

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6339 of 2020

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Munna Mallik Son of Laxmi Mallik, R/o Village- Naya Tola, Bari Hat, P.S. K. Hat, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
2. The Municipal Commissioner, Nagar Nigam, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashutosh Kumar Jha
For the Respondent/s	:	Mr. Rajiv Roy. GP 1
	:	Mr. Bijendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 08-02-2022

The matter is heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

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

“That this writ application is being filed for issuance of a writ in the nature of “Mandamus” commanding and directing the respondents authorities to make compassionate appointment of the petitioner, on the post of his deceased Mother who was regular employee of Nagar Nigam, Purnea and died during her service period.

(1/A) For issuance of other writ/writs, direction/directions, order/orders for which the petitioner found entitled to.”

3. Petitioner’s mother while working as a Sanitary worker in Nagar Nigam, Purnea died on 04.03.2018. Petitioner’s father Shri. Laxmi Mallik filed an application proposing name of his son



Munna Mallik that is petitioner for compassionate ground. The file was processed as is evident from Annexures A, B, C to the counter statement. Almost the petitioner's name was cleared for issuance of appointment against one of the Group D post. Thereafter, there was a protracted correspondence relating to issuance of fresh guidelines for compassionate appointment *vide* letter 226 dated 03.02.2020 (Annexure E) of General Administration Department repealed the earlier circular while prescribing minimum qualification 10th (Matriculation or equivalent examination) for the purpose of compassionate appointment to the Group D post, therefore, the petitioner name has not been considered for compassionate appointment.

4. The dates are undisputed that the petitioner's mother died on 04.03.2018. Application for compassionate appointment was submitted on 05.06.2018 as on the date of application i.e. 05.06.2018 the necessary guidelines is to be taken note of and not the guidelines dated 03.03.2020 (Annexure E) prescribing minimum qualification at 10th (Matriculation or equivalent examination), 03.03.2020 guidelines has prospective effect. In other words, the compassionate appointment claimed by any person subsequent to 03.03.2020, authorities have to insist pass in 10th matriculation. The respondents cannot insist that applicant



should have minimum qualification of 10th (Matriculation and equivalent examination). In other words policy dated 03.03.2020 cannot be given retrospective effect so also it is not applicable to the petitioner's case.

5. Having regard to the fact that petitioner's mother died on 04.03.2018 and application was submitted on 05.06.2018. Apex Court in the case of ***N.C. Santhosh Vs. State of Karnataka and Others*** reported in (2020) 7 SCC 617 (Paragraphs Nos. 9 to 20), it is held that for the purpose of examination eligibility criteria for compassionate appointment, the relevant date is date of application and the scheme of compassionate appointment/rules existing as on the date of application is required to be applied. Paragraph Nos 9 to 20 of the aforesaid judgement are held as under:

9. While Rule 5, as it originally stood, enabled a minor dependant to apply within one year after attaining majority, the rule-making authority with the amendment effected from 1-4-1999 stipulated an outer limit of one year from the date of death of the government servant for making application for compassionate appointment. The validity of the amended Rules is not challenged in any of the present proceedings. Following the amendment, the norms clearly suggest that the earlier provision which enabled a minor dependant to apply on attaining majority (may be years after the death of the government servant), has been done away with. The object of the amended provision is to ensure that no application is filed beyond one year of the death of the government employee. The consequence of prohibiting application by a minor beyond one year from the date



of death of the parent can only mean that the appellants were undeserving beneficiaries of compassionate appointment as they attained majority well beyond one year of the death of their respective parents.

10. In all these cases, when the government employee died, the appellants were minor and they had turned 18, well beyond one year of death of the parent. As can be seen from the details in the chart, the dependants attained majority after a gap of 2-6 years from the respective date of death of their parents and then they applied for appointment. By the time, the dependant children turned 18, the amended provisions became operational w.e.f. 1-4-1999. As such their belated application for compassionate appointment should have been rejected at the threshold as being not in conformity with proviso to Rule 5. The appellants applied for compassionate appointment (after attainment of majority), well beyond the stipulated period of one year from the date of death of the parent, and therefore, those applications should not have been entertained being in contravention of the Rules.

11. The provision of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 was considered in Commr. of Public Instructions v. K.R. Vishwanath [Commr. of Public Instructions v. K.R. Vishwanath, (2005) 7 SCC 206 : 2005 SCC (L&S) 927] . Speaking for the Division Bench, Dr Arijit Pasayat, J. noted that the effect of the amended second proviso is that, unless the application is pending at the time of commencement of the Amendment Rules, the same can have no bearing on the claim for compassionate appointment. Thus, belated application filed by the dependant on attaining majority beyond one year from the date of death of the government employee would not be a valid application, consistent with the provisions of the Rules.

12. Insofar as the appellant's claim to legitimacy of appointment on the basis of Rule 9(3) of the Rules is concerned, a reading of Rule 9(3) suggests that it is a transitory provision granting extension of time for



applying for compassionate appointment. But, the transitory provision excludes application filed in contravention of Rule 5, as amended in 1999. In other words, the applications filed by the minor dependants who had not attained majority within one year from the date of death of the government servants will be in contravention of Rule 5. Therefore, we are of the considered view that the cases of the appellants are not covered by the transitory provision of Rule 9(3) introduced by the Notification dated 28-5-2002.

13. It is well settled that for all the government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In SAIL v. Madhusudan Das [SAIL v. Madhusudan Das, (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

14. This Court in SBI v. Raj Kumar [SBI v. Raj Kumar, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognised in this judgment. Similarly, in MGB Gramin Bank v. Chakrawarti Singh [MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442] this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the government employee.

15. However, in Canara Bank v. M. Mahesh Kumar [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412



: (2015) 2 SCC (L&S) 539] in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8-5-1993), ex gratia payment was proposed (under the Circular dated 14-2-2005), the Court adopted a different approach. Noticing the extinguishment of the right to claim appointment, this Court held the “dying in harness scheme” which was prevalent on the death of the employee, be the basis for consideration.

16. A two-Judge Bench headed by Uday U. Lalit, J. noticed the Supreme Court's view in *SBI v. Raj Kumar* [*SBI v. Raj Kumar*, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] and *MGB Gramin Bank v. Chakrawarti Singh* [*MGB Gramin Bank v. Chakrawarti Singh*, (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442] on one side and the contrary view in *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in *SBI v. Sheo Shankar Tewari* [*SBI v. Sheo Shankar Tewari*, (2019) 5 SCC 600 : (2019) 2 SCC (L&S) 71] , the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

17. The above discussion suggest that the view taken in *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is to be reconciled with the contrary view of the coordinate Bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik v. State of Karnataka* [*Uday Krishna Naik v. State of Karnataka*, 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648] , it can not be said that the appellant's claim should be considered under the unamended provisions



of the Rules prevailing on the date of death of the government employee.

18. In the most recent judgment in State of H.P. v. Shashi Kumar [State of H.P. v. Shashi Kumar, (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542] the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.

19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

20. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed [N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396] by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments [N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396] , [Sayeda Farheen Banao v.



State of Karnataka, 2013 SCC OnLine Kar 6616] , [Santosh v. Revenue Deptt., WP No. 28738 of 2011, order dated 2-12-2011 (Kar)] , the appeals are found devoid of merit and the same are dismissed.

6. In the light of above facts and circumstances, petitioner has made out a *prima facie* case and accordingly, respondent No. 2 is hereby directed to revisit to the petitioner’s claim for compassionate appointment and proceed to issue order of appointment within a period of one month from the date of receipt of this order, failing which, the petitioner is entitled to litigation cost and it is quantified @ of Rs. 25,000/-.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

