

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6972 of 2019

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Rupesh Kumar Sahni, aged about 26 years, male, Son of Late Ram Narayan Sahni R/o Village Semmuapur P.S. Dumariya Ghat, District-East Champaran

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The District Magistrate, Gopalganj.
3. The District Level Compassionate Committee through its Chairman, District Magistrate, Gopalganj.
4. The Additional Collector, Gopalganj.
5. The S.D.O. Gopalganj.
6. The Deputy Collector, (Establishment), Gopalganj.
7. The Circle Officer, Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar Pandey, Adv.
For the Respondents : Mr. Ajay Kumar AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-07-2022

Heard learned counsel for the petitioner and learned counsel for the State.

2. Learned counsel for the petitioner submits that the petitioner's claim for compassionate appointment has been rejected at the meeting of the District Compassionate Committee dated 12-01-2019 by assigning a reason that the petitioner's sibling is gainfully employed.

3. The submission of the petitioner's counsel is that the settled law in view of the decision of the Full Bench in the case of *Niraj Kumar Mallick and others vs. State of Bihar and*



others reported in **2018(2) PLJR 951** is that the authorities are required to examine whether the employment is such so as to fulfill the financial needs of the dependents of the deceased. No such scrutiny has been undertaken by the authorities which is not only in violation of the decision in the case of **Niraj Kumar Mallick** (supra) but also violating the communication of the State of Bihar in the General Administration Department dated 19-11-2014.

4. In view of the said submission, the State counsel being faced with the decision of the Full Bench is not in a position to contend otherwise. The matter is remanded to the District Magistrate, Gopalganj (Respondent No. 2) for ensuring consideration of the petitioner's claim in light of the decision in case of **Niraj Kumar Mallick** (supra). Paragraph No. 47 and 48 are useful for being quoted for easy reference and are hereby being quoted:-

"47. 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 paragraphs 10 and 11 of the judgment of Asha Ramchandra Ampedkar (**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."*

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”

5. Let the scrutiny be done ignoring the rejection of the petitioner’s claim earlier, within eight weeks from the date on which the petitioner submits his application staking his claim having regard to the settled legal position. The petitioner would be obliged to submit his claim within two week.

6. The application is disposed of.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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