

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1062 of 2018

In
Civil Writ Jurisdiction Case No.19237 of 2017

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1. The North Bihar Power Distribution Company Ltd. Through the Managing Director, Bailey Road, Patna.
 2. The Deputy General Manager cum C- Electrical Superintending Engineer, Electric Supply Circle, Engi
 3. The Electrical Executive Engineer, Electric Supply Division, Muzaffarpur Rural.
 4. The Eexecutive Engineer Electric Urabn Electric Supply Area, Muzaffarpur.
 5. The General Manager- cum- -Chief-Engineer Tirhut Electric Supply Area Muzaffarpur.

... .. Appellant/s

Versus

Ankush Kumar S/o Late Chhedi Mahto, Resident of Village- Jhapahan, P.S.- Ahiyapur, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vinay Kirti Singh, Sr. Adv. Mr. Vijay Kumar Verma, Adv. Mr. Akhileshwar Singh, Adv.
For the Respondent/s	:	Mr. Sunil Kumar Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 11-07-2022

I.A. No.7429 of 2018

The aforesaid interlocutory application has been preferred for condonation of delay of 38 days in filing the appeal. For the reasons stated in the I.A. petition, the delay in filing the appeal is condoned.

L.P.A. No.1062 of 2018

Heard counsels for the appellants and respondent.



2. The appeal has been preferred against the order dated 07.05.2018 passed by learned Single Judge (Hon'ble Mr. Justice Mohit Kumar Shah) in CWJC No.19237 of 2017 by which the decision dated 30.12.2016 taken by the Central Compassionate Appointment Committee rejecting the claim of the respondent/writ petitioner for compassionate appointment was set aside and direction was given to the appellant North Bihar Power Distribution Company Limited (*henceforth for short* 'the Company') to take appropriate steps for appointment of the respondent/writ petitioner on compassionate ground.

3. The matrix of facts giving rise to appeal is/are as follows.

4. The father of the writ petitioner, namely, Chedi Mahto was an employee with the erstwhile Bihar State Electricity Board (*henceforth for short* 'the Board'). He died on 22.01.2008 while in service. Otherwise ordinarily he would have retired on 30.06.2010.

5. The writ petitioner herein, who is son of the deceased Chedi Mahto thereafter made an application for his appointment on compassionate ground. The said application was rejected on 17.08.2012 by which respondent authorities stating that he is the son of the second wife of the deceased employee.



6. Aggrieved by the said order passed by the Respondent Authorities, the writ petitioner moved before this Court vide CWJC No.10684/2013 which was heard and allowed by learned Single Judge (Hon'ble Mr. Justice Shivaji Pandey, as his lordship then was) vide an order dated 30.08.2016 directing the Respondent Authorities to consider the claim of the writ petitioner afresh. The operative part of the order (Annexure-4) is incorporated herein below:

“5. In such view of the matter, the order dated 17.08.2012, whereby the claim of the petitioner for compassionate appointment has been rejected, is hereby set aside. The matter is remanded back to the respondent authorities for fresh consideration. The respondent-authorities are directed to examine the case of the petitioner for compassionate appointment and take final decision within a period of two months from the date of receipt/production of a copy of this order. If it is found that the petitioner is entitled to the benefit, he must be given the benefit of compassionate appointment. If the authority would not find fit case for granting compassionate appointment, must assign the



reason after giving due hearing to the petitioner.

6. With the aforesaid observations and directions, this writ application is allowed.”

7. The Respondent Authorities thereafter took up the matter and vide reasoned order dated 30.12.2016 rejected his claim on the sole ground that the deceased employee had not taken permission from ‘the Department’ for the second marriage with the mother of the writ petitioner. (Annexure-5 of the writ petition).

8. Being aggrieved, the writ petitioner preferred CWJC No.19237/2017. The Respondent Authorities appeared in the matter and filed their counter affidavit taking the same plea as would reflect from para-4 of the said counter affidavit which said as follows:

“That in reply to the statements made in Paragraph No.1(ii) of the writ application it is stated that the petitioner had filed earlier writ application bearing CWJC No.10684 of 2013 seeking compassionate appointment which was disposed of by this Hon’ble Court vide order dated 30.08.2016 with a direction to the company to examine the mater afresh and pass an appropriate order.



Accordingly, in compliance of the order of the Hon'ble High Court the case of the petitioner was examined afresh and the matter was considered again in terms of the order of Hon'ble High Court dated 30.08.2016 as well as provisions contained in Circulated by Personnel & Administrative Reforms Department, Government of Bihar, Patna as well as the Clause (GH) of the Guideline issued by General Administration Department, Government of Bihar vide letter No.7722 dated 27.05.2015 and it has been found that the case of the petitioner is not consider above due to lack of permission for second Marriage to the father of the petitioner. Accordingly the case of the petitioner was rejected again. Decision of the company has already been communicated to the petitioner vide memo no.92 dated 06.03.2017 (Annexure-5 of the writ application) by a Reasoned order. Hence at this stage reconsideration of the case for



appointment on compassionate ground is
neither justified nor required.”

9. The learned Single Judge heard the matter on
07.05.2018 and held as under:-

“(i) After death of the father of the petitioner,
the entire death cum retiral benefits were given to his
widow, namely, Smt. Mithilesh Devi, the mother of the
petitioner herein as well as the second wife of the
father of the petitioner.

(ii) It is an admitted fact that the first wife of
the petitioner had died on 06.06.2001 whereafter, the
father of the petitioner had solemnized the second
marriage.

(iii) This fact has also been recorded by this
Court in the earlier round of litigation i.e. in the order
dated 30.08.2016 passed in C.W.J.C. No. 10684 of
2013.

(iv) This Court finds from the records of this
case that the mother of the petitioner herein i.e. the
second wife of the deceased father of the petitioner had
also been paid the entire death cum retiral dues as also
has been granted family pension by the Respondents
vide P.P.O. No. 2523/08-09 dated 05.02.2009.

(v) On going through the impugned order dated
30.12.2016 passed by the Central Compassionate
Committee, it is apparent that the case of the petitioner
for appointment on compassionate ground has been
rejected on the sole ground that the father of the
petitioner had solemnized marriage during the lifetime
of the first wife without obtaining permission from the
department.

(vi) Nonetheless, without delaying the matter
any further, this Court finds that the first wife of the



father of the petitioner had died on 06.06.2001 whereafter the father of the petitioner had entered into the second marriage and this is the reason why the respondents authorities have granted death cum retiral dues to the second wife of the father of the petitioner herein finding her to be the genuine legal heir of the father of the petitioner herein.

(vii) Thus, in nutshell, the position in law as also on facts is that the respondent authorities have admitted the relationship of the mother of the petitioner with that of the deceased father as a legal and valid relationship and on account of the said subjective satisfaction on the part of the respondents, the mother of the petitioner i.e. the second wife of the father of the petitioner herein was granted death cum retiral dues as also the family pension.

(viii) Therefore, this Court is of the view that since the respondents have recognized the validity and legality of the second marriage of the father of the petitioner, hence, at this stage, the issue of not providing appointment on compassionate ground to the petitioner herein on the ground that he is the son of the second wife of the deceased father of the petitioner and instead raising the issue of the deceased father of the petitioner marrying the mother of the petitioner without taking permission of the department is not only mala-fide but is also contrary to the facts of the present case as also is in teeth of the order of this Court dated 30.08.2016 passed in C.W.J.C. No. 10684 of 2013, hence, the impugned decision of the Central Compassionate Committee dated 30.12.2016, as contained in Annexure-5 to the writ petition, is not sustainable in the eyes of law and is accordingly quashed and set aside.”



10. Accordingly, the learned Single Judge allowed the writ petition with the following direction:

“In view of the aforesaid, the Respondent No. 1 is directed to take steps for granting appointment to the petitioner herein on compassionate ground since apart from the issue of the deceased father of the petitioner herein marrying the mother of the petitioner herein without taking permission of the department, no other disqualification has been pointed out by the Central Compassionate Committee or by the respondents in their counter affidavit filed in the present case. The said exercise be completed within a period of eight weeks from today”

11. Aggrieved, ‘the Company’ preferred LPA No.1062/2018.

12. Heard counsel for the parties.

13. The consistent stand of the respondent for last one decade was that the deceased employee had married for the second time without any permission from the employer and as such the compassionate appointment benefit cannot be extended to the son. Even in the writ petition preferred herein, the stand of ‘the company’ was the same that no permission was taken which resulted in rejection of petitioner’s claim for compassionate appointment.



14. However in the appeal, they have come up with the new plea that since the first wife died in 2001, the writ petitioner-respondent cannot claim himself to be the son of Late Chedi Mahto as his date of birth is 16.04.1992.

15. We are afraid, 'the appellant company' cannot be allowed to divert their case from the consistent stand taken by them since last one decade. The admitted fact is that the materials on record clearly show that the deceased employee solemnized marriage for the second time after the death of first wife for which no permission was required. The second marriage was duly recognized by 'the appellant company' inasmuch as they have paid entire Death-cum-Retiral Dues to the second wife (mother of the writ petitioner-respondent) who has also been extended the benefit of family pension by them vide PPO No.2523/08-09 dated 05.02.2009. Thus, it is clear that 'the appellant-company' had accepted the relationship of the mother of the writ petitioner-respondent with that of the deceased employee as a legal relationship and only after their satisfaction, they have released Death -cum- Retiral benefits and family pension in favour of petitioner's mother.

16. From the aforesaid facts, it is clear that 'the appellant company' have deliberately chosen to overlook the facts



that is there in their record i.e. acceptance of valid relationship of the mother of the writ petitioner with that of the deceased employee and have acknowledged them as husband and wife. Thus, the objection raised by them of not taking permission before the solemnization of second marriage is fit to be rejected.

17. This Court does not find any infirmity in the order passed by the learned Single Judge on 07.05.2018 in CWJC No.19237 of 2017.

18. The present appeal thus fails and is hereby dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2022
Transmission Date	NA

