

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16934 of 2018

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Rakesh Kumar, S/o Late Madan Mohan Sah @ Madan Mohan Prasad,
resident of Village-Ahmedpur Bijruk, P.O.-Subnima, P.S.-Athmalgola,
District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Bihar, Patna.
2. The Director General of Police cum Inspector General of Police, Bihar, Patna.
3. The Principal Secretary, Department of General Administration, Govt. of Bihar, Bihar, Patna.
4. The Senior Superintendent of Police, Sitamarhi.
5. The Circle Officer, Athmalgola, Patna, District- Patna.
6. The Mukhia, Gram Panchayat Subnima, Athmalgola (Patna).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramhriday Prasad, Advocate Mr. Bauye Jee Jha (B.J. Jha), Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 16-09-2022

Today being Friday, matters are being taken up through virtual mode as per current procedure for hearing.

2. The Superintendent of Police, Sitamarhi has rejected the petitioner's claim for compassionate appointment on the basis of a Government decision dated 10.05.2010, bearing letter No.1781 of the General Administration Department, as reiterated in the communication dated 19.11.2014, which bars consideration



of a dependent for grant of compassionate appointment on the ground of his sibling being in employment.

3. The learned counsel for the petitioner submits that the said communications forming the basis of rejection of petitioner's claim has been considered by a Full Bench of this Court in the case of *Niraj Kumar Mallick vs. State of Bihar*, reported in **2018(2) PLJR 951**. The learned counsel has placed specific reliance on paragraphs 48 and 49 of the judgment, which read as follows:

“48. In terms of the clarification offered by the department, on receipt of information that other siblings of the applicant are in employment, the competent authority would be required to objectively look into the nature of the employment and the resources being generated by the employed sibling from such employment. On an objective consideration where it is found that other sibling of the applicant is gainfully employed in such an employment from which he/she is in a position and has capacity to provide sustenance/maintenance to the other dependents, the application for appointment on compassionate ground would not fit in the scheme in terms of the clarification at Annexure-"A" referred above but where it is found that the employment of the other sibling is of such a nature that it is not generating resources so as to make him able to provide both ends meet, for sustenance/maintenance to the other dependents of the deceased Government employee and despite gainful employment of one of the dependents but because of his poor income from such employment he is not in a position to provide two ends meet to the other dependents, therefore, they are on the verge of starvation, destitution and penury, the authorities of the State would be liable to consider the application of other dependent for appointment on compassionate ground. No other plea in any form whatsoever would be



a ground to provide the benefit of the scheme of compassionate appointment.

49. In my opinion the Division Bench judgment of this Court in the case of **Vishal Kumar** (supra) followed by learned Writ Court in the case of **Mahabir Paswan** (supra) and **Jay Prakash Choudhary** (supra) are laying down the correct law. In none of these writ applications, the petitioners have pleaded that their other siblings are in such an employment by which they are unable to get sufficient money so as to provide the both ends meet to these petitioners, therefore, we find no error in the impugned order rejecting the application of the petitioner(s) on the ground that their other siblings are in employment. I would, therefore approve the judgment dated 22.8.2016 passed by the learned Single Judge in CWJC No. 10236 of 2013 which has followed the judgment of the Hon'ble Division Bench in the case of **Vishal Kumar** (supra).”

4. The judgment is clear in its intent that the mere fact of sibling's employment is not sufficient and that the authorities are required to examine whether the employment generates sufficient income for saving the dependents from starvation.

5. From the order of rejection, this Court would find that there is no such consideration by the Superintendent of Police, Sitamarhi.

6. The petitioner's counsel submits that to support his claim regarding the income being insufficient, the petitioner would be filing details before the Superintendent of Police, Sitamarhi within two weeks. If such application is filed along with a copy of this order, the Superintendent of Police, Sitamarhi shall re-



consider the petitioner’s claim in light of decision of the Full Bench.

7. The order dated 14.05.2018 earlier rejecting the petitioner’s claim shall not stand in the way of such consideration.

8. Writ application is allowed.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

