

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10849 of 2023

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Pappu Kumar Herendra Singh Resident of Village- Bhagwatpur, P.S. and District Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat , Patna.
2. The District Magistrate, Vaishali, District- Vaishali.
3. The Additional District Magistrate, Vaishali, District- Vaishali.
4. The Sub-Divisional Officer, Banka, District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Labh
For the Respondent/s : Mr.Arvind Ujjwal (Sc 4)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

4 26-10-2024 Heard learned counsel for the parties.

The present writ petition has been filed for the
following reliefs:-

“That this writ application is being filed on behalf of the petitioner above named for issuance of an appropriate writ, order and direction for quashing the order passed by the Sub-Divisional Officer, Hajipur and issued vide Memo No. 211 dated 18/5/2019 whereby and where under P.D.S. license of the petitioner’s father namely Harendra Singh who was a P.D.S. dealer has been cancelled contained in (Annexure-1) as well as quashing the order passed by the Additional District Magistrate, Vaishali in P.D.S. Appeal Case No. 10/ 2022-23 and issued vide Memo No. 287 dated 6/4/2023 whereby and where under appeal filed by the petitioner’s father namely Harendra Singh has been closed only on a sole ground that during pendency of this appeal, father of the petitioner who was an appellant was died without considering substitution petition of the petitioner or merit of this case (Annexure-9) and further direction to the respondents to consider the name of the petitioner and to issue P.D.S. license on compassionate ground in the name of the petitioner and till final order not to issue any P.D.S. license to another on place of the petitioner.”

3. Learned counsel appearing on behalf of the



petitioner has stated that the petitioner was pursuing the appeal before the District Magistrate, Vaishali, District- Vaishali i.e. Respondent No. 2 herein. However, the Respondent No. 2, without deciding the appeal on merits, has dismissed the appeal solely on the ground that the original appellant i.e. the father of the petitioner had died and the appeal has become infructuous. Learned counsel has stated that the application made by the petitioner for substituting the name of the father was pending adjudication, but the authority did not go into the merits of the said application and dismissed the appeal on technicalities in a mechanical and pedantic manner.

4. Admittedly, the impugned order has been passed by the appellate authority on technicalities and not on the merits of the case. The appellate authority ought to have passed the order on merits duly substituting the name of the petitioner in lieu of the name of his father. In case, the petitioner succeeds in the appeal, he can file an application for appointment on compassionate grounds. Unless and until the order of cancellation is set aside, the petitioner's right to be appointed on compassionate ground cannot be entertained.

5. The view expressed by the co-ordinate Bench of this Hon'ble Court supported by judgment of the Division



Bench passed in CWJC No. 5959 of 2022 dated 28.07.2022 is squarely applicable to the facts of this case and is as under:-

“The petitioner is desirous of seeking license on compassionate ground but that could be done only after it is found by the Appellate Authority that the licence of the petitioner was wrongly cancelled.

Precisely, for this purpose, the petitioner has filed a substitution petition before the District Authority seeking a request to substitute him in place of his mother so that the appeal could be contested.”

6. Having regard to the above, the impugned order dated 06.04.2023 passed by the District Magistrate, Vaishali is set aside. The matter is remanded back to the appellate authority for considering the matter afresh and pass a reasoned order. The appellate authority shall substitute the name of the petitioner in lieu of the name of his father. It is also made clear that the substitution of the name of the petitioner will not confer any right on the petitioner to get the license in his name. In case, the appeal is allowed, it will only make him eligible for being considered for appointment under the compassionate ground.

7. With the above directions, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

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