

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11618 of 2023

Amarnath Paswan, S/o Late Rohan Paswan, R/o Village-Bratpur, P.S.-
Kachchi Dargah, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate-Cum-Collector, Patna.
2. The District Magistrate-Cum-Collector-Cum-Chairman Compassionate Committee, appoint Committee, Patna.
3. The Additional District Magistrate-Cum-Additional Collector (General), Patna.
4. The Sub-Divisional Magistrate, Patna City, Patna.
5. The Circle Officer, Patna Sadar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kaushal Kumar, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, (SC 8)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 05-12-2024 Heard Mr. Kaushal Kumar, learned counsel

 appearing on behalf of the petitioner and Mr. Sheo Shankar

 Prasad, learned SC 8 appearing on behalf of the State.

2. The petitioner, in paragraph no. 1 of the present writ petition, has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

“(i) For issuance of an appropriate writ/s, direction/s, Order/s in the nature of certiorari for quashing of Memo No. XVI-19 (P-1)/2014 839/ Gen., date 13.03.2023 issued by the Respondent No. 2 whereby and whereunder the application for appointment of Chowkidar/ Dafadar on Compassionate grounds of the petitioner was rejected.

(ii) For issuance of an appropriate writ/s, direction/s, order/s in the nature of mandamus for commanding the Respondents to appoint the



petitioner on Compassionate appointment on the post of Chowkidar.

(iii) Any other relief/s for which the petitioner may found entitled by this Hon'ble Court. ”

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner's father died in harness on 12.02.2012, while he was posted as *Chowkidar/Dafadar* in Patna. The petitioner had applied for compassionate appointment on 06.07.2016 for considering him to be appointed on compassionate ground. A communication has been made in respect of decision of the District Compassionate Committee on 26.07.2022 and based on the said decision, the Collector, Patna passed an order contained in Memo no.839 dated 13.03.2023 in respect of two applicants, including the petitioner. The reason for not considering the case of the petitioner, based on the recommendation of the District Compassionate Committee, is that the petitioner had not filed the application within time, as provided in Memo no.6817 dated 25.05.1989, which provides five years' time. The father of the petitioner had died on 20.02.2012, while the petitioner has applied for the compassionate appointment on 03.07.2017. The application of the petitioner is beyond 5 years, 4 months and 13 days. On the said basis, the application of the petitioner, being time barred, was rejected. Aggrieved by the said order, the petitioner



obtained information under the Right of Information Act and the Information Officer on 30.06.2023 had provided information, as would appear from the Annexure-10, that the application of the petitioner was filed on 06.07.2016, which is well within the time limit of five years. As such, so far as the petitioner is concerned, learned counsel seeks interference with the order contained in Memo no.839 dated 13.03.2023 and the said order is required to be set-aside and quashed.

4. *Per contra*, learned counsel appearing on behalf of the respondent submitted that the petitioner for the first time had filed his application for considering his case for compassionate appointment on 03.07.2017, which is beyond statutory time granted in terms of Memo No.6817 dated 25.05.1989. He further submitted that the petitioner has brought on record his application (Annexure 3) along with the requisites Form 1 to contend that the same was not submitted before the Appropriate Authority. In absence of any receiving or seal of the officer, the information prepared by the Information Officer dated 30.06.2023 cannot be sustained. He further submitted that the petitioner has given written information to inform that his date of birth is 01.03.1991 and he is matric-pass. On these grounds, learned counsel submitted that no interference is



required with the decision of the District Appointment Committee or the order passed by the District Collector, Patna.

5. Heard the parties.

6. So far as the law in respect of the compassionate appointment is concerned, the same is no more *res integra*. The Apex Court relying on the ratio of ***Umesh Kumar Nagpal v. State of Haryana and Others*** reported in (1994) 4 SCC 138, further in Paragraph No. 7.2 in the case of ***The State of West Bengal Vs. Debabrata Tiwari & Ors. Etc.*** passed in ***Civil Appeal nos. 8842-8855 of 2022***, has laid down following principles of compassionate appointment, which are reproduced hereinafter:

“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.”

7. In the case of **Jagdish Prasad v. State of Bihar** reported in **(1996) 1 SCC 301**, Hon'ble Apex Court, while considering the object of compassionate appointment held that the object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family.

8. In case of **State of U.P. v. Paras Nath**, reported in **(1998) 2 SCC 412**, the Hon'ble Apex Court held that the purpose of providing employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. It was further observed that none of these considerations can operate, while the application is made after a long period of time.

9. Considering the facts and circumstance of the



present case, it appears that the application of the petitioner has been denied to be considered for compassionate appointment, whose father died in harness on 20.02.2012, on the sole ground that the petitioner has applied for the first time for his appointment on compassionate ground on 03.07.2017, which is beyond 5 years, 4 months and 13 days as the time provided in Memo no. 6817 dated 25.05.1989 is five years. On this sole ground, the application of the petitioner was rejected, which I find that it is not rational, considering the fact that the petitioner has applied for compassionate appointment on 06.07.2016 which is within time and the same is also supported by the information given by the Information Officer dated 30.06.2023, which was sought by the petitioner under Right to Information Act, soon after the rejection order was communicated to him. The order also don't reflect that the financial condition of petitioner's family was taken into the account and in absence of such, the very object of the compassionate appointment is frustrated, considering that the same is provided to the dependent of the deceased to meet the day to day financial hardship and they may not face starvation that leads to this Court to hold that the order contained in Memo No.839 dated 13.03.2023 is not in accordance with law and the same is set-



aside and quashed in light of the admitted facts of the case. The competent authority is directed to reconsider the case of the petitioner in light of the law laid down by the Apex Court.

10. Accordingly, the present writ petition is allowed.

Ashishsingh/-

(Purnendu Singh, J.)

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