

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1956 of 2015

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Sushma Kumari @ Sushma Gupta W/o Late Prakash Kumar Gupta, R/o Village - Gangachak Bazar, P.O. - Gangachak, P.S. - Masaurhi, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar
2. The Secretary, Department of SC and ST Welfare, Government of Bihar, Patna.
3. The Director, Department of SC and ST Welfare, Government of Bihar, Patna.
4. The District Compassionate Appointment Committee through the District Magistrate, Vaishali.
5. The District Magistrate, Vaishali, Hajipur.
6. The District Welfare Officer, Vaishali, Hajipur.
7. Divya Prakash D/o late Prakash Kumar Gupta, C/o Smt. Rita Gupta, in the House of Sri K.D. Prasad, Road No. 3, Hawai Nagar, Birsa Chowk, Ranchi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Brijnandan, Advocate Mr. Amit Pandey, Advocate Mr. (Dr.) Pratyush Kumar, Advocate
For the State	:	Mr. Nadeem Seraj, GP 20 Ms. Shalini Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-08-2024

Heard Mr. Kumar Brijnandan, along with Mr. Amit Pandey and (Dr.) Pratyush Kumar, learned counsels appearing on behalf of the petitioner and Mr. Nadeem Seraj, learned GP 20 along with Ms. Shalini Mishra, for the State.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

(I) For issuance of an order(s)/direction(s) or



writ(s) in the nature of Certiorari for quashing the Memo No.4250 dated 15.11.2014 issued by the Respondent No.5- the District Magistrate, Vaishali whereby and whereunder the District Compassionate Appointment Committee headed by District Magistrate, Vaishali rejected the application dated 23.06.2012 of the petitioner for compassionate appointment. And/ or

(ii) For issuance of an order(s)/direction(s) or writ(s) in the nature of Mandamus directing the respondents to appoint the petitioner on a suitable government post on the compassionate ground. And / or

(iii) Pass such other order/orders which may appear fit and proper in the facts and circumstances of the instant case.”

3. Learned counsel appearing on behalf of the petitioner submitted that District Compassionate Appointment Committee headed by District Magistrate in its meeting dated 08.11.2014 has rejected the claim of the petitioner for being appointed on compassionate ground mainly on the ground that there are more than one claimant and statement in the said regard has been made in paragraph no.12 of the counter affidavit filed on behalf of the respondents no.4 to 6. It is the case of the petitioner that there is no dispute that she is the second wife after the deceased employee had divorced his first wife and so far as the claim of the daughter of the deceased employee from first wife is concerned, as per the guidelines of the compassionate appointment, which has been brought on record



by way of Annexure 3, the wife is entitled as a first claimant and not the daughter, namely, Divya Prakash, respondent no.7 herein, who is daughter of the deceased employee from the first wife. Learned counsel submitted that this aspect of the matter has not been taken into consideration by the District Compassionate Appointment Committee, which has resulted into non-consideration of application of independent mind and thereafter a decision has been taken by the District Magistrate, who has rejected the claim of the petitioner for consideration of her case of appointment on compassionate ground after the death of the deceased employee in harness on 17.03.2012 in spite of the fact that *vide* order dated 10.01.2014 passed in CWJC No.18543 of 2012, this Court had directed to take conscious decision in respect of the claim of the petitioner. Petitioner has also filed CWJC No.13483 of 2012. Learned counsel further submitted that the decision of the District Compassionate Appointment Committee is required to be interfered on the ground that there is no reference of the service book of the deceased employee in respect of the entitlement for claiming family pension and as such the Committee has failed to consider the very fact that the petitioner has been appointed as a nominee by the deceased employee.



4. *Per contra*, learned counsel appearing on behalf of the State submitted that the matters involving the appointment on compassionate ground in respect of all the claimants were discussed by the District Compassionate Appointment Committee and it was found that after the death of husband of the petitioner, appointment on compassionate ground was claimed by more than one applicant and there was no consensus among them on the point of appointment and, as such, none of them could be appointed.

5. Heard the parties.

6. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the petitioner has claimed herself to be the legally second wife of the deceased employee, who had taken divorce from his first wife, namely, Rita Gupta, during his service period. On perusal of the decision of the District Compassionate Appointment Committee, I find that there is no discussion in respect of the fact, as to whether, during the lifetime of the deceased employee before marrying with the petitioner, he has taken permission from the department. It is admitted by the parties that deceased employee had taken divorce from his first wife, namely, Rita Gupta and then married the petitioner, who is claiming to be



appointed on compassionate ground and she is also receiving family pension. I find that in absence of clear finding in this regard and merely on the ground that appointment on compassionate ground was claimed by more than one claimant and there was no consensus among them on the point of appointment and as such, none of them could be appointed cannot be a good ground of rejection of the case of the petitioner. I am of the opinion that the matter with respect to the petitioner and other claimant is required to be reconsidered by the District Compassionate Appointment Committee in accordance with the resolution of the compassionate appointment, as contained in Memo No.13293 dated 05.10.1991 (Annexure 3), as well as, the service book of the deceased employee and also the Committee is required to verify, as to whether, the deceased employee has taken any permission before marrying with the petitioner, who is the second wife of the deceased employee.

7. It is well settled that the very purpose of compassionate appointment is to mitigate the immediate financial hardship of the family and the law relating to consideration for being appointed on compassionate ground is no more *res intergra*. The Apex Court in the case of ***Umesh***



Kumar Nagpal v. State of Haryana and Others [(1994) 4 SCC 138] and in the case of ***The State Of West Bengal Vs. Debabrata Tiwari & Ors. Etc. Etc.*** passed in ***Civil Appeal nos. 8842-8855 of 2022***, after relying on the ratio of ***Umesh Kumar Nagpal (Supra)***, the Apex Court in para 7.2 has *inter alia* held as follows:

7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

8. In a very peculiar facts of the present case, I find it proper to direct the concerned authority to first reconsider the



financial condition of the family of the deceased employee as on date and if it is found that petitioner is in financial crisis in spite of the fact that she is receiving pension and only after giving a specific finding in this regard, the District Magistrate is required to take steps for referring the matter of the petitioner or any other claimant in respect of their claim for being appointed on compassionate ground before the District Compassionate Appointment Committee, so that the claim of the petitioner *vis-a-vis* the other claimant (heirs) of the deceased employee can be considered.

9. The decision of the District Magistrate, Vaishali as contained in Memo No.4250 dated 15.11.2014 (Annexure 12) is hereby set aside and quashed.

10. The writ petition is, accordingly, disposed of.

11. Interlocutory application(s), if any, shall also stand disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.08.2024
Transmission Date	NA

