

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13410 of 2021

Navin Kumar Saksena S/o Late Murat Prasad, Resident of Village and Post - Chichaura, P.S. - Conch, Distt.- Gaya, at present address - New area Chitaur Nagar, Ward No. 12, Road No. 5, Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through Joint Secretary, Law Department, Govt. of Bihar, Patna.
2. The Registrar, Administration, Patna High Court, Patna.
3. The District Judge, Civil Court, Aurangabad (Bihar).
4. The Registrar, Civil Court, Aurangabad (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Awadhesh Prasad Sinha, Adv.
For the Respondent/s : Smt. Kumari Amrita (GP-3)
For the Respondent No.2: Mr.Piyush Lall, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 07-12-2023

1. The present writ petition has been filed for directing the respondent-authorities to appoint the petitioner on compassionate ground on any post in IVth Grade under the Judgeship of Aurangabad district.

2. The brief facts of the case, according to the petitioner are that the father of the petitioner namely, Shiv Murat Prasad, died in harness on 08.01.2014, while working as Peon at Civil Court, Aurangabad, whereafter the petitioner is stated to have applied for appointment on compassionate ground on 04.12.2014. Thereafter, a meeting of the Compassionate



Appointment Committee was held on 09.02.2015 in the chamber of the District and Sessions Judge, Aurangabad-cum-Chairman of the said Committee and after having interviewed the petitioner, he was unanimously declared fit for appointment on Class IV post, whereupon the case of the petitioner for compassionate employment was sent to the Hon'ble High Court, nonetheless, the recommendation was rejected by the Registrar, Patna High Court, by an order dated 19.09.2016, without considering the fact that 20 posts of Peon were still vacant under the Judgeship of Aurangabad district. It is further submitted that there are six family members, who were all dependent on the father of the petitioner and all of them are on the verge of starvation, hence it is imperative that the petitioner be granted compassionate employment.

3. Per contra, the learned counsel, appearing for the High Court of Judicature at Patna (hereinafter referred to as the "Respondent-Court") has submitted, by referring to the counter affidavit filed in the present case, that the father of the petitioner namely, Shiv Murat Prasad was a Class IV employee of the Judgeship of Aurangabad and he died in harness on 08.01.2014, whereafter the petitioner had applied for grant of compassionate employment on Class IV post on 04.12.2014, pursuant whereof



the District and Sessions Judge, Aurangabad vide letter dated 09.02.2015 had informed the Respondent-Court that the Appointment Committee of the Judgeship of Aurangabad, in its meeting held on 09.02.2015 has found three applicants, including the petitioner herein, to be fit for being granted compassionate employment on Class IV post, hence approval was sought for from the Respondent-Court. The Respondent-Court had then sought for minutes of meeting of the Appointment Committee dated 09.02.2015, from the District and Sessions Judge, Aurangabad vide letter dated 21.04.2015, in response whereof the minutes of meeting dated 09.02.2015 and the relevant documents of the aforesaid three applicants were sent to the Respondent-Court. The Registrar (Administration) of the Respondent-Court had then, vide letter dated 15.12.2015, informed the District and Sessions Judge, Aurangabad that the Court has been pleased to observe that the compassionate employment, in view of the law laid down by the Hon'ble Apex Court in the case of *Umesh Kumar Nagpal vs. State of Haryana and Ors.*, is to be given only when the family is in penurious condition and as far as the case of the petitioner is concerned, he being the only dependent, apart from the fact that the wife of the father of the petitioner namely Late Shiv Murat



Prasad had predeceased the father of the petitioner and the family has received the entire death-cum-retiral dues, he is not eligible for compassionate employment. In such view of the matter, the District and Sessions Judge, Aurangabad was directed to reconsider the case of the said three applicants, as far as granting compassionate employment to them is concerned.

4. The learned counsel for the Respondent-Court has further submitted that the Hon'ble Standing Committee of the High Court, in its meeting held on 21.12.2015, vide Agenda Item No. 7 had considered the matter relating to appointment on compassionate ground in the Judgeship of East Champaran at Motihari and was pleased to resolve as follows:-

"Resolved that the District and Sessions Judge, East Champaran at Motihari, may proceed to make appointment on compassionate ground against the available vacancies. It is further resolved that all the District and Sessions Judges be informed that so far as compassionate appointments are concerned, the same would be considered with a restriction that the total strength of compassionate appointees would not exceed three percent (3%) of the sanctioned strength of the cadre in which such appointment is being considered."

The aforesaid decision of the Court was communicated to



all Judgeships of the State vide letter No. 373-408 dated 04.01.2016 of the Respondent-Court. The said decision was reiterated by the Respondent-Court vide letter No. 24293-24329 dated 05.04.2016 addressed to all the Judgeships of the State to the effect that compassionate appointments would be made only against 3% of the sanctioned strength of the cadre in which such appointment is to be made and there cannot be any deviation.

5. The Ld. Counsel for the Respondent-Court has further submitted that thereafter, the District and Sessions Judge, Aurangabad, vide letter dated 06.08.2016, forwarded the minutes of meeting dated 03.08.2016 of the Appointment Committee of the Judgeship of Aurangabad with request to provide guidelines to take further steps, while informing about the financial conditions of the above three applicants, including the petitioner as also apprising about the actual fact to the effect that the sanctioned strength of Class IV post in the Judgeship of Aurangabad is 57 and if 50 posts, created by the District and Sessions Judge for the financial year 2016-17, are also considered then the strength would be 107, whereas 10 posts are already occupied by compassionate appointees, hence the restriction of 3% of cadre strength has already been exceeded.

6. Thus, considering the fact that the total sanctioned



strength of Class IV staff is 107 and out of them, 10 have been appointed on compassionate ground and are still working, resulting in the 3% limit being exceeded, the competent authority had taken a decision on 15.09.2016 to not favorably consider the case of the petitioner and two other incumbents for grant of compassionate employment and the said decision was then communicated to the District and Sessions Judge, Aurangabad, vide letter dated 19.09.2016. Therefore, it is submitted by the Ld. Counsel for the Respondent-Court that as per the policy decision, governing the matters of compassionate employment, the case of the petitioner for compassionate employment has already stood rejected, way back in the year, 2016, whereas the present writ petition has been filed belatedly in the year, 2021, i.e. after a lapse of about 5 years, as such the present writ petition is also marred by the principles of delay and laches, thus the same is fit to be dismissed, not only on merits but also on the ground of delay and laches.

7. I have heard the learned counsel for the parties and perused the materials available on record, from which it is clear that the Respondent-Court has taken a policy decision to make compassionate employment, restricted to 3% of the sanctioned strength of the cadre in which such appointment is being



considered, hence as far as the present case is concerned, since the sanctioned strength of Class IV post is 107 and already 10 persons have been appointed on compassionate ground on the Class IV post, who are still working, the petitioner cannot be granted compassionate employment, inasmuch as the 3% limit has already stood exceeded.

8. In any view of the matter, this Court also finds that the death-cum-retiral dues have already stood paid to the petitioner, totaling to a sum of Rs.10,71,019/-, which by any stretch of imagination is not a meager amount, hence it cannot be said that the petitioner has been facing abject financial hardship.

9. Yet another aspect of the matter is that now about 10 years have lapsed since the death of the father of the petitioner, hence at this juncture, if any application of the petitioner is entertained after such a long delay, other cases of similar nature may arise where grant of immediate relief by providing employment to the dependent of the deceased employees may crop up, thus what is material for consideration is the time when the relief is to be granted to a family in distress and not to reserving a job for one of the dependents. In this connection, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of *Umesh Kumar Nagpal vs. The State*



of Haryana and others, reported in **(1994) 4 SCC 138**, paragraph no. 6 whereof is reproduced herein below:-

"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 any time 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."

10. At this juncture, it would be apt to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Central Coalfields Limited and Others vs Parden Oraon***, reported in **2021 SCC Online SC 299**, paragraph no. 8 and 9 whereof are reproduced herein below:-

"8. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job



is offered to the eligible member of the family. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.

9. We are in agreement with the High Court that the reasons given by the employer for denying compassionate appointment to the Respondent's son are not justified. There is no bar in the National Coal Wage Agreement for appointment of the son of an employee who has suffered civil death. In addition, merely because the respondent is working, her son cannot be denied compassionate appointment as per the relevant clauses of the National Coal Wage Agreement. However, the Respondent's husband is missing since 2002. Two sons of the Respondent who are the dependents of her husband as per the records, are also shown as dependents of the Respondent. It cannot be said that there was any financial crisis created immediately after Respondent's husband went missing in view of the employment of the Respondent. Though the reasons given by the employer to deny the relief



sought by the Respondent are not sustainable, we are convinced that the Respondent's son cannot be given compassionate appointment at this point of time. The application for compassionate appointment of the son was filed by the Respondent in the year 2013 which is more than 10 years after the Respondent's husband had gone missing. As the object of compassionate appointment is for providing immediate succour to the family of a deceased employee, the Respondent's son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.

11. Therefore, considering the object of the scheme of compassionate employment, which is to enable the bereaved family to tide over the immediate financial crisis, which it faces on account of sudden death of the breadwinner, no relief can be granted to the petitioner at this juncture, inasmuch as compassionate employment is neither a vested right nor an alternate mode of employment, apart from the fact that the case of the petitioner is barred by the aforesaid policy decision of the Respondent-Court, restricting the compassionate employment to 3% of the sanctioned strength of the cadre in which such appointment is to be made as also marred by the principles of delay and latches.

12. Having regard to the facts and circumstances of the



case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
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