

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9075 of 2012

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Pankaj Kumar Singh S/O Late Chandra Shekhar Singh, R/O Police Club, Qr.
No. GF (B) 4, Salempur, P.S.- Chapra Town, P.O.- Chapra, Saran

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Home (Police) Department, Government Of Bihar, Patna
3. The Director General Of Police, Bihar, Patna
4. The Deputy Inspector General Of Police (Personnel) Bihar, Patna
5. The District Magistrate, Saran, Chapra
6. The Superintendent Of Police, Saran, Chapra
7. Mukund Mohan Srivastava S/O Late Mrinal Kumar R/O Village and P.O.-
Satjora Pakari, P.S.- Masarakh, Distt.- Chapra, Presently Posted As Clerk In
The Scale Of Rs. R,000.00 - 6,000.00, Collectorate, Saran At Chapra
8. Satish Kumar S/O Late Binod Prasad R/O Villge- Saraiya, Ward No. 12,
Gopalganj, Presently Posted As Clerk In The Scale Of Rs. R,000.00 -
6,000.00, Collectorate, Saran At Chapra

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Prakash Bihari, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 06-05-2024

Heard Mr. Satya Prakash Bihari, learned counsel
appearing on behalf of the petitioner and Mr. Gyan Prakash
Ojha, learned GA-7 for the State.

2. The petitioner has filed the present writ petition
seeking following relief(s) in paragraph no. 1 of the writ
petition:

*"(i) Issuance of an appropriate writ, order or
direction in the nature of mandamus commanding and
directing, the respondent authorities to treat the
appointment of the petitioner on the post of clerk at least
with effect from the date and pay scale at par with the*



subsequent applicants, respondent no. 7 & 8 have been so appointed with all consequential benefits of seniority in service and pay.

(ii) To any other relief/reliefs to which the petitioner may be found entitled."

3. Thereafter, certain development took place in between during the pendency of the writ petition and petitioner has filed Interlocutory Application No. 04 of 2024 for modification of the relief(s) as prayed for in paragraph no. 1 of the main writ petition:

"1. That the present interlocutory application being filed for the amendment in the prayer/ relief sought in the connected writ application, which was inadvertently missed out during the filing of the writ application. The petitioner was appointed on compassionate ground. His appointment was cancelled with retrospective effect i.e. 02.08.2001 by the Respondent No. 5. The petitioner has been advised to assail the order of cancellation of appointment bearing Memo No. 642 dated 07.05.2002 (Annexure-12) to the extent it has been cancelled with retrospective effect, after amending the prayer/ relief to the connected writ application. The petitioner has also been advised to assail the subsequent appointment letter dated 16.7.2002 whereby and whereunder the directions have been issued for appointment of the petitioner in the as LDC and compassionate basis in the police department. The aforesaid order of appointment dated 16.07.2002 is being challenged to the extent that it seeks to ignore the past service of the petitioner from 02.08.2001 to 07.05.2002. The Hon'ble Court may permit amendment/ addition of following prayers as paragraph no. 1A, 1B, 1C, 1D & 1E to the connected writ application

1A. For issuing writ/writs, order/orders or any other writ including writ of certiorari and thereby quashing/ setting aside the order bearing Memo No.642 dated 07.05.2002 (to the extent it has been cancelled with retrospective effect) issued by the Respondent No. 5 whereby and whereunder the appointment of the petitioner has been cancelled with retrospective effect i.e. 02.08.2001 which is the date of issuance of appointment order.

1B. For issuing writ/writs, order/orders or any other writ including writ of certiorari and thereby quashing/setting aside the subsequent appointment letter



bearing Memo No. 1070 dated 16.07.2001 (to the extent it seeks to ignore the past service of the petitioner from 02.08.2001 to 07.05.2002) whereby and whereunder the directions have been issued for appointment of the petitioner in the as LDC on compassionate basis in the police department.

1C. For issuing writ/writs, order/orders or any other writ including writ of mandamus directing the Respondent (s) to grant continuity service to the petitioner reckoning his initial date of appointment to be 02.08.2001.

1D. For granting all consequential benefit to the petitioner which is petitioner is entitled to by virtue of quashing/setting aside of the impugned order dated 07.05.2002.

1E. For granting the benefit of passing the hindi noting and drafting examination (which he had passed while being posted at Collectorate) in the present service and annual increment on basis of such income be directed to paid to the petitioner."

4. Brief facts of the case are that the father of the petitioner had died in harness on 17.01.1999, while he was posted as Correspondent clerk in the office of the Superintendent of Police, Saran at Chapra. The District Magistrate-cum-Collector has sought clarification from the District Inspector General of Police in respect of the petitioner whether the appointment made by the District Magistrate as per the recommendations compassionate appointment committee can be held to be in accordance with law. Thereafter, the petitioner made application before the Inspector General of Police, Saran at Chapra on 02.09.1999, which was placed before the District Compassionate Committee for its recommendation in accordance with the prevailing circular issued by the then



Personnel and Administrative Reform, Bihar Government, as contained in Memo No. 2822 dated 27.04.1995 (Annexure-2 to the writ petition). Thereafter, vide Letter No. 833 dated 16.07.2001, the District Magistrate had recommended the case of the petitioner to be considered by the District Compassionate Committee and name of the petitioner had figured at Serial No. 6. Pursuant to which, the Collectorate, Saran (District Establishment Branch) had appointed the petitioner on the post of Lower Division Clerk on compassionate basis in Saran Collectorate in the pay scale of Rs. 3050-4500/- vide Memo No. 921 dated 02.08.2001. The Collector, vide Order No. 642 dated 07.05.2002 had cancelled the appointment of the petitioner, which was made by him vide letter dated 16.7.2001 being not by a competent authority. The respondents have admitted that petitioner was recommended for appointment but referring to the counter affidavit filed on behalf of the respondent no. 5, particularly, paragraph no. 15, submitted that the District Compassionate Committee, has only recommended for consideration of the case of the petitioner for compassionate appointment. The petitioner had made a request vide letter dated 19.01.2007 to the District Magistrate, who, vide Letter contained in Annexure-9, had sought clarification from the



Deputy Inspector General Of Police (Personnel) Bihar, Patna, in respect of the petitioner, whose father had died in harness in the office of Superintendent of Police Saran at Chapra and, as such, whether application made by the deceased heir seeking compassionate appointment can be considered by the District Compassionate Committee or not. The Deputy Inspector General Of Police (Personnel) Bihar, Patna, had clarified that the guidelines of the Personnel Administrative Reforms Department Guidelines dated 27.04.1995 is applicable in the case of the Police Personnel also and same will guide the case of the petitioner. Thereafter, the petitioner was issued a fresh appointment letter under the authority and seal of Deputy Inspector General Of Police, Saran at Chapra, who is the appointing authority of the petitioner, with a condition that the effective date of the appointment will be not from the date, the Collector had appointed the petitioner in the Collectorate i.e. 15.07.2001 as would appear from 'Annexure-7 to the writ petition', which was done on the basis of the same recommendation made by the District Compassionate Committee dated 25.06.2001.

5. Learned counsel appearing on behalf of the petitioner submitted that vide letter no.833 dated 16.07.2001 the



District Compassionate Committee headed by the District Magistrate, Saran, Chapra selected and recommended the petitioner for appointment on Class III post. Pursuant to the letter no. 833 dated 16.07.2001 the Collectorate, Saran (District Establishment Branch) Saran at Chapra vide Memo No. 921 dated 02.08.2001 appointed the petitioner on the post of lower division clerk on compassionate basis in Saran Collectorate in the pay scale Rs. 3050-4500/-. Vide Memo No. 921 dated 02.08.2001 petitioner joined on the post of lower division clerk in Saran Collectorate and was discharging his duties to the satisfaction of all concerned. The father of the petitioner died on 14.01.1999 subsequent there to two other employees namely, Late Mrinal Kumar and Late Binod Prasad were also died on 20.08.1999 and 29.08.1999 respectively that is after death of the petitioner's father. The case of Mukund Mohan Srivastava, dependent and son of Late Mrinal Kumar and dependent of Late Binod Prasad were considered by the District Compassionate Committee and both were appointed as clerks in pay scale of 4000-100-6000 in Saran Collectorate vide Memo No. 1401/Establishment. Their cases for appointment on class III post on compassionate basis were not forwarded to Deputy Secretary of the Government nor any clarification was sought



for as to their appointment would be made by B.P.S.C. or the District Compassionate Committee. The case of petitioner, unnecessarily and undesirably, was forwarded to the D.I.G., Personnel from there to the Under Secretary of the Department and further, when the Under Secretary of the Government Communicated that the District Compassionate Committee is competent to consider case of appointment of the petitioner for appointment on class III post on compassionate basis, according to prevailing rules (Annexure- 5). Even then the District Magistrate, Saran vide Annexure-6, further sought clarification from the Deputy Secretary of the Government, as to whether, the District Compassionate Committee is competent to recommend appointment of petitioner on compassionate basis. The provision as contained in Clause 3 (Kha), as contained in letter no. 2822 dated 27.04.1995, the District Compassionate Committee, headed by the District Magistrate, was required to prepare a seniority list, according to qualifications of dependents of deceased Government employees of different offices, on the basis of date of death and according to vacancies the committee would recommend to the concerned department for appointment. The inter departmental communications has consumed sufficient time and sufficiently delayed petitioner's



case. And the dependents of the Government employees, who died much later than father of the petitioner, who died on 17.01.1999, whereas Mukund Mohan Srivastava, whose father died on 20.08.1999 and Satish Kumar's father died on 29.08.1999, their cases were considered by the District Establishment Committee, Saran and they were appointed as clerk in the pay scale Rs. 4000-6000/- pursuant to Saran Collectorate order no. 261/2000, Memo no. 1401 Establishment. Finally, the case of the petitioner regarding his appointment on the post of clerk, on compassionate basis, was considered on 25.06.2001 by the District Compassionate Committee, after the decision of this Court vide order dated 26.04.2001 passed in C.W.J.C. 2889/2001. Pursuant to which petitioner was recommended to be appointed on 17.07.2001. It would need to be reiterated that petitioner had already joined as lower division clerk, then there was no occasion to recommend afresh to the respondent no. 4, for appointment of petitioner on compassionate basis on Class III post. It is completely immaterial, as in which department/establishment petitioner has been appointed and he joined. The purpose of compassionate appointment is to provide helping hand to mitigate the suffering of the family members of the deceased employee, the



paraphernalia should not be allowed to come in the way. In reply to letter no. 409 dated 20.03.2002 Sri Amrik Singh Nimbaran, D.I.G., Personnel, Bihar, Patna issued letter no. 1960 dated 03.05.2002 addressed to District Magistrate, Saran suggesting that petitioner's appointment in Saran Collectorate on the post of lower division clerk, should be cancelled, so that the petitioner may be appointed on the post of lower division clerk on compassionate basis in Police Department.

6. Learned counsel further submitted that pursuant to suggestion communicated through letter no. 1960 dated 03.05.2002 (Annexure-11) the District Magistrate, Saran, Chapra cancelled appointment of the petitioner in Saran Collectorate on the post of lower division clerk, on compassionate basis, with retrospective effect and communicated the decision to the D.I.G., Personnel, Bihar vide Memo No. 642 dated 07.02.2002. Further, the petitioner got another shock, as he joined as lower division clerk, pursuant to the Memo No. 921 dated 02.08.2001 (Annexure-8) and had discharged his duties to the satisfaction of all concerned but the District Magistrate, Saran, Chapra cancelled appointment of the petitioner with retrospective effect vide Memo No. 642 dated 07.02.2002 (Annexure-12) and despite of no default in his part



the petitioner was not paid a single penny in lieu of his about 1 year and 3 months work, which clearly transpires the arbitrary, apathetic and discriminatory attitude of the concerned respondent authorities. Subsequent, there upon, petitioner was appointed as lower division clerk on compassionate basis in Police Department, which the petitioner joined under compulsion to save from starvation, the dependents of Late Chandra Shekhar Singh. The petitioner has joined his job in Police Department and earlier in the Collectorate, Saran under compulsion to save morsels of his Keith and Kin, his family members, therefore, he persistently represented and his last representation is on 22.01.2007, submitted before the Superintendent of Police, Saran at Chapra, for considering his appointment prior to appointment of respondent nos. 7 & 8 and if not possible then at least with effect from the date and the pay scale, in which the respondent nos. 7 & 8 have been appointed as clerk on compassionate basis. The petitioner was discriminated by the respondent authorities, so far the appointment on compassionate basis on the post of clerk is concerned, that is why petitioner's application needlessly forwarded to improper authorities, against the prevailing rules and inspite of mother of the petitioner tried her best to apprise



the respondent authorities, such unsavious departmental communications consume sufficient time, which delayed consideration of the petitioner's application by the District Compassionate Committee for the delay, which has been occurred in appointment of the petitioner on account of which the petitioner become junior and paid salary in lower pay scale. There was no fault on the part of the petitioner, as he immediately applied on 01.02.1999 in the prescribed form through the proper channel for his appointment as clerk on compassionate basis, so if delay has been caused in putting petitioner's application before the District Compassionate Committee and consideration there upon for whatsoever reason by whomsoever, respondent authorities, petitioner cannot be allowed to suffer for the laches on the part of the respondent authorities. Petitioner is entitled for his appointment on class III post on compassionate basis, if not possible prior to respondent nos. 7 & 8 then at least with effect from the date respondent nos. 7 & 8 have been appointed and also in the same pay scale, which the respondent nos. 7 & 8 are getting. Deliberate delay caused by the concerned respondent authorities had made the petitioner junior to the respondent nos. 7 & 8 and compelled him to work in the lower pay scale of 3050-4500/- than it should



be Rs. 4000/- to Rs. 6000/-. Learned counsel in these backgrounds submitted that the petitioner had worked from the period 04.08.2001 to 15.07.2002 and he cannot be denied his seniority, as well as, his due salary for the said period, for the reason that petitioner has neither misappropriated nor misrepresented.

7. *Per contra*, a counter affidavit has been filed on behalf of the State, in which it has not been denied that the petitioner was recommended by the District Compassionate Committee headed by the District Magistrate. It has also not been denied that the District Magistrate had issued appointment letter to the petitioner on 15.07.2001 and, thereafter, his appointment was cancelled as the father of the petitioner was died in harness in Police Department and after cancellation of the petitioner's appointment by the Collector, the Deputy Inspector General Of Police, Chapra had issued fresh appointment letter dated 02.08.2002 and, therefore, there is no question of giving the petitioner benefit from the date, his appointment was made by an authority, who had no jurisdiction to appoint in regular establishment of Collectorate. The petitioner, therefore, is not entitled for any relief(s) as prayed for in the present writ petition or Interlocutory Application, so far



as, his claim for seniority is concerned.

8. Having heard the rival submissions made on behalf of the parties, the petitioner has filed the writ petition on the basis of discrimination with respondents no. 7 and 8 and, thereafter, he has amended the relief(s) sought for in paragraph no. 1 of the main writ petition, by filing Interlocutory Application No. 04 of 2024 during the pendency of the present writ petition. Petitioner seeks modification of the order to the extent that the case of the petitioner is covered by similarly situated employee namely, Md. Samim, whose name was also recommended for Class-III post along with the petitioner by the District Compassionate Committee and the case of the said Md. Samim in respect of allowing his prayer for making payment for the period till the appointment of the said Md. Samim was rectified after holding that the appointing authority was not having jurisdiction to appoint the said petitioner. The case of the petitioner is distinguishable from the case of Md. Samim to the extent that the petitioner had worked in regular establishment of Collectorate as per the terms and conditions of appointment letter duly issued by the Collector contained in 'Annexure-7 to the writ petition' dated 15.07.2001 and, thereafter, the Collector on the clarification made by the Deputy Inspector General Of



Police (Personnel) Bihar, had cancelled the appointment of the petitioner after taking work for a period of 04.08.2001 to 15.07.2002. Thereafter, a fresh letter of appointment based on the recommendation made by the District Compassionate Committee was issued on 02.08.2002 to the petitioner.

9. The question arises, as to whether, the appointment of the petitioner can be considered from the date of his initial appointment i.e. made on 04.08.2001 vis a vis the other persons, who were appointed on the said date in the police force. Second question arises, as to whether, the petitioner is only entitled for salary for the period 04.08.2001 to 15.07.2001, during which, he had rendered his services in the Collectorate.

10. It is admitted that both the time appointment of the petitioner has been made considering the recommendation of the District Compassionate Committee. Firstly he was appointed in Collectariate with service condition applicable to the employee of the Collectorate, which is entirely different from the service conditions prescribed for the police personnel. It is also admitted by the respondents that there is no infirmity in the recommendation made by the District Compassionate Committee, therefore, considering the fact that the service condition of the police personnel being entirely different, I find



that the petitioner was appointed into the service of the Police Department with effect from 16.07.2002 on the post of Lower Division Clerk in pay scale of Rs. 3050-4500/- is required to be taken into account for calculating the promotional and consequential financial benefit to the petitioner treating it to be the initial date of appointment in the police department.

11. It is admitted by the respondent no. 5 that from 04.08.2001 to 15.07.2001, the petitioner was appointed on compassionate basis on the post of lower division clerk in applicable pay scale in Collectorate, Saran, the relief claimed by the petitioner for payment during the period can be considered by the concerned respondent(s) and in this regard, petitioner may file representation before the competent authority.

12. With above observations and directions, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

