
(2005) 01 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 7854 of 2003

Kumari Sangita

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 PLJR 573

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Bindhyachal Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—Prayer of the petitioner in this application filed under Article 226 of the Constitution of India is to quash the order dated 28.12.20002 (Annexure-8) whereby the appointment of the petitioner on compassionate ground has been cancelled. Shorn of unnecessary details, facts giving rise to the present application are that on the recommendation of the District Compassionate Committee by Memo dated 1.7.1997 petitioner was appointed, as Clerk on compassionate ground and posted at Additional Primary Health Centre, Risiap in the district of Aurangabad. While she was posted as such, a show cause notice dated 15.6.1999 (Annexure-3) was issued asking her to show-cause as to why her service be not terminated. In the show cause notice it was stated that at the time of her father's death, his wife was in service and in view of the direction of the State Government dated 5.10.1991, inter alia, providing that in case both the spouses are in Government service, in case of death of one of the spouses, benefit of appointment on compassionate ground shall not be available to any dependant, petitioner was not entitled to be appointed on compassionate ground. In the show cause notice, it was further alleged that petitioner was married at the time of her father's death and therefore, not entitled to be given appointment on compassionate ground. It

seems that thereafter, the case of the petitioner was considered by the Establishment Committee of the Health Department, which found her appointment on compassionate ground to be illegal on its conclusion that petitioner's mother was in service at the time of her father's death and accordingly, petitioner was asked to file her show cause by memo dated 11.12.2002 (Annexure-6). Petitioner filed her show cause dated 19.12.2002 (Annexure-7) and asserted that the lady in the service i.e. Sonia Devi is here step-mother whereas the name of her mother is Shanti Devi and hence, her appointment on compassionate ground cannot be said to be illegal. The plea taken by the petitioner in the show cause was considered and by the impugned order, service of the petitioner has been terminated.

2. In the counter affidavit filed on behalf of respondent No. 4, the plea of the petitioner that Sonia Devi is her step-mother has seriously been disputed and it, has been pointed out that in the application (Annexure-A) filed by the petitioner, she had nowhere stated that Sonia Devi is her step-mother. Answering respondent has placed on record the affidavit filed by Sonia Devi filed along with the application for appointment on compassionate ground (Annexure-B) in which she claimed the petitioner to be her daughter and nowhere, she stated that she is petitioner's stepmother. Accordingly, the plea of the respondents is that Sonia Devi is not the petitioner's step-mother and hence, her service was rightly terminated, as her very appointment was illegal.

3. Mr. Bindhyachal Singh, learned Advocate appearing on behalf of the petitioner submits that the respondents are wrong in coming to the conclusion that Sonia Devi is not her step-mother.

4. JC to AAG III, however, points out that in the application filed by the petitioner and the affidavit sworn by Sonia Devi they have not even whispered that Sonia Devi is the step-mother and hence, conclusion arrived at by the respondents can not be said to be wrong.

5. Having considered the rival contention, I do not find any substance in the submission of Mr. Singh. In the application filed for appointment on compassionate ground, petitioner had not stated that the lady in service is her step-mother. Sonia Devi, the alleged step-mother had also in the affidavit not even whispered that the petitioner is her step daughter. In fact, in the affidavit, she has specifically asserted that the petitioner is her daughter, who has become major and entitled to be appointed on compassionate ground due to death of her husband. In view of absence of any claim by the petitioner at the stage of appointment that the lady in question is her step-mother, coupled with the specific assertion of the lady herself that petitioner is her daughter, in my opinion the plea taken by the petitioner that she is step-mother is absolutely unfounded and after thought.

6. Having said so, even I assume that Sonia Devi is the step-mother of the petitioner, same in no way, shall advance her case. The resolution of the State

Government dated 5.10.1991 has specifically provided that in case of death of one of the spouses, when both the spouses are in service, the benefit of appointment on compassionate ground shall not be available to any of the dependants. Relevant portion of the Circular reads as follows:

7. It is trite that the object to provide appointment on compassionate ground is to tide-over the financial crisis, failing on account of the employee dying in harness. It is not a mode of appointment but taking into account the welfare of the family having no means of livelihood at the time of death of bread-earner, appointment on compassionate ground is given. It is not an appointment of a dependant in place of the deceased employee on the ground of descent and in case the family is not affected by financial destitution, appointment on compassionate ground is not to be given. Keeping in mind the aforesaid, the State Government has taken the decision not to provide appointment on compassionate ground, if either of the spouse is in service and has not made any distinction between the first spouse or the second spouse. The decision uses the expression "PAT1-PATNI" and hence, plea of one of the spouses being step-mother is alien. In the face of it, petitioner's appointment on compassionate ground can not be said to be legal only on her purported plea that the wife of the employee is her step-mother. The decision in the case of Ashok Kumar Choudhary Vs. The State of Bihar and Others, and an unreported decision of this Court in C.W.J.C. No. 9759 of 2003 (Binod Kumar vs. The State of Bihar & ors) do lend support to the view, which I have taken.

8. Mr.. Singh then contends that the petitioner was appointed without any misrepresentation and hence, her service can not be terminated on the principle of promissory estoppel. I do not find any substance in this. The very assumption of the petitioner that she had made no misrepresentation, is unfounded on fact. Petitioner, while claiming appointment on compassionate ground, nowhere averred that the wife of the deceased employee is employed. She got appointment by concealing this fact and when the fact came to the notice of the respondents, after giving opportunity, her service has been terminated. In any view of the matter, petitioner's appointment on compassionate ground being illegal, nothing prevented the respondents to terminate her service after giving opportunity to her and the principles of promissory estoppel is not remotely attracted.

9. As a last straw, Mr. Singh prays to save the appointment on equity. Petitioner, after appointment was paid the salary for few months and immediately thereafter her appointment came under cloud. The principle of equity is invoked, when law on the subject is silent to do complete justice. In the present case, the petitioner was not eligible to be appointed but was appointed illegally depriving more qualified and needy persons. In my opinion, In such circumstance, the appointment of the petitioner can not be saved by invoking the principle of equity. Resultantly, writ application has not merit and it is dismissed accordingly, but without any order as to cost.