

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2763 of 2023

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Zishanur Rahman Son of Late Zeyaur Rahman Resident of Near Masjid
Chitkohra Basti, P.O.-Anisabad, P.S.-Gardaniabgh, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Environment and Forest Department, Government of Bihar, Patna.
2. The Divisional Forest Officer, Patna Division, Patna.
3. The District Magistrate-Cum-Chairman, District Compassionate Committee, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Pathak, Advocate Mr. Uma Kant Mishra, Advocate
For the Respondent/s	:	Mr. Dhurjati Kr. Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 19-04-2023 Heard learned counsel for the petitioner and the State.

Petitioner in the present case is challenging the order vide letter no.1520 dated 21.05.2022 (Annexure-7) by which the request of the petitioner to once again consider his case for appointment has been rejected by the Compassionate Appointment Committee. In its communication dated 21.05.2022 the committee has recorded that earlier on 30.01.2016 the District Compassionate Appointment Committee had taken a decision wherein the claim of the petitioner was rejected on the ground that the elder son of the deceased government servant was gainfully employed.

It is the case of the petitioner that the decision of the



District Compassionate Appointment Committee has been communicated to him only vide Annexure- '7' to the writ application. It is submitted that the elder brother of the petitioner is in service but he is not willing to support the petitioner and the widow mother, therefore, the mother of the petitioner has submitted her application/representation on 05.05.2014 for appointment of the petitioner on compassionate ground.

On the other hand, learned counsel for the State submits that the government has come out with a policy whereunder in case the deceased government servant has left behind him more than one sibling and one of them is gainfully employed, the another one cannot claim appointment on compassionate ground. It is submitted that the said policy decision of the government was subject matter of consideration before the Hon'ble Full Bench of this Court in the case of **Niraj Kumar Mallick Vs. the State of Bihar and others** reported in **2018(2) PLJR 951** and the Hon'ble Full Bench has upheld the policy decision.

Having heard learned counsel for the petitioner and the State, this Court finds that the very reason provided in the writ application that the eldest son of the deceased government



servant is not supporting the petitioner and his widow mother is not a valid ground for seeking appointment on compassionate ground. In the case of **Niraj Kumar Mallick** (supra), the Hon'ble Full Bench has considered this aspect of the matter and in paragraph '46' and '47' of the said judgment held as under:-

“46. A perusal of Clause (d) of Annexure-A to the counter affidavit of respondent no. 2 in CWJC No. 17143 of 2016 would show that the clarification offered by the General Administration Department clearly states that where any of the dependents of a deceased government servant is ‘gainfully employed’ then irrespective of the fact whether he lives together or separate from other dependents, the benefit of compassionate appointment would not be available to any other dependents of the deceased government servant. I am of the considered opinion that the clarification offered by the Department being a part of the policy decision governing the scheme of appointment on compassionate ground is based on judicial pronouncement of this Court in the case of *Vishal Kumar* (supra) and it is fully in consonance with the object of compassionate appointment, it is also in tune with the views expressed by Hon'ble Supreme Court in a catena of decisions some of them I have referred herein above. It is also reasonable one and passes the test of Article 14 and 16 of the Constitution of India. The clarification vide Clause (d) of Annexure-‘A’ to the counter affidavit of respondent no. 2 cannot be found fault with on the touchstone of Article 14 and 16 of the Constitution of India.

47. I am of the considered opinion that keeping in mind the object of the compassionate appointment and well settled legal proposition that it is not a source of recruitment, it is a policy decision based on a sound public policy provided



in the clarification that where any of the dependents of the deceased government servant is 'gainfully employed', no other dependent would be entitled to get the benefit of the scheme of compassionate appointment. Government has come out with a policy that the dependent who is gainfully employed is living separately from other dependents cannot be a reason to provide appointment and irrespective of that whether employed one lives together or separately the other dependents would not get the benefit of compassion. The word 'dependents' here take into it's fold all the siblings of the applicant. The clarification as contained in Clause (d) of Annexure-A to the counter affidavit is based on the views expressed by the Hon'ble Division Bench of this Court in the case of *Vishal Kumar* (supra) and at the same time it is in consonance with the law laid down by the Hon'ble Supreme Court in the case of *Umesh Kumar Nagpal* (supra) as also other judgments of the Hon'ble Supreme Court."

In the light of the discussions made hereinabove, this Court finds no reason to interfere with the impugned order.

This writ application is dismissed.

(Rajeev Ranjan Prasad, J)

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