

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7562 of 2017

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Salma Tarannum Daughter of Late Basiruddin, residents of Mohalla Ganichak, P.S. Mojahidpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Department of Energy, Government of Bihar, Sichai Bhawan, Patna.
3. The Chief Engineer, Department of Energy, Government of Bihar, Sichai Bhawan, Patna.
4. The Electrical Superintending Engineer, Election Work Circle, Patna.
5. The Electrical Executive Engineer, Electric Works Division, Bhagalpur.
6. The District Magistrate, Bhagalpur.
7. The District Education Officer, Bhagalpur.
8. The Director, R.D.D.E. Office, Bhagalpur.
9. The Administrative Department, through its Secretary, Government of Bihar.
10. Md. Zafar Imam, Son of Anwari Khatoon, resident of Village Damaria, P.O. Anishabad, P.S. Gardanibagh, District Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar Ojha, Advocate Mr. Abhimanyu Kumar, Advocate Mr. Mritunjay Kumar, Advocate
For the Respondent/s	:	Mr. Subhash Prasad Singh-Ga3

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-08-2024

Heard Mr. Ajit Kumar Ojha along with Mr. Abhimanyu Kumar and Mr. Mritunjay Kumar, learned counsels appearing on behalf of the petitioner and Mr. Subhash Prasad Singh, learned GA 3 for the State.

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

“That in present writ application the



petitioner humbly pray for a direction/writ against the respondents to appoint the petitioner on compassionate ground after the death of her father namely Md. Basiruddin, resident of Ganichak, P.S. Mojahidpur in the District of Bhagalpur.

The petitioner further prays to cancel the office order dated 21.02.2009 contained in Memo No.104, issued under the signature of Divisional Commissioner, Bhagalpur, whereby and whereunder one Md. Zafar Imam. (Respondent No.10) wrongly described as son of Basiruddin has been appointed on wrong recommendation of District Committee for compassionate Appointment for Bhagalpur. The petitioner prays for cancellation of this order which is absolutely wrong.”

3. Learned counsel appearing on behalf of the petitioner submitted that the father of the petitioner died in harness on 30.01.2000. The petitioner's mother had applied for appointment of petitioner on compassionate ground on 28.02.2000. Thereafter, mother of the petitioner also applied for succession certificate before the learned District Judge, Bhagalpur and the succession certificate was granted by learned District Judge, Bhagalpur on 11.03.2001. Learned counsel submitted that one Md. Zafar Imam, (respondent no.10 herein) claiming to be son of late Basiruddin (father of the present petitioner) filed CWJC No.7633 of 2003 for considering him to be considered on compassionate ground. The writ petition was heard and disposed of *vide* order dated 03.09.2003 being Annexure 5 to the writ petition, by directing the authorities to make enquiry and satisfy themselves as to whether the petitioner is in fact the son of Md. Basiruddin and



if so, whether petitioner should be preferred to his sister and also directed the petitioner (respondent no.10 herein) to pursue his remedy before the departmental authorities. Learned counsel further submitted that mother of said Md. Zafar Imam (respondent no.10 herein) had filed CWJC No.9689 of 2009 (**Anwari Khatoon Versus the State of Bihar & Ors.**) claiming herself to be wife of late Md. Basiruddin in which Shahjehan Begum was arrayed as respondent no.5, being third wife of late Md. Basiruddin. The said writ petition was dismissed holding that the mother of respondent no.10 hereof Anwari Khatoon was not entitled for terminal dues of late Md. Basiruddin after having found that late Md. Basiruddin had married Shahjehan Begum (mother of the petitioner) and late Md. Basiruddin in his service book has made her nominee in respect of provident fund and gratuity having obtained succession certificate from Civil Court at Bhagalpur in Succession Case No.17 of 2001. Learned counsel in these backgrounds submitted that once it has been held by this Court vide order dated 25.09.2014 passed in CWJC No.9689 of 2009, filed by the mother of respondent no.10, that she had obtained succession certificate and said succession certificate was not challenged by mother of respondent no.10 and the claim of the petitioner for being considered on



compassionate ground cannot be denied in admitted factual position.

4. *Per contra*, Mr. Subhash Prasad Singh, learned GA 3 submitted that once this Court has held that Shahjehan Begum, who is mother of the present petitioner, was married to late Md. Basiruddin, it cannot be denied that petitioner is not daughter of late Md. Basiruddin. It has also been recorded in the order dated 25.05.2014 passed in CWJC No.9689 of 2009 that the succession certificate on which basis, the mother of the respondent no.10 was granted terminal benefit having not been challenged and no such statement was made on behalf of respondent no.10, who has approached this Court for being appointed on compassionate ground in CWJC No.7633 of 2003 wherein vide order dated 03.09.2003, this Court had disposed of the said writ petition filed on behalf of respondent no.10 by holding that “apart from the dispute about the petitioner’s (respondent no.10) alleged relationship with Md. Basiruddin, it appears that there is *inter se* dispute between the petitioner on the one hand and his daughters on the other. Such a dispute cannot be decided in writ jurisdiction. It is for the authorities to make enquiry and satisfy themselves, as to whether, the petitioner is in fact son of Md. Basiruddin and if so, whether



petitioner should be preferred to his sister.” Learned counsel further submitted that the petitioner has also not brought on record any document to show that any declaratory civil suit is pending which has either been filed by Anwari Khatoon, who has claimed herself to be wife of late Md. Basiruddin or by respondent no.10, who has claimed himself to be son of Anwari Khatoon and Md. late Basiruddin and, as such, the present writ petition in want of proper pleadings, as well as, subsequent event on record don’t call for any interference.

5. Having considered the rival submissions made on behalf of the parties, as well as, on perusal of the pleadings made in the writ petition, the admitted facts are that the father of the petitioner Md. Basiruddin was employed as “Work Sarkar” in the office of respondent no.5, the Electrical Executive Engineer, Electric Works Division, Bhagalpur and had died in harness on 30.01.2000. The mother of the petitioner has claimed herself to be wife of Md. Basiruddin and on the basis of succession certificate issued by a competent Civil Court, she was granted terminal benefit being the nominee in respect of provident fund and gratuity. The petitioner has claimed on the said basis being the daughter of late Md. Basiruddin for considering her claim to be appointed on



compassionate ground, vis-a-vis case of respondent no.10 Md. Zafar Imam, who had filed CWJC No.7633 of 2003 in which, an order was passed on 03.09.2003 which inter alia as follows:-

“ It is submitted that under the relevant circular son has preferential claim over daughter in the matter of compassionate appointment. Therefore, a son ie, the petitioner being available, the respondents are not correct in ignoring his claim.

It appears from the counter affidavit that respondents are contemplating to appoint one of the daughters on compassionate ground in place of Md. Basiruddin.

The submissions of the counsel on its face value bring disputed questions which cannot be decided by this Court in writ jurisdiction. Apart from the dispute about the petitioner's alleged relationship with Md. Ashiruddin, it appears that there is inter se dispute between the petitioner on the one hand and his daughters on the other. Such a dispute too cannot be decided in writ jurisdiction. It is for the authorities to make enquiry and satisfy themselves as to whether the petitioner is in fact son of Md. Bashiruddin and if, whether petitioner should be preferred to his sister. The petitioner may pursue his remedy before the departmental authorities.

With this observation, the petition is disposed of.”

6. In spite of the writ petition having been filed in the year 2017, the respondents have not filed any counter affidavit till date and to controvert any pleadings made in the writ petition. The law in respect of claim for being appointed on compassionate ground is no more *res integra*. The Apex Court has held that compassionate appointment is not a fundamental right, it is only a social legislation for purpose of meeting immediate hardship in the deceased family. The Apex Court



elaborately considered issue of compassionate appointment including the delay issue in the following cases:-

“(i) Union Of India & Another vs. Shashank Goswami & Another reported in 2012 11 SCC 307.

(ii) Shreejith L. vs. Deputy Director (Education) Kerala and Others reported in 2012 7 SCC 248.

(iii) Dhalla Ram vs. Union Of India And Others reported in 1997 11 SCC 201.

(iv) State of Uttar Pradesh and Others vs. Premlata reported in (2022) 1 SCC 30.”

7. In the present case, the petitioner and respondent no.10 have claimed themselves to be the heirs of late Basiruddin and the controversy relating to the entitlement of terminal benefit has already been settled by this Court in the case of **Anwari Khatoon (Supra)** which was filed by the mother of respondent no.10 holding that the mother of the present petitioner Shahjehan Begum, who was impleaded as respondent no.5 in the said writ petition, had produced succession certificate duly issued by a competent civil court at Bhagalpur in Succession Case No.17 of 2001 and the mother of the petitioner was made nominee, however, it is not informed in the present writ petition, as to whether, respondent no.10 or his mother Anwari Khatoon were arrayed or issued notice in the said Succession Case No.17 of 2001. The law in respect of nominee is also no more *res intergra*. The nominee has been



considered to be the custodian of the property of a deceased, who has nominated a particular person, who may be heir or assign or executor but that does not mean that the right vests in the said nominee. The nominee is under obligation to distribute the property as per the rule of succession. The Supreme Court, while dealing with similar circumstances, in the case of **State of Chhattisgarh v. Dhirjo Kumar Sengar, (2009) 13 SCC 600 : (2010) 1 SCC (L&S) 281 : 2009 SCC OnLine SC 1001 at page 607** has held as under:

“22. A succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable by the deceased to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant. Even otherwise, the respondent and his father were entitled to the said dues being his heirs and legal representative....”

8. In the present case, the mother of respondent no.10 has claimed herself to be wife of late Basiruddin and has given information in the cause title of CWJC No.9689 of 2009 in respect of mother of the petitioner to be the third wife of late Basiruddin. The petitioner has stated in the writ petition that by creating forged documents, the respondent no.10 had started



claiming to be son of late Basiruddin and inquiry in the said fact has not been conducted. From the pleadings made in the present writ petition and several rounds of litigation fought between the parties, one thing is clear that the petitioner and respondent no.10 are claiming themselves to be the son and daughter of the late Basiruddin , though their mother are different persons. Respondent no.10 is claiming himself to be son of one Anwari Khatoon, while petitioner is claiming herself to be daughter of Shahjehan Begum. In absence of any document brought on record and in spite of the fact that the writ petition is pending since the year 2017, I find that respondent no.3, the Chief Engineer, Department of Energy, Government of Bihar must verify from the records, as to whether respondent no.10 has been given appointment on compassionate ground after having considered the fact that his claim has been considered on the basis of a valid document or a decree of a competent civil court in light of the order dated 03.09.2003 passed in CWJC No.7633 of 2003 (Annexure 5) and whereas the petitioner has claimed herself to be daughter of late Basiruddin, who was married to the mother of the petitioner, namely, Shahjehan Begum and in her respect, a clear cut finding has been given in order dated 25.09.2014 passed in CWJC



No.9689 of 2009 that she has produced succession certificate in her favour and petitioner being one of her daughter, had applied for considering her claim to be appointed on compassionate ground. The respondent no.3 must also verify from the record and from the inquiry report dated 18.03.2004 , as to whether, the respondent no.10 or his mother, namely, Anwari Khatoon was impleaded as party defendant in Succession Case No.17 of 2001.

9. The law is well settled that the object of compassionate appointment is to meet immediate harness in the family. The Supreme Court has time and again reiterated that compassionate appointment is not to be used as an alternate remedy for securing employment. This has been well emphasized in **Haryana State Electricity Board And Anr Versus Hakim Singh, (1977) 8 SCC 85**, in the following paras:

“8.The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly



plunged into penury due to the ultimately death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

12. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member.

13. The learned Judge pointed out that if the claim of the dependent which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased government servant "which cannot be encouraged, de hors the recruitment rules."

10. I find that in case the authority has already taken decision to appoint respondent no.10 on compassionate ground, the same is faulted with, if no consideration has been made to the order dated 03.09.2003 passed in CWJC No.7633 of 2003 and order dated 25.09.2014 passed in CWJC No.9689 of 2009. Both the writ petitions were filed by respondent no.10 and his mother respectively which were disposed and dismissed respectively by this Court.



11. The writ petition is, accordingly, disposed of with above observation and direction to be expeditiously considered by the authorities concerned.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2024
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