

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11793 of 2016

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Arun Kumar, son of Late Shashi Bhushan Singh, Resident of Village-Parmanandpur, P.O. Ladaura Pakari, P.S. Muzaffarpur Sadar, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Muzaffarpur.
2. The District Magistrate, Muzaffarpur District- Muzaffarpur.
3. The Deputy Collector(Establishment), Muzaffarpur District-Muzaffarpur.
4. The Circle Officer, Aurai, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar Ojha, Adv. Mr. Vijay Kumar Singh, Adv.
For the Respondent/s	:	Mr. Jainendra Kumar Sinha, AC to SC17

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date : 13-08-2018

Heard Mr. Ajit Kumar Ojha, learned counsel for the petitioner and Mr. Jainendra Kumar Sinha, learned AC to SC17 for the State.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission.

The petitioner prays for issuance of a writ in the nature of the mandamus commanding the respondent authorities to appoint him on compassionate ground, his father having died in harness on 18.12.2013 while serving as Orderly Peon in the Circle Office at Aurai in the District of Muzaffarpur.

Pleadings on record would confirm that the case of the petitioner was considered by the District Compassionate



Committee, Muzaffarpur in its meeting held on 31.12.2014 as manifest from Annexure- A to the counter affidavit and it is noting the age of the petitioner which stood 41 years and 11 months that his case was referred to the Commissioner, Tirhut Division for condonation of the upper age limit for entry in the Government service. The proceedings of the District Compassionate Committee, Muzaffarpur dated 03.09.2016 would confirm that the case of the petitioner was rejected by the Commissioner, Tirhut Division inter alia on grounds that the age difference between the petitioner and his father was only 13 years 3 months and 23 days, which is manifest from the remarks appearing against serial No. 30 of the minutes enclosed at Annexure-12 to I.A No. 2972 of 2017 and which has not persuaded the District Compassionate Committee to condone the age of the petitioner.

It is complaining of arbitrariness in action complained that Mr. Ojha invites the attention of this Court to the case of the applicant appearing at serial No. 20 namely, Sachindra Prasad Singh who was aged 50 years on the date of his application to submit that even if it is presumed that the father of the said applicant was nearing superannuation at 60 years when he died in harness, yet the difference would be about 10 years in between the said applicant and his father but neither any objection was raised



nor his case was referred for condonation by the District Compassionate Committee before the Commissioner, rather the said applicant has been provided with compassionate appointment.

Despite the opposition by Mr. Sinha to the argument advanced by Mr. Ojha he is unable to persuade this Court on the arbitrariness of the exercise which is reflecting from the decision itself. There is no complaint that the petitioner has interpolated his date of birth rather it is because he has crossed the upper age limit that he seeks the condonation. In other words there is no dispute of date of birth of this petitioner. There is also no dispute as regarding his educational qualification rather the dispute is that there is less age difference between him and his father for which the petitioner cannot be held answerable. Certainly the petitioner would not have enhanced his age and in case the father of the petitioner has given a lower age at the time of his entry in service, which can also be a reason for reduction in age gap, this cannot be a reason for disqualification of the petitioner. Even otherwise an age difference between an applicant and his father, unless standing on a fabricated document filed by the applicant, cannot be a reason for a disqualification. That the order of rejection in case of the petitioner is a manifestation of an arbitrary exercise, is



evident from the case of Sachindra Prasad Singh, where the Committee did not even find it necessary to seek a condonation although the difference of age between the said applicant and his father was only 10 years and even though he was about 9 years elder to the present petitioner. The decision making process in so far as it concerns the petitioner is certainly infested with discrimination and confirms abuse of executive power.

In result, the decision of the District Compassionate Committee as taken in its meeting on 03.09.2016 in so far as it concerns the petitioner whose name appears at serial No. 30 is set aside and the case of the petitioner is remitted back to the District Compassionate Committee to take a fresh decision in accordance with law without raising objection on age difference and bearing in mind the case of Sachindra Prasad Singh. Let a decision be taken within 4 weeks of receipt/production of a copy of the order.

The writ petition is allowed with the direction aforementioned.

Bibhash/Ranveer

AFR/NAFR	A.F.R
CAV DATE	NA
Uploading Date	24.08.2018
Transmission Date	N.A

(Jyoti Saran, J)

