

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17983 of 2014

=====

Baidya Nath Karn Son of Late Kamla Kant Lal, resident of at Village-
Dherukh, P.O.- Benipur, P.S.- Bahera, District- Darbhanga

... .. Petitioner

Versus

1. The State Of Bihar, through Principal Secretary Water Resources Department, Government of Bihar, Sichai Bhawan, Old Secretariat, Patna
2. The Deputy Secretary, Department of Water Resources, Government of Bihar, Sichai Bhawan, Old Secretariat, Patna
3. Special Land Acquisition Officer, Son Flood Safety Planning, Anisabad
4. Special Land Acquisition Patna Officer, Son Project Arah
5. Director, Land Acquisition and Rehabilitation-cum-Department Secretary, Patna
6. The District Magistrate Arah Cum Chairman, District Compassionate Appointment Committee, Bhojpur, Arah

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr.Dhirendra Narain Mallik
For the Respondent/s : Mr.Kumar Alok, SC 7

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 24-09-2019 Heard learned Counsel for the petitioner and the learned
Counsel for respondent State.

The petitioner, son of the employee dying in harness, has sought the benefit of compassionate appointment by the instant proceedings.

The brief facts are that father of the petitioner was working as Surveyer/Amin attached in the office of Special Land Acquisition Officer and he died while in service on 27.1.1995. Wife of the deceased employee (mother of the petitioner) applied in May 1995 itself for appointment on compassionate ground. The claim of



the mother of the petitioner was not acted upon by the authorities. The son upon attaining majority in 2010, applied for consideration and grant of compassionate appointment. The writ petition has been filed in the year 2014 i.e. on 17.10.2014, about more than 19 years after death of father of the petitioner claiming appointment on compassionate ground.

It is submitted by petitioner's Counsel that since no decision was finally taken in respect of mother's application made within time in 1995 itself the petitioner cannot be made to suffer on account of inordinate delay caused by the respondent authorities in considering the claim of petitioner's mother.

Petitioner's counsel has placed reliance on the decision in the case of *Lakshmi Kumari vs. State of Bihar* reported in 2019(3) PLJR 379. The brief facts in the case of *Lakshmi Kumari (supra)* is being reproduced from para 2 of the said judgment which is as follows:-

“The brief facts of the case, according to the petitioner, is that the father of the petition died in harness on 3.6.2003, whereafter the mother of the petitioner had applied for appointment on compassionate ground in the prescribed format on 4.9.2004, however, her case was kept pending by the authorities for more than six years and ultimately, her claim was rejected in the year 2010 vide letter dated 25.3.2010 issued by the Deputy Collector (Establishment) Darbhanga on the ground of her being overage. Subsequently, the mother of the petitioner appears to have applied for appointment of her elder daughter i.e. the petitioner herein, on compassionate ground in



the year 2010 itself, however, the claim of the petitioner has been rejected in the year 2018.”

The lapse of time is a necessary factor to be considered in a claim for compassionate appointment. The facts in the case of Lakshmi Kumari would reveal that within six years application of the mother had been rejected. Immediately thereafter the elder daughter had submitted her application for appointment on compassionate ground. Still the claim of the petitioner was rejected that also much later in the year 2018 on the ground of application being made by delay and after 5 years from death of employee in harness. It was in these circumstances that the court held that the petitioner therein could not be deprived of her appointment on compassionate ground on account of delay occasioned by the authorities.

The facts in the instant case presents a different picture all together. Mother of the petitioner applied in 1995. The mother took no steps thereafter including approaching this court for long period of time i.e. for about 15 years. After 15 years, the instant petitioner who was a young child at the time of death of his father, has made his application for appointment on compassionate ground on 5.7.2010.

Long lapse of about 15 years and the laches on behalf of mother of the petitioner by not seeking any redress regarding non consideration of the claim may be detrimental to the claim of the mother itself. If the case of the mother was not being considered for about 15 years normal prudence would require approaching the higher authorities or approaching this court diligently, if the family was in penury. On the contrary, mother of the petitioner has never approached this court.

After 15 years of her application the son has applied



trying to obtain compassionate appointment by alleging inaction on the part of the state authorities. The claim of the instant petitioner (son) has for the first time been made 15 years after death of his father. Such long lapse of time is detrimental to the claim in respect of compassionate appointment as very concept of compassionate appointment is to tide over the sudden crisis. Lethargy in the matter to agitate the claim for years together, in the instant case till date, cannot enure to the benefit of the son (petitioner).

In this connection this Court would refer to decision of the apex court in the case of ***Umesh Kumar Nagpal vs. The State of Haryana & ors***, reported in ***(1994) 4 SCC 138***. This Court would consider it useful to reproduce paragraph 6 of the judgment which reads as follows:-

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

Recently apex court has held that immediacy of the need is an essential element and forms the basis of claim for compassionate appointment. In this connection this court would refer to decision in the case of ***State of Himachal Pradesh and another vs. Shashi Kumar*** reported in ***(2019) 3 SCC 653***.

The admitted position is that original applicant i.e. the mother has never approached this court and till date even though her claim has not been rejected. By no stretch of imagination in such circumstances a right can now be claimed by the son (present



petitioner), that also 15 years after death of his father to claim the benefits of compassionate appointment.

Since claim of the mother is not before this Court, whether the authorities were justified in sitting tight over the claim is an issue on which this Court refrains from commenting upon.

The son, however, has no right in view of the aforesaid discussion.

The writ petition of the son claiming compassionate appointment after such long delay on basis of an application made for compassionate appointment 15 years after death of his farther in harness is devoid of merit and the same is dismissed.

SNkumar/-

U			
---	--	--	--

(Madhuresh Prasad, J)

