

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 314 of 2019

In

Civil Writ Jurisdiction Case No. 6414 of 2018

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Jawahar Lal Ram aged about 51 years (Male), S/o Late Chhabinath Prasad Resident of Village - Farhangpur, Police Station - Chandi, District - Bhojpur.

... .. Appellant

Versus

1. The State of Bihar through the Director, Secondary Education Department, Govt. of Bihar, Patna
2. The Director, Secondary Education Department, Govt. of Bihar, Patna
3. The District Magistrate-cum- Chairman, Compassionate Appointment Committee, Bhojpur
4. The District Education Officer, Bhojpur, Ara

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Gopal Govind Mishra, Advocate

For the Respondent/s : Mr. Ashutosh Ranjan Pandey (AAG-15)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 19-12-2019

Supplementary counter affidavit is filed on behalf of respondent no. 4/District Education Officer, Bhojpur, Ara. Let the supplementary counter affidavit be kept on record.

2. Heard learned counsel appearing for the appellant as well as learned Additional Advocate General – 15 appearing for the State.

3. This appeal has been preferred against the impugned judgment dated 06-12-2018 passed by the learned Single Judge



in C.W.J.C. No. 6414 of 2018, by which and whereunder, he dismissed the writ petition filed on behalf of the petitioner (appellant).

4. The father of the appellant namely Chhabinath Prasad was an Assistant Teacher in Primary School, Kawalpatti Circle, Bihiya, District – Bhojpur, but unfortunately, he died in harness during his service period on 07-09-2002. The appellant happens to be son of second wife of his father. He applied on 09-03-2006 for appointment on compassionate ground before appropriate authority enclosing all the necessary documents after death of his father. Similarly, one Subhash Ram, who happens to be son of first wife of father of the appellant, too applied for compassionate appointment on death of his father. Both the applications were forwarded before the competent authority. However, no decision was taken on the application of the appellant and thereafter, the appellant preferred a writ petition i.e. C.W.J.C. No. 7241 of 2010, which was disposed of by learned Single Judge of this Court, vide order dated 19-01-2011 directing the concerned authority to take up the claim of the appellant in the first meeting of the concerned committee. However, Subhash Ram, son of first wife of deceased Chhabinath



Prasad, also preferred C.W.J.C. No. 10122 of 2012, which was disposed of by learned Single Judge of this Court, vide order dated 19-06-2012 directing the concerned authorities to pass a reasoned order on the claim of the aforesaid Subhash Ram within a reasonable time. The District Compassionate Committee accepted the claim of above-stated Subhash Ram and recommended for his appointment, but in course of verification of documents of aforesaid Subhash Ram, some documents were found forged and accordingly, the appointment letter was not issued to him. However, the claim of the appellant was not considered and thereafter, he again filed a writ petition i.e. C.W.J.C. No. 5158 of 2013, which was disposed of by learned Single Judge of this Court, vide judgment dated 04-02-2016 directing the District Magistrate, Bhojpur to consider the case of the appellant with regard to appointment on compassionate ground in accordance with law within a period of six months from the date of receipt/production of copy of aforesaid order. After receipt of the aforesaid order dated 04-02-2016 passed in C.W.J.C. No. 5158 of 2013, the District Magistrate, Bhojpur, Ara considered the case of the appellant, but rejected the claim of the appellant taking note of letter no. 937 dated 23-06-2005 issued



by the General Administration Department, Bihar, Patna, which prohibits appointment on compassionate ground of the son of second wife of an employee.

5. Being aggrieved by the above-stated order (Memo No. 231 dated 11-03-2017), the appellant preferred C.W.J.C. No. 6414 of 2018, which was dismissed by the learned Single Judge and the same has been challenged before this Court.

6. Learned counsel appearing for appellant, having relied upon a decision of *Union of India and Another vs. V.R. Tripathi* reported in **2019 (1) BLJ (SC) 307**, submits that the Hon'ble Apex Court has held in the aforesaid decision that the son of second wife is also entitled to make claim of compassionate appointment after death of his father and no rule in consistence with Article 14 of the Constitution of India can be framed by the Government. He further submits that Clause 4 of letter no. 937 dated 23-06-2005 of the State Government is contrary to the Article 14 of the Constitution of India and therefore, the aforesaid Clause 4 of letter no. 937 dated 23-06-2005 has no implication on the compassionate appointment of the appellant and the District Magistrate, Bhojpur had no authority to reject the claim of the appellant only on the



ground that the appellant is son of second wife of deceased Chhabinath Prasad. He submits that this matter be remitted to the District Magistrate, Bhojpur for reconsideration of the claim of the appellant.

7. On the other hand, learned Addl. Advocate General – 15 appearing for the State submits that admittedly, the father of the appellant was died in the year 2002 and the appellant as well as his brother Subhash Ram made claim for compassionate appointment separately some time in the year 2006 i.e. after four years of death of their father. He further submits that earlier, the brother of appellant was recommended for appointment on compassionate ground, but subsequently his documents were found forged and therefore, no appointment letter was issued to him. He further submits that no doubt in the year 2016, vide order dated 04-02-2016 passed in C.W.J.C. No. 5158 of 2013, this Court directed the District Magistrate, Bhojpur to consider the claim of the appellant and in the light of the aforesaid order, District Magistrate, Bhojpur, having considered the claim of the appellant-petitioner, refused to give appointment on compassionate ground to the appellant on the ground that he happens to be son of second wife of deceased employee, but



admittedly, near about 17 years have already elapsed after death of father of the appellant and the purpose of compassionate appointment has already been failed and therefore, there is no need to remit this matter to District Magistrate, Bhojpur for fresh consideration.

8. Having heard contentions of both the parties, we went through the records as well as decision cited on behalf of the appellant. The Hon'ble Apex Court in the decision of Union of India and Others (*supra*) has held that son born from second marriage of deceased employee is entitled to get compassionate appointment and any rule, circular or law issued by the Government contrary to Article 14 of the Constitution of India should not be treated as a valid circular. The same view has also been taken by this Court in a **Full Bench** decision (*The Bihar State Electricity Board & Ors. vs. Chandra Shekhar Paswan & Ors.* reported in **2019 (2) PLJR 500**), in which, it has been held that the State cannot lay down a condition, which is inconsistent with Article 14 of the Constitution of India and bring about unconstitutional discrimination between legitimate children.

9. Considering the aforesaid facts and circumstances, we hold that compassionate appointment can not be claimed as a



matter of right. No doubt, the son born from second wife is also entitled to make claim of compassionate appointment and the District Magistrate committed error in rejecting the claim of appellant and the circular in question issued by the State is inconsistent with Article 14 of Constitution of India, but the whole object of compassionate appointment is to enable the family to get over the sudden financial crisis, which has been created due to the sudden death of bread earner of the family. As such, the compassionate appointment cannot be granted after a long period of time. In the case in hand, the deceased died in the year 2002 and for the last 17 years, the family is surviving and appellant has completed 51 years of age. Compassionate appointment is not a form of reservation to be claimed as a matter of right. In this regard, there are catena of decisions of Hon'ble Supreme Court, in which, the Hon'ble Supreme Court has discussed the scope of compassionate appointment, which are as follows:-

"(i) General Manager, SBI vs. Anju Jain [(2008) 8 SCC 475],

wherein it has been laid down that delay and laches in claim of compassionate appointment cannot be permitted.

(ii) State of Jammu & Kashmir & Others vs. Sajad Ahmad Mir [(2006) 5 SCC 766]



Compassionate appointment cannot be granted after 10 to 14 years of death of the employee that also after the son attains majority.

(iii) Jagdish Prasad vs. State of Bihar & Anr. [(1996) 1 SCC 301]

(iv) Haryana State Electricity Board & Anr. vs. Hakim Singh [(1997) 8 SCC 85].”

10. Therefore, in this backdrop of the legal principle, as laid down by the Hon’ble Supreme Court through various judgments, as well as the fact that the father of the petitioner died in 2002 and the family of deceased employee has been surviving since last 17 years and therefore, we do agree with the submission of learned Addl. Advocate General that there is no need to remit this matter to the District Magistrate, Bhojpur (Ara) for reconsideration.

11. Accordingly, this Letters Patent Appeal stands dismissed.

(Hemant Kumar Srivastava, J.)

(Prabhat Kumar Singh, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.01.2020
Transmission Date	N/A

