

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9947 of 2020

Pravin Kumar S/o Late Jagdish Pandey R/o Village- Dhiroundh, P.S.- Sirdala,
Distt- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Magadh Division, Gaya.
4. The Collector cum Chairman, District Compassionate Committee, Nawada.
5. The Executive Engineer, Water Resources Department, Irrigation Division, Rajauli, Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma, Advocate
For the Respondent/s : Mr. Akhileshwar Singh, AC to GA 2

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

Date : 24-01-2022

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

In the instant petition, petitioners have prayed for the
following relief(s):-

“For issuance of an appropriate writ/writs, order/orders, and direction/directions, in the nature of certiorari for quashing of aggrieved portion of order passed by the Collector, Nawada (Respondent no. 4 herein) so far it relates to petitioner is concerned, whereby and whereunder claim of the petitioner for appointment on compassionate ground in place of his father has been finally rejected by the District Compassionate Committee



presided in chairmanship of the Collector dated 23.12.2019 on the ground that at the time of application itself i.e. before date of death of father of the petitioner, the petitioner had cross the upper age limit of appointment as prescribed by the state government. Further a writ in the nature of mandamus may issue commanding and directing to the respondent authority to relax the age limit for appointment of the petitioner on compassionate ground and consider his case a fresh for his appointment on compassionate ground on class iii post in place of his father who died in harness on 25.07.2017 during his service period while posted as Office Peon in Water Resources Department in Irrigation Division, Rajauli, Nawada leaving behind his wife Mostt. Hiramani Devi, one married daughter namely Sudhendu Devi and the present petitioner and for the other necessary relief/reliefs for which the petitioner is entitled to in accordance with law.”

Short question for consideration is whether age relaxation is permissible in respect of compassionate appointment or not?

Learned counsel for the petitioner has filed reply to the counter affidavit on behalf of the respondent nos. 1, 2 and 5. In para 4 of the reply to the counter affidavit it is stated as under:-

“That, in reply to the statements made in paragraph no. 7 to 9 of the counter affidavit, it is submitted here that as per Part-II, Appendices Rule 54 of the Bihar Service Code there is power to relax in special cases, the age limit for appointment to pensionable Government service. Moreover, in view of scheme for



compassionate appointment upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age. On the date of application the age of the petitioner was 37 years 4 months and 8 days. And BPSC Upper age Limit for general category has been prescribed 37 years. In Bihar Government service for recruitment the upper age limit for general category has been prescribed 37 years. And as such upper age limit of the petitioner may be relaxed by the District Compassionate Committee. In case of similarly situated person to the petitioner namely Smt. Renu Kumari relaxation in age has been considered and decision was taken for her compassionate appointment as per letter of Secretary to Commissioner, Magadh Division, which is evident from Annexure-6 with the supplementary affidavit. In view of above rejections of case of the petitioner for his compassionate appointment in place of his father on the ground of over age is not sustainable in the eye of law and thus the impugned order dated 23.12.2019 is fit to be quashed by this Hon'ble Court.

The aforesaid statement is in the light of Annexure-7,

Scheme for compassionate appointment. The relevant paragraph 6

B for relaxation of age reads as under:-

“B. RELAXATIONS

(a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

Note I Age eligibility shall be determined with reference to the date of application and not the date of appointment;



Note II Authority competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.

(b) Secretary in the Ministry/Department concerned is competent to relax temporarily educational qualifications as prescribed in the relevant recruitment rules in the case of appointment at the lowest level e.g. Group 'D' or Lower Division Clerk post, in exceptional circumstances where the condition of the family is very hard provided there is no vacancy meant for compassionate appointment in a post for which the dependent family member in question is educationally qualified. Such relaxation will be permitted upto a period of two years beyond which no relaxation of educational qualifications will be admissible and the services of the person concerned, if still unqualified, are liable to be terminated.

Note In the case of an attached/subordinate office, the Secretary in the concerned administrative Ministry/Department shall be the competent authority for this purpose.

(c) In the matter of exemption from the requirement of passing the typing test those appointed on compassionate grounds to the post of Lower Division Clerk will be governed by the general orders issued in this regard:-

(i) by the CS Division of the Department of Personnel and Training if the post is included in the Central Secretariat Clerical Service; or

(ii) by the Establishment Division of the Department of Personnel and Training if the post is not included in the Central Secretariat Clerical Service.

(d) Where a widow is appointed on compassionate ground to a Group 'D' post,



she will be exempted from the requirement of possessing the educational qualifications prescribed in the relevant rules provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications.”

Therefore, the petitioner has made out a case. Accordingly, the decision of compassionate committee dated 14.08.2019 (Annexure-2) is set aside. The matter is remanded to the concerned authority to re-examine relating to the petitioner’s eligibility for appointment on compassionate ground while invoking para 6B of Scheme for Compassionate Appointment vide Annexure-7 to the reply to counter affidavit on behalf of respondent nos. 1, 2 and 5. The concerned authority is hereby directed to revisit to the petitioner’s claim for compassionate appointment in the light of the aforesaid observation and proceed to pass speaking order and communicate the same to the petitioner within a period of two months from the date of receipt of this order.

With the aforesaid observations, the present writ petition stands disposed off.

Vikash/-

(P. B. Bajanthri, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

