

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2185 of 2016

In
Civil Writ Jurisdiction Case No.2337 of 2014

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Nitesh Sinha, s/o Rabindra Parsad and late Ginni Sinha (Mother), resident of Road No.- 2, Khas Mahal, Chiraiyatand, PS- Jakkanpur, PO- GPO- District Patna.

... .. Appellant

Versus

1. The State of Bihar, through the Principal Secretary, Department of Education, Bihar, Patna
2. The Special Secretary cum Deputy Director, Department of Education, Bihar, Patna.
3. The Regional Deputy Director of Education, Patna Division, Situated at Floor No.- 4, Room No.- 706, Budha Marg, Patna
4. The District Programme Officer (Establishment), Situated in Collectariate Compound, PO- GPO, Patna
5. The Principal, Badshah Nawab Rizvi Training College, Gulzarbag, Patna- 800007

... .. Respondents

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Appearance :

For the Appellant/s : Mr.Jagjit Roshan

For the Respondent/s : Mr. Shashi Shekhar Tiwary, AC to AAG 15

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 18-11-2019

Heard learned Counsel for the appellant and learned Counsel for the respondents.

In the present *intra* Court appeal, challenge is to the judgment, dated 02.12.2015, passed by the learned Single Judge, in CWJC No. 2337 of 2014, whereby he has dismissed the writ



petition, wherein a prayer was made for directing the respondent authorities to appoint the appellant on compassionate ground on account of death of his mother in harness.

2. Learned Counsel appearing for the appellant submitted that the learned Single Judge failed to appreciate the fact that the brother of the appellant was separate in mess and business and was not offering any support to the family. His gainful employment could not have been a ground for negating the right of the appellant to be appointed on compassionate ground. He further contended that since father of the appellant is also suffering from several ailments and most of his earnings are being spent on medical expenses, his earning, as a retired Government servant, could not have been made a ground for denying the compassionate appointment to the appellant.

3. Learned Counsel for the State submitted that there is no illegality in the judgment of the learned Single Judge. He contended that the father of the appellant was in Government service and is drawing pension after his superannuation; whereas, the sibling of the appellant is also gainfully employed. That apart, on account of the death of the mother of the appellant, family pension is also being paid to the dependents of the deceased



employee. In that view of the matter, the learned Single Judge rightly rejected the application filed on behalf of the appellant.

4. We have heard learned Counsel for the parties.

5. The facts of the case, in brief, are that the mother of the appellant was working on the post of Craft Teacher, posted in Badshah Nawab Rizvi Training College, Patna. She died in harness on 15.03.2013. Prior to the death of the mother of the appellant, the father of the appellant, who was also in Government service, had retired on attaining the age of superannuation on 31.05.2007. The elder brother of the appellant is also in a private job. After the death of the mother of the appellant, when the appellant filed his application for appointment on compassionate ground, the application was forwarded by the Principal of the College to the Regional Deputy Director of Education, Patna. The prayer of the appellant for appointment on compassionate ground was negated by the respondent on the ground that the father of the appellant was also in Government service and, thus, the appellant did not deserve to be appointed on compassionate ground.

6. It is, in this background, the appellant filed the writ petition, which was considered by the learned Single Judge and vide order, dated 02.12.2015, he declined to issue any *mandamus*



in favour of the appellant for his appointment on compassionate ground.

7. The operative portion of the order, dated 02.12.2015, passed by the learned Single Judge, reads as under:-

“The facts of the present case are that father and mother of the present petitioner were both government servants. The father retired and is drawing pension. Mother continued in service. But, unfortunately, she passed away due to cancer. The petitioner thereafter applied for compassionate appointment. The liability within the family has been indicated that the elder brother of the petitioner is working in a private company. Details of which has not been deliberately provided, as to the nature of work and the name of the company. Merely taking a plea that he separated from the family, not taking responsibility of the family may not do. The petitioner seems to be the only unemployed progeny of the two government servants. There seems to be enough resources to run the affairs of the family.

The Court, therefore, will not give any direction for engagement of the petitioner under under compassionate head, because this case does not come within the purview of the object for which is required to be made.

Writ application stands dismissed with observation as above.”



8. It is well settled position in law that the policy of compassionate appointment in public service is not a right, but a benefit held out by the State to rescue the family of an employee, who died in harness. It is the financial hardship upon the untimely death of an employee while in service, which furnishes the basis for the State to make an appointment on compassionate ground.

9. The object of appointment on compassionate ground and the factors for being taken into account before offering such appointment has been considered by the Supreme Court, in several cases. In the case of ***Umesh Kumar Nagpal v. State of Haryana***, reported in (1994) 4 SCC 138, the Supreme Court observed, “*As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure*



humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.”

10. In the instant case, the husband of the deceased employee was in Government service and upon attaining the age of superannuation, he was receiving pension. The dependents of the deceased employee were also getting family pension. That apart, another brother of the appellant was also employed and was in a private job.



11. Having considered all these aspects, if the respondents denied the appellant appointment on compassionate ground, no illegality can be found in the action of the respondents, as the family of the deceased employee was not placed in a position of financial hardship due to her untimely death. The learned Single Judge rightly took a view that no direction for engagement of the appellant on compassionate ground is required to be made.

12. The appeal is, accordingly, dismissed.

13. The parties shall bear their own costs.

(Ashwani Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
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