

(2012) 08 JH CK 0178
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4528 of 2009

Juliana Hembrom

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2013) 1 AJR 231 : (2012) 4 JLJR 308

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Rita Kumari and Mr. Manoj Kumar, for the Appellant; Arbind Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—Counsel for the petitioner submitted that the petitioner has already been appointed on compassionate ground as Class-IV employee in the year 1998 with the respondents and thereafter, the respondents have floated new policy in the year 2008 i.e. after one decade that a person having a higher education will be appointed directly as Class-III employee on compassionate ground. The petitioner also having the higher qualification and therefore, she may now be employed as Class-III employee. Counsel for the respondents submitted that the petitioner has already been working as Class-IV employee since 1998. New policy is floated in the year, 2008 and it is not made effective from retrospective date. The petitioner, might be of higher qualification, but, that is not a ground for appointing him on a higher post because compassionate ground is an exception of Article 16 of the Constitution of India otherwise, petitioner has to compete with others for getting public employment. There is no right vested in the petitioner to get higher post on the basis of the educational qualification nor there is any correspondence duty vested in the respondents otherwise, if any candidate is a Ph.d. holder he will get highest post. This is not permissible because compassionate appointment is given as an exception to

Article 16 of the Constitution with a view to give support to the family members. By virtue of compassionate appointment the respondent-State is not evaluating the capacity of the applicant.

2. Having heard counsel for both the sides and looking to the facts and circumstances of the case. I see no reason to entertain this writ petition mainly for the following facts and reasons:--

(i) The husband of the present petitioner expired in the year, 1995 and thereafter, the petitioner was given compassionate appointment as a Class-IV employee. The petitioner is already working as Class-IV employee as on today.

(ii) Counsel for the petitioner submitted that new policy has been floated in the year 2008 for direct appointment in Class-III employee if a candidate is going to be appointed on compassionate ground and having educational qualification of Intermediate. The petitioner is possessing higher qualification and therefore, he should be appointed as Class-III employee. This contention is not accepted by this Court mainly on the ground that the husband of the petitioner has expired in the year 1995 whereas policy upon which the petitioner is relying upon was floated by the Government in the year. 2008 and therefore, no retrospective (sic-- effect?) can be given to the policy. Moreover, there is nothing in the policy which gives retrospective effect to the policy. There is no legal obligation on the part of the respondents to appoint the petitioner on a higher post on compassionate ground looking to the educational qualification. Giving compassionate appointment is an exception to the Article 16 of the Constitution of India otherwise, all the candidates who are in search of public employment must compete with each other through competitive examination. Moreover, compassionate appointment is given only to support the family of the deceased employee. Compassionate appointment cannot be given on a much higher post looking to the educational qualification. This is a policy decision of the State. This Court is not sitting in an Appeal recommending that the said policy decision must be given effect to from the retrospective date. The petitioner is already working as Class-IV employee.

(iii) It has been held by Hon'ble Supreme Court in the case of State of Jharkhand and Others Vs. Shiv Karampal Sahu, especially in paragraph 17 which reads as under--

17. Ordinarily, a subordinate legislation should not be construed to be retrospective in operation. The Circular Letter dated 7.5.2003 was given a prospective effect. The father of the respondent died on 19.5.2000. There is nothing to show that even the Circular dated 9.8.2000 had been given retrospective effect. In any view of the matter, as the State of Jharkhand in the Circular Letter dated 7.5.2003 adopted the earlier circular letters issued by the State of Bihar only in respect of cases where death had occurred after 15.10.2000 i.e. the date from which the State of Jharkhand came into being, the High Court, in our opinion, committed a serious error in giving retrospective

effect thereto indirectly which it could not do directly. Reasons assigned by the High Court, for the reasons aforementioned," are unacceptable.

(Emphasis supplied)

In view of the aforesaid facts, reasons and judicial pronouncement, there is no substance in this writ petition. Hence, the same is hereby, dismissed.