
(2002) 09 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 9819 of 2002

Md. Shaid Hussain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Citation : (2002) 09 PAT CK 0034

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance; of a writ in the nature of mandamus commanding the Respondents to grant the Petitioner appointment on compassionate ground. His further prayer is to quash the order dated 27.11.1997 (Annexure-3) whereby the prayer of the Petitioner for grant of appointment on compassionate ground has been rejected.

2. Short facts giving rise to the present application are that the Petitioner's father was a Head Clerk posted at Government Animal Hospital, Danapur and died while in service on 22.8.1988. His date of birth is 2nd of January 1978 and therefore aged about 11 years i.e. minor at the time of his father's death. It is the stand of the Petitioner that while he was minor, he filed application for appointment on compassionate ground in the year 1989 and the Veterinary Surgeon vide its letter dated 2.8.1989 (Annexure-1), forwarded the application of the Petitioner to the Director, Animal Husbandry. It seems that the Petitioner being minor, he was not appointed and thereafter, on attaining majority, Petitioner again filed application for grant of appointment on compassionate ground on 20th of June, 1995. By the impugned order dated 27.11.1997, same has been rejected on the ground that the application has been filed after eight years of the death of his father.

3. Mr. Dubey, appearing on behalf of the Petitioner submits that in fact Petitioner had filed the application for appointment on compassionate ground in the year 1989 which would be evident from the communication of the veterinary Surgeon (Annexure-1) and in that view of the matter, the prayer of the Petitioner for

appointment on compassionate ground ought not to have been rejected on the ground that the Petitioner filed the application after eight years of the death of his father. In support of his submission learned Counsel for the Petitioner has placed reliance on a judgment of Division Bench of this Court in the case of Ghanshyam Ram Vs. State of Bihar and Others, and my attention has been drawn to paragraph 7 of the said judgment which reads as follows:

7. Counsel submitted that, an application had been filed by the Petitioner even when he was a minor. There is nothing to support, that assertion contained in paragraph 5 of the writ petition. The affidavit in support of paragraph 5 has been verified as true to knowledge. We had called for the original file and from that we find that there is no application filed in the year 1986. There is nothing on the record to support that any such application was filed. On the contrary there is application filed by the Petitioner himself in the year 1992 praying for condoning the delay in filing the application and explaining that he could not apply earlier as he had not attained majority. Even a mere perusal of the original application filed by the Petitioner in the year 1989, gives the same impression that the application was being filed on attaining majority. There is no statement in the said application that any earlier application had been filed. In the circumstances, it is difficult to accept the assertion of the Petitioner that he had earlier filed an application within two years of the death of his father.

4. Admittedly, in the year 1989, when the Petitioner is alleged to have filed the application for grant of appointment on compassionate ground, he was aged about 11 years i.e. a minor. Minor could not have been given appointment. In fact, in the case of Ghanshyam Ram (supra) on which the learned Counsel for the Petitioner has placed reliance, instead of supporting its case, entirely goes against him. In the said case in paragraph-6, it has been observed as follows:

6. Moreover, the Supreme Court has held that where at the time of the death of the father, the Petitioner was a minor, appointment on compassionate ground cannot await the attaining of "majority by the dependant. No doubt, if the Petitioner had attained majority within the period prescribed by law for making an application, he could have applied, and that could have been considered. In the facts of this case that was not possible because the Petitioner was only 12-13 years of age at the time of his father's death.

5. Shri Dubey then contends that the case of the Petitioner for appointment on compassionate ground was considered in the year 1997 and Petitioner having attained majority on the day of consideration, his application was not fit to be rejected. In support of the submission, reliance has been placed on a decision of a learned "Single Judge of this Court in the case of Rajesh Kumar v. The State of Bihar and Ors., 1999 (1) PUR 491 and my attention has been drawn to the following paragraphs of the judgment which read as follows:

4. It is not in dispute that in the instant case the Petitioner submitted the application for compassionate appointment on 18.1.1994 which is within five

years from the date of death of the Petitioner's father which took place on 28.4.1989. But application of the Petitioner was taken into consideration on 2.12.1996, i.e. after two years, from the date of making application by the Petitioner on 18.1.1994. It is also not in dispute that the petitioner has crossed the age of eighteen years on 2.12.1996. On that date as he became a major his application should have been considered on merit.

5. In that view of the matter, this Court disposes of this writ petition by directing the Petitioner's case to be considered on merit as he attained majority on the date his application was taken up for consideration by the Committee in question. Since the Petitioner's case is to be considered afresh the previous order rejecting the Petitioner's case by the said Committee by its order dated 2.12.1996 is quashed. In so far as the Petitioner's case, is concerned the same should be considered afresh on its merit by Respondent No. 2 within a period of three months from the date of service of this order on him.

6. I do not find any substance in this submission of the learned Counsel. It is nptv in dispute that the Petitioner did not attain majority within the period prescribed for filing the application. Hence, the date on which the application was considered has no relevance at all. In fact the case in hand, in all corners, covered by the decision of the Supreme Court arising out of a decision of this Court, in the. case of Sanjay Kumar Vs. The State of Bihar and Others, In the said case the claimant for appointment on compassionate ground was aged 10 years on 2.6.1988, the date on which his mother died. Soon after her death, he made application seeking compassionate appointment. Same was rejected for the first time on 10.12.1996. Thus on the date of rejection claimant was major. In the back ground of the aforesaid fact, the Supreme Court laid down the law in the following words:

2. Learned Senior Counsel appearing on behalf of the Petitioner has placed strong reliance on the decision of a learned Single Judge of the Patna High Court in Chandra Bhushan v. State of Bihar. Learned Senior Counsel points out that it was held in that case that an applicant's right cannot be defeated on the ground of delay caused by authorities which was beyond the control of the applicant. Learned Senior Counsel further points out that instead of following the above judgment, the same learned Judge has now held on 21.4.1997 that the application is time-barred. Learned Counsel has placed before us a judgment of this Court in Director of Education (Secondary) v. Pushpendra Kumar. He submits that, in this case, a direction was given to create supernumerary posts.

3. We are unable to agree with the submissions of the learned Senior Coun-" sel for the Petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the Petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date

when the first application was made by the Petitioner on 2.6.1988, the Petitioner was a minor and was not eligible for appointment. This is conceded by the Petitioner. There cannot be reservation of a vacancy till such time as the Petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

7. In view of the decision of the Supreme Court in the case referred to above, I am not persuaded to follow the decision of this Court in the case of Rajesh Kumar (supra), which if followed, may lead to anomalous situation. Claimant aged above 3 years files application soon after the death of the Govt, servant and for one reason or the other the same is kept pending for 15 years i.e. till he attained majority, then in that case, his eligibility will have to be judged with reference to the date on which his application was considered. This will amount to reservation of a vacancy for appointment on compassionate ground, which has not been provided under the scheme of compassionate appointment.

8. There is yet another impediment in the way of the Petitioner. His prayer for grant of appointment on compassionate ground was rejected by order dated 27.11.1997 (Annexure-3) but he has chosen to file this application on 27th of August, 2002.

9. In the result, I do not find any merit in this application and it is dismissed accordingly.