

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.228 of 2024
In
Civil Writ Jurisdiction Case No.10199 of 2018

Gautam Kumar Son of Late Chandrama Rai, Resident of Mohalla- Shyam Chak, P.O.- Chapra, P.S.- Bhagwan Bazar, District- Saran at Chapra.

... ... Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Director General of Police , Bihar, Patna.
3. The Inspector General of Police (Welfare), Bihar, Patna.
4. Assistant to Inspector General of Police (Welfare), Bihar, Patna.
5. The Inspector General of Police, Magadh Range, Gaya.
6. The Deputy Inspector General of Police, Aurangabad.
7. The Commissioner, Magadh Division, Gaya.
8. The District Magistrate, Aurangabad.
9. The Superintendent of Police, Aurangabad.
10. The Deputy Superintendent of Police, Aurangabad.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Aditya Narain Singh, Adv.
Mr.Ajay Kumar Singh, Adv.

For the Respondent/s : Mr. Sanjay Kumar Ghosarvey, AC to AAG -3

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-08-2025

The present appeal has been filed under Clause-X of



Letters Patent of the Patna High Court Rules, 1916 against judgment dated 13.02.2024 passed by the learned Single Judge in CWJC No. 10199 of 2018, whereby the learned Single Judge dismissed the writ petition filed by the present appellant /original writ petitioner.

2. Heard Mr. Aditya Narain Singh, learned counsel for the appellant/original petitioner and Mr. Sanjay Kumar Ghosarvey, learned AC to AAG -3.

3. Learned counsel for the appellant/original petitioner has mainly contended that the father of the appellant/original petitioner was serving as an Assistant Sub-Inspector in the district of Aurangabad and while he was on duty, he died on 20th May, 2013. It is further submitted that the appellant/original petitioner, son of the deceased employee, submitted an application for getting appointment on compassionate ground as per the scheme of the State Government, on 09.12.2013. It has further been contended that the said application was kept pending by the respondent authorities and, ultimately, the District Compassionate Committee, Aurangabad recommended the name of the appellant/original petitioner for his appointment on compassionate ground on 19.09.2014. Learned counsel referred



the minutes of the meeting of the said committee, copy of which is placed on record at page -30 of the compilation.

4. At this stage, learned counsel for the appellant/original petitioner further submits that pursuant to the recommendation made by the concerned committee, the petitioner was asked to report to the Superintendent of Police, Aurangabad and thereafter the appellant/original petitioner went to the office of the Superintendent of Police, Aurangabad. However, Superintendent of Police, Aurangabad informed the appellant/original petitioner that there is no vacancy under the fixed quota of appointment on compassionate ground and he was asked to appear at Police Centre, Aurangabad along with all the required documents for necessary physical test for appointment on compassionate ground on the post of Sepoy. Learned counsel referred page -35 of the compilation. It has also been submitted that thereafter, his appointment was kept pending vide order dated 27.02.2017. At this stage, learned counsel for the appellant/original petitioner submits that ultimately vide order dated 07.02.2018, the appellant/original writ petitioner was informed that he cannot be considered for his appointment on compassionate ground as his brother is already in Govt. service and employed as a Driver in Railways since



23.04.2014. The petitioner, therefore, filed the captioned writ petition before this Court challenging the aforesaid order of the concerned respondent authority on different grounds.

5. Learned Single Judge vide impugned judgment dated 13.02.2024 dismissed the writ petition filed by the appellant/original petitioner relying upon the decision of Full Bench in the case of **Niraj Kumar Mallick v. the State of Bihar** reported in **2018(2) PLJR 951 (FB)**.

6. Learned counsel for the appellant/original petitioner has assailed the said judgment mainly on the ground that on the date of application submitted by the appellant/original petitioner, his brother was not in service and his brother was appointed as a Driver in Railways only on 23.04.2014. It is further submitted that even the income of the brother of the appellant/original petitioner is not sufficient to maintain the entire family. Learned counsel for the appellant/original petitioner would further submit that his brother is residing separately and, therefore, looking to the facts and circumstances of the present case, learned Single Judge ought to have quashed and set aside the order passed by the concerned respondent authority with a direction to respondent authorities to appoint appellant/original petitioner on compassionate ground. Thus,



learned counsel urged that the impugned judgment be set aside and appropriate order be passed.

7. On the other hand, learned counsel appearing on behalf of the respondents/State has opposed the present appeal. Learned counsel mainly submitted that at the time of the recommendation made by the concerned committee on 19.09.2014, the committee was not aware about the appointment of the brother of appellant/original petitioner on the post of Driver in Railways on 23.04.2024. When the aforesaid aspect was noticed by the respondent authorities, the order came to be passed by the respondent authority, as the brother of appellant/original petitioner got the appointment and was gainfully employed and, therefore, as per the policy of the respondents/State, the appellant/original petitioner is not entitled to get the appointment on compassionate ground and, therefore, the respondent authority has rightly passed the order, rejecting the claim of the appellant/original petitioner. It is submitted that the learned Single Judge has not committed any error while dismissing the writ petition filed by the petitioner (appellant herein) and, therefore, this court may not interfere with the impugned judgment passed by the learned Single Judge.

8. We have considered the submissions canvassed by



the learned advocates. We have also perused the materials placed on record. In the present case, there are certain undisputed facts i.e., the father of the appellant/original petitioner died on 20th May, 2013. The petitioner thereafter submitted an application on 09.12.2013 for getting appointment on compassionate ground. It is true that the application of the appellant/original petitioner was kept pending for some time and thereafter the concerned committee, in its meeting, recommended that the petitioner be appointed on compassionate ground. The said recommendation was made on 19.09.2014. It is also not in dispute that in the meantime, the brother of the appellant/original petitioner was gainfully employed on 23.04.2014. He was appointed as a Driver in Railways. From the record, it appears that the concerned committee, which made the aforesaid recommendation on 19.09.2014, was not aware about the gainful employment of the brother of the appellant/original petitioner and, therefore, the aforesaid recommendation was made. However, the fact remains that the brother of the petitioner has been gainfully employed on 23.04.2014, i.e., prior to the recommendation of the concerned committee.

9. At this stage, we would like to refer the policy of the State Govt. for appointment of the dependents of the



deceased employee on compassionate ground. Relevant clause of the said policy provide as under:-

जिज्ञासा	मार्गदर्शन
(क) मृत सरकारी कर्मी के आश्रितों में से किसी के नियोजित रहने की स्थिति में अन्य आश्रितों में से किसी को अनुकम्पा नियुक्ति का लाभ दिया जा सकता है अथवा नहीं ?	सामान्य प्रशासन विभाग से निर्गत पत्रांक-1781 दिनांक 10.5.2010 के तहत परिचारित माननीय पटना उच्च न्यायालय द्वारा सी.डब्लू.जे.सी सं-6668/2003 तथा सी.डब्लू.जे.सी सं-7044/2003 में पारित समेकित आदेश, दिनांक 27.7.2004 के आलोक में सेवाकाल में मृत सरकारी कर्मी के आश्रितों में से किसी के gainfully नियोजित होने की स्थिति में उसके अन्य आश्रितों के साथ रहने अन्यथा नहीं रहने के बावजूद अन्य आश्रितों में से किसी को अनुकम्पा नियुक्ति का लाभ अनुमान्य नहीं है। Gainfully नियोजित रहने से तात्पर्य ऐसे नियोजन से है जिसमें मृत सरकारी सेवकों के आश्रितों का भरण पोषण हो सके।

10. Now, at this stage, we would also like to refer the decision render by the Full Bench in the case of **Kumar Mallick** (supra). The Full Bench of this Court has observed in paragraph 45 and 49 as under:-

“45. A perusal of Clause (d) of Annexure-A to the counter affidavit of respondent no.2 in CWJC No.17143 of 2016 would show that the clarification offered by the General Administration Department clearly states that where any of the dependents of a deceased government servant is „gainfully employed“ then irrespective of the fact whether he lives together or separate from other dependents, the benefit of compassionate appointment would not be available to any other dependents of the deceased government servant. I am of the considered opinion that the clarification offered by the Department being a part of the policy decision governing the scheme of appointment on compassionate ground is based on judicial pronouncement of this Court in the case of Vishal



Kumar (supra) and it is fully in consonance with the object of compassionate appointment, it is also in tune with the views expressed by Hon"ble Supreme Court in a catena of decisions some of them I have referred herein above. It is also reasonable one and passes the test of Article 14 and 16 of the Constitution of India. The clarification vide Clause (d) of Annexure-,,A" to the counter affidavit of respondent no.2 cannot be found fault with on the touchstone of Article 14 and 16 of the Constitution of India.

49. In my opinion the Division Bench judgment of this Court in the case of Vishal Kumar (supra) followed by learned Writ Court in the case of Mahabir Paswan (supra) and Jay Prakash Choudhary (supra) are laying down the correct law. 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 we find no error in the impugned order rejecting the application of the petitioner(s) on the ground that their other siblings are in employment. I would, therefore approve the judgment dated 22.08.2016 passed by the learned Single Judge in CWJC No.10236 of 2013 which has followed the judgment of the Hon"ble Division Bench in the case of Vishal Kumar (supra)".

11. Keeping in view the aforesaid policy of the State Government and the clarification made by the Government as well as the decision rendered by the Full Bench in **Kumar Mallick** (supra), if the facts of the present case are examined,



we are of the view that when the brother of the appellant/original petitioner was gainfully employed on 23.04.2014, no error has been committed by the respondent authority while rejecting the claim of the appellant/original petitioner for his appointment on compassionate ground. Similarly, learned Single Judge has also not committed any error while dismissing the writ petition filed by the writ petitioner.

12. In view of the aforesaid discussions, no case is made out for interference in the impugned judgment dated 13.02.2024 passed by learned Single Judge in CWJC No. 10199 of 2018.

13. Accordingly, the present appeal is dismissed.

14. Interlocutory application(s), if any, shall also stand disposed of.

(Vipul M. Pancholi, CJ)

(Nani Tagia, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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