

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3542 of 2023

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Jitendra Kumar Jitu, Son of Late Manoj Kumar and Late Smt. Savita Verma,
Resident of Mohalla- Lohiya Nagar, Ward No.- 28, P.O. Shurid Nagar, P.S.
Lohiya Nagar O.P., District- Begusarai, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Divisional Commissioner, Munger Division, Munger, Bihar.
3. The District Magistrate, Begusarai, Bihar.
4. The Additional District Magistrate (District Establishment), Begusarai, Bihar.
5. The Circle Officer, Mansoorchak, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Advocate
For the Respondent/s : Mr. Shailendra Kumar Dwivedi, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 17-10-2024

Heard Mr. Prashant Kumar, learned counsel
appearing on behalf of the petitioner and Mr. Shailendra Kumar
Dwivedi, learned counsel appearing on behalf of the State.

2. The petitioner in paragraph no. 1 of the present
writ petition has sought inter alia, following relief(s) which is
reproduced hereinafter:-

“For issuance of appropriate writ,
order or direction in the nature of Certiorari
thereby quashing and setting aside the Memo No.
174 dated 09.02.2023 issued by the Additional
Collector (District Establishment), Begusarai
rejecting the application of the Petitioner for
appointment on compassionate ground for the



reason that the application was made after seven (7) years of death of the Petitioner's father.

ii) For issuance of an appropriate writ, order or direction in the nature of Mandamus thereby directing the Respondents to consider the appointment of the Petitioner on compassionate grounds pursuant to the order dated 12.03.2021 passed by this Hon'ble Court in CWJC No. 7380/2020.

iii) For grant of such other order or direction for which the Petitioner is found entitled to in the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner submitted that the father of the petitioner died on 11.07.2015 and the petitioner had applied for compassionate appointment on 14.07.2022 for the reason that disciplinary proceeding was pending against the father of the deceased employee namely, Manoj Kumar, who was posted as *Rajaswa Karmchhari* at Begusarai Sadar Circle, Begusarai. It is the case of the petitioner that the father of the petitioner was facing disciplinary action and before the death of the father of the petitioner, he was dismissed from service on 26.05.2014 and same will not dis-entitle him from being appointed on compassionate ground. Against the order of dismissal, the deceased has filed CWJC No. 5410 of 2015 and during the pendency of the said writ petition, the deceased employee died.



However, *vide* order dated 09.04.2018 the said writ petition was allowed and the matter was remanded back to the appellate authority for deciding afresh. Thereafter upon remand, against the order passed by the District Magistrate, wife of the deceased, i.e. the mother of the present petitioner, filed CWJC No. 7380 of 2020 against the fresh departmental enquiry initiated against the deceased on the same set of charges. *Vide* order dated 12.03.2021, the said writ petition was disposed of and learned counsel taking this Court to the operating part of the order submitted that the Court once having held husband of the petitioner will be treated to have not been ever dismissed from service and accordingly she is held to be entitled to all monetary benefits in terms of arrears of salary and death cum retiral dues. Since the said writ petition filed by the mother of the petitioner was allowed, the petitioner also becomes entitled for considering his case to be appointed on compassionate ground and non-consideration of the case of the petitioner on technical ground that the petitioner has not made application within five years of the death of his father, i.e. on 11.07.2015 is not in accordance with law and also in teeth of the order passed by this Court in CWJC No. 7380 of 2020. Learned counsel further submitted that petitioner also made an application for



compassionate appointment dated 14.07.2022 and the same was forwarded by the Circle Officer, Mansoorchak to the Additional Collector (District Establishment) recommending the case of the petitioner for being considered to be appointed on the compassionate ground.

4. *Per contra*, Mr. Shailendra Kumar Dwivedi learned counsel appearing on behalf of the State submitted that the law in respect of considering the case for compassionate appointment is no more *res integra*, however in the present case, the petitioner who has admitted that his mother was litigating before this Court soon after the death of his father, the petitioner was not conscious of his right, however, he was adult at the time of his death of his father for making application before the competent authority for considering his case for being appointed on compassionate ground. The petitioner on his own has waived off his right by not taking any action within time when he was well aware of the fact that in view of the Government Circular contained in Letter No. 2822 issued by the General Administration Department, Government of Bihar, the time limit for filing application for considering the case for compassionate appointment must be strictly within a period of five years. To clarify why such limitation has been imposed by



the State Government, learned counsel submitted that the Apex Court has clarified in various judgments that the compassionate appointment is not a right, rather the same is provided to the family of the deceased to mitigate the financial hardship faced immediately after the death of sole bread earner, so that they can survive and lead at least a human life. The petitioner has admitted that he could only apply before the competent authority to consider his case for being appointed on compassionate ground on 14.07.2022 not within the time and the authority having found that the petitioner has himself sustained for more than nearly ten years, the case of the petitioner has been rejected in accordance with law.

5. Heard the parties.

6. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the law in respect of compassionate appointment is well-settled. Petitioner on the date of death of his father was adult and the family has sustained for nearly ten years, which would appear from the statement made in the writ petition, as well as, order dated 12.03.2021 passed in CWJC No. 7380 of 2020. The terminal benefits has also been paid to the mother of the petitioner and after holding that the father of the petitioner (deceased employee) will be



treated to have not been ever dismissed from service and accordingly the mother of the petitioner was directed to be paid all the death cum retiral benefits, however, she passed away and petitioner has survived till date.

7. The Apex Court relying on the ratio of ***Umesh Kumar Nagpal v. State of Haryana and Others*** reported in (1994) 4 SCC 138, further in Paragraph No. 7.2 in the case of ***The State of West Bengal Vs. Debabrata Tiwari & Ors. Etc.*** passed in ***Civil Appeal nos. 8842-8855 of 2022***, has laid down following principles of compassionate appointment, which are reproduced hereinafter:

“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided



immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

8. In the case of ***Jagdish Prasad v. State of Bihar*** reported in ***(1996) 1 SCC 301***, Hon'ble Apex Court, while considering the object of compassionate appointment held that the object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family.

9. In case of ***State of U.P. v. Paras Nath***, reported in ***(1998) 2 SCC 412***, the Hon'ble Apex Court held that the purpose of providing employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. It was further observed that none of these consideration can operate while the application is made after a long period of time.

10. Based on the above principles and the pleadings made in the writ petition, the admitted facts are that the father of



the petitioner died on 11.07.2015 and the petitioner filed affidavit on 14.07.2022for consideration of appointment on compassionate ground after much delay and it cannot be said that the family of the petitioner faced any hardship on account of unexpected death in view of the fact that the petitioner has sustained to live till date, the present writ petition requires no interference.

11. The writ petition is, accordingly, dismissed.

12. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.10.2024
Transmission Date	NA

