

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4878 of 2019

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Ram Pravesh, Son of late Raghunath Singh, Resident of Village, Post Office
and Police Station- Biddupur, District- Vaishali at Hazipur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the District Officer-Cum-Chairman of the District Compassionate Appointment Committee, District Vaishali at Hazipur.
2. The Executive Engineer, Public Health Division, Hazirpur.
3. Principal Secretary, P.H.E.D., Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh, Advocate
For the Respondent/s : Mr. Vishwambhar Prasad, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-06-2025

Heard Mr. Lalan Kumar Singh, learned Advocate for the petitioner and Mr. Vishwambhar Prasad, learned Advocate for the State.

2. The challenge in the present writ petition is made to an order contained in letter no.3079 dated 10.11.2018 passed by the Executive Engineer, Public Health Division, Hajipur as also the decision of the District Compassionate Appointment Committee under Memo No.57 dated 25.09.2018, whereby the



claim of the petitioner for appointment on compassionate ground came to be rejected on the ground that one of the sons of deceased employee is gainfully employed.

3. Mr. Lalan Kumar Singh, learned Advocate for the petitioner submitted that it is the admitted fact that the father of the petitioner died in harness on 22.06.20214 while working as a Nalkoop Khalasi in Public Health Division, Hajipur. On account of unfortunate demise, the petitioner immediately filed an appropriate application for considering his case for appointment on compassionate ground. It has also been apprised that though one of the sons of the deceased was in service in Defence Ministry but he had already been separated during the life time of his father on 04.11.2012 itself. To support the aforesaid contention, a copy of the Partition through Panchayati has been placed on record as Annexure-2. On receipt of the application for compassionate appointment, the same was forwarded by the Executive Engineer vide Memo No.482 dated 01.03.2016 to the concerned Superintending Engineer. The certificates duly issued by the public representative viz. Mukhiya and Sarpanch have also been placed to support the contention of the petitioner that the elder son, who was serving in Defence has already been separated from his father during his life time. An enquiry was



also conducted at the level of Halka Karamchari and a report has been sent through the Circle Officer to the Dy. Collector, Establishment. All the afore-noted documents along with the application for compassionate appointment were placed before the District Compassionate Appointment Committee. A meeting was held on 25.09.2018; however, the claim of the petitioner came to be rejected without taking note of the fact that another son of the deceased employee is separated and not supporting the family by any means, is the contention of the learned Advocate for the petitioner.

4. Referring to para-12 and Annexure-2, Mr. Singh vehemently contended that there is no financial means and assistance to the bereaved family members to earn bread and rice and they are in penury; hence, in any circumstances, the rejection of the claim of the petitioner for appointment on compassionate ground is against the very object of the compassionate appointment which is meant to mitigate the hardship to the family on account of death of the breadwinner.

5. On the other hand, learned Advocate for the State submitted that the issue raised before this Court has already been clarified by Memo No.15783 dated 19.11.2014 issued by the General Administrative Department, wherein it has been



made clear that in case of any of the dependents of a Government servant being gainfully employed whether he is living with the other dependent or not, the other dependent shall not be entitled for benefit of appointment on compassionate ground. This clarificatory letter was questioned and had come up for consideration in the case of **Niraj Kumar Mallick v. The State of Bihar and Others [2018(2) PLJR 951]**, wherein the Full Bench of this Court upheld the validity of said clarificatory letter.

6. This Court has given anxious consideration to the submissions set forth by the learned Advocate for the parties and finds substance in the submission of the learned Advocate for the State.

7. It would be worth stating here that the learned Full Bench of this Court in **Niraj Kumar Mallick** (supra) in no uncertain terms in paragraphs no.47 and 48 has crystallized the issue by holding that “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.” The Full Bench of this Court also reminded that the 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.

8. The Court further crystallized that in terms of the clarification offered by the department, the competent authority would be required to objectively look into the nature of the employment and the resources being generated by the employed sibling from such employment. Only where it is found that the employment of the other sibling is of such a nature that it is not generating resources so as to make him able to provide both ends meet, for sustenance/maintenance to the other dependents of the deceased government employee and despite gainful employment of one of the dependents but because of his poor income from such employment he is not in a position to provide two ends meet to the other dependents and they are on the verge of starvation, destitution and penury, the authorities of the State would be liable to consider the application of other dependent.



9. At this juncture, Mr. Singh, learned Advocate for the petitioner intercepted the Court and drawn the attention of this Court that the Full Bench has taken note of the fact in para-49 that in none of these writ applications, the petitioners have pleaded that their other siblings are in such an employment by which they are unable to get sufficient money so as to provide the both ends meet to these petitioners, therefore the error in the rejection of their claim were sustained. However, in the present case, it is specifically mentioned that the family of the petitioner is in destitution and penury.

10. This Court is afraid to accept the submission of the petitioner as there is no averment with regard to the income of the gainfully employed son as to what he is getting from his employment. There is only a vague statement that the second son of the petitioner who is gainfully employed is residing separately and the family is in destitution.

11. It would be pertinent to observe that the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal v. State of Haryana and Others [(1994) 4 SCC 138]** held that mere filing of the application for compassionate appointment would not be enough to consider the claim of the petitioner for compassionate appointment. The financial condition in terms



with the scheme is also required to be looked into.

12. It is the settled proposition of law that “The Compassionate appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14” [vide: *State of J. & K and others vs. Sajad Ahmed Mir, (2006) 5 SCC 766*].

13. Since the issue raised before this Court that one of the sons of the petitioner who is gainfully employed; even if residing separately, has already been answered by the Full Bench of this Court in **Niraj Kumar Mallick** (supra), this Court



does not find any merit in the present writ petition. Accordingly,
the instant writ petition stands dismissed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27-06-2025
Transmission Date	

