

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6460 of 2019

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Mudita Rani, Wife of Tarun Kumar Tarun, Resident of Village-Dadpur, P.S.-
Bhagwanpur, District-Begusarai, at present residing at Village Hawaspur,
P.S.-Baruni, District-Begusarai. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Human Resource
Department, Government of Bihar, Patna.
2. The Principal Secretary Human Resource Department, Government of
Bihar, Patna.
3. The District Magistrate, Begusarai.
4. The District Education Officer, Begusarai.
5. The Block Education Officer, Begusarai, Sadar.
6. The Head Master of Upgraded Middle School, Singhaul, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh
For the Respondent/s : Mr.Subhash Chandra Mishra (Sc16)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

- 6 12-01-2024 1. The petitioner is the married daughter of Late Devrani
Devi, who died in harness on 20.08.2016, while working
as Assistant Teacher in the Upgraded Middle School,
Singhaul, Begusarai, for 04 years 05 months, has filed the
present writ application for quashing Letter No. 899,
dated 04.10.2018, issued by the Block Education Officer,
Begusarai, whereby the claim of the petitioner for her
appointment on compassionate ground has been rejected
on the ground that the son of the deceased employee has
been working as Teacher prior to the death of the
deceased employee.
2. Learned Counsel for the petitioner submits that the
petitioner is married and deserted daughter of the



deceased employee. She is unemployed though is well educated. She was married to one Tarun Kumar Tarun in the year 2007. However, immediately after the marriage, matrimonial dispute arose between husband and wife, and the same resulted in the desertion of the petitioner by her husband. Having no other option, the petitioner was residing with her mother for more than five years. After the death of her mother, on 20.08.2016, the petitioner became dependent upon her brother, Bharat Bhushan Azad, who is already in employment, as Teacher, prior to the death of her mother and is already married and has got his own family, i.e. wife and children.

3. In the aforesaid background, the petitioner submitted application for her appointment on compassionate ground on 11.05.2018 before the Block Education Officer, Sadar, Begusarai, claiming that she is the eligible candidate for appointment on compassionate ground because the only brother of the petitioner is already in employment and has given no objection by way of affidavit.
4. Learned Counsel further submits that respondent no. 5, the Block Education Officer, Sadar, Begusarai, failed to appreciate that the petitioner is a deserted lady and was



dependent upon her mother. The respondent no. 5, without seeking any guidelines from the higher authorities, on his own, rejected the application of the petitioner on the ground that one of the siblings of the petitioner is already in employment as Teacher prior to the death of her mother (deceased employee).

5. On the other hand, learned Counsel for the State argued that the respondent no. 5 has rightly rejected the claim of the petitioner for appointment on compassionate ground inasmuch as the brother of the petitioner is already in employment as Teacher prior to the death of the petitioner's mother.
6. The petitioner relied upon paragraph 48 of the decision of Full Bench of this Court, in the case of **Niraj Kumar Mallick v. State of Bihar and Others**, reported in **2018 (2) PLJR 951**.
7. I have heard learned Counsel for the parties.
8. The fact that the brother of the petitioner is already in employment as a Teacher prior to the death of the petitioner's mother on 20.08.2016 is not disputed. The respondent authority has rejected the claim of the petitioner for appointment on compassionate basis on the



ground that the son of the deceased employee is already working on the post of Teacher prior to the death of the mother of the petitioner. Thus, the claim of the petitioner is that since the petitioner's brother is having his own family and she is deserted daughter of the deceased employee, as such, she is entitled to be appointed on compassionate ground.

9. The Supreme Court, in a catena of decisions, has held that appointment on compassionate ground is a concession, and not a right. The appointment on compassionate ground is an exception to general rule. However, some exceptions have been carved out in the interest of justice and in order to to meet certain contingencies and to mitigate the immediate suffering of the family.
10. One such exception is in favour of the dependents of an employee died in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration and taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide employment to one of the dependents of the deceased, who may be eligible for such employment. The



whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. Mere death of an employee in harness does not entitle his/her family to such source of livelihood.

11. The Full Bench of this Court, in the case of **Niraj Kumar Mallick** (supra), has considered the circular of the General Administration Department, bearing No. 15783, dated 19.11.2014, relating to clause (क), which says that out of the dependents of the deceased Government employee, if one of the dependents is already employed, then no appointment on compassionate ground shall be given to other dependents of the deceased employee.
12. The Full Bench of this Court interpreted the aforesaid circular, in paragraphs 46 and 47 of **Niraj Kumar Mallick** (supra), which are being quoted herein below:

“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”.

13. Admittedly, the other sibling of the petitioner is in Government employee, as such, paragraph 48 of **Niraj Kumar Mallick** (supra), relied upon by the petitioner is not applicable in the facts and circumstances of this case.

14. In view of the aforesaid discussion, on the facts as well as on law, and the object and purpose for which compassionate appointment is introduced, I do not find any merit in this writ application.

15. This writ application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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