

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.127 of 2022
In
Civil Writ Jurisdiction Case No.123 of 2021

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1. The High Court of Judicature at Patna through Registrar General.
 2. The Registrar General, Patna High Court, Patna.
 3. The Registrar (Administration), Patna High Court, Patna.
 4. The District and Sessions Judge, Kishanganj.
 5. The Administration in- charge, Civil Courts, Kishanganj.

... .. Appellant/s

Versus

1. Srawan Kumar, S/o Late Chandra Shekhar Singh, Resident of Mohalla - Purana Khagara, Ward No. 20, P.O., P.S. and District- Kishanganj.
2. The State of Bihar, through the Principal Secretary General, Administration Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Piyush Lall, Advocate
For the Respondent No. 1	:	Mr. Pankaj Kumar Sinha, Advocate
	:	Mr. Rabi Bhushan, Advocate
	:	Ms. Rakhi Kumari, Advocate
For the State	:	Dr. Mankeshwar Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-02-2023

Heard Mr. Piyush Lall, the leaned Advocate
for the appellant/High Court of Judicature at Patna and Mr.
Pankaj Kumar Sinha for respondent No. 1.

2.) The State is represented by Dr.
Mankeshwar Tiwari.



3.) The mother of respondent No. 1 had died in harness on 29.01.2016. The respondent No. 1, thereafter, had made an application for being considered for appointment on compassionate ground on 10.03.2016.

4.) The decision with respect to such application was taken on 20.11.2021, which was further modified by order dated 23.11.2021.

5.) The rejection of the request of respondent No. 1 was primarily on the ground that no vacant position is available for accommodating any person on grounds of compassion.

6.) Be it noted that the Administration of the High Court of Patna had been hitherto following the practice of the State of reserving 5% of the total sanctioned strength in a district for compassionate appointment.

7.) The State practice of keeping 5% reserved for compassionate appointment was later done away with and now, there is no cap over such percentage



and such appointments would depend upon the exigency of the situation. Nonetheless, when 5% Rule was in currency in the State Administration, the High Court in its Administrative side took a decision on 04.01.2016 that compassionate appointment shall be made only on 3% of the posts/ sanctioned strength in the district. It so happened that one Vikram Kumar Shrivastava, whose father had died in harness on 28.08.2018, had applied for being granted appointment on compassionate ground. Similarly, one Chandan Kumar Singh also had made such application in whose case, his father had died on 23.02.2012.

8.) With respect to them, there was an instruction from the High Court that the rules which were prevalent at the time of death, shall be applicable while considering their cases for compassionate appointment and they were, ultimately, granted appointment on compassionate grounds, but only after 04.01.2016, i.e., the date when the High Court, in its Administrative side,



decided that henceforth, the compassionate appointment shall be only to the extent of 3% on the entire sanctioned strength.

9.) With the appointment to the aforementioned persons namely, Vikram Kumar Shrivastava and Chandan Kumar Singh on compassionate grounds, the total number of compassionate appointees rose to seven. Since the occasion for respondent No. 1 to make a request for compassionate appointment arose only after 04.01.2016, as her mother had died on 29.01.2016, the case of the petitioner had to be decided in terms of the directives of the High Court dated 04.01.2016 (3% of the sanctioned strength).

10.) For the paucity of any vacancy as noted-above, the respondent No. 1 was not offered appointment, but that decision was taken much later, i.e., on 20.11.2021, which was modified on 23.11.2021.

11.) It was under these circumstances that the respondent No. 1 had preferred a writ petition seeking



a direction against the respondents (appellants herein) to appoint him on compassionate ground against Class-IV post.

12.) The learned Single Judge appears to have construed that the earlier appointments of Vikram Kumar Shrivastava and Chandan Kumar Singh were made in compliance of the policy of the High Court dated 04.01.2016, and therefore held such appointments to be bad as the decision of the High Court dated 04.01.2016 could not have had any retrospective operation.

13.) There appears to be some miscommunication from the side of the appellants/High Court that such appointments were made by giving retrospectivity to the decision dated 04.01.2016.

14.) The fact of the matter is, which becomes evident from the communication made by the Registrar General to the concerned District Judge that in case of Vikram Kumar Shrivastava and Chandan Kumar Singh, the relevant date would be the death of their respective



fathers and the law or the principle applicable at that time, only would apply. Those were times when a quota of 5% was maintained for giving appointment on compassionate grounds.

15.) Thus, factually speaking, the leaned Single Judge based his decision on a premise which is non-existent.

16.) What the learned Single Judge has held and rightly so that the relevant scheme prevalent on the date of demise of the employees is to be made applicable and subsequent scheme cannot be looked into. [Refer to *State of The Madhya Pradesh and ors vs. Ashish Awashthi (Civil Appeal No. 6903 of 2021)*; *The State of Madhya Pradesh and ors vs. Baalendu Yadav (Civil Appeal No. 6904 of 2021)*; *Indian Bank and ors vs. Promila and Anr. (2020 (2) SCC 729)* and *The State of Madhya Pradesh and ors vs. Amit (Srivas 2020 (10) SCC 496)*].

17.) The proposition postulated by the learned Single Judge cannot be questioned.



18.) There are two relevant dates when the consideration is for granting compassionate appointment; one being the date of death in the family and the other being the date on which consideration is being made for granting such compassionate appointment. The second date may vary, but the first date remains constant. The general principle of law is that the application of the scheme cannot depend upon a variable factor which could be for various/myriad reasons.

19.) However, in the peroration of the impugned judgment, which directs the High Court Administration to consider the case of respondent No. 1 in the context of the two other appointments, referred to above, not having been made in legal manner, cannot stand the scrutiny of law as it is not based on correct set of facts. The two earlier appointments, referred to above, were on the basis of the relevant scheme and principle applicable at that time and not in compliance of the High Court's decision dated 04.01.2016.



20.) As on date, the case of the respondent No. 1 was dismissed on account of non-availability of vacancy and there are seven appointees on compassionate ground in the sanctioned strength of 104 employees in the concerned district.

21.) The order passed by the leaned Single Judge, therefore, cannot be sustained in the eyes of law to the extent that it has held the appointment of Vikram Kumar Shrivastava and Chandan Kumar Singh to be not legally sustainable on the ground that rules cannot be given retrospectivity.

22.) The appeal, thus, stands allowed and disposed of accordingly.

23.) Looking at the totality of the circumstances, we deem it appropriate to direct the High Court Administration to consider the case of the respondent No. 1, in case there is any vacancy available for grant of compassionate appointment as a decision to reject the application of the respondent No. 1 had been



taken in the year 2021. We are conscious of the fact that a new Rule namely, *Bihar Civil Court Officers and Staff (Recruitment, Promotion, Transfer and Other Service Conditions) Rules, 2022* has been promulgated, which now provides for 5% cap in compassionate appointments, but that would also have a prospective operation.

24.) Interlocutory application/s, if any, also stands disposed of.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

Praveen/Gaurav-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

