

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.728 of 2018

In
Civil Writ Jurisdiction Case No.2339 of 2016

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Lalwati Devi, Wife of Late Ram Balak Das, Resident of Village- Rampur
Nausahan, P.O.- Jadhua, P.S. Industrial Area, Hajipur, District- Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar through the Law Secretary, Govt. of Bihar, Patna.
2. The District Judge, Civil Court, Vaishali at Hajipur.
3. The Judge In-charge Administration, Civil Court, Vaishali at Hajipur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar, Adv.
		Mr. Raja Ram Rai, Adv.
For the State	:	Mr.Gyan Prakash Ojha, GA-7
For Respondent Nos. 2 and 3	:	Mr. Bindhyachal Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020



Heard Mr. Sanjay Kumar, learned counsel for the appellant and Mr. Bindhyachal Singh, learned counsel for the Respondent Nos. 2 and 3.

Re. Interlocutory Application No. 1 of 2018/5222 of 2018.

The above mentioned Interlocutory Application has been filed with a prayer for condonation of delay of 100 days in filing the present appeal.

Considering the grounds taken in the limitation petition suggesting sufficient reason for not filing the appeal in time by the appellant, the delay of 100 days in filing the present appeal is condoned.

Accordingly, I.A. No. 1 of 2018/5222 of 2018 stands disposed of.

Re. L. P. A. No. 728 of 2018.

The present Letters Patent Appeal has been directed against the order dated 08.01.2018, passed in C.W.J.C. No. 2193 of 2016, whereby, the learned single Judge has rejected the claim of the appellant for compassionate appointment since the appellant had challenged the order dated 29.9.2011, as contained in Annexure 9 to the writ application rejecting her claim for



compassionate appointment after about six years.

The factual matrix of the case is that the husband of the appellant, Ram Balak Das was a Class -IV employee in Civil Court, Vaishali at Hajipur. The husband of the appellant was found dead on 25.10.1998 as his dead body was recovered near the railway track but since it could not be identified, hence the dead body was disposed of by the railway authorities though the family members of the appellant identified the dead body on the basis of the clothes (lungi) of the deceased. Subsequently, a complaint case being Compliant Case No. 649 of 1999 was filed by the appellant before the learned Judicial Magistrate, Vaishali at Hajipur with regard to the accidental death of her husband. Thereafter, on 26.10.1998, necessary information was given to the concerned authorities of the Civil Court, Hajipur and a request was made for payment of consequential benefits and appointment on compassionate ground. The appellant initially submitted a representation for being appointed on compassionate ground on 22.10.2001, thereafter another representation was submitted on 22.12.2001 and lastly on 27.08.2011 respectively. The death certificate of the victim was



submitted by the appellant before the concerned authority on 09.08.2005. However, the appointment committee of the Civil Court, Vaishali kept the application of the appellant for compassionate appointment pending for about nine years. Thereafter, vide Letter No.12/Confidential, dated 11.05.2010 issued by the Judge I/c Administration, Civil Court, Vaishali intimation was given to the appellant that her claim for appointment on compassionate ground has been rejected by the competent authority. Thereafter, the appellant challenged the said order dated 11.5.2010 rejecting the claim, in a writ application being CWJC No. 5956 of 2011. The learned Single Judge, vide order dated 1.8.2011 as contained in Annexure 7 to the writ application, quashed the order rejecting the claim of the appellant for appointment on compassionate ground since the order dated 11.5.2010 was neither reasoned nor speaking one, with a direction to the District Judge, Vaishali at Hajipur to pass a fresh speaking order within a period of eight weeks from the date of production/communication of the order. In pursuance to the order of the writ Court, the concerned appointment committee considered the claim of the appellant afresh and vide order dated 29.09.2011, again



rejected the claim of the appellant for appointment on compassionate ground since though the appellant came to know about the factum of death of her husband on 25.10.1998, but the death certificate was submitted on 09.08.2005. Moreover, in view of the Letter No. 281, dated 01.02.2006 of the Personnel and Administrative Reforms Department, Government of Bihar, whereby a decision has been taken that if someone claims the death by virtue of presumption under Section 108 of the Indian Evidence Act, 1872 and claims such appointment after seven years then such benefit of compassionate appointment could not be given because the purpose of compassionate appointment is for providing immediate financial relief to the family members of the sole bread earner. The order dated 29.9.2011 whereby the claim of the appellant for compassionate appointment was rejected for the second time by the competent authority, was challenged by the appellant through a writ application being CWJC No. 2193 of 2016 and the learned single Judge vide order dated 08.01.2018 dismissed the writ application since the appellant filed the writ application on 1.2.2016 wherein she had challenged the rejection order after six years.



Learned counsel for the appellant submits that the husband of the appellant was presumed to be dead after seven years of the appellant's husband going traceless. The delay of five years in challenging the order dated 29.09.2011 whereby her claim for appointment on compassionate ground was rejected was only due to the financial distress and hardship faced by the appellant. It is further submitted that in a case of the employee being traceless, the benefit for compassionate appointment has been directed to be considered in terms of the ratio laid down in the case of *Kundan Kumar Vs. The State of Bihar* reported in 2017(4) PLJR 625.

Mr. Bindhyachal Singh, learned counsel for the respondent Nos. 2 and 3 submits that the appellant's claim for compassionate appointment was rejected after considering all aspects of the matter, in accordance with law. The ratio laid down in Kundan Kumar (supra) is not applicable to the case of the appellant since the appellant came to know about the death of her husband in 1998 itself and filed complaint in 1999. The necessary information was given to the Civil Court, Vaishali at Hajipur by the appellant on 26.10.1998. Hence, the



appellant cannot claim the benefit after presumption of death after seven years in view of the provisions as incorporated under Section 108 of the Indian Evidence Act.

Considering the rival submissions of the parties, we are of the view that the primary object of compassionate appointment is to save the bereaved family from sudden financial crisis occurring due to death of sole bread earner immediately after the death, but in the present case, admittedly, the death took place in 1998, the husband of the appellant was not coming to court, the appellant came to know about the death of her husband in 1998 itself as the appellant claimed death benefits of the deceased employee and made application for compassionate appointment before the Civil Court, Vaishali in 1998 itself which gets reflected from paragraph No.4(v) of the writ application, which reads as under:

“That the petitioner informed the concerned authorities of Civil Court, Hajipur about the incident on 26.10.98 and requested for payment of death benefits payable to her as well as appointment on compassionate ground due to starving condition and miserable financial position of the family of the deceased having no source of income.”

We are also of the opinion that the case of *Kundan*



Kumar (supra) has no application in the present case, as in the said case, the bread earner was traceless but neither the appointment was claimed nor any benefit was claimed immediately after the death. Moreover, if the family members of the deceased employee survived for 22 years, we do not find that the consideration for compassionate appointment could have been made in favour of the appellant, since the objective of compassionate appointment has not been envisaged for such circumstance, but its scope is only for the purpose of providing immediate succour and relief to the distressed family whose sole bread earner dies in harness. Though the Civil Court, Vaishali initially took nine years to dispose of the application of the appellant but it appears that after seven years of the claim of compassionate appointment, in 2005, the death certificate was submitted by the appellant and delayed disposal of the application was never claimed by the appellant at earlier stage when first writ application was filed. This is also not in dispute that the present writ application has been filed after six years of the rejection of the claim of the appellant.

The delay has always been considered vital point for not interfering in the matter while exercising jurisdiction under Article 226 of the Constitution. There cannot be a fixed yardstick for rejecting such claim on the ground of delay. Such exercise of discretion depends upon the facts and circumstances of each case. The important factor for denying the relief due to delay is



due to the third party right being created in the meantime. Exercise of discretionary jurisdiction under Article 226 of the Constitution in a delayed matter has been considered by the Apex Court in the case of State of M.P. Vs. Nandlal Jaiswal, reported in (1986) 4 SCC 566. Paragraph 24 of the judgment reads as follows:

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important



factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.....”

Merely because in the first round of writ application, the matter was remanded back, that does not give a fresh cause of action to the appellant as has been held by the Apex Court in the case of Union of India Vs. M.K. Sarkar, reported in (2010) 2 Supreme Court Cases 59. Paragraph 15 of the judgment reads as follows:

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

In view of the discussions made above, we are not



inclined to interfere with the order of the learned Single Judge.

Accordingly, Letters Patent Appeal stands dismissed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-Anil/

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

