IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 276 of 2019

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Gunjan @ Gunjan Kumar @ Gunjan Kumar Srivastava, aged about 33 years, Son of Late Arun Kumar Srivastava, Resident of Village & PO - Mubarakpur, P.S.-Marhowrah District-Saran, Chapra and Presently resided at H/o, Raman Kumar Srivastava, 153, Uma Niketan, third Floor, North Anandpuri, West Boring, Canal Road, Patna P.S.-S.K. Puri, Town + District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Personnel and Administration Reform Department, Govt. of Bihar, Patna, Old Secretariat, Patna.
2. The Joint Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Old Secretariat, Patna.
3. The Deputy Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Old Secretariat, Patna.
4. The Principal Secretary, Vigilance (Investigation Bureau), Govt. of Bihar, Patna.
5. The Director General, Vigilance (Investigation Bureau), Govt. of Bihar, Patna.
6. The Inspector General, Vigilance Department, Government of Bihar, Patna.
7. The Superintendent of Police, Cabinet Vigilance Department, Investigation Bureau, Govt. of Bihar, Patna.
8. The Principal Secretary, Personnel and Administrative Department, Old Secretariat, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr Dhirendra Narain Mallik, Advocate
For the Respondent/s : Dr Mankeshswar Tiwari, AC to AAG III

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 04-07-2019

Learned counsel for the petitioner is permitted to add Principal Secretary, Personnel and Administrative Reforms Department as respondent No 8 to this writ petition.

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Heard learned counsel for the petitioner and the respondent-State.

Claim of the petitioner for appointment on compassionate ground has been made since father of the petitioner is traceless with effect from 08.01.1994. This fact is admitted by the respondents. On lapse of the requisite period of seven years, respondents have acknowledged civil death of the father of the petitioner to make available the retiral benefits to the dependents of the deceased employee. Claim of the petitioner for compassionate appointment on account of civil death of his father having occurred in 2001 has, however, been rejected relying upon Circular No 281 dated 01.02.2006. Claim has also been rejected by assigning a reason that petitioner's claim cannot be considered as per Government decision dated 31.10.2008, as the same has no retrospective effect.

The issue whether having regard to the provisions contained in the departmental Circular dated 01.02.2006, claim of the petitioner could have been rejected, even though the right accrued in favour of the petitioner for consideration of appointment on compassionate ground, earlier in January 2001, is the issue which falls for consideration in the instant proceeding.

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Provisions contained in one Circular No 9739 dated 26.11.1997 to consider the case of dependents of those Government servant who have remained traceless for seven years for appointment on compassionate ground was not revised in the Circular dated 01.02.2006. taking notice of this fact, this Court, in the case of *Smt Kaushalya Devi -Versus- State of Bihar & Others, 2009 (2) PLJR 325*, quashed the rejection of the petitioner's claim for compassionate appointment and directed for consideration of the claim on the basis of Circular dated 26.07.1997.

Judgment in the case of Smt Kaushalya Devi (supra) was also relying upon earlier decision of this Court in the case of *Md Noor Alam -Versus- State of Bihar & Others reported in 2007 (4) PLJR 200.* This Court would consider it useful to quote paragraphs 5 & 6 of the judgment in the case of *Smt Kaushalya Devi (supra)* which reads as follows:-

> *5. The other case relied upon by learned counsel for the petitioner is that of Md Noor Alam vs The State of Bihar and Others: 2007 (4) PLJR 200 and its analogous cases in which it has been held by this Court in para-3 as follows:-*
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> *"Having heard counsel for the petitioner and having perused the pleadings filed by them including different circulars relied on during the hearing of the writ petition, namely, Circular Letter No 13293 dated 05th October, 1991, Circular Letter No 9739 dated 26th November, 1997, Annexure-12 to the supplementary affidavit, and the Circular Letter No 281 dated 01.02.2006, Annexure-A, I am*

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of the view that the State Government has already taken a decision which is contained in Circular Letter No 9739 dated 26th November, 1997, Annexure-12 to the supplementary affidavit to consider the case of the dependents of those Government servants who have remained traceless for seven years for appointment on compassionate ground which decision has not been revised in the subsequent Circular bearing Letter No 281 dated 01.02.2006, Annexure-A. In the circumstances, I have no option but to quash the order bearing Letter No 49 dated 10.02.2005, Annexure-9/Office Order No 122 dated 31st August, 2005, Annexure-2/Memo No 260 dated 03.02.2004, Annexure-5/Memo No 1629 dated 02.08.2005, Annexure-8 and to direct that the State Government is duty bound to consider the case of the petitioners in the light of the instructions contained in Circular Letter No 9739 dated 26th November, 1997, Annexure-12 to the supplementary affidavit but while considering their case for such appointment, the State Government/competent authority of the department concerned shall take into account the family income of the traceless Government servant from other sources; movable/immovable properties on the basis of which the family survived during the preceding years. Such information is sought for compassionate appointment as provided in Circular Letter dated 05.10.1991 and if the family members/dependents survived the intervening seven years in penury then they shall be granted compassionate appointment, otherwise not. The case of the petitioners for compassionate appointment shall be considered as early as possible, in any case within a period of three months from the date of receipt/production of a copy of this order before the Secretary, Personnel and Administrative Reforms Department/Secretary, Minor Irrigation Department/Environment and Forest Department, Bihar, Patna/Secretary, Bihar State Electricity Board, Patna/District Magistrate -cum- Chairman, District Compassionate Committee, Patna."

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> *6. In the Md Noor Alam's case (supra) this Court had considered the Circular Letter No 281 dated 01.02.2006 on the basis of which the case of the present petitioner has been rejected and it was held that the decision taken by the State Government in Circular Letter No 9739 dated 26.11.1977 to consider the case of the dependents of those Government servants who have remained traceless for seven years for appointment on compassionate ground has not been revised in the subsequent letter No 281 dated 01.02.2006. It was accordingly, directed in the said case to consider the case of the petitioners therein for compassionate appointment as early as possible."*

Case of instant petitioner is also covered by the decision in the case of *Smt Kaushalya Devi (supra)*. The admitted facts are that, upon father of the petitioner going traceless on 08.01.1994, claim of the petitioner for compassionate appointment arose in the year, 2001 itself when the Circular dated 26.11.1997 was in force. Consideration of the petitioner's claim on the basis of Circulars of the State Government decisions which have come into existence much later, i e, 11.02.2006 and 31.10.2008 by the authorities is, therefore, not in accordance with law. In the order passed by the authorities, they have not considered the claim of the petitioner with reference to the Circular dated 26.11.1997 which, for claim of the petitioner, is the relevant Circular.

Matter is, therefore, remitted to respondent No 8 for consideration afresh having regard to the Circular dated

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26.11.1997 and decision of this Court in the case of *Smt Kaushalya Devi (supra)*.

Let final decision be taken by Principal Secretary, Personnel and Administrative Reforms Department (respondent No 8) expeditiously, without any undue delay and preferably within three months from the date of receipt/production of a copy of this order.

Writ petition is allowed with the aforesaid observations and directions.

Orders dated 06.06.2018 passed by the Joint Secretary -cum- First Appellate Tribunal of Public Grievance Redressal Forum, as also order dated 216.07.2018 passed by the Principal Secretary, Personnel and Administrative Reforms Department -cum- Second Appellate Tribunal, Public Grievance Redressal Forum are quashed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.07.2019
Transmission Date	NA

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