

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.123 of 2021

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Srawan Kumar S/o Late Chandra Shekhar Singh, resident of Mohalla - Purana
Khagara Ward No. 20, P.O., P.S. and District - Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The High Court of Judicature at Patna through Registrar General.
3. The Registrar General, Patna High Court, Patna.
4. The Registrar (Administration) Patna High Court, Patna.
5. The District and Sessions Judge, Kishanganj.
6. The Administration in-charge, Civil Courts, Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rabi Bhushan, Advocate
	:	Mr. Pankaj Kumar Sinha, Advocate
	:	Ms. Rakhi Kumari, Advocate
For the Respondent No.5:	:	Mr. Piyush Kumar Lal, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 30-11-2021

In the instant petition, petitioner has prayed for following relief/reliefs:

“(i) To issue an appropriate order/s, direction/s including a writ preferably in the nature of Mandamus commanding and directing upon the respondents to appoint the petitioner on compassionate ground against Class IV Post as such her mother died in harness.

(ii) To direct the respondent No. 5 to consider the case of the petitioner in the matter of compassionate appointment who has applied for the same within the prescribed time and accordingly appoint him.

(iii) To direct the respondents to appoint the petitioner on compassionate ground against Class IV Post in view of Hon’ble Courts letter No. 1211-47 A.D. Misc. Section dated 10.01.2017 which prescribes that % compassionate



appointment against Class IV post shall be made out of sanctioned strength.

(iv) To any other relief/s to which the petitioner may be found entitled in the facts and circumstances of the case.”

The petitioner’s mother who was in service died on 29.01.2016. Resultantly, petitioner submitted application on 10.03.2016 to appoint him on compassionate ground.

The grievance of the petitioner has not been considered by the respondents. In their counter statement, it is submitted that by virtue of policy of the High Court dated 04.01.2016, 3 % of the posts were earmarked for compassionate appointment and it would be effective from 04.01.2016. Total cadre strength of the posts are 66 and 3 % would be 2 posts. Learned counsel for the respondents vehemently contended that those two posts with reference to 3 % read with the policy decision of the Court dated 04.01.2016 has been given effect to in filling up of two posts namely Shri Vikram Kumar Shrivastava and Shri Chandan Kumar Singh. Their particulars are that Shri Vikram Kumar Shrivastava father’s died on 28.08.2018 and Shri Chandan Kumar Singh father’s died on 23.02.2012 and it is much prior to policy dated 04.01.2016. Filling up of these two posts could not be decide with reference to 3 % determination in the policy dated 04.01.2016 for the reasons that policy decision determining 3 % compassionate appointment dated 04.01.2016 has no retrospectivity. In other



words, in absence of determination of percentage of the posts, Shri. Vikram Kumar Shrivastava and Shri. Chandan Kumar Singh were to be accommodated. The 3 % quota earmarked for compassionate appointment would operate from 04.01.2016, the date of introduction of policy whereas petitioner's mother died on 29.01.2016 and application is dated 10.03.2016, therefore, the policy dated 04.01.2016 in determining 3 % earmarked for compassionate appointment is applicable to the petitioner's case and not to the cases of Shri. Vikram Kumar Shrivastava and Shri. Chandan Kumar Singh.

In the light of these facts and circumstance, the petitioner is entitled to compassionate appointment.

Apex Court in the case of **The State of Madhya Pradesh and Ors. vs. Ashish Awashthi CIVIL APPEAL NO. 6903 OF 2021** with **The State of Madhya Pradesh and Ors. vs. Baalendu Yadav CIVIL APPEAL NO. 6904 OF 2021**, Paragraph Nos. 4 and 4.1 read as under:

“4. The deceased employee died on 08.10.2015. At the time of death, he was working as a work charge employee, who was paid the salary from the contingency fund. As per the policy/circular at the time of the death of the deceased employee, i.e., policy/circular No. C-3-12/2013/1-3 dated 29.09.2014 in case of death of the employee working on work charge, his dependents/heirs were not entitled to Rs. 2 lakhs as compensatory amount. Subsequently, the policy came to be amended vide circular dated 31.08.2016, under which even in the case of death of the work charge employee, his heirs/dependents will be entitled to the appointment on



compassionate ground. Relying upon the subsequent circular/policy dated 31.08.2016, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground. As per the settled preposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.

4.1 In the case of **Indian Bank and Ors. Vs. Promila and Anr., (2020) 2 SCC 729**, it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in the case of **State of Madhya Pradesh and Ors. Vs. Amit Shrivastava, (2020) 10 SCC 496**. It is required to be noted that in the case of **Amit Shrivastava (supra)** the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgement and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside.”

Principle laid down in the aforesaid decision is that for claiming compassionate appointment whatever the policy decision existing as on the date of application is to be invoked for the purpose of determining whether such a person is entitled to compassionate appointment or not and not with reference to the amended or later policy decision. In the present case Shri Vikram Kumar Shrivastava and Shri Chandan Kumar Singh cases are required to be decided with reference to policy i.e., prior to 04.01.2016. Therefore, 04.01.2016 policy is not attracted for the above persons. 3 % quota of posts are to be applied to such of the persons who claim compassionate appointment from 04.01.2016



onwards. Thus, the concerned respondent is hereby directed to re-examine the petitioner’s claim for compassionate appointment in the light of the above observations and proceed to appoint petitioner within a period of two months from the date of receipt of this order.

With the above observation, petition stands disposed of.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2021
Transmission Date	NA

