Court, one in the case of **Anil Kr. Singh and Ors. Vs. The State of Bihar** reported in **1993 (1) PLJR 414** and another in the case of **Kamlanand Jha Vs. The State of Bihar and Ors.** reported in **2007 (1) PLJR 672**, the learned Single Judge has referred the matter to the Chief Justice for considering the desirability of referring the case to an appropriate Division Bench. That thereafter, as per the order passed by the Chief Justice, the matter is referred to the Division Bench and that is how, the matter is before the Division Bench.

3. At the outset, it is required to be noted that the short question, which is posed for consideration of this Court, is whether even in the case where a dependent would be minor at the time of death of the deceased-employee and has not become major within the period of limitation (period of limitation for making an application for appointment on compassionate ground as per the policy), he will be entitled to get appointment on compassionate ground subsequently when he becomes major?

4. The facts leading to the present petition in nutshell are as under;



4.1. That the deceased employee-father of the applicant-petitioner, Late Moti Ram, died in harness while working as Peon in the Office of Assistant Commissioner, Commercial Taxes, Danapur Circle, Danapur on 11.02.1982. According to the petitioner, in the year 1982 itself, he through his mother made an application for appointment on compassionate ground, however, at the relevant time in the year 1982, more particularly, on the date of death of his father i.e. 11.02.1982, he was minor.

4.2. At this stage, it is required to be noted that as per the old policy of the compassionate appointment contained in circular of the Personnel and Administrative Reforms Department dated 12.07.1977, which was prevailing at the time of death of the deceased employee, time limit-period of limitation for making an application for appointment on compassionate ground was two years. It appears that in the year 1991, the petitioner made an application for appointment on compassionate ground. It appears that as nothing was done, therefore, the petitioner approached this Court by way of C.W.J.C. No. 10964 of 2000 and vide order dated 11.09.2007, this Court disposed of the petition directing the appropriate authority to take an appropriate decision on the application of



the applicant. That thereafter by the impugned order, the application of the petitioner for appointment on compassionate ground had been rejected on the ground that the same is barred by limitation to make an application for appointment on the compassionate ground as per the policy prevailing at the relevant point of time.

4.3. Feeling aggrieved and dissatisfied with the impugned order rejecting the application for appointment on the compassionate ground, the petitioner has preferred the present writ petition under Article 226 of the Constitution of India.

5. Sri Rajendra Kumar Jain, learned counsel appearing on behalf of the petitioner has vehemently submitted that the case of the petitioner is squarely covered by the decision of this Court in the case of *Kamlanand Jha (supra)* in which this Court has considered the earlier decision in the case of ***Brajendra Prasad Poddar Vs. The State of Bihar and ors.*** reported in **1990 (2) PLJR 668**. In the aforesaid two decisions, it is specifically held that whenever the dependent would become major, he would be entitled to be considered even though he may be minor at the time of death his father-deceased employee.



5.1. It is further submitted by Sri Rajendra Kumar Jain, learned counsel appearing on behalf of the petitioner that, even otherwise, in the present case in the year 1982 itself, the applicant-petitioner, who was minor, made an application for appointment on compassionate ground, which was within the period of limitation prescribed as per the policy and, therefore, the application of the petitioner for appointment on compassionate ground could not have been rejected on the ground of limitation.

6. Sri Lalit Kishore, learned Advocate General has appeared on behalf of the State. It is submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the State that as such the issue involved in the present petition is squarely covered against the petitioner in view of the decision of the Division Bench of this Court in the case of *Anil Kr. Singh (supra)*. It is further submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the State that in the said case after considering the various decisions of the Hon'ble Supreme Court on the point, it has been held that if the dependent would be minor at the time of death of the deceased employee and would not become major within the period of



limitation, he will not be entitled to get appointment on compassionate ground.

6.1. It is further submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the State that in the present case, as such, the application alleged to have been made by the petitioner in the year 1982 is not on record of the Department and even the same is not placed on record before this Court. It is also submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the State that the only application on record is the application made in the year 1991, which was after period of 9 years from the date of death of the deceased employee and after period of six years from the date the petitioner attained the age of majority.

6.2. It is further submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the State that as such in the case of *Brajendra Prasad Poddar (supra)*, which came to be subsequently considered by this Court in the case of *Kamlanand Jha (supra)*, the decision was as such on facts and therefore, no absolute proposition of law had been laid down. It is further submitted that on the contrary, the decision of the Division Bench of this Court in the case of *Anil Kr. Singh (supra)*, which holds the field, was not brought to the notice of



this Court in the subsequent decision in the case of *Kamlanand Jha (supra)*. It is further submitted that as such the decision in the case of *Kamlanand Jha (supra)* can be said to be *per incurium*. It is further submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the State that, even otherwise, by now more than 36 years have passed and, therefore, now to consider the appointment of the petitioner on compassionate ground would be frustrating the object and purpose of compassionate appointment.

6.3. Making above submissions and relying upon the following decisions of the Supreme Court and also relying upon the decision of the Division Bench of this Court in the case of *Anil Kumar Singh and Ors. (supra)*, it is requested to dismiss the present petition. Following judgments of the Supreme Court have been relied upon by the learned Advocate General appearing on behalf of the State:

(i) ***Sanjay Kumar Vs. State of Bihar And Others*** reported in **2000 (7) SCC 192;**

(ii) ***State of J&K And Others Vs. Sajad Ahmed Mir*** reported in **2006 (5) SCC 766;**

(iii) ***MGB Gramin Bank Vs. Chakrawarti Singh*** reported in **2014 (13) SCC 583; and**



(iv) ***Canara Bank and Another vs. M. Mahesh Kumar*** reported in **2015 (7) SCC 412**.

7. Heard learned counsel appearing on behalf of the respective parties at length.

8. Having observed and found that there are two contradictory decisions of this Court, one in the case of *Anil Kumar Singh (supra)* and another in the case of *Kamlanand Jha (supra)*, the matter is referred to the Division Bench. The short question, which is posed for consideration of this Court, is whether the time limit prescribed under the policy of the State Government for appointment on compassionate ground would be applicable also in case of the applicant who at the relevant time of death of the deceased employee was minor?

9. While considering the aforesaid question/issue, few decisions of the Hon'ble Supreme Court on compassionate appointment are required to be referred to and considered which are as under:

9.1. In the case of *Sajad Ahmed Mir (Supra)*, the Hon'ble Supreme Court had an occasion to consider the earlier decisions of the Hon'ble Supreme Court on compassionate appointment in paragraphs 12 to 16. In paragraphs 11 to 16, the Hon'ble Supreme Court has observed as under;



11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought "compassion", the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with [Article 14](#) of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say "goodbye" to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of [Article 14](#) of the Constitution.

12. [In State of Haryana v. Rani Devi](#) it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of [Article 14](#) or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

13. [In LIC of India v. Asha Ramchhandra Ambekar](#), it was indicated that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments.



14. In *Umesh Kumar Nagpal v. State of Haryana & Ors.*, it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the dependant of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

15. In *Sushma Gosain & Ors. v. Union of India & Ors.*, it was observed that in claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.

16. Recently, in *Commr. of Public Instructions v. K.R. Vishwanath*, one of us (Pasayat, J.) had an occasion to consider the above decisions and the principles laid down therein have been reiterated."

9.2. In the case of *Sanjay Kumar (supra)*, the Hon'ble Supreme Court has observed and held that compassionate



appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. It is further observed by the Hon'ble Supreme Court that there cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions. It is further observed that the very basis of compassionate appointment is to see that the family gets immediate relief. In the case before the Hon'ble Supreme Court the applicant attained the age of majority eight long years after the death of the deceased employee and then applied for compassionate appointment, as such, the same was rejected as time barred and the same had been confirmed by the Hon'ble Supreme Court. At this stage, it is required to be noted that in the said decision, reliance was placed upon a decision of the Patna High Court in the case of ***Chandra Bhushan v. State of Bihar & Ors.*** reported in **1997 (1) PLJR 626 (Pat)**, in which it was held that the applicant's right cannot be defeated on the ground of delay caused by the authorities which was beyond the control of the applicant. The Hon'ble Supreme Court did not agree with the same and confirmed the decision of the authorities in rejecting the



application for appointment on compassionate ground as it being time barred.

9.3. In the case of *MGB Gramin Bank (supra)*, the Hon'ble Supreme Court has observed and held in paragraph 6 which is as under;

“6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.”

9.4. In the case of *M. Mahesh Kumar (supra)*, the Hon'ble Supreme Court has also considered its earlier decision in the case of *Umesh Kumar Nagpal (supra)* and observed and



held that compassionate appointment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment *de hors* the scheme.

9.5. The sum and substance of the aforesaid decision would be as under;

“(I) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee’s family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”



As such a similar view is taken by the Division Bench of Patna High Court in the case of **Anil Kr. Singh** (*supra*). In the similar set of facts and circumstances that arise in the present case, the applicant made the application for appointment on compassionate ground beyond time limit of two years granted for filing an application for appointment in terms of the scheme and in that case also at the time of death of the deceased employee, the applicant was minor and thereafter when his application for appointment on compassionate ground was rejected as being time barred, the same was challenged and after various decisions of the Hon'ble Supreme Court on the point, the petition came to be dismissed by the Division Bench. At this stage, it is required to be noted that in the said decision, the Division Bench specifically observed that the observations made in the case of *Brajendra Prasad Poddar* (*supra*) does not lay down any binding precedent. As such, we are in complete agreement with the view taken by the Division Bench in the case of *Anil Kr. Singh* (*supra*).

10. Now, so far as reliance placed upon the decision of the Division Bench of this Court in the case of *Kamlanand Jha* (*Supra*) by the learned counsel appearing on behalf of the petitioner is concerned, at the outset, it is required to be noted



that in the said decision, the Division Bench did not consider the decision of the co-ordinate Bench in the case of *Anil Kumar Singh (supra)*. Apart from that, even in the case of *Kamlanand Jha (supra)*, the Division Bench of this Court had relied upon and considered the decision in the case of *Brajendra Poddar (supra)* which as such was held to be not having any binding precedent as observed in the case of *Anil Kr. Singh (supra)*, therefore, the decision of the Division Bench in the case of *Kamlanand Jha (supra)* can be said to be *per incurium* and even the said decision can be said to be contrary to the decisions of the Hon'ble Supreme Court referred to hereinabove.

11. Now, so far as reliance placed upon the decision of the Division Bench in the case of *Vina Kumari (supra)* by the learned counsel appearing on behalf of the petitioner is concerned, considering the facts of the case of *Vina Kumari (supra)*, we are of the view that the said decision shall not be applicable to the facts and circumstances of the case on hands. In the said case, it was found that as per the policy decision when the time limit was extended to 5 years, the application submitted by the applicant was found to be within the period of limitation. In the present case, the deceased employee died in the year 1982, the applicant attained the age of majority in



the year 1985 and thereafter he made an application in the year 1991/1992 and thereafter the applicant approached this Court for the first time in the year 2000. As per the policy prevailing at the relevant time, the time limit for making application for appointment on compassionate ground was two years. As such, the aforesaid decision in the facts and circumstances of the case shall not be applicable to the facts and circumstances of the case on hands.

12. Considering the aforesaid decisions of the Hon'ble Supreme Court referred to hereinabove and the law laid down by the Hon'ble Supreme Court on compassionate appointment, we are of the opinion that the petitioner is not entitled to any relief as prayed in the petition and the application of the applicant-petitioner for appointment on compassionate ground is rightly rejected on the ground that it is barred by time limit prescribed under the Scheme.

13. Even otherwise, in the facts and circumstances of the case and the object and purpose of appointment on compassionate ground which is to give immediate relief to the heir of the deceased employee, who died in harness, the petitioner is not entitled to any relief of appointment on compassionate ground now. By now, more than 36 years have



passed and, therefore, to give appointment to the applicant-
petitioner on compassionate ground would be contrary to the
object and purpose of appointment on compassionate ground.

14. In view of the above and for the reasons stated
above, the present petition fails and the same deserves to be
dismissed and is, accordingly, dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	A.F.R
CAV DATE	
Uploading Date	02.11.2018
Transmission Date	

