

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13072 of 2012

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Mithilesh Kumar Pandey S/O Late Latan Pandey Resident Of Village-
Kushaharo, P.S- Andar, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department Of Revenue And Land Reforms, Patna.
2. The Commissioner, Saran Division, Chapra.
3. The District Magistrate, Siwan.
4. The Circle Officer, Maharajganj.
5. The Circle Officer, Raghunathpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Tiwary, Advocate
	:	Mr. Sudama Kumar, Advocate
	:	Mr.Radhey Shyam, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13
	:	Mrs. Sunita Kumari, A.C. to AAG-13

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 29-01-2024

Heard learned counsel appearing for the petitioner and

learned counsel appearing for the State.

2. The present writ application has been filed for quashing the order issued under Memo No.251 dated 17.02.2012 passed by the respondent No.3 by which the respondent No.3 has rejected the appointment of the petitioner on compassionate ground for the reason that the petitioner has not furnished the affidavit as required vide Annexure-3 by which the petitioner is required to submit some affidavit with respect to the none of the family members of the petitioner is in



service and petitioner has not filed the same within the stipulated period then the respondent No.3 has made an enquiry and after receiving the report of the enquiry it was found that the elder brother of the petitioner was in service and on that ground the candidature of the petitioner was rejected and despite of repeated request, the petitioner has not furnished the certificate of source of income of his elder brother. The father of the petitioner was Government Servant posted as Revenue Employee, Maharajganj and while he was in service he died on 23.09.2010 leaving behind his wife, two sons and one daughter.

3. Learned counsel for the petitioner submits that the elder brother of the petitioner, namely, Sri Akhilesh Kumar Pandey was living separately with his family and he has not looked after the family members of the petitioner and in the year 2010 the petitioner has applied for his appointment on compassionate ground and the District Appointment Committee vide his meeting dated 25.05.2011 considered by the District Level Committee for compassionate appointment and the respondent No.3 has issued a letter to the petitioner to joint the duty within 15 days with certain conditions and accordingly the petitioner has joined in the office of the Circle Office, Maharajganj on 01.07.2011. All of a sudden, the petitioner has



received a show cause notice on 30.01.2012 issued under the signature of the respondent No.3 directing the petitioner to submit explanation within three days as to why your service has not been terminated for not disclosing the facts. Pursuant to that show cause notice, the petitioner has submitted his reply and respondent No.3 after considering the explanation given by the petitioner has passed the impugned order. Learned counsel for the petitioner submits that the respondent No.3 without considering the fact that elder brother of the petitioner is living separately during lifetime of his father.

4. Learned counsel for the State, on the other hand, referring the counter affidavit submits that the petitioner has been appointed by the District Compassionate Appointment Committee and the petitioner has not furnished the information as required under the Memo No.411 dated 25.05.2011. Further submits that it was further stipulated in the case he has furnished wrong information and forgery was revealed or found his service are terminated at any stage. Further submits that in the light of the notification of the General Administration Department dated 24.10.2011, the petitioner had not submitted non-employment certificate of his brother despite demand letter No.9 letter dated 06.01.2011 and it has come during enquiry by



the Circle Officer, Raghunathpur, the elder brother of the petitioner, namely, Sri Akhilesh Kumar Pandey is in Government Service and the Circle Officer also informed the respondent No.3 that the elder brother of the petitioner was a Government Servant and he was a member of the joint family of the petitioner and respondent No.3 after examining all the facts has passed the impugned order and has cancelled the candidature of the petitioner. Learned counsel for the State has relied upon a judgment of the Full Bench in the case of **Niraj Kumar Mallick Vs. The State of Bihar & Ors**, reported in **2018 (2) PLJR 951**, paragraph Nos.42,43 and 45 of the said judgment, which read as follows:-

“42. In my considered opinion the judicial pronouncements of the Hon’ble Apex Court are consistently saying that appointment on compassionate ground is out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet. To me it appears that there cannot be any other



consideration”.

“43. The essence of the judgment of the Hon’ble Division Bench in the case of Vishal Kumar (supra) is based on a sound rationale and reasoning in conformity with the views expressed by the Hon’ble Supreme Court in a catena of decision some of them, I have referred hereinabove to enlighten with the legal doctrines”.

“45. A perusal of Clause (d) of Annexure-A to the counter affidavit of respondent no.2 in CWJC No.17143 of 2016 would show that the clarification offered by the General Administration Department clearly states that where any of the dependents of a deceased government servant is “gainfully employed” then irrespective of the fact whether he lives together or separate from other dependents, the benefit of compassionate appointment would not be available to any other dependents of the



deceased government servant. I am of the considered opinion that the clarification offered by the Department being a part of the policy decision governing the scheme of appointment on compassionate ground is based on judicial pronouncement of this Court in the case of Vishal Kumar (supra) and it is fully in consonance with the object of compassionate appointment, it is also in tune with the views expressed by Hon'ble Supreme Court in a catena of decisions some of them I have referred herein above. It is also reasonable one and passes the test of Article 14 and 16 of the Constitution of India. The clarification vide Clause (d) of Annexure- "A" to the counter affidavit of respondent no.2 cannot be found fault with on the touchstone of Article 14 and 16 of the Constitution of India".

5. Learned counsel for the State further relied upon a judgment of this Court in the case of **Vishal Kumar Vs. The**



State of Bihar & Ors. reported in **2004(2)PLJR 453**, paragraph

Nos.4 and 5 of the said judgment, which read as follows:-

“4. The Court is afraid, this logic of law will not apply for if there will be rivalry within the family as in the present case between the father and the son or between siblings, a job can be offered on the principle of compassionate appointment only to one person and when one is gainfully employed, there is no obligation to offer a job in an otherwise backdoor entry employment”.

*“5. An order has been cited in the case of **Bharat Prasad Vs. State of Bihar and Ors.**, reported in **1998(1)PLJR 125**. From paragraph-4 of the order, it is clear that the learned Single Judge has clearly mentioned that he is not deciding the validity of any guideline and merely permitted filing of a representation. This case does not apply to the circumstances of the case under consideration”.*



6. In view of the aforesaid, there is no merit in the writ application. It is, accordingly, dismissed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.01.2024
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