

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13303 of 2022

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Avnish Kumar Son of Late Arvind Kumar Thakur, resident of Village -
Balapur, Post - Birsinghpur, Police Station - Kalyanpur, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Bihar, Patna.
2. The Deputy Secretary to Government of Bihar, General Administration Department, Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The Collector-cum-Chairman, Compassionate Appointment Committee, District - Samastipur.
5. The Additional Collector-cum-Senior Officer, District Establishment Section, Samastipur.
6. The Civil Surgeon-cum-Chief Medical Officer, Samastipur, District - Samastipur.
7. The Incharge Medical Officer, Primary Health Centre, Kalyanpur, District - Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajoy Kumar Chakraborty, Adv., Mr. Krishna Murari Rawt, Adv.
For the State	:	Mr. Aditya Nath Jha, AC to SC-18

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 01-10-2024

An application for compassionate appointment was filed by the petitioner on the death of his father in harness on 17th July, 2019. The petitioner is the younger son of the deceased. Elder brother of the petitioner is employed in the Armed Forces. As he is gainfully employed, the Compassionate Appointment Committee directed the jurisdictional Civil Surgeon to make an enquiry and



submit a report as to whether the elder son of the deceased employee being gainfully employed, compassionate employment of the younger son was necessary.

2. The Civil Surgeon during enquiry found that the elder son of the deceased employee lives separately and he does not maintain any connection with the other members of the family. The widow of the deceased and their two daughters are dependent upon the younger son, the petitioner herein. By an order dated 9th February, 2022, the Compassionate Appointment Committee of the District sent the observation of the Committee to the General Administration Department, Bihar for according opinion. By Memo No. 5888, dated 18th April, 2022, issued by the Deputy Secretary to the Government of Bihar, it was informed that the petitioner is not entitled to get compassionate appointment. This prompted the petitioner to file the instant writ petition.

3. It is pertinent to mention here that in view of the opinion passed by the General Administration Department, the Chairman-cum-District Magistrate of the Compassionate Appointment Committee, rejected the claim of the petitioner vide order dated 15th June, 2022. The said order is also under challenge in the instant writ petition.



4. The learned Advocate on behalf of the respondents refers to a Full Bench decision of this Court in the case of ***Niraj Kumar Mallick & Others Vrs. The State of Bihar through Secretary, Rural Works Department and Others.***, reported in ***2018 (2) PLJR 951***.

5. Referring to paragraph-48 of the decision, it is submitted by the learned Advocate for the State Respondents that in a case where one of the siblings of the deceased employee is gainfully employed, other siblings is not allowed to get compassionate appointment on the basis of Government policy, even if the said sibling, who is gainfully employed, stayed separately from other family members of the deceased employee.

6. The Full Bench was guided by the decision of the Division Bench in the case of ***Vishal Kumar*** and the Hon'ble Supreme Court in the case of ***Umesh Kumar Nagpal Vrs. State of Haryana And Others***, reported in ***(1994) 4 SCC 138***.

7. On careful perusal of the decision of the Full Bench, it appears to this Court that the Full Bench found that it had no jurisdiction to take a contrary view to the policy decision of the State while exercising the power of judicial review under Article 226 of the Constitution of India. At the same time the Full Bench observed as follows:-



“48. So far as the clarification that ‘gainfully employed’ means such employment from which the employed dependent of the deceased government servant may provide sustenance or can maintain other dependents is concerned, it has to be looked at ‘objectively’ and not ‘subjectively’. It is not for the authority considering the application for compassionate appointment to find out as to whether the dependent in employment is willing to take care of other dependents or not. It would not be his concern that the gainfully employed sibling is actually providing sustenance to the other dependents or not. Any argument that the dependent in employment is not willing to provide sustenance/maintenance to other dependents or that the employed one is living separately is beyond the scope and ambit of consideration under the given scheme and policy of the government and this Court sitting in its writ jurisdiction under Article 226 of the Constitution of India would not go into enquiring the correctness of the facts so pleaded before the Court. It is because the writ Court is to be conscious of the judicial pronouncements of the Hon'ble Apex Court wherein it has been repeatedly held that a Court has no power to ignore a provision to relieve what it considers a distress resulting from its operation. We have quoted paragraph 10 and 11 of the judgment of Asha Ramchandra Ambedkar (supra) only to remind us what the Hon'ble Apex Court has held in the following words;-



“the Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however hard the case may be, it should never be done”.

8. In my considered view, the General Administration Department did not consider the case of the petitioner objectively as per the direction made by the Full Bench of this Court in paragraph-48 of **Niraj Kumar Mallick (supra)**. The General Administration Department was under obligation to consider the case of the petitioner objectively to find out as to whether employment of the elder son of the deceased employee is sufficient to maintain the entire family of the deceased:- secondly whether the elder son of the petitioner actually maintains his widow mother, brother and sisters and lastly whether objective consideration of the issue enables the administration to take a contrary view in favour of the petitioner or not.

9. For the reasons stated above, the impugned Memo No. 5888, dated 18th April, 2022 and Memo No. 759, dated 15th June, 2022, issued respectively by the Deputy Secretary, Government of Bihar and the Chairman-cum-District Magistrate, Samastipur, are quashed and set aside.



10. The Chairman-cum-District Magistrate, Samastipur is directed to remit the file to the General Administration Department within 30 days from the date of communication of this order for fresh consideration of the issue, in the light of the observation of the Full Bench in paragraph-48 of the Judgment, quoted hereinabove and take fresh decision with regard to the application filed by the petitioner for employment on compassionate ground.

11. With the above direction, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

