

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7909 of 2022

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Vikesh Kumar Manjhi, aged about 23 years, gender-male, S/o Late Janardan
Manjhi Resident of Pipra, P.S.- Sahajitpur, District- Saran at Chapra.

... .. Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, General Administration
Department, Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Inspector General of Police (Welfare) Bihar, Patna.
4. The Assistant to Inspector General of Police (Welfare) Bihar, Patna.
5. The Inspector General of Police Muzaffarpur.
6. The Deputy Inspector General of Police Saran Range, Saran at Chapra.
7. The Commissioner Saran at Chapra.
8. The District Magistrate Saran at Chapra.
9. The Senior Deputy Collector District General Administration Branch, Saran
at Chapra.
10. The Superintendent of Police Saran at Chapra.
11. The Deputy Superintendent of Police Saran at Chapra.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Radha Mohan Singh, Adv.
For the Respondents	:	Mr.M. Nasrul Huda Khan SC-1

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 08-07-2022

This matter has been taken up for consideration online.

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

3. On account of the petitioner's sibling being in



employment his application for compassionate appointment has been rejected by the District Compassionate Committee under order dated 17-03-2022.

4. The brief admitted background is that the petitioner's father was working as *Chawkidar* and died in harness on 01-04-2021. The submission of the petitioner's counsel is that because the petitioner's sibling is in government employment, his claim cannot be rejected as the law is clear, in this regard, based on the decision of the Full Bench in case of ***Niraj Kumar Mallick and others vs. State of Bihar and others*** reported in ***2018(2) PLJR 951***. Paragraph Nos. 47 to 48 of the said judgment are specifically being relied upon by the petitioner's counsel which, this Court would consider useful to reproduce and is being reproduced hereinafter:-

“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. The submission is that whether the employment of the petitioner's sibling was sufficient to take care of the financial needs of the dependents of the deceased is an issue which was required to be considered by the authority, which in the instant case, has not been done. It is submitted that the petitioner would be approaching the District Magistrate, Saran, (Respondent no.8) with his representation so as to show to the authority that the income arising out of the sibling's employment was not sufficient to maintain the dependents of the deceased and, therefor, petitioner's entitlement to compassionate appointment cannot be denied.

6. Without expressing any opinion on the merits of the said submission, to enable the petitioner to approach the District Magistrate, Saran, (Respondent no.8) the application is disposed



of.

7. It is needless to say that if any application is filed expeditiously and preferably within a period of four weeks, the District Magistrate, Saran (Respondent no.8) would be obliged to consider the same expeditiously and pass a reasoned and speaking order as per law, preferably within eight weeks thereafter.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13-07-2022
Transmission Date	

