

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10666 of 2021

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Dharmjeet Kumar Son of Late Kusheshwar Sah, resident of Mohalla Kashipur, Ward No. 6, P.S. Samastipur Town, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary General Administration).
2. The Collector Samastipur.
3. The Deputy Collector, Establishment (Compassionate Appointment) Committee, Samastipur.
4. The Registrar Bihar, Human Right Commission, Patna.
5. The Anchal Adhikari Ujiarpur Block, P.S. Ujiarpur District Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Sinha with
Mr. Mithilesh Kumar, Advocates
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 03-10-2023 Heard learned counsel for the petitioner and learned counsel for the State.

2. Learned counsel for the parties have made their submissions with reference to the rejection of petitioner's claim for compassionate appointment (Annexure-1) by the Establishment (Compassionate Appointment) Committee, Samastipur, in its meeting dated 28-12-2018. Petitioner's claim for compassionate appointment has been rejected by assigning a reason that the petitioner's sibling is gainfully employed.

3. The learned counsel for the petitioner submits that gainful employment requires a further look in terms of the



decision of the Full Bench in the case of *Niraj Kumar Mallick vs. the State of Bihar & Ors.* reported in *2018 (2)PLJR 951*. The authorities was required to examine the nature of employment objectively so as to ascertain whether the generated income is sufficient to meet the maintenance of the remaining legal heirs and nothing beyond this. The mandate of the Full Bench is clear from bare reading of paragraph nos. 47 and 48 of the said judgment, which reads as follows:-

“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.

48. So far as the clarification that 'gainfully employed' means such employment from which the employed dependent of the deceased government servant may provide sustenance or can maintain other dependents is concerned, it has to be looked at 'objectively' and not 'subjectively'. It is not for the authority considering the application for compassionate appointment to find out as to whether the dependent in employment is willing to take care of other dependents or not. It would not be his concern that the gainfully employed sibling is actually providing sustenance to the other dependents or not. Any argument that the dependent in employment is not willing to provide sustenance/maintenance to other dependents or that the employed one is living separately is beyond the scope and ambit of consideration under the given scheme and policy of the government and this Court sitting in its writ jurisdiction under Article 226 of the Constitution of India would not go into enquiring the correctness of the facts so pleaded before the Court. It is because the writ Court is to be conscious of the judicial pronouncements of the Hon'ble Apex Court wherein it has been repeatedly held that a Court has no power to ignore a provision to relieve what it considers a distress resulting from its operation. We have quoted paragraph 10 and 11 of the judgment of *Asha Ramchandra Ambedkar* (supra) only to remind us what the Hon'ble Apex Court has held in the following words;-

“the Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be



*weighed falls within the scope of law.
Disregardful of law, however hard the case
may be, it should never be done”.*

4. The Court finds that there is no such consideration in the impugned order dated 28-12-2018 (Annexure-1). The fact of sibling being gainfully employed, *per se* has been made the basis of rejecting the petitioner's claim without considering whether the nature of employment is such so as to enable the sibling to maintain the remaining legal heirs, irrespective of the fact that he is actually maintaining or not. The proceedings of the Establishment (Compassionate Appointment) Committee, Samastipur, dated 28-12-2018 (Annexure-1) insofar as the petitioner is concerned, is quashed.

5. The matter is remanded to the Establishment (Compassionate Appointment) Committee, Samastipur to re-assess the petitioner's claim on the parameters, extracted above, in the case of **Niraj Kumar Mallick** (supra). Let such consideration be done within a period of two (02) months from the date of receipt/ production of a copy of this order .

(Madhuresh Prasad, J)

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