

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16803 of 2012

Amrendra Kumar S/O Late Shyam Sundar Singh R/O Village- Nandpura,
P.O.- Jat Dumri, P.S.- Punpun, District- Patna, At Present Posted as an
Account Clerk in the Office of Superintending Engineer (Monitoring) Circle,
Patna, Sinchai Bhawan, Patna

... .. Petitioner/s

Versus

1. The State of Bihar, Water Resources Department, Sinchai Bhawan, Secretariat, Patna
2. The Under Secretary Water Resources Department, Government Of Bihar, Sinchai Bhawan, Secretariat, Patna
3. The Chief Engineer Water Resources Department, Dehri-On-Sone, Rohtas
4. The Deputy Director Quality Control Pramandal, Water Resources Department, Dehri, Rohtas
5. The District Magistrate, Arrah, Bhojpur
6. The Superintending Engineer Design, Ayojan And Monitoring Circle, Dehri, Indrapuri, Rohtas
7. The Chief Engineer, Yojana And Monitoring, Sinchai Bhawan, Patna
8. The Superintending Engineer Irrigation Monitoring Circle, Patna, Sinchai Bhawan, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Deepak Kumar Sinha, Advocate
For the Respondent/s : Mr.Krishna Kant Singh

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 02-05-2024

Heard learned counsel appearing on behalf of the petitioner and the learned counsel for the Respondents/State.

2. In paragraph no.1 of the present writ petition, the petitioner has claimed for following relief(s), which are re-produced *inter alia* as follows : -

- i. To command and direct the respondents to quash the order dated 11.02.2011 issued under the signature of Principal Secretary, Water Resources



Department, Government of Bihar, Patna, subsequently copy forwarded to this subordinate Officer as well as to the petitioner vide Memo No.179 dated 15.02.2021 under the signature of Anand Kumar Datta under Secretary of the Department on the same paper by which representation of the petitioner and his grievances regarding continuity of service from the date of first Compassionate Appointment vide memo no.2102 dated 06.07.1996 by Chief Engineer, Dehri-On-Sone, Rohtas of the same Department has been rejected in compliance of the order dated 09.07.2010 in CWJC No.302 of 2007 filed by the petitioner earlier.

ii. To command and directs the respondent that after quashing the order dated 11.02.2011 passed by the Principal Secretary further to quash order dated 17.02.1997 vide memo no.941 issued by the Secretary, Water Resources Department, Patna by which earlier order Memo no.2702 dated 06.07.1996 issued by the Chief Engineer, Water Resources Department, Dehri-on-Sone, Rohtas was cancelled in which the order of appointment of petitioner was issued on the basis of compassionate ground after recommendation of District Compassionate Committee, Bhojpur and fresh order for the same purpose was passed.

iii. To further command and direct the respondents to counter the services of the petitioner from 6.7.1996 on which date the petitioner was joined the service in the office of the quality Control Division, Dehri- on- Sone, Water Resources Department, Dehri and worked as on Accounts Clerk till date thereafter confirmation was made.

iv. To further command and directs the respondents to pay the dues salary which was stopped by the Department without any independent order but subsequently affected by the order dated 17.02.1997 issued by the Secretary, Water Resources Department, Patna without giving any opportunity to the petitioner.

v. For any other appropriate relief/reliefs as your Lordships may deem fit and proper.



3. Learned counsel appearing on behalf of the petitioner submitted that the initial appointment dated 06.07.1996 of the petitioner has been rejected in a mechanical manner merely on the ground that the appointing authority (Chief Engineer) was not competent to appoint the petitioner on compassionate ground, allegedly who had instead of recommending the decision of the District Compassionate Appointment Committee, vide letter no.577 dated 11.04.1996, had issued appointment letter of the petitioner for appointment on compassionate ground, vide Memo No.2102 dated 06.07.1996. The petitioner joined on the same date. The services of the petitioner were confirmed vide memo no.2699 dated 13.08.1996. The petitioner since the date he joined on the post of Accounts Clerk, he had been continuously working on the said appointment, which was cancelled by the Secretary, Water Resources Department, Government of Bihar, vide memo no.941 dated 17.02.1997 and the petitioner was appointed afresh and confirmed vide memo no.2187 dated 09.04.1997.

4. The fact being that the petitioner had been working since his date of joining on 06.07.1996 and for the fact of the Chief Engineer, who instead of informing the department on his own had issued appointment letter but the same will not disentitle the



petitioner from his due salary, which was stopped by the Department for no fault of the petitioner.

5. *Per contra* Mr. Krishna Kant Singh, learned counsel for the Respondents/State submitted that the District Compassionate Appointment Committee had recommended the name of the petitioner for appointment on compassionate ground on the post of Accounts Clerk, accordingly, the petitioner was appointed as the Accounts Clerk by the Chief Engineer, Water Resources Department, Dehri-on-Sone, vide memo no.2102 dated 06.07.1996 and thereafter, his appointment was cancelled and he was re-appointed by the Secretary, Water Resources Department, Government of Bihar, vide memo no.941 dated 17.02.1997 and the petitioner was confirmed by the Department's letter no.2187 dated 09.04.1997 considering the initial appointment of the petitioner made by the Chief Engineer, Water Sorceress Department, Dehri-on-Sone on 06.07.1996 to be annulled. As such, the petitioner is not entitled for payment of arrear of salary etc. for the period from 06.07.1996 to 17.02.1997. Being aggrieved, the petitioner filed CWJC No.302/2007 for the similar relief(s) as prayed for in the present writ petition, as such the present writ petition is barred by the principle of *res judicata*.



6. The case of the petitioner for grant of continuity of service was pending with the respondents, this Court, vide order dated 09.07.2010 passed in CWJC No.302 of 2007 had granted liberty to the respondents to consider the same and take appropriate decision as early as possible. In compliance of the order dated 09.07.2010, the claim of the petitioner for continuity in service was rejected considering the fact that his initial appointment was made by an incompetent authority, vide memo no.179 dated 15.02.2011. Accordingly, the claim of the petitioner for continuity in service and for payment of difference of salary was considered by the competent authority.

7. Heard the parties.

8. Admitted facts of the case are that the father of the petitioner was posted as Junior Engineer in the Water Resources Department and while he was in service, he died in harness but no information was given with respect to the “date of death” of the father of the petitioner. The case of the petitioner was considered by the District Compassionate Appointment Committee on 11.04.1996 and thereafter, the Chief Engineer, Water Resources Department, Dehri-on-Sone instead of recommending the name of the petitioner to the then Principal Secretary, Water Resources Department, Government of Bihar with respect to appointment of



the petitioner on compassionate ground, issued appointment letter dated 06.07.1996. A counter affidavit has also been filed but the same is silent as to in what manner the appointment of the petitioner was cancelled. Vide memo no.941 dated 17.02.1997 issued under the signature of the Secretary, Water Resources Department, Government of Bihar do not contain the information regarding any notice was issued to the petitioner before cancelling his appointment. The Government Circular dated 15.02.2011 bearing memo no.179, which was in force at the relevant time when the Committee had recommended the case of the petitioner for considering him to be appointed on the post of Accounts Clerk, vide letter no.517 dated 11.04.1996. The petitioner was appointed on 06.07.1996 having recommended by the District Compassionate Appointment Committee by the Chief Engineer, Water Resources Department, Government of Bihar, which was corrected by issuing fresh order of appointment dated 17.02.1997 by the competent authority.

9. Therefore, merely on the ground that the appointment was made by an incompetent authority and allowing the petitioner to continue in service on the applicable pay scale and having denied from payment of arrear of the salary and other consequential relief(s) from the initial date of appointment i.e. 06.07.1996 can



not be sustained. The case of the petitioner is covered by the judgment of the Apex Court passed in the case of **The Secretary, State of Karnataka & Ors. Vrs. Umadevi Ors.** reported in **(2006) 4 SCC 1.**

10. The case of the petitioner is also covered by the judgment of the Apex Court passed in **Civil Appeal No.6159 of 2008 [Arising out of SLP (Civil) No.4725 of 2007] (The Steel Authority of India Ltd. Vs. Madhusudan Das & Ors.)**, vide **Paragraph nos.15 & 16**, which are re-produced hereinafter as follows :

*15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession, not a right. [See **General Manager, State Bank of India and Others v. Anju Jain (2008) 8SCC 475, para 33**]*

*16. Mr. Braj K. Mishra, learned counsel appearing on behalf of the respondent No. 1, however, placed strong reliance on a decision of this Court in **Balbir Kaur and Another v. Steel Authority of India Ltd. and Others [(2000) 6 SCC 493]**, wherein it was opined (SCC p. 504, Para 19) :*



“19. Mr Bhasme further contended that family members of a large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the employee concerned. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue or flaw is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

*17. It may be that such a provision was made as a measure of social benefit but it does not lay down a legal principle that the court shall pass an order to that effect despite the fact that the conditions precedent therefor have not been satisfied. This aspect of the matter has been considered by this Court in **Umesh Kumar Nagpal v. State of Haryana and Others [(1994) 4 SCC 138]** in the following terms (SCC pp. 139-40, Para 2) :*

“2.... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of



justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who maybe eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.”

.....8. In National Institute of Technology v. Niraj Kumar Singh, this Court has stated the law in the following terms: (SCC p.487, para 16)

‘16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder.’

11. The case of the petitioner can be considered to be under the category of irregular appointment. The petitioner can not be allowed to suffer for the fault of the Chief Engineer. The



Authority concerned instead of having proceeding against the Chief Engineer, who had issued the appointment letter. The respondent having once accepted and having acted on the basis of the recommendation of District Compassionate Appointment Committee now can not turn around and put the petitioner to face penal consequences.

12. A claim for compassionate appointment is not a vested right and according to the scheme/policy, it is founded on considering immediacy upon the death of the sole bread earner of the family must be established that the dependents of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet. Compassionate appointment and the right, if any, is traceable from the scheme and no discretion is left with the authorities to make compassionate appointment dehors the scheme of operation. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread earner which has left the family in penury and without any means of livelihood. The Apex Court has summarized the rationale behind the policy of compassionate appointment in the case of **State of W.B. v. Debabrata Tiwari**, reported in **2023 SCC**



OnLine SC 219 in Paragraph Nos.30, 31, 32 and 33, which is re-produced hereinafter as follows :

“Policy of Compassionate Appointment : The

Rationale:

30. The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision has been derived from the provisions of Part IV of the Constitution of India, i.e., Article 39 of the Directive Principles of State Policy.

31. It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

i. In Sushma Gosain v. Union of India, (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.



ii. In *Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependents of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.

iii. In *Haryana State Electricity Board v. Hakim Singh*, (1997) 8 SCC 85, (“Hakim Singh”) this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the



death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

iv. This Court in State of Haryana v. Ankur Gupta, (2003) 7 SCC 704 : AIR 2003 SC 3797 held that in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

v. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad v. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) v. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.

vi. In State of Jammu and Kashmir v. Sajad Ahmed Mir, (2006) 5 SCC 766 : AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application



was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

vii. In Shashi Kumar, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

“41. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in



the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependent in seeking compassionate appointment.”

32. 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 dependents 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.*

33. *The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, **after** the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.*

13. In the above mentioned facts and circumstances of the case, I find that the recommendation of the petitioner by the District Compassionate Appointment Committee has not been questioned and the State Government/Department has also not



found the recommendation to be inconsistent in any manner with the scheme of the compassionate appointment contained in Memo No.941 dated 17.02.1997, relevant for the time. I find it proper to quash the order dated in 11.02.2011 issued under the signature of the Principal Secretary, Water Resources Department, Government of Bihar, Patna communicated vide Memo No.179 dated 15.02.2011. As a consequence of which, I direct the respondent authorities of the Water Resources Department to consider the case of the petitioner afresh and take an appropriate decision well within a period of six months from the date of production of the copy of this order in support of his claim

14. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

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