

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.86 of 2023

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Mukesh Kumar Paswan Son of Late Ruplal Paswan Resident of ward no.- 2,
Village- Loknathpur Ganj, P.S.- Dalsinghsarai, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administrative Department, Government of Bihar, Patna.
2. The District Compassionate Appointment Committee, Samastipur.
3. The District Magistrate, Samastipur.
4. The Additional Collector (Establishment Section), District- Samastipur.
5. The Sub-Divisional Officer, Dalsinghsarai, District- Samastipur.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Akshansh Ankit, Advocate
For the Respondent/s : Mr. Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 20-02-2023 Learned counsel for the petitioner seeks permission to
make necessary correction in paragraph 1(a) of the application.

Permission is granted. Let it be done in course of the
day.

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

Petitioner, in the present case, is aggrieved by and
dissatisfied with the order as contained in Annexure 'P/7' passed
by the respondents whereby the case of the petitioner for
compassionate appointment has been rejected.

Learned counsel for the petitioner submits that one
Ruplal Paswan (father of the petitioner) died in harness on



25.06.2020. At the relevant time, he was holding the post of Office Attendant in the office of Sub-Divisional Officer, Dalsingsarai. He left behind his wife, four sons and one daughter. Admittedly two sons of late Ruplal Paswan are employed in the private sector. In paragraph '14' of the writ application it is stated *inter alia* that both the sons namely, Naresh Kumar Paswan and Dinesh Paswan are gainfully employed in private sector and have been earning their livelihood.

The stand of the petitioner is that the two gainfully employed sons of the deceased are separate in residence and mess and have no concern with the other dependants of the deceased. They have not given no objection in favour of the petitioner and this is because of their ill-will.

Learned counsel for the petitioner submits that the District Level Compassionate Appointment Committee has simply rejected the case of the petitioner taking note of the departmental letter no. 1342 dated 06.02.2017 wherein it is provided that for purpose of claiming benefit of compassionate appointment the dependants of the deceased are required to furnish a self-declaration/self-certified no objection affidavit from the other dependants.



Learned counsel submits that the rejection of the case of the petitioner only because the two other gainfully employed sons of the deceased have not given their self-declaration/self-certified no objection affidavit is not just and proper.

On the other hand, Md. Irshad, learned AC to SC-1 for the State submits that appointment on compassionate ground is done only after being satisfied that the dependants of the deceased government servant is living in a state of penury or destitution. It is one of those cases in which the two sons of the deceased are gainfully employed. It is not the case of the petitioner that the gainfully employed siblings are having such a poor income that from such income he cannot provide two ends meet to the other dependants or that the other dependants are on the verge of starvation/destitution and penury.

Learned counsel has drawn the attention of this Court towards the Hon'ble Full Bench Judgment of this Court in the case of **Niraj Kumar Mallick and others Vs. The State of Bihar and Another** reported in **(2018) 2 PLJR 951** to submit that in such cases where the deceased has left behind more than one dependants and some of them are gainfully employed, the government has come out with certain guidelines and those guidelines had been subject matter of consideration by the



Hon'ble Full Bench of this Court. One of the issues raised before the Hon'ble Full Bench was as to what would be the consideration in the matter of appointment on compassionate ground where the deceased has left behind some of his sons gainfully employed. The clarification issued by the government in this regard were subject matter of consideration before the Hon'ble Division Bench. It is submitted that in the present case the petitioner does not contend at any stage that the other two brothers of the petitioner are having poor income or that they are not in a position to provide two ends meal to the other dependants. The only ground set-forth by the petitioner is that his other two brothers are living separately in residence and mess. Learned counsel submits that this cannot be a valid ground to be covered under the government's policy for compassionate appointment.

Having regard to the facts and circumstances of the case as appearing from the pleadings before this Court and the submissions of learned counsel for the petitioner and the State, this Court finds substance in the submission of learned counsel for the State. Admittedly, the two brothers of the petitioner are gainfully employed. It is not the case of the petitioner that their income is so poor that they cannot provide two ends meal to the



other dependants. The Hon'ble Full Bench of this Court in the case of Niraj Kumar Mallick (supra) has after discussing the law on the subject held in paragraph '46' onwards as under:

“46. 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.

47. 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”.

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.

49. In my opinion the Division Bench judgment of this Court in the case of **Vishal Kumar** (supra) followed by learned Writ Court in the case of **Mahabir Paswan** (supra) and **Jay Prakash Choudhary** (supra) are laying down the correct law. In none of these writ applications, the petitioners have pleaded that their other siblings are in such an employment by which they are unable to get sufficient money so as to provide the both ends meet to these petitioners, therefore we find no error in the impugned order rejecting the application of the petitioner(s) on the ground that their other siblings are in employment. I would, therefore approve the judgment dated 22.08.2016 passed by the learned Single Judge in CWJC No. 10236 of 2013 which has followed the judgment of the Hon'ble Division Bench in the case of **Vishal Kumar** (supra).

50. The Letters Patent Appeal as well as both the Writ



Applications are, accordingly, dismissed. There will, however, be no order as to costs.”

In this writ application also there is no averment that the two brothers of the petitioner are having poor income or that they are not in a position to maintain the other dependants. The grounds set-forth by the petitioner cannot be a ground in terms of the judgment of the Hon’ble Full Bench of this Court.

This Court, therefore, finds no merit in this writ application. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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