

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20128 of 2018

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Tarun Kumar S/o Late Nawal Kishore Prasad R/o House No 119, C/o
Bhupendra Kumar, R.K. Puran Colony, Near Saguna More, P.O. and P.S.-
Danapur, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Registration Department, Government of Bihar,
Vikash Bhawan, Patna
3. The Inspector General of Registration, Registration Department, Govt. of
Bihar, Patna
4. The District Magistrate, District- Patna
5. The District Sub Registrar, Registry Office, Patna
6. The Deputy Collector, Establishment, Collectorate, Patna
7. The Sub Registrar, Registry Office, Phulwarishariff, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Rajpati, Advocate
		Smt. Durga Kumari, Advocate
For the Respondent/s	:	Mr. Anil Kr. Sinha- GA1

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 11-07-2022 The petitioner's claim for compassionate appointment, on
account of demise of his father in harness, has been rejected by
the proceedings of the District Compassionate Committee, dated
25.08.2018.

The committee has assigned a reason for rejection, being
the employment of his brother as a data entry operator having a
consolidated pay of Rs. 10,532/-. Reliance is placed on a
communication of the General Administration Department,
dated 19.11.2014.



In view of the nature of rejection, the Court would consider the decision of the Full Bench in the case of ***Niraj Kumar Mallick vs. the State of Bihar & Ors.*** reported in **2018 (2) PLJR 951**, paragraph 47 and 48 of the judgment read as follows:-

“47. 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.

48. 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”.

From proceedings of the District Compassionate Committee, it is more than obvious that there is no consideration on the grounds mandated by the Full Bench decision in the case of **Niraj Kumar Mallick** (supra). This is manifested from bare perusal of the proceedings of



Compassionate Committee, as it does not specify that the petitioner's sibling has sufficient income to maintain the other dependents of the deceased.

The petitioner's counsel submits that in this regard he would be approaching the District Magistrate, Patna specifying the number of dependents of the deceased, viz-a-viz, the income of the sibling and the financial condition to bring his case within the parameters of the Full Bench decision in the case of *Niraj Kumar Mallick (supra)*, taken note above.

If such application is filed by the petitioner within three weeks, it is needless to say that the District Magistrate, Patna shall consider the claim.

Decision of the Compassionate Committee, dated 25.08.2018, insofar as the petitioner is concerned, is quashed.

Application is disposed of.

If the petitioner makes his representation within three weeks, the Compassionate Committee headed by the District Magistrate, (Respondent No. 4) shall take a decision expeditiously and preferably within 3 months.

(Madhuresh Prasad, J)

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