

(2010) 01 JH CK 0038
In the Jharkhand High Court

Mrs. Durgawati Kumari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Citation : (2010) 01 JH CK 0038

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present petition has been preferred for getting compassionate employment on the basis of death of the father of the petitioner which has taken place on 13th November, 1989.

2. Learned Counsel for the petitioner has submitted that the father of the present petitioner was serving with the State of Bihar and he expired on 13th November, 1989, and application was preferred by the petitioner somewhere in the Year, 2000 and this application was not allowed and, therefore, this petition has been preferred in the Year, 2008, and as per the policy of the respondents, the petitioner ought to have been appointed on compassionate ground.

3. I have heard learned Counsel appearing on behalf of Respondent No. 5, who has submitted that the petitioner cannot be given compassionate appointment after a much belated stage, from the death of her father. Father of the petitioner expired in the Month of November, 1989. Widow of the deceased employee has not preferred any application and thereafter, more than twenty years time has lapsed. The very purpose of compassionate appointment is over and, therefore, at a much belated stage, no such writ petition may be entertained by this Court. Moreover, widow of the deceased employee has also not preferred any application at the relevant time and, therefore, this writ petition may not be entertained by this Court.

4. Having heard learned 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) It appears that the father of the present petitioner, who was serving with the respondents, expired on 13th November, 1989.

(ii) It also appears that no application was preferred by the widow of the deceased employee for getting compassionate employment, but, the present petitioner preferred an application somewhere in the Year, 2000. It is submitted by learned Counsel for the petitioner that widow of the deceased employee was residing with joint family and as per their family customs, ladies are not going for services and, therefore, widow of the deceased employee had not preferred application, but, it was requested that nephew of the widow should be given employment and thereafter, the present petitioner, who is daughter of the deceased employee had preferred an application, somewhere in the Year, 2000, and, therefore, the petitioner must be given compassionate appointment. These grounds, canvassed by learned Counsel for the petitioner, are also not accepted by this Court because they are self-contradictory. Widow of the deceased employee could not go for service because she was a female candidate. The present petitioner is also a female candidate. If the petitioner could have preferred an application in the Year, 2000, widow of the deceased-employee could have also preferred an application for getting compassionate appointment. The father of the present petitioner expired on 13th November, 1989 and, therefore, no useful purpose will be served after lapse of approximately 20 long years for grant of compassionate appointment. The purpose of compassionate appointment is to grant immediate support the family of the deceased. By lapse of twenty years period, it appears that there is already some supportive force working behind the petitioner.

(iii) It has been held by Hon''ble Supreme Court, in the case of State of U.P. and Others Vs. Paras Nath, , especially in paragraph Nos. 4, 5 and 6, which read as under:

4. Seventeen years after the death of his father, the respondent, on 8.1.1986, made an application for being appointed to the post of a Primary School Teacher under the said Rules. His application was rejected. He, thereafter, filed a writ petition before the High Court. This writ petition was allowed by the High Court and an appeal from the decision of the Single Judge of the High Court was also dismissed by the Division Bench of the High Court. Hence the State has filed the present appeal.

5. The purpose of providing employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate

financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgment of this Court in the case of Union of India v. Bhagwan Singh. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed:

The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the family.

(iv) It has been held by the Hon'ble Supreme Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, thereof read as under:

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 Counsel 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 2-6-1998, 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.

In view of the aforesaid decision also, no useful purpose will be served for grant of compassionate appointment after twenty long years.

5. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncement, I see no reason to entertain this writ petition. There is no substance in this writ petition and hence, the same is, hereby, dismissed.