

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.299 of 2020

In

Civil Writ Jurisdiction Case No.7594 of 2017

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Mangal Bahadur Son of Late Ramu Bahadur Resident of Mohalla- Hospital
Colony, Valmiki Nagar, P.S. Valmiki Nagar, District- West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department (Irrigation Department), Bihar, Patna.
2. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Motihari.
4. The Superintending Engineer, Tirhut Nahar Anchal, Bettiah, West Champaran.
5. The Executive Engineer Tirhut Nahar Pramandal No.1, Bettiah, West Champaran.
6. The District Magistrate, West Champaran, Bettiah.
7. The District Magistrate-Cum-President, District-Compassionate Appointment Committee, West Champaran, Bettiah.
8. The Deputy Collector, District Establishment, West Champaran, Bettiah.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dileep Kumar Jha, Adv.
Mr. Rakesh Kumar Singh, Adv.
Mr. Sonu Kumar, Adv.

For the State : Mr.JC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 15-03-2024

The present LPA is directed against the
judgment dated 09.05.2018 passed in CWJC No. 7594 of



2017 whereby and whereunder civil writ petition filed by the appellant has been dismissed.

2. In civil writ jurisdiction, the appellant has sought following relief(s):-

(i) An appropriate writ(s), order(s) or direction(s) particularly in the nature of quashing of the order contained in memo no. 339 dated 02.08.2016 passed by the District Magistrate-cum-Chairman, District Compassionate Appointment Committee, West Champaran, Bettiah, the respondent no. 6, rejecting the claim of compassionate appointment of the petitioner in lieu of petitioner's father death in harness on 26.01.1992.

(ii) An appropriate writ(s), order(s), direction(s) particularly in the nature of writ of mandamus, directing the respondent authorities to appoint the petitioner on any suitable post on compassionate ground with all consequential benefits.

3. Briefly stated the facts of the case are that appellant's father, namely, Ramu Bahadur died in harness on 26.01.1992 while working on the permanent post of Canal Labour (Nahar Majdoor) and whereafter the appellant made



an application on 24.12.1995 before the respondent no. 5 for grant of compassionate appointment, however, the claim of the appellant was not considered.

4. Learned counsel for the appellant submits that appellant, being the son of deceased employee has passed 8th Standard, filed an application for appointment on compassionate ground in prescribed form with all relevant documents on 24.12.1995. It has further submitted that appellant tried his best to draw the attention of respondent authority to appoint him on compassionate ground and in the light of consistent drawing attention of respondent authority, respondent no. 5 issued a letter vide memo no. 710 dated 13.06.2015 (Annexure-2 to the writ petition) to respondent no. 4 seeking clarification in the light of letter no. 1866 dated 04.02.2015 issued by the Finance Department, Bihar, Patna. It has further been submitted that claim of appellant for appointment on compassionate ground has been rejected by the respondent authority on the ground that same cannot be considered after lapse of 24 years from the date of death of government employee and it was mentioned that there was no evidence for filing the application for appointment on compassionate ground and it was also not clear that what is



the time limit for filing application for appointment on compassionate ground and lastly, the claim of appellant for appointment on compassionate ground has been rejected which was communicated to the appellant vide memo no. 339 dated 02.08.2016 (Annexure-3 to the writ petition). It was further submitted that claim of the appellant has wrongly been rejected on the ground that there is no clear proof of the fact that appellant had submitted application for appointment on compassionate ground within prescribed time, inasmuch as the letter of Executive Engineer, Tirhut Canal Division dated 13.06.2015 (Annexure-2 to the writ petition) would show that the appellant filed application on 24.12.1995. It was further submitted that claim of appellant has been rejected by mentioning another ground that there is no basis for considering the case of the appellant for appointment on compassionate ground after lapse of 24 years from the date of death of government employee. The counsel of the appellant vehemently submitted on the said score that neither the respondent authority nor the learned Single Judge has considered that whether there was laches on the part of respondent authority who has blocked the process of appointment on compassionate ground for so many years as



same is evident that file is being sent for one purpose or another purpose with reason best known to the respondent authority and thereby the process of appointment has been delayed and appellant is being deprived for which he has sought the relief. Learned counsel for the appellant has submitted that the learned Single Judge has dismissed the case of the appellant solely on the ground of delay of 25 years since death of appellant's father without appreciating the policy applicable at the time of death of appellant's father. Hence, the present LPA.

5. Learned counsel for the respondent authority has submitted that appellant filed application for appointment on compassionate ground enclosing some documents along with said application but those were not found complete and respondent no. 5 directed the appellant vide letter no. 1519 dated 30.12.1995 to submit more documents and the respondent authority made certain queries through various letters and it has been submitted that fresh application of the appellant was forwarded by respondent no. 5 vide letter no. 710 dated 13.06.2015. It has further been submitted that District Compassionate Appointment Committee, West Champaran examined the proposal of



appellant for appointment on compassionate ground in the meeting held on 23.06.2016 and rejected the same on the ground of inordinate delay of 24 years vide proposal no. 3 and said decision was communicated by the order of District Magistrate, West Champaran vide memo no. 339 dated 02.08.2016. It has further been submitted that it is evident from the order that appellant himself is responsible for inordinate delay. In the light of aforesaid facts and circumstances of the case, the present LPA is liable to be dismissed.

6. From perusal of the record, it is crystal clear that the matter relates to compassionate appointment of the appellant and appellant's father died in the year 1992. Therefore, we have to examine what are the criteria for the purpose of compassionate appointment as on date of death of appellant's father on 26.01.1992. Neither of the parties have placed on record, what is the scheme of compassionate appointment/rules in order to ascertain whether minor son or daughter of the deceased employee is entitled to make belated application for compassionate appointment or not?

7. Further, it is found that concerned authority has taken his own time in deciding the appellant's



application for compassionate appointment and rejected only in the year 2016 and in the year 2018 by the learned Single Judge of this Court with reference to application in the year 1995.

8. Pursuant to the order of this court, supplementary counter affidavit on behalf of respondent no. 6 to 8 has been filed in the present LPA. It has been submitted in the supplementary counter affidavit that appellant has submitted his application for compassionate appointment in the prescribed format before the concerned authority on 24.12.1995 and same was verified by head clerk on the same day. The respondent no. 5 made his signature on 05.02.2013 and respondent no. 4 vide its letter no. 927 dated 01.12.2015 forwarded the application before the respondent no. 8. Learned counsel for the respondent no. 6 to 8 submitted photocopy of memo no. 13293 dated 05.10.1991 of the Personnel and Administrative Reforms Department, Bihar, Patna (Annexure-C to the supplementary counter affidavit) and para-3 of memo no. 13293 dated 05.10.1991 is quoted hereunder:-

आवेदन की समय-सीमा:

आवेदन देने की कोई समय-सीमा नहीं होगी।



लेकिन नियुक्ति हेतु अधिकतम उम्र सीमा की
अहर्ता का कड़ाई से पालन किया जायेगा।

9. The document which is denoted as Annexure-C to the supplementary counter affidavit signifies that there will be no time limit for submitting application for appointment on compassionate ground at the relevant time when appellant's father died during course of employment. It has been submitted by respondents no. 6 to 8 through supplementary counter affidavit that said memo no. 13293 dated 05.10.1991 of Personnel and Administrative Reforms Department, Bihar, Patna will be applicable in the case of appellant.

10. Pursuant to the order of this court dated 29.02.2024, the document which is denoted as Annexure-C to the supplementary counter affidavit is made available by the respondent no. 6 to 8 and same was not sought by the concerned authority at the time of deciding the application of appellant on compassionate ground and the learned Single Judge has also not sought the relevant document while deciding CWJC No. 7594 of 2017.

11. It is necessary to quote the relevant judgment of Hon'ble Supreme Court passed in Civil Appeal



No. 7752 of 2021 arising out of Special Leave Petition (C)
No. 1564 of 2021 (**The Secretary To Govt. Department of
Education (Primary) & Ors. vs. Bheemesh @ Bheemappa.**

In the said case, the Hon'ble Supreme Court has held that applicability of modified scheme with respect to appointment on compassionate grounds would be based on a fixed criteria, like date of death, rather than indeterminate factor, like date of consideration of claim.

12. On the said subject matter of compassionate appointment, in the case of State of M.P. v. Ashish Awasthi reported in (2022) 2 SCC 157 it has been held at para 5 that *as per the settled proposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.* In para 6 of the said judgment, while discussing the case of *Indian Bank v. Promila* reported in (2020) 2 SCC 729 it is observed and held that *claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into.* Similar view has been taken by the Hon'ble Supreme Court in



State of M.P. v. Amit Shrivastava reported in **(2020) 10 SCC 496**.

13. In the view of said guideline of Hon'ble Supreme Court, in the present LPA, date of death of government employee was on 26.01.1992 and the appellant filed application for appointment on compassionate ground on 24.12.1995 and Annexure-C as submitted by respondent no. 6 to 8 where there was no time limit for filing application for appointment on compassionate ground. From perusal of record it is also crystal clear that the application for appointment on compassionate ground was being tossed from one authority to another authority blocking the process of appointment for so many years and the appellant cannot be solely liable for the process which was not under his control. The appellant being an unfortunate person, who has lost his father, filed his application in the year 1995. It was also not denied by the concerned authority when they have filed supplementary counter affidavit in the present LPA. The ground of rejection by respondent authority has already been discussed in the aforementioned paragraphs, as same are bereft of any merit and the learned Single Judge has also not taken into account the relevant Executive order governing



compassionate appointment (Annexure-C to the supplementary counter affidavit) and rejected the writ petition without appreciating the merit of the case. The respondents themselves admitted that Annexure-C was quite relevant in the present case but while deciding the fate of case of the appellant, respondent authority has not taken into account the relevant material (Annexure-C to the supplementary counter affidavit) and both respondent authority and the learned Single Judge came to the wrong conclusion as both have decided the fate of appellant's case without going through relevant material which was applicable at the time of death of the employee. Therefore, the appellant has made out a case so as to interfere with the judgment dated 09.05.2018 passed in CWJC No. 7594 of 2017. Accordingly, judgment dated 09.05.2018 stands set aside and CWJC No. 7594 of 2017 allowed, consequently the present LPA stands allowed.

14. The appellant is not entitled to compassionate appointment at this belated stage, since deceased family maintained for these many decades. However, appellant is entitled to compensation for no fault he had been denied compassionate appointment on account of lethargic attitude of the official respondents and it is



quantified at Rs. 3,00,000/- (Rupees three lakhs).
Compensation of Rs. 3,00,000/-(Rupees three lakhs) shall be
paid to appellant within a period of three months from the
date of receipt of this order, failing which appellant is entitled
to interest @ 6% p.a. from the date of filing of CWJC.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	A.F.R.
CAV DATE	07.03.2024
Uploading Date	15.03.2024
Transmission Date	N.A.

