

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2063 of 2020

=====

Parmila Devi Wife of Lal Bahadur Singh Resident of Village-Marhar, Post-Ankorh, Police Station-Navi Nagar, District-Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Bihar Patna.
3. The Director Inspector of General, Tirhut Range, Muzaffarpur.
4. The Superintendent of Police, Sitamarhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Tiwary
For the Respondent/s : Mr.Anil Kumar, AC to SC 8

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 20-02-2020

Heard counsel for the petitioner and counsel for the respondents-State.

The petitioner has approached this court assailing rejection of her claim for appointment invoking sympathy by the State having regard to pathetic medical condition of her husband, who served as a Sub Inspector from 01.09.1981 till 01.09.2014 i.e. date on which he voluntarily retired.

Petitioner's claim for appointment based on medical condition of her husband invoking sympathy, has been rejected by the Superintendent of Police, Sitamarhi. Reason assigned is that appointment based on compassion is only given under scheme for compassionate appointment to specified dependent/ heir of an



employee who dies in harness. Petitioner's husband is ill. No scheme has been brought to the notice of this court under which petitioner can claim appointment on account of her husband's voluntary retirement necessitated on account of his illness.

On specific query whether there is any provision which sustains the claim of the petitioner for appointment, though her husband has sought voluntarily retirement on medical condition, the answer is in the negative.

Clearly, petitioner has no legally enforceable claim based on any corresponding legal duty cast upon the State or Public Authority, based on any resolution, scheme, or instruction which provides for appointment to the wife of an employee, who has voluntarily retired owing to his physical incapacity. In such circumstances whether petitioner can seek issuance of a writ of mandamus, directing her appointment is an issue which is no longer *res integra*.

It is trite law that in exercise of jurisdiction under Article 226, this court may issue orders in the nature of a writ of mandamus, but for enforcement of fundamental, non-fundamental or other ordinary legal rights. Before issuing such a command the court must come to a conclusion regarding existence of such a right to be enforced, or that such right has been infringed.



Existence of a legal right of a citizen and a corresponding duty or obligation of the State or Public Authority is a prerequisite to exercise of writ jurisdiction under Article 226 of the Constitution of India for issuing a command in the nature of a writ of mandamus. Petitioner has not shown any scheme/resolution/instruction under which she can claim any right to be considered for being offered appointment in view of the fact that her husband took voluntary retirement by his application dated 01.09.2014 on grounds of his illness.

No case is made out for exercise of writ jurisdiction in favour of the petitioner.

Writ petition is dismissed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2020
Transmission Date	NA

