

(2001) 02 PAT CK 0025
In the Patna High Court
Case No : L.P.A. No. 1010 of 1999

Bihar State Electricity Board and Others	APPELLANT
Vs	
Sanjay Kumar Singh and Others	RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Citation : (2001) 3 PLJR 111

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kumar Singh, J

Bench : Division Bench

Advocate : Mihir Kumar Jha and Mohit Kumar Surjit, for the Appellant; Ashok Kumar, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—This is an appeal, on behalf of the Bihar State Electricity Board against the judgment of a learned Judge. The judgment is dated 15 July, 1999 in C.W.J.C. No. 8884 of 1993 : Sanjay Kumar Singh v. Bihar State Electricity Board and Ors.

2. Admittedly Sanjay Kumar Singh had been given an employment as a Class IV employee, subsequently taken in as a Khalasi and the appointment was terminated by the Bihar State Electricity Board by an office order dated 14 July, 1993, annexure 1 to the writ petition, thus, the writ petition to challenge the order of termination.

3. At the time when the Petitioner's father died, during the course of employment with the Bihar State Electricity Board, hereinafter referred to as the Board, it is not in issue that Sanjay Kumar Singh was two years old. Plainly, any rule of compassionate appointment or on the principle of dying-in-harness could not be made applicable. If applied, this in itself would make a mockery out of the principle of employment in public service under the dying-in-harness rule. A person who is to be given a job, in context, must have the capacity to hold the job. Even a public employment is a contract with the State. The basic

qualification is the age qualification that a person is not under age. The other corollary is that a person must not be over age. In both situations a job cannot be provided.

4. Thus, the Court having given its considered attention to the judgment on the writ petition, is of the opinion that the judgment of the learned Judge impugned by the present Letters Patent Appeal cannot be upheld. Apparently, the judgment has noticed an aspect that notwithstanding service regulations, assuming that it was irregular or illegal, but the fact that the Petitioner had passed the test of recruitment permitted him to hold the job. This aspect, cannot be sustained. If public employment had been obtained through a back door then no ground of qualification subsequently will entitle a person to hold the job. The manner in which this appointment was given or procured was not only irregular but illegal. Public employment cannot be given to minors.

5. Having seen the entire record of the writ petition and the present Letters Patent Appeal inasmuch as the Board was attempting to avoid the matter of the Petitioner becoming a precedent, and yet with all the reservations which were recorded on the record, the Board fell into errors which it was attempting to avoid. Sanjay Kumar Singh's father had died as a result of an accident during the course of employment. The Court had put the proposition to counsel on both sides whether this situation was in issue. No issue was made out of it. Plainly, good management requires that the Board ought to have advised the dependants of the workman to file a claim under the Workmen's Compensation Act, 1923. Within the management of the Board some one was trying to be more faithful to the Board than was necessary in attempting to avoid the compensation which the dependant may have been entitled to by finding another route as if it was a cheaper solution. The other was not straight and was thoroughly irregular. It is only within the Board that the responsibility lay in encouraging this irregularity to provide employment by invoking the rule of dying-in-harness when the workman of the Board had died 16 years ago.

6. Even public sector undertakings are obliged as part of good management to advise injured workmen or in case at death their legitimate heirs to file a claim for compensation as the law so provide. Like in the present matter advise the dependants that their legitimate claim may lie under the Act aforesaid.

7. This may be a hard case but the Court cannot encourage situations to invoke the principle of dying-in-harness to be taken advantage of by any dependant 16 years after the death of a parent. This is not providing succor or relief immediately in time of distress.

8. In any case, regard being had to the present times, the aspect of providing employment to the dependents of the staff in Government or in public sector employment is a zamindari of a special kind. There are millions of unemployed outside the Government service or public sector employment looking for jobs which, may have been reserved for a select (sic); A liberal insurance scheme

may be the answer.

9. Thus, the judgment on the writ petition is set aside. The Petitioner (sic) hold the post of a fitter, a promotion when his initial employment was (sic) At the time of his father's death the was two years old and he could not hold the employment. When he was given employment his father had died sixteen years ago. The job had not been reserved for him.

10. But the fact that the Board (sic) looking for another avenue to compensate by providing the employment and to avoid monetary compensation as provided by law is an irregular avoidance. Under the Workmen's Compensation Act, 1923, equity invokes a claim of the widow of the workman or whoever his legitimate heir may be to apply for compensation as the avoidance of it was admittedly at the instance of the Board and the situation was involuntary to the legitimate heirs, of the workmen who died. They had been advised wrongly.

11. The appeal of the Board, thus, only succeeds in part on the declaration as above.

Shashank Kumar Singh, J.

12. I agree.