

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15729 of 2023

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Vidya Nand Rai S/o- Late Soti Rai R/v- Kachhi Talab, Naya Tola, Saristabad,
P.S.- Gardanibagh, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director cum Special Secretary, Civil Aviation Directorate, Mantrimandal Sachivalaya Vibhag, Hawaii Adda, Patna 800014.
3. The Additional Chief Secretary, Mantrimandal Sachivalaya Vibhag, Hawaii Adda, Patna- 800014.
4. The Director (Controller), Civil Aviation Directorate, Mantrimandal Sachivalaya Vibhag, Hawaii Adda, Patna- 800014.
5. The Special Executive Officer, Mantrimandal Sachivalaya Vibhag, Hawaii Adda, Patna- 800014.
6. The Joint Secretary, Mantrimandal Sachivalaya Vibhag Hawaii Adda, Patna- 800014.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha (GA-7)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 30-04-2024 Heard learned advocate on behalf of the petitioner
and learned counsel on behalf of the Respondents.

2. Father of the petitioner since deceased was an employee working as a Cleaner in Civil Aviation Directorate Mantrimandal Sachivalaya Vibhag, Hawaii Adda, Patna. He died-in-harness on 05.01.2016. On 27.07.2017, the petitioner filed an application for appointment in place of his deceased father on compassionate ground. The said application was, however, rejected by the Authority on 27.07.2017 on the ground



that the petitioner had no requisite qualification on the date of filing of the application for compassionate appointment. Subsequently, the petitioner passed matriculation examination which is considered as the minimum requisite qualification for appointment to the said post of Cleaner on compassionate ground on 26.02.2021. After passing matriculation examination, the petitioner filed a fresh application on 25.06.2021 reiterating his prayer for compassionate appointment. The concerned department rejected the prayer of the petitioner vide order dated 21.04.2023 on the ground that as per Notification No.6817 dated 25.05.1989, it is incumbent upon the legal heir of the deceased employee to file application on compassionate ground within five years from the date of death of the employee. The petitioner filed his application after obtaining requisite qualification after the lapse of five years. Therefore, the said application was rejected.

3. It is submitted by the learned advocate for the petitioner that this Court being a Court of equity is empowered to relax the time period for compassionate appointment on the ground that the petitioner's application was rejected previously for lack of requisite qualification. The petitioner filed the application immediately on getting requisite qualification,



therefore, Memo No.6817 dated 25.05.1989 issued by the General Administration Department, Government of Bihar may be relaxed.

4. It is needless to say that compassionate appointment cannot be claimed as a matter of right and a claim for the same must be entertained having regard to the compelling financial circumstances (if any) of the deceased's dependents. Therefore, entertaining a claim which accrued in the year 2016 cannot be entertained upon filing of an application in the year 2021.

5. In *Smt. Sushma Gosain & Ors Vs. Union of India & Ors.* reported in (1989) 4 SCC 468, the Hon'ble Supreme Court observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

6. In the *State of Madhya Pradesh & Ors vs Nandlal Jaiswal & Ors* reported in (1986) 4 SCC 566, the Hon'ble Supreme Court held as here under :-



“9..... the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

7. Bearing the above principles in mind, this Court finds that the petitioner had no requisite qualification in the year 2017 to get appointment on compassionate ground. He obtained such qualification after the expiry of five years of the death of his father, then he filed a fresh application. The relevant memorandum of the General Administration, Government of Bihar states that no compassionate appointment can be made



after the expiry of five years from the date of death of the employee.

8. Since, the application was made after five years of the death of the father of the petitioner and in case of compassionate appointment, the appointment is considered as not in accordance with the general rules of appointment and therefore, a back door appointment, strict adherence of rule is absolutely necessary.

9. Since, the petitioner's application was filed after the expiry of five years as directed by the General Administration Department, Government of Bihar, the respondent authority did not commit any wrong or violate any fundamental right or legal right of the petitioner in rejecting his application filed on 25.06.2021.

10. In view of the above discussion, I do not find any merit in the instant writ petition and accordingly, the instant writ petition is dismissed.

(Bibek Chaudhuri, J)

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