

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11640 of 2012

=====

Basanti Kumari D/O Late Munarik Yadav Resident Of Village - Karuna, P.O.
- Khaira, P.S. Rafiganj, District - Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. Bihar State Electricity Board having its office at Vidyut Bhawan, Bailey Road, Patna through its Secretary.
2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. Joint Secretary, Work Man Establishment, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. General Manager-cum-Chief Engineer, Central Area Electricity Board, Serpentine Road, patna.
5. Deputy Director of Personnel Central Area Electricity Board, Serpentine Road, Patna.
6. Deputy Director of Personnel, Electric Supply Area, Magadh Gaya.
7. Electrical Executive Engineer, Electric Supply Division Aurangabad, Dist- Aurangabad.
8. Assistant Electrical Engineer, Electric Supply Sub Division, Rafiganj, Dist- Aurangabad.
9. The Central Compassionate Committee, Bihar State Electricity Board, Patna through its Secretary.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Anil Kr Singh, Advocate
For the Board	:	Mr. Anand Kumar Ojha, Standing Counsel
		Mr. Ashok Kumar Karn, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 08-04-2024

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the Board.

2. The present writ petition has been filed for quashing
of the Memo No. 358 dated 19.04.2012 and order dated
17.04.2012 passed by the respondent no. 9 whereby and



whereunder the claim of the petitioner for her appointment on compassionate ground has been rejected.

3. Learned counsel for the petitioner submits that the father of the petitioner has died on 31.10.1998 in service period leaving behind the petitioner only and the petitioner was the only daughter of the deceased and also mother of the petitioner had already died in the year 1984 itself during the lifetime of the father of the petitioner. Learned counsel for the petitioner submits that the petitioner has applied for her compassionate appointment in the month of November, 1991 through the proper channel. Learned counsel for the petitioner submits that the date of birth of the petitioner was 09.01.1977 and on the date of the application of her compassionate appointment the petitioner was minor. Learned counsel for the petitioner submits that Board has rejected the claim of the petitioner vide Letter No. 306 dated 03.06.1998 on the ground that the application for compassionate appointment of the petitioner was not made within the stipulated period as mentioned in the circular.

4. Learned counsel for the petitioner submits that as per the Standing Order No. 756 dated 18.02.1994 of the Board, the petitioner had made her application for compassionate appointment within the stipulated period of time of five years but



the same was rejected by the competent authority of the Board and then the petitioner had moved before this Court in CWJC No. 10562 of 1998 and the said writ petition was disposed of on 28.01.2000 with a direction to the authority of the Board to consider the application of the petitioner for her compassionate appointment in light of the Circular dated 18.02.1994.

5. Despite of the direction of the Hon'ble Court, the Board has not considered the claim of the petitioner and then the petitioner filed contempt petition bearing MJC No. 3026 of 2000 and in the meantime the Board has also filed a Civil Review No. 71 of 2000 for reviewing of the order/judgment dated 28.01.2000. The said MJC was also dismissed on 03.02.2003 and the Civil Review No. 71 of 2000 which was filed by the Board also dismissed on 01.07.2009. Learned counsel for the petitioner submits that the petitioner has again filed his application in the light of the order dated 28.01.2000 passed in CWJC No. 10562 of 1998 with a request to consider the case of the petitioner for compassionate appointment. Learned counsel for the petitioner further submits that the Board had not taken a decision with respect to the compassionate appointment of the petitioner then the petitioner had again filed a contempt petition bearing MJC No. 3684 of 2011 and during the period of aforesaid contempt petition,



the Board has also filed a show cause annexing an order dated 17.04.2012 by which the claim of the petitioner has been rejected by the Board. From perusal of the impugned order it appears that when the father of the petitioner was died the petitioner was minor and it appears from the record itself the petitioner has got marriage in the year 1999 itself prior to attaining her majority age and hence in pursuance of the provisions of the standing order no. 756 dated 18.02.1994, the petitioner will not come in the category of dependent of the deceased employee and hence she is not entitled for her compassionate appointment.

6. Learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of **Malaya Nanda Sethy Vs. State of Orissa, reported in AIR 2022 SUPREME COURT 2836**, referring to paragraph nos. 7 and 8 which are as follows :-

“7. Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be



made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules.

8. In view of the above discussion and for the reasons stated above, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The respondents are directed to consider the case of the appellant for appointment on compassionate grounds under the 1990 Rules as per his original application made in July, 2010 and if he is otherwise found eligible to appoint him on the post of Junior Clerk. The aforesaid exercise shall be completed within a period of four weeks from today. However, it



is observed that the appellant shall be entitled to all the benefits from the date of his appointment only. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

7. Learned counsel for the petitioner referring paragraph nos. 7 and 8 of the judgment of the Hon'ble Supreme Court and in view of the circular of the order dated 18.02.1994, submits that the case of the petitioner may be considered by the Board.

8. Learned counsel for the Board has submitted that the case of the petitioner duly considered by the competent authority and the reasons as mentioned in the rejection order, the case of the petitioner has been rejected twice by the Board on the ground that the case of the petitioner has not come in the purview of the circular.

9. Learned counsel for the Board submits that on 22.10.1997 the meeting of the Central Compassionate Committee of the Board was convened and consider the case of the petitioner for compassionate appointment and it was found that application was submitted after five (5) years from the death of her father. Hence committee has rejected the application of the petitioner. The petitioner has challenged the same in CWJC No. 10562 of



1998. The writ petition was disposed on 28.01.2000 with the direction to the concerned authority of the Board to consider the application of the petitioner for compassionate appointment in the light of Circular dated 18.02.1994.

10. Learned counsel for the Board submits in compliance of the order dated 28.01.2000 passed in CWJC No. 10562 of 1998, it was found that petitioner has not passed the Matriculation Examination, so Board has constituted a Medical Board for determined of her age and Medical Board found that age of the petitioner be 30-32 years on 13.02.2012. The Central Compassionate Committee has considered the case of the petitioner in the light of direction in CWJC No. 10562 of 1998 as well as in the light of Provision of Standing Order of the Board in its meeting dated 10.04.2012. The Committee found that at the time of death of her father i.e. 31.10.1998, the petitioner was minor and she has solemnized her marriage in the year 1999. As per Provision of Clause-Gh of the Standing Order No. 756 dated 18.02.1994, the married daughter does not come under the definition of the dependent of the family. The Central Compassionate Committee has rejected the claim of the petitioner on the ground that petitioner was not eligible for compassionate appointment.



11. Learned counsel for the Board has relied upon a judgment of Hon'ble Supreme Court, it appears that the case of the petitioner has rightly been rejected by the Board and in view of the judgment in the case of **Umesh Kumar Nagpal Vs. State of Haryana and Others, reported in (1994) 4 Supreme Court Cases 138**, referring paragraph no. 6 which is as follows:

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

12. In view of the aforesaid, the case of the petitioner duly considered by the Board and it was found that as per Provision of Clause-Gh of the Standing Order No. 756 dated 18.02.1994, the married daughter does not come under the definition of the dependent of the family as well as judgment rendered by the Hon'ble Apex Court in the case of **Umesh Kumar Nagpal (supra)**, no case is made out for interference in the matter.



There is no merit in the writ petition and it is, accordingly,
dismissed.

(Rajesh Kumar Verma, J)

Ibrar//-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.04.2024
Transmission Date	N.A.

