

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8488 of 2018

Prabhat Kumar Son of Late Ram Pukar Choudhary, Resident of near St. Xavier School, Dighi Kala Purbi, P.S.-Hajipur, District-Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Water Resources Department, Bihar, Patna.
3. Chief Engineer, Irrigation Creation, Water Resources Department, Aurangabad.
4. Superintending Engineer, Sone High Level Canal Circle, Aurangabad.
5. Executive Engineer, Sone High Level Canal Division, Tikari Gaya.
6. District Compassionate Appointment Committee, Aurangabad through its Chairman.
7. The District Magistrate, Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Respondent/s : Mr.Vikash Kumar -Sc11

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 19-06-2024

Counsel for the petitioner and counsel for the State are present.

2. This writ petition has been filed for quashing of the decision of District Compassionate Appointment Committee, Aurangabad as contained in Memo No. 283 dated 04.12.2017 (Annexure- P/8) issued by Respondent No. 7 by which application of the petitioner for appointment on compassionate



ground has wrongly been rejected on the ground of having time barred as well as quashing of the communication of the aforesaid decision as contained in letter no. 1655 dated 28.12.2017 (Annexure-P/9) issued by Respondent No. 3 and further to direct the respondents to appoint the petitioner on compassionate basis against Class III post.

3. Counsel for the petitioner submits that father of the petitioner was appointed as Assistant Engineer in the Water Resources Department, Bihar in the year 1987 after working at different places, he was lastly posted as Assistant Engineer (Estimating Officer) in Eastern Sone High Level Canal Division, Tekari (Gaya) on the Water Resources Department, Bihar and he joined there on 27.11.2008.

4. Counsel further submits that father of the petitioner is missing since 22.01.2010 for which the petitioner submitted written information before the Officer-in-charge on the Rampur Police Station (Gaya) on 24.01.2010. He submits that the incident was entered in the station diary on the said police station vide S.D.E. No. 595/2010 dated 24.01.2010. Counsel further submits that the mother of the petitioner initially informed the incident to the Executive Engineer, Eastern Sone High Level Canal Division, Tekari, Gaya verbally and



subsequently in writing on 04.05.2010. He further submits that the Water Resources Department sanctioned death-cum-retirement benefits of the father of the petitioner and the office of Accountant General, Bihar issued family pension payment order in favour of the mother of the petitioner on 04.11.2015. Learned counsel further submits that the petitioner has submitted his application for appointment on compassionate basis on 19.11.2016 enclosing all the required documents and matter was forwarded by the Executive Engineer, Eastern Sone High Level Canal Division, Tekari (Gaya). Report was also called for and it was found that petitioner's father is still traceless. Counsel submits that the application for appointment on compassionate ground was placed in the meeting of District Compassionate Appointment Committee, Aurangabad and the claim of the petitioner was rejected on the ground that the said application for compassionate ground was filed after lapse of five years which is time barred in view of Letter No. 9990 dated 04.08.2017. Learned counsel for the petitioner submits that in case of the petitioner, such time period shall not apply because it is not the case of death rather it is the case of traceless/missing. In this regard counsel for the petitioner relied on the judgment passed by this Hon'ble Court in case of ***Rajiv Kumar Vs. State***



of Bihar and Ors. in CWJC No. 589 of 2019 in which it has been categorically stated :

The case of the petitioner is squarely covered by the aforesaid decision. In the instant case also the wife of the deceased employee had diligently made application in January 2013 itself. Since the employee became traceless on 24.9.2005 the presumption of civil death would have arisen only after seven years, i.e. in September 2012. For compassionate appointment in such cases, the legal heir/dependent would be eligible only after declaration of civil death. Only when the seven years period under Section 108 of the Evidence Act lapses the legal heir or dependent would become eligible for claiming compassionate appointment. Therefore date with effect from which employee has become traceless is not relevant.

In the circumstances the claim made by the petitioner's mother cannot be said to be belated or delayed in any respect. The authorities are required to consider claim of the petitioner as per admissibility/eligibility on all other grounds. The authorities cannot deny the petitioner consideration on the ground that the application has been made more than five years after the employee became traceless.

District Compassionate Committee should proceed to consider claim of the petitioner having regard to all other requisites for grant of compassionate appointment in accordance with the procedure and scheme for compassionate appointment. Let final decision be taken by the District Compassionate Committee, Aurangabad (respondent No. 9) within a period of eight weeks from the date of receipt/production of a copy of this order.

5. Counsel further relied on the letter issued by the General Administrative Department contained in Memo. No. 5014 dated 16.04.2021 which categorically states that in case of



missing, the period for limitation shall be counted after 7 years from the date of missing but in the present case, the application has been submitted after the lapse of five years of the date of missing of the father of the petitioner.

6. Counsel for the State on the other hand opposes the prayer of the petitioner and submits that the petitioner has no case at all due to the reason that the father of the petitioner become traceless and after lapse of five years only, he has filed the application and his claim has rightly been rejected by the District Compassionate Appointment Committee, Aurangabad and properly being intimated to him by the Chief Engineer.

7. After going through the pleadings of the parties, it transpires to this Court that in the present case, the father of the petitioner was found missing in the year 2010 and in this regard, S.D.E entry 595 of 2010 dated 24.01.2010 was made which is annexed as Annexure-1. It also transpires to this Court that death-cum-retiral benefit of the father of the petitioner was allowed in the favour of the petitioner's mother on 04.11.2015.

7. Extracts of the letter issued by the General Administrative Department contained in Memo. No. 5014 dated 16.04.2021 is as follows:

उपर्युक्त न्यायादेश में माननीय न्यायालय का मानना है कि जब किसी लापता व्यक्ति के मृत्यु की सम्पुष्टि उसके लापता होने के सात वर्ष के बाद होती है, तब मृत्यु की सम्पुष्टि होने के पूर्व ही



उसके *आश्रित* अनुकम्पा नियुक्ति के लिए आवेदन समर्पित करने की अपेक्षा न्यायसम्मत नहीं है। इस आधार पर न्यायालय द्वारा सामान्य प्रशासन विभाग से विचाराधीन विषय के संदर्भ में नया मार्गदर्शन निर्गत किये जाने की अपेक्षा की गयी है।

8. From the aforesaid extracts of this circular which is of the year 2021, it transpires to this Court that 7 years shall be counted from the date of missing, and thereafter, presumption of death shall be made according to Section 108 of the Indian Evidence Act, and thereafter, 5 years shall be counted as mentioned in the said circular. It transpires to this Court that the petitioner has filed representation for compassionate appointment in the year 2016, and as such, the said application for compassionate appointment has been filed well within time according to the judgment mentioned above as well as the circular of the year 2021 whose extracts is already been mentioned.

9. In this view of the matter, this Court is of the firm view that the decision taken by the District Compassionate Committee annexed as Annexure-8 and communication made by the Chief Engineer are not sustainable and so hereby quashed.

10. It is directed to the District Compassionate Committee and the Chief Engineer to consider the claim of the petitioner for compassionate appointment in accordance with law



mentioned above within 90 days from the date of filing of the
fresh representation along with the said order.

11.In this view of the matter, this writ application is
disposed off.

(Dr. Anshuman, J)

Sunnykr/-

AFR/NAFR	AFR
Uploading Date	
Transmission Date	

