

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16840 of 2016

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Tapeshwar Chaudhary S/o- Late Ram Charitra Chaudhary, R/o- Head
Manpur, Bara Inara, City Gas Gaya, District- Gaya, Bihar.

... .. Petitioner

Versus

1. The State Of Bihar, Through Principal Secretary, Health, Govt. Of Bihar
2. The District Magistrate, Gaya.
3. The Deputy Collector, Establishment, Gaya.
4. The Civil Surgeon cum Chief Medical Officer, Gaya.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Ms. Roona Singh Ms. Manisha Singh
For the Respondent/s	:	Mr. Chitranjan Sinha- PAAG 2 Mr. Shailendra Kumar, AC to PAAG 2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 28-02-2019 Heard learned Counsel for the petitioner and the learned
Counsel for the respondent State.

Father of the petitioner, while working as a Clerk at Additional Primary Health Centre, Bhimpur, Manjhiyawan (Koch), District Gaya, died in harness on 28.4.2015. Petitioner's application for benefit of compassionate appointment has been rejected by the District Compassionate Committee on 29.7.2016 by assigning a reason that two elder brothers of the petitioner are in government employment. It has also been taken note of that there is no material evidence to show that the petitioner was living separately from other two brothers. The *panchnama* showing partition between the brothers, produced by the petitioner's mother (wife of the employee



who died in harness) has also not been relied upon by the Compassionate Committee while considering the claim of the petitioner.

The authorities apparently have not made any detailed enquiry to see whether other two brothers were looking after widow of the deceased employee and to assess whether the family of the deceased government servant (petitioner and his mother) were in destitute or any other source of survival was there or not.

Counsel for the State however would submits that the petitioner was not found fit for compassionate appointment after due consideration of the Committee. In view of the fact that the two elder brothers of the petitioner are in government service and it was their pious duty to support the family of the deceased, the claim of the petitioner has been rightly rejected.

Counsel for the petitioner has placed on record a judgment of this Court in the Case of ***Gunjan Kumar vs. State of Bihar*** decided on 2.2.2018 in the proceedings arising out of ***CWJC No. 15383 of 2014***. The decision of the Division Bench of this Court in the case of ***Ashok Kumar Choudhary vs. State of Bihar***, reported in ***2000 (4) PLJR 651 (DB)*** has been taken note of in the judgment in the case of Gunjan Kumar. Relevant extract of the judgment is being reproduced for the sake of reference in the



instant proceeding:-

“...Any appointment on compassionate ground can be made strictly in terms of the policy regulating the same. If the policy dated 18.02.1995 provides for consideration of the claim of a second son notwithstanding the elder son being in employment, but subject to the satisfaction of the authorities with regard to the destitute and penury of the family because the employed brother was not looking after the family of the widow was also suffering on that count, the claim for compassionate appointment cannot be shut outright...”

“...Thus, the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources of livelihood or not at the relevant time to meet the hardship, and once it is found that the financial condition is sufficient to tide over crisis, then no appointment can be made on compassionate ground and the question whether the other spouse is continuing in service or has retired is wholly immaterial.”

“.....The touchstone for the exercise of the power therefore is that does the family have other sources of survival or is it left destitute. In each case therefore it is a question of fact to be arrived at after an enquiry....”



While recording the said position of law, this Court in the case of Gunjan Kumar (*supra*) has quashed the rejection of petitioner's claim for compassionate appointment and remanded the matter back to the District Appointment Committee for a decision afresh after proper enquiry by a responsible functionary of the government and thereafter to take a decision in light of the observations in the case of ***Ashok Kumar Choudhary (supra)***. In compliance of the said order, the case of Gunjan Kumar has been considered and upon proper enquiry the claim, as per submission of the petitioner's Counsel, of Gunjan Kumar was allowed for compassionate appointment by the Committee on 27.4.2018. Petitioner's Counsel submits that if proper enquiry and appreciation of the fact is done by a responsible officer of the State Government in the case of the petitioner also, the petitioner would be extended the same relief.

As noticed hereinabove proceeding of the District Compassionate Committee dated 29.7.2016 rejecting petitioner's claim for compassionate appointment does not appear to have examined the petitioner's claim by proper enquiry and proper appreciation of the fact. The decision, therefore, is not sustainable. The recommendation of the District Compassionate Committee dated 29.7.2016, in so far as the petitioner's claim has



been rejected, is quashed.

In view of the decision relied upon by Counsel for the petitioner, in the case of the petitioner also this Court would direct that a proper enquiry report from the responsible functionary of the Government be called to ascertain the financial condition of wife of the deceased, who is dependent upon the petitioner, and to take a decision in light of the observation in the case of *Ashok Kumar Choudhary (supra)*.

This Court would expect that the Committee will take a final decision after thorough consideration based on a proper enquiry by the responsible functionary of the State Government within a period of four months from the date of receipt/production of a copy of this order.

The writ petition stands disposed of.

(Madhuresh Prasad, J)

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