

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1209 of 2018

In

Civil Writ Jurisdiction Case No.12305 of 2017

Aditya Yuvraj Gond S/o Late Shashi Kumar Gond Resident of Sutanpur,
Danapur Cant. P.O. Danapur, P.S. Danapur, Dist - Patna.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administration Department, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mrigank Mauli, Advocate
Mr. Prince Kumar Mishra, Advocate
For the Respondent/s : Mr. Dharendra Kumar, A.C. to A.A.G. 6

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-04-2019

Heard Shri Mrigank Mauli learned counsel for the
appellant, and Shri Dharendra Kumar for the State.

The challenge raised is to the impugned judgement of
the learned Single Judge dated 2nd of August, 2018 whereby the
claim of compassionate appointment of the respondent-
petitioner has not been found to be acceptable on account of the
fact that the respondent was a minor at the time of the death of
his father on 31st of December, 2001 and that the mother of the
respondent-petitioner who had moved an application, had not
accepted the employment and rather made a request for the
appointment of the respondent-petitioner on compassionate
basis. The claim of the respondent-petitioner was rejected that
gave rise to the writ petition being C.W.J.C. No. 12305 of 2015.



We have considered the submissions raised and the undisputed facts are that the employee died on 31st of December, 2001. It appears that there was some alleged information with regard to the employment of the deceased employee based on a fake certificate. This, in the year 2010 was found to be incorrect. It is, thereafter, that the mother of the respondent was informed vide a letter dated 1st of March, 2013 to submit requisite documents in order to consider her claim for compassionate appointment. This document is at Annexure 7 to the writ petition. The mother, instead of herself, made a request that her son should be offered that appointment. The said claim, according to the counter affidavit of the respondent State, came up for consideration before the Central Compassionate Appointment Committee on 28th of November, 2013 and the said request was declined on the ground that the respondent-petitioner was a minor and his claim has come up after 11 years of the death of the employee whereas it could have been set up only within 5 years of the death of the employee as per the Rules. Therefore, the claim cannot be considered.

The matter was sent for re-consideration before the Committee on the request of the respondent-petitioner and again on 28th May, 2015, a decision was taken reiterating the earlier



decision and rejecting the claim of compassionate appointment on the ground of delay of its presentation.

Learned counsel for the appellant contends that this delay was not on account of the appellant or any fault on his part, inasmuch as the claim which had been made by the mother of the appellant was given up by her in favour of the appellant who had pursued the matter well within time after the department had resolved the controversy with regard to the fake certificate of the deceased employee on the basis whereof it was alleged that he had obtained employment. Thus, in the absence of any such delay on the part of the dependant of the deceased, the decision taken through the communication dated 19th June, 2015 is not based on correct facts.

The same argument has been advanced while assailing the impugned judgement and it is urged that the learned Single Judge has calculated the age on the basis of the affidavits on record to conclude that since the appellant was a minor and his application had been given after more than 5 years as prescribed under Rules, therefore, the same was not entertainable.

We have considered the submissions raised and we find that the appellant was admittedly a minor at the time of



death of his father in the year 2001. The claim was set up by the mother and it is correct that intimation with regard to the enquiry about the fake certificate remained pending till 2010 when it was informed that the said allegations were not found to be correct. However, the fact remains that the claim of compassionate appointment by the mother was not pursued and when the department called upon the mother to submit her documents, she, instead of submitting her documents, set up the claim for the appellant requesting the department to consider compassionate appointment of the appellant as he was eligible for such consideration.

The aforesaid facts clearly indicate that even though the period of 5 years is sought to be explained by contending that delay was on the part of the department, yet the fact remains that this claim on behalf of the appellant was set up after almost 11 years of the death of the employee. The conclusion, therefore, drawn by the authorities that the claim was set up after 5 years is correct, insofar as the appellant is concerned. The mother had given up her claim so as to accommodate the son and which aspect came to be considered by the Compassionate Appointment Committee, as is evident from the resolutions dated 28.11.2013 and 28.05.2015. In effect,



there is no challenge raised to the said resolutions, but the communication dated 19th June, 2015 is based on the said decisions taken by the Compassionate Appointments Committee. In the said background, we find that the claim of the appellant cannot be said to be within the time prescribed of 5 years and, even otherwise, was set up for the first time after 11 years of the death of the deceased employee.

Apart from this, even as on today, the claim of compassionate appointment, if considered now, would be after 17 years of the death of the employee which, in our opinion, would not be equitable or even otherwise lawful to consider keeping in view the background that the application had to be moved within 5 years of the death of the employee.

We are, therefore, not inclined to entertain this appeal and interfere with the judgement of the learned Single Judge.

The appeal is accordingly consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

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