

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3022 of 2024

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Pankaj Kumar, Gender-Male, Aged about 25 years, Son of Amrendra Yadav,
Resident of Village – Chauwatiya, P.S. and District-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The Collector, Banka, District - Banka.
3. The Additional District Magistrate, Banka, District - Banka.
4. The Sub-Divisional Officer, Banka, District - Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh, Advocate.
For the Respondent/s : Mr. Mujtabaul Haque, GP-12 with
Mr. Pranoy Kumar, AC to GP-12.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

4 13-09-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“.... for issuance of an appropriate writ, order and direction for quashing the order passed by the Sub-Divisional Officer, Banka and issued vide Memo No. 259 dated 11/9/2019 whereby and where under P.D.S. license No. 45/12 of the petitioner's father namely Amrendra Yadav who was a P.D.S. dealer has been cancelled contained in (Annexure - 1) as well as quashing the order dated 2/2/2023 passed by the Collector Banka in Miscellaneous Appeal Case No. 712/19-20 and issued vide



Memo No. 24 dated 3/1/2024 whereby and where under appeal filed by the petitioner's father namely Amrendra Yadav has been closed only on a sole ground that during pendency of this appeal, father of the petitioner who was an appellant was died and now this appeal became infructuous without considering substitution petition of the petitioner or merit of this case (Annexure -5) and further direction to the respondents to consider the name of the petitioner and to issue P.D.S. license on compassionate ground in the name of the petitioner and till final order not to issue any P.D.S. license to another on place of the petitioner.”

3. Learned counsel appearing on behalf of the petitioner has stated that pursuant to the order passed by this Hon'ble Court in CWJC No. 5586 of 2021 dated 04.10.2021, the petitioner was pursuing the appeal before the District Magistrate, Banka i.e. Respondent No. 2 herein. However, the Respondent No. 2, without deciding the appeal on merits, has dismissed the appeal solely on the ground that the original appellant i.e. the father of the petitioner had died and the appeal has become infructuous. Learned counsel has stated that the application made by the petitioner for substituting the name of the father was pending adjudication, but the authority did not go into the merits of the said application and dismissed the appeal on technicalities in a mechanical and pedantic manner.



4. Admittedly, as seen from the order of the co-ordinate Bench of this Hon'ble Court passed in CWJC No. 5586 of 2021 dated 04.10.2021, this Hon'ble Court had directed the Respondent No. 2 to dispose the appeal filed by the father of the petitioner on merits. However, it is to be noted that the impugned order has been passed by the appellate authority on technicalities and not on the merits of the case. The appellate authority ought to have passed the order on merits duly substituting the name of the petitioner in lieu of the name of his father. In case, the petitioner succeeds in the appeal, he can file an application for appointment on compassionate grounds. Unless and until the order of cancellation is set aside, the petitioner's right to be appointed on compassionate ground cannot be entertained.

5. The view expressed by the co-ordinate Bench of this Hon'ble Court supported by judgment of the Division Bench passed in CWJC No. 5959 of 2022 dated 28.07.2022 is squarely applicable to the facts of this case and is as under:-

“The petitioner is desirous of seeking license on compassionate ground but that could be done only after it is found by the Appellate Authority that the licence of the petitioner was wrongly cancelled.

Precisely, for this purpose, the



petitioner has filed a substitution petition before the District Authority seeking a request to substitute him in place of his mother so that the appeal could be contested.”

6. Having regard to the above, the impugned order dated 02.02.2028 passed by the District Magistrate, Banka and the order dated 11.09.2019 passed by the Sub-Divisional Officer, Banka are both set aside. The matter is remanded back to the appellate authority for considering the matter afresh and passing a reasoned order. The appellate authority shall substitute the name of the petitioner in lieu of the name of his father. It is also made clear that the substitution of the name of the petitioner will not confer any right on the petitioner to get the license in his name. In case, the appeal is allowed, it will only make him eligible for being considered for appointment under the compassionate ground.

7. With the above directions, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

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