

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10426 of 2016

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Deepak Kumar Thapa

... .. Petitioner/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shyam Narayan Pandey, Adv.
For the Respondent/s	:	Mr. Sarvesh Kumar, GP24
		Mr. Vikash Chandra Srivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 08-07-2025

Heard Learned Counsel for the petitioner and Learned
Counsel for the Bihar State Power (Holding) Company
(Respondent Nos.2 to 4).

2. Learned Counsel for the petitioner submits that the present writ petition has been filed for issuance of direction to the Respondent Authorities to appoint the petitioner on compassionate ground for which he is entitled for. Further prayer has been made to quash the Letter no.94 dated 20.02.2015 by which request of the petitioner for his appointment on compassionate ground was declined by the Committee of Compassionate appointment on the ground that brother of the petitioner is employed with Allahabad Bank at Hyderabad.

3. Counsel for the petitioner further submits that the



petitioner is a son of messenger of the erstwhile Electricity Department, Government of Bihar and now Bihar State Power (Holding) Company Ltd. Bihar. He further submits that the petitioner's father died while in service on 02.04.2013 leaving behind his wife and two sons. He further submits that elder brother of the petitioner is an employee in the Allahabad Bank and is living with his family at Hyderabad. He further submits that he has no relation with the petitioner and his mother. Since during the life time of the petitioner's father, he got himself married with a girl without the consent of his father and mother.

4. Counsel further submits that after death of his father, the petitioner is living with his widow mother and is caring for her, but both were facing financial constrain. The mother of the petitioner was not interested to be appointed on the ground of compassionate appointment, as she used to be an illiterate and *pardanasin* lady and expressed her willingness that petitioner be appointed to mitigate the difficulties of the family. The elder brother of the petitioner has also given an affidavit of no objection. He further submits that the petitioner has submitted an application in a prescribed form before the Authority, but the Committee has rejected the request of the petitioner vide letter No.94 dated 20.02.2015 and thereafter, the



petitioner has filed the present writ petition before this Hon'ble Court.

5. Counsel further relied on the judgment passed by this Hon'ble Court in C.W.J.C. No.13787 of 2014 dated 01.07.2017 in case of Avinash Kumar Verma Vs. the State of Bihar & Ors. in which this Court has pleased to held that the rejection of application for compassionate appointment shall not be rejected in a causal manner rather enquiry has to be made and then only, claim of the petitioner be considered.

6. Learned Counsel for the Bihar State Power (Holding) Company on the other hand submits that the matter of compassionate appointment is to look after the immediate need of the family, who is in distress. He further submits that here in the present case, there are only two members in the family and mother of the petitioner is getting family pension and petitioner is a young and major one as well as his brother is already in service, who has given no objection for compassionate appointment. Therefore, it is false to state by the petitioner that they are not in contact with the elder brother and he does not used to take care. He further submits that granting consent means he has every care for his brother.

7. Counsel further submits that this Hon'ble Court by



virtue of Full Bench decision, i.e., **Niraj Kumar Mallick Vs. State of Bihar & Ors. Reported in 2018(2) PLJR 951** has decided a writ application of **Mudita Rani Vs. the State of Bihar & Ors. dated 12.01.2024 in C.W.J.C. No.6460 of 2019** in which it has been held that the compassionate appointment is not a source of recruitment. It is a policy decision based on public policy where any of the dependents of the deceased Government servant is gainfully employed then, with a view to provide help, the dependent of the deceased government servant may provide subsistence so that family of the dependent can maintain themselves.

8. Counsel further submits that here in the present case, there were 3 dependents in the family i.e., wife, present petitioner and his elder brother in which elder brother is already in job and wife is getting family pension and petitioner is young person aged about 25 years on the date of filing the present writ application.

9. After hearing the parties, it transpires to this Court that the petitioner is relied on a decision passed by this Hon'ble Court in C.W.J.C. No.13787 of 2014 dated 01.07.2017 whereas counsel for the Power Corporation relied on decision of the year 2024 dated 12.01.2024 in C.W.J.C. No.6460 of 2019 based on



Hon'ble Full Bench Decision whose relevant paragraphs 11, 12 and 13 which states as follows:-

11. The Full Bench of this Court, in the case of Niraj Kumar Mallick (supra), has considered the circular of the General Administration Department, bearing No. 15783, dated 19.11.2014, relating to clause (क), which says that out of the dependents of the deceased Government employee, if one of the dependents is already employed, then no appointment on compassionate ground shall be given to other dependents of the deceased employee.

12. The Full Bench of this Court interpreted the aforesaid circular, in paragraphs 46 and 47 of Niraj Kumar Mallick (supra), which are being quoted herein below:

"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".

13. Admittedly, the other sibling of the petitioner is in Government employee, as such, paragraph 48 of Niraj Kumar Mallick (supra), relied upon by the petitioner is not applicable in the facts and circumstances of this case.

10. In the light of the reasonings assigned in the latest decision of this Hon’ble Court based on Hon’ble Full Bench, this Court is not inclined to grant any relief to the petitioner and hence, this writ application is hereby dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
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