

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9144 of 2021

1. Sayara Khatoon @ Shayara Khatoon Wife of Late Nazrul Haque Resident of care Samin Uddin, Advocate, Near Holi Mission School, Police Station- Shastrinagar, District- Patna.
2. Zar Afashan Begum Daughter of Late Nazrul Haque Resident of care Samin Uddin, Advocate, Near Holi Mission School, Police Station- Shastrinagar, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Secretary, Home Department, Government of Bihar, Sinchai Bhawan, Patna.
4. The Director General of Police, Bihar Police, Patna.
5. The Commandant (Samadesta) cum Chairman, Battalion Compassionate Committee, Bihar, Military Police, Patna.
6. The Battalion Compassionate Committee through the Commandant (Samadesta) cum Chairman, Bihar Military Police, Patna.
7. The District Compassionate Committee through District Magistrate cum Chairman, District- Patna.
8. The District Magistrate cum Chairman, District Compassionate Committee, District- Patna.
9. The Principal Secretary, General Administration, Government of Bihar, Old Secretariat, Patna.
10. Shahbaz Ahmad Son of Late Nazrul Haque Resident of I-114, Third Floor, Mohalla- Gadhwali, Laxami Nagar, Delhi- 110092 and permanent resident of Village- Dostpur, Police Station- Khajauli, District- Madhubani, Bihar.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Ratnesh Kumar Singh, Advocate Mr.Sanjay Kumar, Advocate
For the Respondent/s	:	Mr.Sanjay Kumar 'Ghosarvey', AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 10-05-2023 Let the hard copy be taken on the record.

Heard learned counsel for the petitioners and learned
counsel for the State.



Petitioners in the present case are seeking the following reliefs:-

“(i) quashing of impugned decision/ order dated 12.03.2019 of the Battalion Compassionate Committee communicated through Memo No. 2413 dated 19.07.2019 (Annexure -36) under the signature of the respondent No. 5, Commandant, Bihar Military Police, Bihar, wherein the Battalion Compassionate Committee on the ground that the daughter of the deceased employees cannot be treated as dependant in absence of divorce from the competent court in disregard to the General Administration’s Letter No. 3721 dated 10.03.2016 (Annexure -25).

(ii) quashing of impugned proceeding of 27.07.2016 of the District Compassionate Committee, Patna (Annexure -27) on the ground that the daughter of the deceased employees cannot be treated as dependant in absence of divorce from the competent court in disregard to the General Administration’s Letter No. 3721 dated 10.03.2016 (Annexure -25).

(iii) direction to the respondents to make compassionate appointment of the Petitioner No. 2 in place of her father on suitable post.

(iv) grant any other relief to the Petitioner No. 2 which Petitioner No. 2 is entitled in the facts and circumstances in this case.”

By filing an interlocutory application being I.A. No. 1 of 2022, the petitioners have prayed for amending the writ application to allow a challenge to the validity of Clause -(1) (Ga) & (Gha) of the Standing Instructions for Appointment on



Compassionate Basis issued vide Memo No. 3/C-2-2067/90 Ka 13293/Patna-15 dated 05.10.1991 and modified vide Memo No. 3/C1-5051/97 Ka-1699 dated 05.05.2010 and Letter No. 22/Anu-05/2012 SC- 16973 dated 10.12.2014 which are said to be gender bias and violative of Articles 14, 15 and 16 of the Constitution of India.

Learned counsel for the petitioners submits that on perusal of the impugned order contained in Memo No. 2413 dated 19.07.2019 (Annexure '36' to the writ application). It would appear that the claim of the petitioner no. 2 for appointment on compassionate ground has been rejected on the solitary ground that as per General Administrative Department, Letter No. 13293 dated 05.10.1991, Paragraph 1 (Gha) the appointment on compassionate ground has to be given on priority basis to (1) wife of the deceased government servant, (2) son, (3) un-married daughter and (4) the widow daughter-in-law of the deceased government servant.

Learned counsel submits that the respondent no. 10 is the son of the deceased government servant who is the rival claimant in this case. He has filed an application seeking appointment on compassionate ground. Earlier, he had sworn an affidavit in support of the petitioners but later on he has disputed



the same.

Learned counsel submits that this petitioner has been deserted by her husband, however, admittedly there is no order of a competent court of law showing that the petitioner has been deserted or divorced by her husband.

Learned counsel for the petitioners has relied upon the judgment of the Hon'ble Division Bench of Karnataka High Court in Writ Petition no. 5409 of 2021 (The State of Karnataka and Others versus Smt. C.N. Apporva Shree and Another). It is submitted that such judgment of the Hon'ble Division Bench of the Karnataka High Court was challenged in a petition for Special Leave to Appeal (C) No. 20166/2021 by the State of Karnataka and Others but the Special Leave to Appeal petition has been dismissed.

Learned counsel for the petitioners submits that the Karnataka High Court has taken a view that there cannot be any discrimination in the matter of compassionate appointment between a married daughter and a married son. Rule '3' of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 was struck down for the decision.

On the other hand, learned counsel for the State submits that the purpose for giving compassionate appointment



has been discussed in detail by the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal vs. The State of Haryana and Others** reported in **(1994) 4 SCC 138**. It is submitted that the appointment on compassionate ground is not a mode of appointment rather it is a welfare scheme of the Government to provide succor to the family/ dependents of the deceased government servant who died in harness. In case of a compassionate appointment, it is therefore necessary to see that the dependent/dependents of the deceased government servant are saved from the state of penury. In such circumstances, as per the Government's Policy contained in Letter No. 13293 dated 05.10.1991, the government has come out with an order of preference whereunder the wife of the deceased government servant has been kept at the top of the preference level. So far as the distinction between the son and daughter are concerned, it is true that the Government's Policy cannot create a distinction between the status of the son and the daughter but at the same time, the authorities are to be satisfied in the given facts of the case as to who will be in a position to take care of the dependents of the deceased government servant. In an appropriate case, if it is found that the married daughter has been deserted or has been divorced by her husband and by



providing her a government job, the dependent of the deceased government servant may be taken care of, appointment on compassionate ground may be provided to the widow or deserted daughter of the deceased government servant.

Learned counsel further submits that it will depend upon the fact situation of a case. If daughter of the deceased government servant is married and living in her in-laws place with her own family, even as there may be no distinction on the ground of gender between a son and a daughter but care is required to be taken to ensure that the job is provided to the dependent who will be in a position to take care of the family of the deceased government servant.

Referring to the facts of the present case, it is submitted that in this case, the petitioner no. 2 is admittedly married. She has failed to produce any valid document having legal sanctity to show that she is deserted or divorced by her husband and she is living with the family of the deceased government servant, further, she is facing a rival claim from her brother who is respondent no. 10 in this case. In such circumstances, where the death of the deceased government servant has taken place as back as in the year 2014 and the petitioner and respondent no. 10 are still fighting over their respective claim, this Court can



well appreciate that the family of the deceased government servant was not living in a state of penury. The very purpose of compassionate appointment has vanished over the period.

Consideration

Having heard learned counsel for the petitioners and the State, in the facts of the present case, this Court finds that the deceased government servant died in harness in the year 2014. The petitioner and her brother are fighting over the claim for compassionate appointment. In the meantime, 9 years have gone.

This Court further finds that admittedly the deceased government servant left behind him his widow who is petitioner no. 1 and married daughter (petitioner no. 2), another daughter is 19 years old and a son who is respondent no. 10. The petitioner no. 2 is admittedly the married daughter who has failed to produce any document showing her desertion/ separation/ divorce from her husband. It is her case that she is living with her mother. But in absence of any valid order of a competent court of law, if the respondent authorities have not accepted the claim of the petitioner no. 2 for appointment on compassionate ground, in the totality of the facts and circumstances of the case, no fault may be found with the



decision of the competent authority.

Since in the present case, her claim has not been rejected on the concept of gender bias, at this stage, this Court would not examine the validity of the impugned clause of the government instruction. In the case of **Umesh Kumar Nagpal**(supra) the Hon'ble Supreme Court has in Paragraph '6' categorically held as under:-

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at anytime in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

On the basis of the law laid down by the Hon'ble Supreme Court, this Court having come to a conclusion that the very purpose of giving compassionate appointment has lost significance in the facts of the present case, this Court would refrain from exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

This application is dismissed.

(Rajeev Ranjan Prasad, J)

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