

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19524 of 2012

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Chandan Kumar S/O Late Shambhu Prasad Singh Resident Of Village-
Bhelwa, P.O. P.S. Hisua, Distt.- Nawada

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Compassionate Appointment Committee, Siwan Through Its
Chairman, The District Magistrate, Siwan
3. The District Magistrate, Siwan
4. The Deputy Establishment Collector, Siwan, District- Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Singh
For the Respondent/s : Dr. Anand Kumar, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 12-08-2024

Heard Mr. Rama Kant Singh, learned counsel
appearing on behalf of the petitioner and Dr. Anand Kumar,
learned AC to AAG-3 appearing on behalf of the State.

2. The petitioner in paragraph no. 1 of the present
writ petition has sought *inter alia* the following relief(s), which
is reproduced hereinafter:-

“That this is an application for issuance of appropriate writ(s), order(s), direction(s) for quashing of the proceeding of District Magistrate - Cum- District Compassionate Appointment Committee, Siwan vide Memo No.81(mu) Sthapana, dated 16th August 2012 issued by Respondent No.2 by which claim of petitioner for appointment on compassionate ground has been rejected. And further respondents be directed to consider and appoint the petitioner on appropriate post on compassionate ground.

And/Or

Pass such other order(s) which may deem fit and



proper.”

3. Brief facts are that the father of the petitioner had died in harness on 22.04.2009, while he was posted as Sub-Inspector in Police Line, Siwan. The deceased had left behind three married sons, one unmarried son, two daughters and a widow (mother of the petitioner). The married sons were living separately from the father and one son was working in Air Force. The application of the petitioner for considering him to be appointed on compassionate ground was considered by the District Compassionate Appointment Committee on 22.06.2009 and the Committee had rejected the claim of the petitioner, on the ground that one elder brother of the petitioner was working in Air Force, without considering the fact that during the lifetime of the deceased employee, he separated from the family. The petitioner had filed CWJC No.9008 of 2012 for quashing of the proceeding of the District Magistrate-cum-District Compassionate Appointment Committee, Siwan dated 22.06.2009, 08.07.2010 and 20.01.2012, by which the claim of the petitioner for appointment on compassionate ground was rejected. Vide order dated 06.07.2012 passed in CWJC No.9008 of 2012, a Co-ordinate Bench of this Court had directed to reconsider the case of the petitioner in light of the enquiry report



and the recommendation made, as contained in "Annexure-11" of the said writ petition. The case of the petitioner was reconsidered by the Committee being Agenda No.18 and the Committee had opined that in absence of any valid partition by the order of the Competent Court, the severance of the elder brother of the petitioner from the family, can not be sustained. The rejection is also on the ground that Senior Citizens (Maintenance, Protection and Welfare) Bill-2006, was applicable in the case of the deceased employee.

4. A counter affidavit and supplementary counter affidavit have been filed on behalf of the respondent nos. 2 to 4 and I find that the only ground taken on behalf of the respondents is that Memo No.2263 dated 17.08.2006, issued by the Personnel and Administrative Department, Bihar, is not related with the appointment of Priyaranjan Kumar, rather, it is in respect of Late Saudagar Prasad, and rejection being on the ground that the elder brother of the petitioner, namely, Deen Dayal has been employed in Air force, the District Compassionate Appointment Committee had rejected the claim of the petitioner on said ground, vide its recommendation contained in Memo No. 513 dated 04.07.2009, Memo No.786 dated 02.07.2010 and Memo No.34(Mu.) dated 27.01.2012. It



has been specifically informed in paragraph no.5 of the supplementary counter affidavit that the Memo No.81 dated 16.08.2012, received by the District Compassionate Committee, Siwan, also considered the fact that the petitioner's brother Mr. Deen Dayal Singh had not separated from the family through Court, in accordance with law. It has further been informed that the petitioner's mother, who is an old lady, can seek maintenance under Section 4 of the Senior Citizens (Maintenance, Protection and Welfare) Bill-2006, from the elder brother of the petitioner, as well as, it has also been stated that the mother also has right of maintenance under Section 125 of the Code of Criminal Procedure. I find it relevant to take notice of the statement made in paragraph no.5 of the supplementary counter affidavit filed on behalf of the respondents no.2 to 4, for considering the manner in which the law has been interpreted by the Authority, who has sworn the counter affidavit. Paragraph No. 5 of the supplementary counter affidavit *inter alia* is reproduced hereinafter:

“That it is an admitted fact that the petitioner's brother Mr. Dindayal Singh is employed in Air Force. The proceeding of the District Compassionate Committee, Siwan as contained in Memo No.513 dated 04.07.2009, Memo No.786 dated 02.07.2010 and 34 (Mu.) dated 27.01.2012 of District Compassionate Committee, Siwan show that the petitioner's claim was rightly rejected keeping in view the relevant rules and departmental letter. The further proceeding as contained in



Memo No.81 (Mu.) dated 16.08.2012 issued by the District Compassionate Committee, Siwan also considered the fact that the petitioner's said brother Dindayal Singh is not separated from the family through Court in accordance with law and the petitioner's mother and other deponents have the right to seek their maintenance u/s 4 of the Senior Citizens (Maintenance, Protection and Welfare) Bill-2006 and the petitioner's mother is also having the right of maintenance from the son under Section/s 125 Code of Criminal Procedure."

5. In counter affidavit, reliance has already been made to communication dated 24.10.2011, in which, it has been clarified that any of the "dependent" of the deceased employee, who is in service and has not separated then the other dependent's case for being appointed on compassionate ground can not be considered. In spite of the said clear instruction, the District Magistrate has not considered the case of the petitioner that the elder son of the deceased employee had separated from the family about 11-12 years before his death and he was not dependent in any manner on the deceased employee and he was earning his own income and sustaining his own family. The petitioner was forced to file writ petition before this Court and the present writ petition is pending since the year 2012.

6. I find that the rejection of the petitioner, on the ground that the elder brother, who had already separated and was not dependent, in any manner, on the deceased employee, the case of the petitioner has not been considered in accordance



with law and the governing guidelines of the State Government, in respect of compassionate appointment.

7. The petitioner had made application within time and the scheme of the compassionate appointment, no doubt, is to come out from immediate financial crisis and destitute which the family face, soon after the death of the bread earner. In the present case, in respect of the petitioner, the rejection is on the ground that the petitioner could not support the very factum of separation of the elder brother by any Court's order. It is not in dispute that the petitioner is not a Hindu and law is well settled that severance of family/partition can be held by way of meets and bounds. I don't find any merit in the case, in spite of the fact that Dr. Anand, learned counsel for the respondents, has relied and tried to interpret the clarification made in support of the Impugned Order that the elder son of the deceased employee was in service and, as such, the case of the petitioner has rightly been rejected is misconceived, as well as, the fact that the governing law and the right, which is available to the mother of the petitioner, is a separate right and the same can not be intermingled in respect of the right, which has been accrued immediately at the time of death of the deceased employee to the petitioner.



8. Accordingly, the Memo No.81 (mu) dated 16.08.2012, by which the claim of the petitioner for appointment on compassionate ground has been rejected by the District Magistrate-Cum-District Compassionate Appointment Committee, Siwan is hereby set-aside and quashed.

9. The matter is referred to be considered by the District Compassionate Appointment Committee afresh, in accordance with law and discussion made hereinabove.

10. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Niraj/-
Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.08.2024
Transmission Date	NA

