

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17156 of 2017

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Ranjeet Kumar Son of Late Surendra Prasad, resident of village- Bari Kewai,
P.O.- Daniyawan, P.S.- Shahjahanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. District Magistrate-cum-Chairman, Compassionate Appointment
Establishment Committee, District- Nala
3. Deputy Collector, Establishment Nalanda, District Nalanda at Biharsharif.
4. Block Development Officer Ekangar Sarai, District- Nalanda.
5. The Circle Officer, Daniyawan, District Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Upendra Prasad, Advocate
Mrs. Veena Kumari Jaiswal, Advocate
For the Respondent/s : Md.N.H.Khan -SC-1

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 15-03-2021 Heard learned counsel for the petitioner and the

State.

The grievance of the petitioner in the present writ petition is that prayer of the petitioner for compassionate appointment was rejected by the respondents on the ground that the brother of the petitioner was gainfully employed in Central Government.

Learned counsel for the petitioner has drawn the attention of the Court to the order dated 27.7.2012 passed in CWJC No. 10632 of 2012, as contained in Annexure-10 to contend that in that writ petition, the Court has issued direction



to consider the case of the petitioner for compassionate appointment notwithstanding the fact that the brother of the petitioner of that case was employed in Railway. The aforesaid order of the learned Single Judge reads as under:-

“This writ petition has been filed by the petitioner seeking writ of certiorari to quash the order dated 17.12.2011 passed by the District Compassionate Appointment Committee, Nalanda at Biharsharif by which the application of the petitioner for appointment under dying in harness rules has been rejected.

The application for appointment under dying in harness rules has been rejected on the ground that at the time of death of the petitioner's father who died in harness one son of the deceased was in service in the department of railways. The deceased was an employee of State of Bihar. He was head clerk in the office of Executive Engineer, Waterways Division, Nalanda, Biharshariff.

The appointment in dying in harness is governed by the Government order issued by the State of Bihar from time to time in its executive power under Article 162 of the Constitution of India. No rule under Article-309 proviso-2 has been placed before me, which specifically provides that the benefit



of compassionate appointment shall be available to only one dependent of the deceased. Thus, dependent of deceased is to be read along with the definition of the family given in the government order. The family is defined containing the wife of deceased, son, unmarried daughter and widow of the son. It is a settled law that the definition of the family has to be considered in the context the word 'family' has been used in the context of dependency not as a whole.

Thus, if at the time of death a son is in employment will not be a ground for rejecting the application of the dependent son, who was not in service and is entitled for appointment in dying in harness rule as he will fall within the meaning of the definition of the family being dependent on the deceased.

The learned State Counsel Mr. Dhurandhar Kumar, A.C. to S.C.16 submitted that the Division Bench in L.P.A. held that if the son is employed the claim does not go to the other son.

I have perused the judgment carefully, the rules as explained above have not been taken in account in the said judgment.

Thus, the rejection of the application of the petitioner on that ground is contrary to the



Government order and is hereby set aside. The writ petition is allowed. The District Compassionate Appointment Committee, Nalanda at Bihar Sharif is directed to reconsider the application of the petitioner for appointment under dying in harness rules.”

It appears from the aforesaid order that learned AC to SC 16 had pointed out a judgment of the LPA Bench where the claim was rejected on the ground that other son was gainfully employed but the learned Single Judge had not even whispered about the judgment of the Division Bench. The learned single Judge simply observed that ‘I have perused the judgment carefully, the rules as explained above, have not been taken in account in the said judgment’. The aforesaid discussion is indicative of the fact that the learned Single Judge had proceeded as if compassionate appointment is reservation and the dependent has right to appointment notwithstanding the fact that other brother is gainfully employed.

The basic idea behind compassionate appointment is to provide social security by way of financial assistance to the family of the employee died in harness to tide over the financial crisis occasioned on account of untimely death of the deceased employee. This Court as well as the Apex Court has occasion to



consider the scheme of compassionate appointment as social security measure and the Apex Court has considered the objectives of compassionate appointment and held out that compassionate appointment is not a reservation available to the family.

Learned counsel for the petitioner submits that the decision of the writ court was challenged by the State in LPA No. 504 of 2016 and the Division Bench has not interfered with the order dated 27.7.2012 passed in CWJC No. 10623 of 2012.

Counsel for the petitioner further submits that the brother of the petitioner is not looking after the family.

From perusal of the judgment dated 26.04.2017 passed in LPA No. 504 of 2016, it is apparent that the LPA was dismissed on the ground of inordinate delay in filing the appeal and the ground set out for condonation of delay was found to be inappropriate. In the aforesaid circumstances, the LPA Court had not gone into the merit of the findings of the learned Single Judge.

Considering the aforesaid facts and circumstances, the Court is of the considered view that the decision of the respondents rejecting the prayer of the petitioner for compassionate appointment on the ground that brother of the



petitioner was already in job in Central Government, does not suffer from any arbitrariness and as such this Court does not find justification to interfere with the impugned order passed by the respondents.

The submission of the petitioner that his brother, who is in employment of the Central Government, is not looking after the family does not impress this Court. The aforesaid submission is noted to be rejected only.

The present writ petition lacks merit. It is, accordingly, dismissed.

(Anil Kumar Upadhyay, J)

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