

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1322 of 2018

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Munna Kumar S/o Late Sanjiv Prasad, resident of Village- Chilbilli, P.S. Beur,
District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Health,
Government of Bihar, Patna
2. Director in Chief, Health Services, Bihar, Patna.
3. Civil Surgeon-cum-Chief Medical Officer, Khagaria.
4. Additional Chief Medical Officer, Khagaria.
5. District Magistrate, Khagaria cum Chairman, District Compassionate
Appointment Committee, Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
For the Respondent/s : Mr. Chandra Shekhar Singh, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

14 12-09-2023 Heard Mr. Shiv Kumar, learned counsel for the

petitioner and Mr. Chandra Shekhar Singh learned AC to GA-

10.

2. This application has been filed for issuance of a writ in the nature of certiorari for quashing the proceeding of the District Compassionate Appointment Committee, Khagaria, dated 26.12.2017 as contained in Annexure-11, whereby and whereunder the claim of the petitioner for appointment on compassionate ground has been rejected on frivolous ground that at the time of death his father, he was not in government service and further issue a writ of mandamus for directing the



respondent authorities to consider the case of the petitioner for appointment on compassionate ground in place of his father who died in harness on 09.01.2015 while working as Non-Medical Assistant.

3. The writ petition has chequered history. The father of the petitioner, namely, Sanjiv Prasad was terminated from service vide Memo No.182 dated 18.03.1993 (para-7 of the petition) by the order of the Deputy Director (Admn.), Health Services, Bihar, Patna.

4. Aggrieved, the father of the petitioner moved CWJC No.5261 of 1993 which was disposed of on 06.03.1995 with a direction to the respondent authorities to examine the claim of the petitioner and pass reasoned order. This followed cancellation of the termination letter on 31.12.1997 and the father of the petitioner was reinstated in service on 20.04.1998.

5. On 27.02.2003, the father of the petitioner was once again terminated from service on 19.05.2001. This followed CWJC No.3739 of 2003 which was allowed on 08.09.2003 and once again the petitioner's father was directed to join before the In-charge Medical Officer, District Leprosy Control, Khagaria.

6. The journey of termination/reinstatement continued



and in continuation of that on 23.09.2004 his father was reinstated from service without any order, as claimed by the petitioner. On 06.10.2009 the termination order was quashed by the Court in CWJC No.10435 of 2008. The State went in appeal vide L.P.A. No.1909 of 2010, which was dismissed on 14.07.2011 and it is important to incorporate the concluding paragraph of the said appeal which reads as under:-

“The learned Single Judge has rightly allowed the writ petition and set aside the termination order. The petitioner shall be reinstated forthwith and salary shall be paid month to month regularly and arrears of salary shall be paid month to month regularly and arrears of salary shall be paid within four months. We fully agree with the Judgment of the learned Single Judge. For the reasons recorded above, the appeal is devoid of merit.

Accordingly, this L.P.A. is dismissed.”

7. Aggrieved, the State preferred S.L.P. No.24754 of 2012. Meanwhile, after facing the litigation for decades, unfortunately, the father of the petitioner died on 09.01.2015.

8. On 23.02.2015, the aforesaid appeal was taken up by the Hon’ble Apex Court and on the information that the



respondent (father of the petitioner) is since dead Hon'ble Apex Court disposed of the appeal (Annexure-G).

9. Thereafter, it is the case of the petitioner that the entire retiral benefit of the petitioner's father was paid to his mother pursuant to the filing of the MJC No.1428 of 2010 and order dated 30.11.2015 by a Bench of this Court (Annexure-15 to the petition).

10. In view of the fact that the LPA Court had dismissed the petition of the State and direction was given for reinstatement of the petitioner's father forthwith on 14.07.2011, the petitioner preferred application for his appointment on compassionate ground.

11. The same was negated by an order dated 26.12.2017 under the Chairmanship of the District Magistrate, Khagaria on the ground that on the date of his death, he was not in service.

12. It is the case of the petitioner that when the order of the writ Court was stamped on 14.07.2011 by the Appellate Court in LPA No.1909 of 2010 with the observation of his reinstatement forthwith, his father died subsequently three and half years later on 09.01.2015, no relief has been granted to the State by the Hon'ble Apex Court, his mother has been granted



all the retiral benefits taking into account his father to be in service, the respondent-District Compassionate Appointment Committee erred in disallowing his claim for compassionate appointment.

13. The State has filed counter affidavit and learned AC to GA-10 has brought attention of this Court to Annexure-E i.e., Memo No.1125(11) dated 14.11.2011 issued by the Director-in-Chief, Health Services, Bihar, Patna, by which the joining of the petitioner's father was rejected. He submits that when the said joining was rejected which the petitioner's father never challenged, it cannot lay his claim for compassionate appointment.

14. Learned counsel for the petitioner submits that though his father is no more, to his knowledge this letter was never delivered to him necessitating its challenge. Further, it is the case of the petitioner that in the light of an order of the LPA Court in LPA No.1901 of 2010 on 14.07.2011, this order at best be termed contemptuous if not illegal. His further case is that when his mother has been granted all the retiral benefits, the appellate Court ordered his father to be in service forthwith, the natural corollary will be of extending the benefit of compassionate appointment; he being the only son and



nominated by his mother.

15. The entire facts have been incorporated only to show that the petitioner's father before he left for his heavenly abode had successfully challenged his termination order which was stamped in appeal when the LPA preferred by the State was dismissed. In that background, the Compassionate Committee in its order dated 26.12.2017 completely erred in recording that the petitioner's father was not in service at the time of his death.

16. In that backdrop, the order dated 26.12.2017 so far as the same relates to the petitioner (Annexure-11 to the writ petition) stands quashed.

17. The petitioner will be submitting his application with all the relevant documents within four weeks from today.

18. In case, the same is submitted by the petitioner, the District Compassionate Committee, Khagaria, will be taking decision on his case within a period of three months and take the matter to its logical conclusion treating his father to be in service on the date he died.

19. The writ petition stands disposed of with the aforesaid observation.

(Rajiv Roy, J)

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