

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17715 of 2018

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Sanjeev Kumar Koushik, son of Late Chandar Pandit, resident of Village - Dhobai, Post Office and Police Station - Tarapur, District - Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The District Magistrate cum the Chairman, District Compassionate Committee, Purnea.
3. The Chief Engineer, Sinchai Srijan, Purnea, Department of Water Resources, Purnea.
4. The Deputy Collector, Establishment, Purnea.
5. The Executive Engineer, Bathnaha Araria, Department of Water Resources, Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar, Advocate
For the Respondent/s : Mr. Harish Kumar- GP8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 05-08-2021

Heard learned counsel for the petitioner and learned counsel for the respondents through video conference.

2. The present writ petition has been filed “*for issuance of order/orders, direction/directions and writ in appropriate nature against the Letter No. 667/रप्रा. Purnea dated 01.06.2018 issued by the Respondent No.2, the District Magistrate cum the Chairman, District Compassionate Committee, Purnea whereby and whereunder the representation for compassionate appointment with the order dated 30.03.2018 passed by this Hon’ble Court in C.W.J.C. No. 4679 of 2018 has been rejected*”



without considering the directions of this Hon'ble Court, stating therein the brother of the petitioner is in service".

3. The short facts of this case according to the petitioner are that consequent upon his father dying in harness on 02.06.2008, the petitioner applied for compassionate appointment. The application was however rejected by order dated 14.5.2010 as communicated by letter dated 2.6.2010 (Annexure-2). Thereafter, a review petition was filed by the mother of the petitioner for his compassionate appointment which was however also rejected. The petitioner then approached this Court in CWJC No. 4679 of 2018 which was disposed of with a direction to pass a reasoned and speaking order keeping in view certain circulars of the State Government as enclosed in the writ petition. In due course, the impugned order dated 01.06.2018 (Annexure-10) was passed.

4. Learned counsel for the petitioner submits that he ought to have been granted compassionate appointment as applied for and the same ought not to have been rejected on the ground that his elder brother was gainfully employed in the Army. It is stated that the elder brother was living separately and did not contribute to the family expenses and, as such, the same ought not to have been come in the way of grant of compassionate appointment. He relies on circular dated 24.3.2009 (Annexure-11)



to the effect that extant circulars did not prohibit compassionate appointment merely on the ground that another eligible heir of the deceased was gainfully employed.

5. Mr. Harish Kumar, learned counsel for the respondent appears and opposes the writ petition. He points out that the application of the petitioner had been rejected firstly as far back as in the year 2010 and thereafter the review petition filed by his mother was also rejected on 19.9.2014. He relies on a Full Bench judgment of this Court in CWJC No. 17143 of 2016, Niraj Kumar Mallick Vs. The State of Bihar and analogous cases, to oppose the claim of the petitioner.

6. Having heard the parties and on a consideration of the materials on record, this Court finds the writ petition to be devoid of merit. It is not in dispute that the petitioner's elder brother was gainfully employed in the Army. The impugned order has referred to Circular No. 15783 dated 19.11.2014 based on the observations of this Court in CWJC No. 6668 of 2003 and CWJC No. 7044 of 2003 to the effect that if any of the heirs of the deceased is gainfully employed, then other heirs would not be eligible for compassionate appointment.

7. The judgment of the Full Bench of this Court in case of Niraj Kumar Mallick (supra) has categorically explained that if



a dependent of the deceased is gainfully employed, then other heirs are precluded for being granted compassionate appointment, regardless of whether the employed dependent lives together or separately. It has been held as follows-

*“46. I am of the considered opinion that keeping in mind the object of the compassionate appointment and well settled legal proposition that it is not a source of recruitment, it is a policy decision based on a sound public policy provided in the clarification that where any of the dependents of the deceased government servant is “gainfully employed”, no other dependent would be entitled to get the benefit of the scheme of compassionate appointment. Government has come out with a policy that the dependent who is gainfully employed is living separately from other dependents cannot be a reason to provide appointment and irrespective of that whether employed one lives together or separately the other dependents would not get the benefit of compassion. The word “dependents” here take into it’s fold all the siblings of the applicant. The clarification as contained in Clause (d) of Annexure-A to the counter affidavit is based on the views expressed by the Hon'ble Division Bench of this Court in the case of **Vishal Kumar** (supra) and at the same time it is in consonance with the law laid down by the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal** (supra) as also other judgments of the Hon'ble Supreme Court.*

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 paragraph 10 and 11 of the judgment 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”.

8. It also cannot be lost sight of that the father of the petitioner died as far back as in the year 2008 and more than a decade has elapsed since. It can no longer be said that there is any



immediate crisis that needs tiding over upon the death of the petitioner’s father, which is the main object and purpose of grant of compassionate appointment.

9. In the above circumstances, this Court is not inclined to interfere in the matter. The writ petition stands dismissed.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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