

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7180 of 2017

=====

Pramod Kumar Son of Late Chandra Bhushan Srivastva Resident of Hospital
Road, P.S. - Bettiah Sadar, District West Champaran, Bettiah

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Health Department, Government of Bihar, Patna
3. The Director in Chief (Administration) Health Services, Government of Bihar, Patna
4. The Regional Deputy Director, Health Services, Tirhut Division, Muzaffarpur, Muzaffarpur
5. The District Magistrate, West Champaran, Bettiah
6. The Civil Surgeon cum Chief Medical Officer, West Champaran at Bettiah
7. The Additional Chief Medical Officer, West Champaran at Bettiah

... .. Respondent/s

=====

Appearance :

For the Petitioner

: Mr. Rajeeva Roy, Advocate.

Mr. Manoj Kumar Jha, Advocate.

Mr. Rajesh Kumar Verma, Advocate.

For the Respondents

: Mr. Nagendra Pd.Yadav-Sc23

Mr. Sudhir Kumar Singh, AC to SC 23.

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 07-01-2019

Heard Mr. Rajeeva Roy, learned advocate for the
petitioner and Mr. Sudhir Kumar Singh, learned AC to SC
23.

2. The petitioner is aggrieved by the order dated
18.08.2015 contained in Memo No. 1454 issued under the
signature of Civil Surgeon-cum-Chief Medical Officer
(Respondent No. 5) whereby the services of the petitioner
have been terminated with immediate effect on the sole
premise that the appointment of the petitioner on
compassionate ground was obtained on wrong facts.



3. The petitioner was appointed on compassionate ground by the Civil Surgeon, West Champaran who had the authority to take a decision in matters of compassionate appointment at the relevant time.

4. The brief facts which are necessary to be noted in the present petition for coming to any conclusion is that the father of the petitioner was serving in the Primary Health Centre, Manjhauliya in the district of West Champaran as a Clerk who died during service on 26.05.1994. Because of the death of the father, the petitioner as his legal heir, applied for being appointed on compassionate ground as by that time he had become eligible and as he had passed Intermediate Examination. The petitioner was appointed as a Clerk on compassionate ground and was posted in the Primary Health Society, Mainatand in the year 1995. Since then, the petitioner has been discharging his duties which were entrusted to him. Needless to state that all the incidence of service viz. opening of service book, salary account were being regularly maintained and the petitioner was also accorded the benefit of ACP in the year 2007 by the competent authority.

5. It may also be noted that the mother of the petitioner also, at the relevant time and even in the present time, is in Government service. The appointment



of the petitioner on compassionate ground took place because the parents of the petitioner did not enjoy good domestic relationship and in fact there had been a separation between the parents of the petitioner and as per the agreement, the petitioner along with his two sisters were to be looked after by the father, whereas another son viz. Prakash Kumar was to be maintained by the mother viz. Mamta Devi.

6. The details of the nomination made by the father of the petitioner and his service papers are not necessary to be recorded here. What is relevant to state is that during the pendency of the service of the petitioner, some complaints were made regarding the illegal/irregular appointment of the petitioner on compassionate ground but on enquiry such complaints were not taken note of. However later, with the order impugned, the services of the petitioner has been terminated with immediate effect, in view of a circular of the Government contained in Memo No. 13293 dated 05.10.1991 which prohibits continuation of any appointment, if obtained on wrong disclosure of facts. The other ground for terminating the employment of the petitioner is that at the relevant time, the Civil Surgeon concerned did not have the competence to provide appointment on compassionate ground. It is also



worth while to mention that the order of the Civil Surgeon was for a brief period stayed.

7. Learned counsel for the petitioner has submitted that at the time when the petitioner was appointed on compassionate ground, it was taken into account that the petitioner was the only eligible heir of the deceased employee because of the separation and arrangement between his parents. It has also been submitted on behalf of the petitioner that the circular prohibiting doling out compassionate appointment by the Civil Surgeon came into effect on 27.04.1995, way after the petitioner was appointed on compassionate ground. It has also been urged on behalf of the petitioner that even otherwise, the services of the petitioner could not have been terminated without following the provisions contained in Article 311 (2) of the Constitution of India and that also in the absence of any misconduct on his part or of having obtained the appointment by fraud or any wrong disclosure. Every fact was laid bare by the petitioner in his representation and the petitioner had been working for twenty years.

8. Terminating his appointment at this stage has not only caused immense hardship to him and his family members but is also not in consonance with the established principle of service jurisprudence.



9. In support of the aforesaid contention, learned counsel for the petitioner has drawn the attention of this Court to the judgment delivered by Supreme Court in case of ***Md. Zamil Ahmed Vs. State of Bihar & Ors.*** reported in ***2016 (12) SCC 342*** in which case, a brother of the deceased employee was given appointment on compassionate ground. After about 15 years of his appointment, the State/employer discerned that the brother of the deceased was not included in the definition of "dependent" of the deceased and hence he could not have been appointed. As such, the appointment of the brother of the deceased employee was set aside. The Supreme Court was strongly of the view that there was no justification to terminate the services of an employee and that too, when he had not made any false declaration or had suppressed any material fact in securing his appointment. The State, it has been held by the Supreme Court could not have taken advantage of its own mistake.

10. As opposed to the aforesaid contentions, learned counsel appearing for the State has drawn the attention of this Court to a judgment delivered by this Court in case of ***Umeshwar Dayal Singh vs. the State of Bihar & Ors.*** reported in ***2003 (2) BLJR 1209***. In the aforesaid case, the division bench of this court was dealing with the claim of a person whose both parents



were in service and had the occasion to analyze a circular which prohibited the appointment of any person, on the death of one of the deceased parent on compassionate ground during the subsistence of the service of the other spouse/parent.

11. The facts in the aforesaid case are absolutely different from the facts of the case. In Umeshwar Dayal Singh (supra), the bench was of the view that unless the circular in question of the Bihar Government was given effect to in letter and spirit, it would amount to creating a special class of heirs of Government servant which would be in the nature of a Zamindari rights in the family of such Government servants.

12. The facts of the present case are absolutely different. The petitioner in the present case was exclusively under the care of the deceased employee. Though for all practical purposes there was no divorce between his parents but the parents of the petitioner stayed separately and by virtue of a private arrangement, the petitioner was undertaken to be looked after and maintained by his father (deceased employee). All these facts were taken note of by the concerned authority and then only the petitioner was given appointment on compassionate ground.

13. This court also takes notice of the fact that for the last 20 years, he petitioner has been serving the



department and has also been granted the benefit of ACP in the year 2007 after completing 12 years of service.

14. Considering the aforesaid facts the order of termination contained in Memo No. 1454 dated 18.08.2015 cannot be sustained in the eyes of law.

15. The order is accordingly set aside.

16. The respondent authorities are directed to reinstate the petitioner on the post on which he was working. However for the period that the petitioner has not worked, he shall not be paid his wages.

17. With the aforesaid direction the writ petition is disposed off.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.01.2019
Transmission Date	

