

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11145 of 2021

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Ashwini Kumar S/o- Late Vijay Kumar Ojha R/o Village- Naradih, P.S.-
Sandaaur, P.S.- Bihia, District- Bhojpur (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Superintendent of Police, Bhojpur at Arrah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Akash Chaturvedi, Advocate Mr.Umesh Narayan Dubey, Advocate
For the State	:	Mr.M.H.N. Khan, SC-01 Mr.Md.Fazle Karim, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 10-11-2023

1. The present writ petition has been filed for quashing the order dated 03.02.2020, issued vide memo no. 31 dated 04.02.2020, whereby and whereunder the case of the petitioner for grant of compassionate employment has been rejected in light of the notification of the General Administration Department, Government of Bihar, Patna dated 10.05.2010, on the ground that since one of the sons of the deceased employee is employed as Hawaldar in Central Reserve Police Force, no compassionate employment can be granted to any other dependent.

2. The brief facts of the case are that the father of the



petitioner, namely, late Vijay Kumar Ojha was a constable and died in harness on 12.03.2018, while posted as constable in the District of Bhojpur at Ara.

3. The petitioner is stated to have then approached the respondents for grant of compassionate employment, however, his case has been rejected on the ground that his brother is employed as Hawaldar in the Central Reserve Police Force, relying on a notification of the General Administration Department, Government of Bihar, Patna dated 10.05.2010.

4. The learned counsel for the petitioner has submitted that his brother, namely, Vinay Kumar Ojha is living separately from the family of the widow of the deceased and the petitioner herein and they are not getting any help from him as also the petitioner is in a state of pecuniary, hence it is submitted that appropriate direction be issued for grant of compassionate employment to the petitioner.

5. The learned counsel for the petitioner has referred to a judgment rendered by a Full Bench of this Court, reported in **2018 (2) PLJR 951 (Niraj Kumar Mallick & Others v. The State of Bihar through Secretary, Rural Works Department, Government of Bihar, Patna & Others)**, paragraph no. 48



whereof, is being reproduced herein below :-

“48. In terms of the clarification offered by the department, on receipt of information that other siblings of the applicant are in employment, the competent authority would be required to objectively look into the nature of the employment and the resources being generated by the employed sibling from such employment. On an objective consideration where it is found that other sibling of the applicant is gainfully employed in such an employment from which he/she is in a position and has capacity to provide sustenance/maintenance to the other dependents, the application for appointment on compassionate ground would not fit in the scheme in terms of the clarification at Annexure- 'A' referred above but where it is found that the employment of the other sibling is of such a nature that it is not generating resources so as to make him able to provide both ends meet, for sustenance/ maintenance to the other dependents of the deceased government employee and despite gainful employment of one of the dependents but because of his poor income from such employment he is not in a position to provide two ends meet to the other dependents, therefore they are on the verge of starvation, destitution and penury, the authorities of the State would be liable to consider the application of other dependent for appointment on compassionate ground. No other plea in any form whatsoever would



be a ground to provide the benefit of the scheme of compassionate appointment.”

6. The learned counsel for the petitioner has thus submitted that the learned Full Bench of this Court has categorically held that in cases, where it is found that the employment of the other sibling is of such a nature that it is not generating resources so as to make him able to provide both ends meet, for sustenance/maintenance to the other dependents of the deceased government servant, the authorities of the State would be liable to consider the application of the other dependent for appointment on compassionate ground.

7. Per Contra, the Ld. Counsel for the respondent-State has submitted that the case of the petitioner for grant of compassionate employment has been rejected in light of the notification of the General Administration Department, Government of Bihar, Patna dated 10.05.2010, on the ground that since one of the sons of the deceased employee is employed as Hawaldar in Central Reserve Police Force, no compassionate employment can be granted to any other dependent.

8. Having regard to the facts and circumstances of the case and considering the fact that the learned Full Bench of this



Court, in a judgment rendered in the case of ***Niraj Kumar Mallick & ors. (supra)***, has held that in cases, where employment of other sibling is of such a nature that he is not providing sustenance to the other dependents of the deceased government employee, the respondent-authorities are bound to consider the application of other dependents for appointment on compassionate ground and for that purpose, the competent authority is required to objectively look into the nature of the employment and the resources being generated by the employed sibling from such employment. In such view of the matter, this Court finds that the impugned order contained in memo dated 04.02.2020, issued by the Assistant to the Director General of Police (Welfare) Government of Bihar, Patna, whereby and whereunder the case of the petitioner for grant of compassionate employment has been rejected, merely on the ground that his brother is working in the Central Reserve Police Force, is contrary to the law laid down by the learned Full Bench of this Court in the case of ***Niraj Kumar Mallick & ors. (supra)***, hence is unsustainable in the eyes of law, thus is quashed. Consequently, the matter is remanded back to the Superintendent of Police, Special Branch, Patna to conduct an inquiry in terms of paragraph no. 48 of the judgment rendered



by the learned Full Bench of this Court in the case of *Niraj Kumar Mallick & ors. (supra)* and thereafter, take a decision with regard to the case of the petitioner for appointment on compassionate ground. This Court further directs that the entire exercise, as aforesaid, should be completed within a period of six weeks from the date of receipt/ production of a copy of this order.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2023
Transmission Date	NA

