

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6677 of 2018

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Shiv Kumar Pandey Son of Late Dhirendar Pandey, Resident of Village-Khairi, P.O.-Waini, P.S.-Pusa, District-Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General Of Police, Central Range, Patna.
3. The Inspector General of Police, Patna.
4. The Senior Superintendent of Police, Patna.
5. Meena Devi, Wife of Late Dhirendra Pandey, Resident of Village-Khairi, P.O.-Baini, P.S.-Pusa, District-Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar
For the Respondent/s	:	Mr. P.K. Verma-AAG-3 with Mr. Suman Kumar Jha, AC to AG-3
For Private respondent		Mr. S. Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date: 27-07-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. Heard Mr. Ajit Kumar, learned counsel for the petitioner and Mr. P.K. Verma, learned Additional Advocate General No.3 for the State of Bihar.

3. The petitioner is seeking quashing of an order/decision of Patna District Compassionate Appointment Committee, whereby petitioner's application for his appointment on compassionate basis has been rejected as time



barred and has been communicated to the petitioner *vide* letter dated 08.04.2011 issued under the signature of Senior Superintendent of Police, Patna. It is the petitioner's case that no copy of the said decision of the Patna District Compassionate Appointment Committee or the order of the Deputy Collector addressed to the office of the Senior Superintendent of Police, Patna, which is the basis for issuance of letter dated 05.04.2011 is available with the petitioner. The petitioner is also seeking a direction to the respondents to consider his case for compassionate appointment on the basis of representation dated 03.03.2016. In the alternative, the petitioner has sought for a direction to appoint petitioner's mother (Respondent No. 5), as indicated in the letter dated 08.04.2011 and other letters issued by the respondent; in case the Court is not inclined to allow the relief relating to petitioner's appointment on compassionate ground.

4. This is to be noted at this stage itself that this writ application was filed on 07.04.2018. The petitioner's case as disclosed in the writ petition is that his father was a constable in Patna District Police Force who died while working as constable on 07.07.1990. The widow of the deceased employee, viz, petitioner's mother made an application in the year 1991 for



her appointment on compassionate basis. As no action was taken on her application, the petitioner's mother made an application on 08.07.2004 for appointment of her son (the petitioner), on compassionate basis, in her place. It has been stated that thereafter certain papers and documents were demanded by the respondents for considering the request for appointment on compassionate ground. The matter, however, remained pending for considerable period of time and finally by the impugned communication dated 05.04.2011, the candidature of the petitioner for his appointment on compassionate ground has been rejected as time barred.

5. It is the petitioner's case that a request for appointment on compassionate basis made by her mother within time was allowed to remain pending for years together without any valid justification. It is, accordingly, the petitioner's case that the action of the respondent in rejecting the petitioner's claim for appointment on compassionate ground as time barred is wholly arbitrary and illegal, which requires interference by this Court, exercising power of judicial review under Article 226 of the Constitution of India.

6. A counter affidavit has been filed on behalf of the State-respondents stating therein that the petitioner's request for



appointment on compassionate basis was rightly rejected as, in terms of the scheme for appointment on compassionate basis, a dependent of a deceased employee can apply for such appointment within five years of the death of the employee. It has been stated specifically that after the death of the deceased employee, the mother of the petitioner had not submitted any application in the prescribed performa with affidavit and other documents, for sending them to the District Level Compassionate Appointment Committee for consideration. She, however, filed an affidavit in the year 2004 before the Department mentioning therein that at the time of death of her husband, both her sons were immature, as a result of which, she could not get advantage for appointment on compassionate basis and now since her elder son, viz, the petitioner is aged 19 years, in her place, the petitioner should be appointed on compassionate ground. It has been stated in counter affidavit that though the affidavit was filed by the petitioner's mother belatedly after a gap of fourteen years, the Department taking a lenient view had asked the petitioner to appear before the authority along with all relevant records, with an application with prescribed performa. Subsequent thereto, the petitioner appeared before the authority on 01.11.2006 and filed his



application but did not submit other relevant papers. After repeated reminders for submitting required papers, the petitioner appeared in the office of the deponents on 22.08.2008 but he did not submit required papers as e.g. death certificate, educational qualification, caste certificate and income certificate etc. He was again directed to submit required papers, whereafter, he submitted papers, which were sent to the Chairman, District Level Compassionate Appointment Committee, Patna. The District Compassionate Appointment Committee, has, however, rejected the application as being time barred.

7. A counter affidavit has also been filed on behalf of the mother of the petitioner, who has been impleaded as respondent No.5 in the present case, reiterating the averments made in the writ application and supporting the petitioner's case either for his appointment or appointment of respondent No.5 on compassionate basis.

8. It is to be noticed that no rejoinder affidavit has been filed on behalf of the petitioner to the said counter affidavit.

9. Mr. Ajit Kumar, learned counsel appearing on behalf of the petitioner has submitted that as the petitioner was minor on the date of death of his father, he could not have made



an application, under the scheme of compassionate appointment and after he attained the majority, he rightly applied for his compassionate appointment before the competent authority. He has argued that inaction on the part of the respondents, in not considering the case of the petitioner's mother for her appointment on compassionate basis is writ large and, therefore, this Court considering the peculiar facts and circumstance of the case, is required to interfere in the interest of justice. He has placed reliance on a decision of this Court in case of ***Most. Indu Devi Vs. State of Bihar and ors*** reported in **2013(3) PLJR 387** to contend that application filed by the petitioner should be considered to be in continuation of an earlier application filed by the petitioner's mother, which was allowed to remain pending for years together. He has argued that the authorities ought not to have rejected the petitioner's claim on the ground mentioned in the impugned communication.

10. Learned State Counsel in reply has, on the other hand, argued that there is no illegality in the impugned communication and the decision of the District Compassionate Appointment Committee. Laches on the part of the dependents of the deceased employee are evident from the facts disclosed in the writ petition itself, and, therefore, it deserves to be



dismissed, he contends.

11. I have perused the pleadings on record carefully and considered the rival submissions made on behalf of the parties as noted above.

12. The basic facts are not in dispute. The deceased employee died on 07.07.1990. Though it is the petitioner's case that his mother (respondent No.5) had made an application for appointment on compassionate basis, in the year 1991, there is no documents produced before this Court in support of such statement. In the counter affidavit, there is specific statement that the petitioner's mother had not submitted any application in prescribed performa with affidavit and other documents. For the first time, she submitted an affidavit before the Department in 2004 stating therein that since both her sons were not mature enough, she could not get advantage of appointment on compassionate ground and now since the elder son of the petitioner (the petitioner) is grown up and attained 19 years of age, he should be appointed on compassionate basis. The said application was rejected as time barred by the District Compassionate Appointment Committee in 2011 and this fact was duly communicated to the petitioner in the letter dated 08.04.2011 issued by the Senior Superintendent of Police, Patna.



It is the petitioner's own case that he did not pursue the matter any further soon after receipt of the communication dated 08.04.2011. He claims that five years thereafter, he filed another application in the year 2016 for reconsideration of his case for appointment on compassionate ground. Thereafter, in 2018, he has filed the present writ application seeking the reliefs as noted above.

13. It is to be kept in mind that it has been reiterated in a series of Supreme Court's pronouncements that compassionate appointment is given purely on humanitarian grounds with the only object to make available immediate relief to the family of the deceased employee to tide over the sudden financial crisis and cannot be claimed as a matter of right.

14. In case of ***Bhawani Prasad Sonkar Vs. Union of India and Ors*** reported in (2011) 4 SCC 209, the Supreme Court has reiterated the settled position that appointment based solely on descent is inimical to our constitutional scheme and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. The concept of compassionate appointment is recognized as an exception to the general rule, carved out in the interest of



justice, in certain exigencies, by way of a policy of an employer.

15. The Supreme Court laid down that such policy of employer partakes the character of the Service Rules and that being so, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. In case of ***SAIL v. Madhusudan Das*** reported in (2008) 15 SCC 560, the Supreme Court has observed that the appointment on compassionate ground cannot be claimed as a matter of right which is offered to a dependent of a deceased employee as an exception to the general rule, which is a concession not a right.

16. It would be beneficial at this juncture to notice the principles laid down by the Supreme Court relating to compassionate appointments in case of ***V. Sivamurthy v. State of Andhra Pradesh and Others*** reported in 2008 13 SCC 730 summarized in paragraph 18 as under:-

“18. (a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well-



recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well-recognised contingencies which are carved out as exceptions to the general rule are:

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of the family of the employee concerned, that is, spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, Classes III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or



II posts.”

17. Following the principles so enunciated in case of **V. Sivamurthy** (supra), it has been held in **Bhawani Prasad Sonkar** (supra) that an appointment on compassionate ground is to meet sudden crisis occurring on account of the death or medical invalidation of the breadwinner while in service. The Court reiterated that an application for compassionate employment must be without undue delay and has to be considered within a reasonable period of time. The twin contingency for grant of compassionate appointment, as noticed in case of **V. Sivamurthy** (supra), have been considered consistently by the Courts while considering the cases involving issues pertaining to appointment on compassionate basis.

18. In case of **Mumtaz Yunus Mulani v. State of Maharashtra** reported in (2008) 11 SCC 384, the supreme Court reiterated that appointment on compassionate grounds can only be granted to tide over the sudden crises of the family of the deceased. In the said case the widow of a Class IV employee working in a vocational institution of the nature of a public charitable trust, who had died in 1996, claimed appointment on compassionate ground. Apart from the fact that the respondent in that case was a charitable institution, run on government aid



and could not appoint persons in a post which had not been sanctioned, the Supreme Court observed in paragraph 17 as under:-

“17. Furthermore, about twelve years have passed. The appellant's son is aged about 20 years and daughter is aged about 16 years. Therefore, they have become major. The appellant herself would be aged about 38 years now. She cannot be given any appointment at this age.”

(Emphasis Supplied)

19. In case of ***Local Administration Department and Another v. M. Selvanayagam*** reported in (2011) 13 SCC 42, the son of the deceased employee was 11 years old at the time of the death of the employee in harness. The wife of the deceased had not made any request for appointment on compassionate grounds immediately thereafter. Nearly five and half years thereafter, the widow of the deceased made an application for appointment of his son on compassionate grounds, when the son was still a minor. Later, after seven years and six months of the death of the deceased employee another application was made for appointment of the son of the deceased. The Supreme Court noticing the said aspect of the matter and other attending circumstances held in paragraphs 11,



12 and 13 as under:-

“11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependants is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the dependants as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the



number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service."

(Underlined for emphasis)

20. The supreme Court in case of ***M. Selvanayagam***

(supra) recorded in paragraph 14 that in the facts of the said case



the municipal authority were clearly right in holding that whatever difficulty, the family of the deceased employee had been able to tide over the first impact of his death and concluded that that being the position, the case did come under the scheme of compassionate appointments.

21. In my opinion, the petitioner's case is squarely covered by the decision in case of *M. Selvanayagam* (supra) and *Mumtaz Yunus Mulani* (supra).

22. Admitted facts have been noted hereinabove. The deceased government servant died in 1991. The respondents have denied the widow of deceased having filed any application in accordance with the procedure prescribed therefor seeking compassionate appointment within five years of the death of the government servant. For the first time an affidavit was filed in 2004 for appointing the son of the deceased employee for appointing the petitioner on compassionate basis, 13 years after the death of the deceased employee. Further, the decision to reject the petitioner's application for appointment on compassionate ground was communicated in 2011. Admittedly, five years thereafter, the petitioner made a representation in 2016 and has come to this Court by filing the present writ application in 2018 challenging a communication relating to



rejection of his appointment on compassionate ground.

23. For the aforesaid reasons, I do not find any merit in this application. The decision rendered by this Court in case of **Most. Indu Devi** (Supra) relied on by learned counsel for the petitioner is of no help, in view of the law laid down by the Supreme Court, as noted above.

This application has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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