

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2617 of 2019

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Tek Narayan Paswan, Son of Late Ram Bali Paswan, Resident of Village-
Bharsara, P.S.- Bihiya, District- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary (Home), Department of Home, Government of Bihar, Patna
2. The Principal Secretary, Department of Home, Government of Bihar, Patna
3. The Principal Secretary, Department of Personnel, Government of Bihar, Patna
4. The Commandant, Bihar Military Police-11, Jamui

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir, Advocate
		Smt. Shruti Sinha, Advocate
For the Respondent/s	:	Mr. Shailesh Kumar, AC to GP- 5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 03-03-2025

Heard the parties.

2. The petitioner has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution, seeking quashing of the order as contained in Memo No. 1625 dated 30.07.2018 issued by the Commandant, Bihar Military Police-11, Jamui, by which the application of the petitioner for appointment on compassionate ground came to be rejected. The petitioner further sought quashing of the Memo No. 2372 dated 14.10.2018 issued by the respondent no.4, whereby the representation preferred by the mother of the petitioner also turned down, affirming the afore-noted order dated 30.07.2018.



3. The brief facts of the case, which led to the filing of the present writ petition, are that while the father of the petitioner was serving as Inspector in the Bihar Military Police-11, Jamui, he died in harness on 11.09.2017. On account of the unfortunate demise of the erstwhile employee, the petitioner submitted his application for appointment on compassionate ground by disclosing the fact that his elder brother has been serving in the Indian Railway as Group-IV employee. The respondent no.4, having taken note of the fact of his brother being employed in the Indian Railway, rejected the claim of the petitioner in view of the Circular duly issued by the General Administrative Department dated 19.11.2014.

4. Learned counsel for the petitioner contended that the elder brother of the petitioner, who has been serving in the Indian Railway as Group-IV employee, had already separated from the family long back in the year 2002. To support the aforesaid contention, certificates issued by the authorities and functionaries of Panchayat have been placed on record. A representation has also been submitted by the mother of the petitioner, acknowledging the aforesaid facts with a prayer to the competent authority to consider the claim of the petitioner for his appointment on compassionate ground, so that the family



may be rendered immediate succor and sustenance to get over the financial crunch on account of the sudden demise of the bread earner.

5. *Per contra*, learned counsel for the State, referring to the clarificatory Circular of the General Administrative Department dated 19.11.2014, has submitted with all vehemence that since the elder brother of the petitioner has been working in the Indian Railway as Group-IV employee, hence, the family is not in starvation and does not need any immediate financial assistance by way of offering the present petitioner compassionate appointment.

6. This Court has heard the learned counsel for the respective parties and also perused the materials available on record.

7. The issue posed before this Court has already crystallized by a Full Bench decision of this Court in **Niraj Kumar Mallick v. The State of Bihar and Others [2018 (2) PLJR 951]**, wherein the learned Full Bench while considering the clarification issued by the General Administrative Department, bearing no. 15783 dated 19.11.2014 has observed as follows:-

“46. I am of the considered opinion that keeping in mind the object of the compassionate



appointment and well settled legal proposition that it is not a source of recruitment, it is a policy decision based on a sound public policy provided in the clarification that where any of the dependents of the deceased government servant is 'gainfully employed', no other dependent would be entitled to get the benefit of the scheme of compassionate appointment. Government has come out with a policy that the dependent who is gainfully employed is living separately from other dependents cannot be a reason to provide appointment and irrespective of that whether employed one lives together or separately the other dependents would not get the benefit of compassion. The word, 'dependents' here take into it's fold all the siblings of the applicant. The clarification as contained in Clause (d) of Annexure- A to the counter affidavit is based on the views expressed by the Hon'ble Division Bench of this Court in the case of **Vishal Kumar** (supra) and at the same time it is in consonance with the law laid down by the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal** (supra) as also other judgments of the Hon'ble Supreme Court.

47. 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. From bare perusal of the observations made by the learned Full Bench of this Court, it is manifestly apparent that it is not for the concerned authority to consider 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; all the more, any plea 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.

9. Now coming to the case in hand and after going through the materials available on record, this Court finds that there is no pleading that the employed dependent of the deceased Government servant is not able to provide sustenance or can maintain other dependents, which is the only ground to



be looked at objectively.

10. Considering the admitted position that one of the dependent of the deceased Government employee is already gainfully employed in the Railway, as a Group D employee, as also in view of the Government Circular and its clarification issued by the General Administration Department referred above along with the settled legal position, as mandated by the Full Bench of this Court, the present writ petition is devoid of any merit and thus hereby dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2025
Transmission Date	NA

