

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.196 of 2014

In
Civil Writ Jurisdiction Case No.2491 of 2012

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1. The Bihar State Electricity Board through its Chairman, Patna
 2. The Chairman, Bihar State Electricity Board, Patna
 3. The Secretary, Bihar State Electricity Board, Patna
 4. The General Manager-Cum-Chief Engineer, Magadh Electricity Supply Range, Magadh Division, Gaya
 5. The Electric Executive Engineer, Electric Supply Sub -Division, Dehri

... .. Appellant/s

Versus

1. Aabid Hussain, S/o- Late Sahamuddin Ansari, R/o- Village Mudiyar, P.O.- Mudiyar, P.S.- Akodhi Gola, District- Rohtas
2. The State of Bihar, through its Principal Secretary, General Administration Department, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha, S.C..

Mr. A.K. Karna, Adv.

For the Respondent/s : Mr. J.K. Verma, Adv.

Mr. Anjani Kumar, Adv.

Mr. Abhishek Anand, Adv.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

7 05-09-2019 Heard learned counsel for the parties.

The instant LPA has been preferred under Clause 10 of the Letters Patent of Patna High Court Rules, against the judgment dated 09.10.2012, passed in C.W.J.C. No. 2491 of 2012, whereby the learned Single Judge quashed the policy



decision of the State Government, issued vide Circular/Letter no. 937, dated 23.06.2005, as contained in Annexure-5 to the writ application, under the signature of Joint Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna, whereby decision had been taken that if a government servant married while earlier marriage subsists without permission of the Government then such spouse and children of such spouse would be disentitled from appointment on compassionate ground. The learned Single Judge also quashed the consequential order, issued vide Letter No. 3207 dated 30.08.2011, as contained in annexure-6 to the writ application, under the signature of General Manager-cum-Chief Engineer, Magadh Electricity Supply Range, Magadh Division, Gaya, whereby the writ petitioner's claim for being appointed on compassionate ground, since his father, late Sahamuddin Ansari, who was posted as Lines Man at Aurangabad Electricity Supply Sub-Division no.1, Dehri, died in harness on 07.09.2003, was rejected. Consequently learned Single Judge directed the employer to appoint the respondent no.1 preferably within a period of three months.

In view of the conflicting decisions on the issue as to whether the children of second wife, if the deceased employee



had not taken permission under Rule 23 of the Bihar Government Servant Conduct Rules, 1976 before solemnizing second marriage during subsistence of first marriage, can claim compassionate appointment, a Divisional Bench, vide order dated 09.12.2013, passed in L.P.A. No. 1305 of 2013 (the Bihar State Electricity Board and Ors. Vs. Chandra Shekhar Paswan and Ors.) referred the matter to a larger bench.

The Full Court, vide judgment dated 18.04.2019 passed in L.P.A. No. 1305 of 2013 and other analogous L.P.As., came to a conclusion that if the government employee performs second marriage without permission of the Government under the Rule, that can be a misconduct and in case punishment is awarded for such misconduct, then that can be a relevant consideration for denying compassionate appointment. However, if no disciplinary proceeding is initiated for any misconduct against the government employee while in service then in that case, after his death, his dependents cannot be denied compassionate appointment. The Full Bench modified the writ order and quashed the Circular/Letter dated 937 dated 23.06.2005, issued under the signature of Joint Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna to the extent it prevents the children



of the second wife from being appointed on compassionate ground and further modified the order of the learned Single Judge, whereby the respondents were directed to appoint the writ petitioner on compassionate ground to the extent that the respondents were directed to consider the claim of the petitioners of the said case for appointment on compassionate ground and to issue appropriate orders as early as possible preferably within a period of three months from the date of receipt/production of a copy of the order.

In view of the decision of the Full Court, Mr. A.K. Ojha, learned counsel for the appellants seeks permission to withdraw the present L.P.A. with a prayer for modification of the operative portion of the order of the learned Single Judge in terms of the judgment of the Full Bench as much as to the extent that the Board be directed to consider the compassionate appointment of respondent no.1 within a time frame.

In the circumstances, the instant appeal is permitted to be withdrawn with modification in the order of learned Single Judge to the extent that let the Board/competent authority consider the appointment of respondent no.1 on compassionate ground and such decision should be taken and the representation to that effect be disposed of within a period of three months of



the receipt/production of a copy of this order.

Accordingly, the instant appeal is dismissed as
withdrawn with above observation and direction.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

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