

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15462 of 2019

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Sahil Kumar (Minor) through his Natural Guardian (Mother), Sarita Triki
Wife of late Munib Oraon, Resident of Village- Jabka, P.O. Bhawal, P.S. Ram
Nagar, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Bailey Road, Patna.
2. The Deputy Inspector General of Police, Central Region, Patna.
3. The Senior Superintendent of Police, Patna.
4. The District Magistrate Cum Chairman Compassionate Ground,
Appointment Committee, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajive Ranjan Singh, Advocate
		Mr. Shanti Bhushan Singh, Advocate
For the Respondent/s	:	Mr. Shiv Shankar Prasad (SC 8)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 05-08-2019

Heard the learned counsel for the parties.

2. The petitioner, an applicant for being appointed

as Child Constable on compassionate ground has

challenged the order dated 17.07.2018 passed by the

Senior Superintendent of Police, Patna whereby his claim

has been rejected on the ground that he is the son of the

deceased constable with his second wife and the first wife

of the deceased constable is still surviving.



3. The rejection of the claim of the petitioner is thus on the basis of a circular of the Government contained in Letter No. 937 dated 23.06.2005 indicating that any government servant whether under the personal law or under an agreement has contracted second marriage during the subsistence and lifetime of the marriage with another person without the prior approval of the Government, children born out of such marriage would not be entitled for being considered for compassionate appointment.

4. Learned counsel for the petitioner submits that the aforesaid circular of the Government (Letter No. 937 dated 23.06.2005) has been held to be ultra vires the Constitution and arbitrary and has been set at naught by a Full Bench judgment of this Court in *Bihar State Electricity Board and Ors. Vs. Chandra Shekhar Paswan and Ors.* 2019 (2) PLJR 500. In the aforesaid judgment, the issue in question was : (a) whether the condition imposed by the circular in Letter No. 937 dated 23.06.2005 issued under



the signature of the Joint Secretary, Personal and Administrative Reforms Department, Government of Bihar, Patna which bars compassionate appointment to the children born from the second marriage of the deceased employee is legal and justified and (b) whether the condition of prior approval of employer before second marriage becomes *sine qua non* for grant of compassionate appointment to the children born of second marriage to the deceased employee. A third question which arose for consideration before the Full Bench was whether the claim of compassionate appointment could originate from the misconduct committed in service by a deceased employee.

5. After referring to several decisions on the point, the Full Bench came to the conclusion that such exclusionary directive is arbitrary and ultra vires (refer to *Union of India and Anr. Vs. V.R. Tripathi 2019 (1) Scale, 302*).

6. It was also held by the Full Bench that an employer who is amenable to part-III of the Constitution



cannot deny the benefit of compassionate appointment which is available to the legitimate children. The State cannot lay down a condition while making a scheme or rules inconsistent with Article 14 of the Constitution. The Bench took the view that if the children born out of a void/voidable marriage are also considered to be legitimate children, they cannot be denied the advantage of being considered for compassionate appointment, should the occasion so arise. If a Government servant, while in service commits a misconduct, he could be proceeded against and be punished. However such misconduct of an employee or his subsequent punishment would not be a relevant consideration for denying the compassionate appointment to his dependent.

7. In the present case, under the personal law, a Muslim male can marry another lady during the subsistence of the marriage in the life of the first wife but subject to her approval. In the case of the deceased employee, no proceeding was initiated against him for any



misconduct of the rules so framed and in that event, it was absolutely unjustified for the authorities to have denied the benefit of the scheme of compassionate appointment to the petitioner who is the son born out of the second wife of the deceased employee.

8. Apart from this, the order of the Government *viz.* Letter No. 937 dated 23.06.2005 which has been taken shelter of by the respondents has been set aside as being ultra vires the Constitution and also being arbitrary. The provisions of such letter could not have been resorted to for rejecting the rightful claim of the petitioner.

9. For the aforesaid reasons, the order dated 17.07.2018 passed by the Senior Superintendent of Police, Patna cannot be sustained in the eyes of law and is set aside.

10. The matter is remitted to the Senior Superintendent of Police, Patna (respondent no. 3) for writing out a fresh order in accordance with law. In case the claim of the petitioner is found to be tenable,



necessary order shall be passed by the concerned respondent within a reasonable period, preferably within a period of three months of the receipt/production of a copy of this order.

11. The writ petition stands allowed accordingly.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.08.2019
Transmission Date	

