

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2 of 2018

In

Civil Writ Jurisdiction Case No.13967 of 2010

Navin Kumar Son of Late Ajay Kumar Choudhary resident of village -
Kharauna Jai Ram, P.O. - Kharauna Dih, P.S. - Kudhani, District -
Muzaffarpur.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The District Compassionate Appointment Committee Bhagalpur through its
Chairman the District Magistrate
3. The District Magistrate, Bhagalpur.
4. The Deputy Collector-in-charge Establishment, Bhagalpur, P.O., P.S. and
District - Bhagalpur.
5. The Excise Superintendent, Bhagalpur, P.O., P.S. and District - Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Kant Singh, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 18-04-2019

The appellant in this appeal challenges the order of
the learned Single Judge dated 29.11.2017 passed in
C.W.J.C. No. 13967 of 2010, whereby the claim of the
petitioner for appointment on compassionate ground was
dismissed on the ground that one of the brothers of the
appellant was employed in Air Force.

So far this issue is concerned, the same has already



been settled by a Full Bench decision of this Court in the case of Niraj Kumar Mallick & Ors. Vs. The State of Bihar & Ors. The relevant Paragraph No. 47 of the said judgement is being reproduced hereinbelow for ready reference:

“47. So far as the clarification that “gainfully employed” means such employment from which the employed dependent of the deceased Government servant may provide sustenance or can maintain other dependents is concerned, it has to be looked at “objectively” and not “subjectively”. It is not for the authority considering the application for compassionate appointment to find out as to whether the dependent in employment is willing to take care of other dependents or not. It would not be his concern that the gainfully employed sibling is actually providing sustenance to the other dependents or not. Any argument that the dependent in employment is not willing to provide sustenance/maintenance to other dependents or that the employed one is living separately is beyond the scope and ambit of consideration under the given scheme and policy of the Government and this Court sitting in its writ jurisdiction under Article 226 of the Constitution of India would not go into enquiring the correctness of the facts so pleaded before the Court. It is because the writ Court is to be conscious of the judicial pronouncements of the Hon’ble Apex Court wherein it has been repeatedly held that a Court has no power to ignore a provision to relieve what it considers a distress resulting from its operation. We have quoted paragraphs 10 and 11 of the judgement



of Asha Ramchandra Ambedkar (supra) only to remind us what the Hon'ble Apex Court has held in the following words:-

“the Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however hard the case may be, it should never be done.”

In view of the fact that the issue involved in the case has already been decided by the aforesaid Full Bench judgement, nothing remains to be decided in this appeal.

As such, there being no merit in this appeal, the same is dismissed.

(Amreshwar Pratap Sahi, CJ)

(Partha Sarthy, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.04.2019
Transmission Date	N/A

