

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4725 of 2019

Lakshmi Kumari (Female), aged about 26 years, D/o Late Leela Kant Jha
resident of vill.-Jaideopatti, P.s.-Ghanshyampur, Distt.-Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar represented through Principal Secretary, Department of Secondary Education, Bihar, Patna
2. The Secretary Department of Secondary Education, Bihar, Patna
3. Commissioner Darbhanga Division, Darbhanga
4. The District Magistrate Darbhanga
5. The Deputy Collector Darbhanga
6. District Programme Officer Darbhanga
7. District Education Officer Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gopal Jha
For the Respondent/s : Mr.Jitendra Kr. Roy 1 (Sc13)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 07-05-2019

The present writ petition has been filed for quashing the order dated 26.11.2018 passed by the District Programme Officer (Establishment), Darbhanga whereby and whereunder the case of appointment on compassionate ground of the petitioner herein i.e. the daughter of Most. Rukmini Devi, whose husband had died in harness, has been rejected on the ground that the application for appointment on compassionate



ground has been made after a lapse of fourteen years whereas the prescribe time limit for filing the application is five years. The petitioner further prays to direct the respondents to appoint the petitioner on compassionate ground.

2. The brief facts of the case, according to the petitioner, is that the father of the petitioner died in harness on 3.6.2003, whereafter the mother of the petitioner had applied for appointment on compassionate ground in the prescribed format on 4.9.2004, however, her case was kept pending by the authorities for more than six years and ultimately, her claim was rejected in the year 2010 vide letter dated 25.3.2010 issued by the Deputy Collector (Establishment), Darbhanga on the ground of her being overage. Subsequently, the mother of the petitioner appears to have applied for appointment of her elder daughter i.e. the petitioner herein, on compassionate ground in the year 2010 itself, however, the claim of the petitioner has been rejected in the year 2018.

3. The learned counsel for the petitioner has submitted that the case of the petitioner should not be barred on account of the laches of the respondents, who sat over the case of the mother of the petitioner as well as the petitioner herein for appointment on compassionate ground. The petitioner has relied upon various



judgments, which are being discussed hereinbelow:-

(i) 2018 (2) PLJR 785 (*Sanjay Kumar vs. The State of Bihar & Ors.*)- In the said case, it has been held that since the date of birth of the deceased employee was in dispute, the petitioner of that case could have made an application for appointment on compassionate ground only after correction of the same inasmuch as only then his entitlement arose, hence, the Hon'ble Court directed that the bar of five years in making an application for appointment on compassionate ground would not arise in the said case since the date of birth of the father of the said writ petitioner was only corrected / rectified on 19.1.2013, entitling the said writ petitioner to apply for appointment on compassionate ground, hence his application dated 9.2.2013 would not be time barred.

(ii) 2018 (3) PLJR 829 (*Baban Rai vs. The State of Bihar & Ors.*)- In the said case, delay was caused by the respondent authorities in considering the case for appointment on



compassionate ground and the writ petitioner of the said case had filed the application for appointment on compassionate ground within one year of death of his father, hence, this Court held that consideration of the case of the petitioner after a lapse of about four years, during which period, the petitioner had become overage, would not prejudice the said writ petitioner. It was further held that for the delay caused by the respondent authorities, the said writ petitioner cannot be made to suffer.

(iii) 2015(3) PLJR SC 197 (*Canara Bank & Anr. vs. M. Mahesh Kumar Santha & Anr.*)- In the said judgment rendered by the Hon'ble Apex Court, it has been stressed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment since the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Moreover, the said judgment relates to the issue of applicability of a particular scheme i.e. as to



whether the scheme of existing on the date of death of the deceased employee would be applicable or the one in vogue at the time of consideration of the claim of the incumbent would be applicable for the purposes of considering the claim.

(iv) 1997 (1) PLJR 626 (*Chandra Bhushan Singh vs. The State of Bihar & Ors.*)- In the said case, this Court has held that in case, the authorities considering the application for appointment on compassionate ground made an inordinate delay and the delay is on account of circumstances beyond the control of the petitioner, the right of the incumbent cannot be defeated on the ground of delay caused by the authorities themselves.

This Court finds that the said proposition of law is not under dispute and this Court would apply the ratio of the case upon arriving at a definite conclusion at the end of this judgment.

(v) 1991 (1) PLJR SC 1 :: (1989) 4 SCC 468 (*Smt. Sushma Gosain & Others vs. Union of*



India & Others)- The ratio laid down by the Hon'ble Apex Court in the said judgment is to the effect that since the purpose of providing appointment on compassionate ground is to mitigate the hardship on account of death of the bread-earner in the family, such appointments should be made expeditiously without any delay.

This Court finds that the aforesaid judgment rendered by the Hon'ble Apex Court lays down a general proposition of law and the course to be followed in claims of appointment on compassionate ground and this Court is well aware of the said principle of law.

4. Per contra, the learned counsel for the respondent-State has submitted that the claim for appointment on compassionate ground has been made by the petitioner after a lapse of about fourteen years, hence, there is no question of appointment of the petitioner on compassionate ground. It is further submitted that there has been no laches on the part of the respondent State authorities.

5. The facts, which are not in dispute in the present case, is that the father of the petitioner died in harness on 3.6.2003,



whereafter her mother had applied on 4.9.2004 for grant of appointment on compassionate ground and at that time, she was 39 years of age, approximately, inasmuch as her date of birth, as disclosed in her petition at Annexure-2 to the writ petition is 2.4.1965. It appears that the authorities kept sitting over the case of the mother of the petitioner for appointment on compassionate ground and ultimately, rejected her case in the year 2010 vide letter dated 25.3.2010 on the ground that the petitioner has crossed the maximum age of 40 years, as prescribed for appointment. It is then that the mother of the petitioner thought it proper to apply for appointment of the petitioner herein on compassionate ground and an application to the said effect was made on 5.6.2010, a date on which the petitioner herein was 18 years old, her date of birth, as per the educational certificates enclosed with the writ petition, being 5.2.1992.

6. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that admittedly, the father of the petitioner had died on 3.6.2003 and the mother of the petitioner had applied for appointment on compassionate ground on 4.9.2004, well within the prescribed time limit, as also a date on which she was less than 40 years of



age i.e. well within the prescribed age for the purposes of grant of appointment, however, the respondent authorities had kept the case of the mother of the petitioner pending and only after she had become overage, had rejected the case of the mother of the petitioner on the pretext that she was overage and that too in the year 2010, however, immediately, in the year 2010 itself i.e. by an application dated 5.6.2010, the mother of the petitioner had applied for grant of appointment on compassionate ground to her eldest daughter i.e. the petitioner herein, at a time when occasion had arisen for the first time for filing an application for appointment on compassionate ground on behalf of the petitioner herein, since prior to the year 2010, the mother of the petitioner was not knowing that her case would be rejected by the respondent authorities. In any view of the matter, on the date of filing of an application at the behest of the petitioner for appointment on compassionate ground, the petitioner was admittedly major having attained 18 years of age approximately, hence, there was no impediment as far as the consideration of the case of the petitioner is concerned. The Respondent authorities have rejected the case of the petitioner for appointment on compassionate ground vide impugned order dated 26.11.2018, after keeping the application for appointment



of the petitioner on compassionate ground pending for a period of more than eight years, on the ground that the case of the petitioner for appointment on compassionate ground is time barred inasmuch as the application has been filed after fourteen years.

7. This Court is of the view that the impugned order dated 26.11.2018 suffers from various fallacies, the same being enumerated hereinafter. Firstly, the application was not filed after fourteen years since the first application, by the mother of the petitioner, was filed within fifteen months of the death of the father of the petitioner and only when the said application of the mother of the petitioner was rejected in the year 2010, the mother of the petitioner had immediately, in the year 2010 itself, preferred an application for appointment of her eldest daughter i.e. the petitioner herein for appointment on compassionate ground. Thus, it is wrong to say that there was delay in filing of application, whereas the facts are otherwise and shows that there has been no delay on the part of the petitioner. At best, the application, at the behest of the petitioner herein, can be said to have been filed after seven years of death of the father of the petitioner, though this Court is of the view that only after the case of the mother of the petitioner was rejected, occasion had



arisen for filing such application at the behest of the petitioner herein which was filed immediately, hence, there does not appear to be any delay on the part of the petitioner / her mother, rather the delay is solely attributable to the respondent authorities.

8. The next issue which arises for consideration is that in case, the respondent authorities had promptly considered the application of the mother of the petitioner for appointment on compassionate ground in the year 2004 itself or for that matter in the year 2005, the mother of the petitioner would have been eligible for appointment and would not have become overage, hence such an adverse situation has arisen only on account of apathy and laches on the part of the respondent authorities for which no explanation has been given in the counter affidavit.

9. It is a well settled law that the purpose of providing appointment on compassionate ground is to mitigate the hardship on account of death of the bread-earner in the family, hence, there should not be any delay for appointment and it is improper to keep such cases pending for years. In fact, the Hon'ble Apex Court has gone to the extent of holding that in case, no suitable post for appointment is available, supernumerary post should be created to accommodate such



candidates.

10. It is equally a well settled law that any delay on account of circumstances beyond the control of the incumbent cannot defeat his / her right for appointment on compassionate ground on the ground of delay caused by the authorities themselves.

11. At this juncture, it would be useful to refer to the celebrated judgment rendered by the Hon'ble Apex Court in the case of ***Umesh Kumar Nagpal vs. State of Harayana & Other***, reported in (1994) 4 SCC 138, paragraph no. 2 whereof is reproduced hereinbelow:-

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is 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 dependants 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 dependants of the deceased who may be 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. What is further, 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.



12. In the present case, admittedly, the family of the deceased does not appear to be having a good financial condition and moreover, the deceased has left behind not only his widow i.e. the mother of the petitioner herein, but also three daughters, out of which the petitioner herein is the eldest and the mother of the petitioner has been left to fend, not only for herself, but also for the petitioner herein and her two sisters.

13. Having regard to the facts and circumstances of the case, as also considering the law discussed hereinabove, I find that the entire family of the deceased has been traumatized beyond a limit, on account of laches, delay and inaction on the part of the respondent authorities, as discussed hereinabove, hence, the case of the petitioner is required to be considered immediately for appointment on compassionate ground, if there is no impediment otherwise. It is directed, accordingly.

14. The necessary steps in the aforesaid direction, be taken within a period of six weeks from the date of receipt / production of a copy of this order, by the Respondent No. 4 i.e. District Magistrate, Darbhanga.

15. The writ petition stands allowed and the order dated 26.11.2018 passed by the District Programme Officer (Establishment), Darbhanga, as contained in letter no. 3633



stands quashed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	01.04.2019
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