
(2017) 03 JH CK 0021
In the Jharkhand High Court
Case No : Civil Review No. 15 of 2014

Nirmal Rana

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Citation : (2017) 2 LLJ 500

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Umesh Kumar Choubey, Advocate, for the Petitioner; Mr. Binod Singh, SC (L&C), for the Respondent

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J.— Heard learned counsel for the petitioner and State.

2. Petitioner seeks review of the judgment/order dated 5th February, 2014 passed in W.P. (S) No. 2595 of 2008 which reads as under:

"Heard learned counsel for the parties.

The petitioner's father died on 02.07.2005 while working as Teacher in the district of Chatra under the respondent-Government of Jharkhand.

The petitioner applied for compassionate appointment and according to him, his name was recommended for Grade-III post in the meeting of the compassionate committee held on 30.05.2006. However, he has been appointed on Grade-IV post in the Ganga Smarak High School Gidhaure Block Gidhaure, district-Chatra vide appointment letter dated 01.06.2007, Annexure-2. He claims to be duly qualified having degree of Master in Arts and as such, it is stated that in the matter of appointment on compassionate ground, the respondents have discriminated with the petitioner as one Naveen Kant Sinha was also recommended and appointed in Grade-III post. Similarly one Anuradha Devi a

Matric passed candidate was also appointed in Grade-III post pursuant to the decision of the compassionate committee held on 16.10.2004. According to the petitioner, five persons have been appointed in Grade-III post, who were having lesser qualification as stated in para-11 of the writ petition. Therefore, he has approached this Court in the present writ petition. Learned counsel for the petitioner relies upon the Division Bench Judgment of this Court rendered in the case of Anil Kumar v. the State of Jharkhand & Ors. reported in 2012(1) JLR 237. It is submitted that in the circumstances, the discriminatory approach of the respondents have been denounced and the respondents were directed to consider the appointment of the appellant/writ petitioner on Class-III post.

Respondents have appeared and filed their counter affidavit. It has been stated on their part that the petitioner was recommended for Grade-III post by the Compassionate Committee on 30.05.2006. However, letter no. 1078 dated 27.04.2005 was brought to the notice of the Committee, which was issued by the Director, Secondary Education, Jharkhand, Ranchi. According to the said letter appointment on Grade-III post could not be made by the District Appointment Committee. The aforesaid error was amended in the subsequent meeting of the Committee held on 22.09.2006. In respect of the statement made in so far as Naveen Kant Sinha is concerned, he was recommended in Grade-III post due to inadvertence and typing mistake, which was corrected in the subsequent meeting of the Compassionate Committee headed by the Deputy Commissioner, Chatra on 22.09.2006 as being in Grade-IV. In so far as appointment of Anuradha Devi is concerned, it has been stated that the same was done according to the letter no. 581 dated 25.02.2005 issued by the Joint Secretary, Personnel, Administrative and Rajbhasha Department, Government of Jharkhand. The action of the respondents is, therefore, not arbitrary or discriminatory. Learned counsel for the respondents, however, submitted that the petitioner having been appointed on Grade-IV on compassionate ground and accepted, however, cannot claim appointment on any particular post as a matter of right.

I have heard learned counsel for the parties and gone through relevant materials available on record. The issue relating to compassionate appointment has been considered and settled in several judgments rendered by the Hon"ble Supreme Court. In the recent judgment in the case of State of U.P. & Ors. v. Pankaj Kumar Vishnoi reported in JT 2013(11) SC 408, these principles have been once again reiterated. It has been held as under:-

"10. Before we proceed to appreciate the entitlement of the respondent for a particular post on compassionate basis, we think it necessary to refer to certain pronouncements in the field pertaining to compassionate appointment itself. In Umesh Kumar Nagpal v. State of Haryana [JT 1994(3) SC 525: 1994 (4) SCC 138] while dealing with the concept of compassionate appointment the Court has observed that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.

Mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis then a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence, they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution.

11. In *Sail v. Madhusudan Das* [JT 2008(12) SC 642: 2008 (15) SCC 560] this Court reiterating the principle has stated thus:-

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

12. In *General Manager, State Bank of India and Others v. Anju Jain* [JT 2008(9) SC 272 : 2008 (8) SCC 475] it has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates are to be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.

13. In *Union of India and Another v. Shashank Goswami and Another* [JT 2012(5) SC 492: 2012 (11) SCC 307] it has been observed that the claim for appointment on compassionate grounds is based on the premise that the

applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.

14. In *State Bank of India and Another v. Raj kumar* [JT 2010(5) SC 492: 2010 (11) SCC 661] it has been ruled that the dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

The petitioner admittedly got appointment on Grade-IV post upon decision of the Compassionate Committee duly revised on the subsequent date on 22.09.2006 and accepted it. The earlier recommendation made vide minutes dated 30.05.2006 was rectified as there was no power under the compassionate committee to make appointment on compassionate ground for Grade-III post as there was error in the recommendation. The letter of the Director, Secondary Education, Jharkhand, Ranchi dated 27.04.2005, was brought to the notice of the committee under which such appointment could not have been recommended by the District Appointment Committee. It is well settled law that the compassionate appointment is not a matter of right. The same is being granted to meet exigency created because of the death of bread earner. It is to be done under the scheme which is framed by the employer in the respective organization in respect of such deceased employee. In the instant case, the petitioner has failed to make out any case of discrimination in the decision making process in the meeting held by the compassionate committee in which the petitioner's case was recommended finally for Grade-IV post.

The reference, which has been made in respect of other persons in relation to such exercise are of different transactions and the respondents have stated that the same were done by the direction of the Joint Secretary, Personnel, Administrative and Rajbhasha Department, Government of Jharkhand vide letter dated 25.02.2005, Annexure-3 to the main writ petition. The judgment relied upon by the petitioner rendered by the Division Bench of this Court in the case of *Anil Kumar* (Supra) wherein the facts and circumstances were under the same recommendation, the respondents had chosen to appoint some persons on Class-III post while appointing the said appellant/writ petitioner on Class-IV post. In such circumstances, the approach of the respondents was held to be unreasonable and they were directed to implement the recommendation of the compassionate committee by giving appointment to the said appellant/writ petitioner in Grade-III post. In the instant case, the petitioner has, however, not

been able to make any such case of discrimination in the same decision making exercise in which the petitioner was appointed on Grade-IV post.

This writ petition, therefore, being devoid of merit and is, accordingly, dismissed."

3. Petitioner contended that review petition was preferred on discovery of certain facts and documents after passing of the impugned judgment. Petitioner contends that two persons whose names were also recommended for Class-IV Post in the meeting of District Compassionate Appointment Committee held on 22nd September, 2006, namely, Rajesh Bakhla and Bikas Kumar, have been appointed on Class-III Post by the respondents, later on, on same compassionate grounds as per order dated 21st May, 2007, Annexure 1 and minutes of District Compassionate Appointment Committee, Chatra dated 29th May, 2009, Annexure 2 to the review petition.

4. In view of the conspicuous facts being brought to the notice of the Court, Respondent-State were directed to file their response by the order dated 1st May, 2015.

5. On 25th November, 2016 when the matter was taken up, the following order was passed:

" Order dated 1st May, 2015 reads as under :-

Counsel for the petitioner submits that two persons whose names were also recommended for Class-IV post in the meeting of District Compassionate Appointment Committee held on 22nd September, 2006, namely, Rajesh Bakhla and Bikas Kumar, have been appointed on Class-III post by the respondents, later on, on same compassionate grounds as per order dated 21st May, 2007, Annexure-1 and minutes of District Compassionate Appointment Committee, Chatra dated 29th May, 2009, Annexure-2 to the review petition. This fact was not brought to the notice of the Court earlier when the writ petition was decided. This fact being discovered by petitioner has been brought on record to seek review of the judgment impugned.

Counsel for Respondent-State prays for and is allowed 4 weeks" time to obtain complete instruction and file specific response to the averments made in the instant review petition.

List this case thereafter."

Appointment letter of Rajesh Bakhla at Annexure-1 passed by the Regional Deputy Director of Education, North Chotanagpur Division dated 21stst May, 2007 does not make any reference to letter no.1078 dated 27thth April, 2005 issued by the Director, Secondary Education, Jharkhand, Ranchi. As a matter of fact, letter no.1078 dated 27thth April, 2005 was the basis for the District Compassionate Appointment Committee to rectify its earlier decision of 30thth May, 2006 in its meeting held on 22ndnd September, 2006 where under the names of the persons Rajesh Bakhla and Bikas Kumar were also recommended

for Class-IV posts.

From perusal of the minutes of the District Compassionate Appointment Committee meeting held on 29th May, 2009 also and the recommendation made in favour of Bikas Kumar for appointment on Class-III post, it appears that there is no reference of said letter no. 1078 dated 27th April, 2005 of the Director, Secondary Education, Jharkhand as per which appointment on Class-III post could not be made by the District Appointment Committee. Respondents in their counter affidavit have, however, chosen to justify the appointment of these two persons on Class-III posts. Annexure-C resolution of the Directorate of Primary Education, Human Resources Development Department relied upon by the respondents is in the nature of a clarification that appointment of dependents of employees of the Education Department can be made in primary schools on the post of untrained assistant teacher. No letter of the Personnel, Administrative Reforms and Rajbhasha Department in the nature of a clarification to the request letter no.186 dated 9th May, 2008 of the Deputy Commissioner, Chatra (Annexure-D) is enclosed to the record in support of the aforesaid stand of the respondents.

Despite giving adequate opportunity to the respondents to meet the specific facts and the grounds based thereupon raised on the part of the petitioner, a vague response has been filed to justify the stand of the respondents, so far as the case of Rajesh Bakhla and Bikas Kumar is concerned.

Let Regional Deputy Director of Education, North Chotanagpur Division be impleaded as respondent no.6 in the instant writ petition. Necessary correction be carried out by learned counsel for the petitioner during course of the day in red ink. Learned counsel for the State-respondents also represents the newly added respondent.

In that circumstances, let the Deputy Commissioner, Chatra and the Regional Deputy Director of Education, North Chotanagpur Division appear in person on the next date with necessary records to support their stand. Let a copy of this order be handed over to learned counsel for the State by Monday i.e. 28th November, 2016.

List the case on 9th December, 2016."

6. Representative of Deputy Commissioner, Chatra i.e. Deputy Development Commissioner, Mr. Birsay Oraon and Regional Deputy Director of Education, North Chotanagpur Division, Hazaribag, Mr. Ratan Kumar Singh appeared thereafter on the next date.

7. Supplementary affidavit has been filed on behalf of respondent no. 6 on 9th December, 2016. Though an affidavit has been filed on 7th December, 2016, but learned counsel for the State sought further time to bring on record the relevant document by way of additional affidavit. The matter was adjourned on their request and additional affidavit was filed thereafter. Respondent no. 2 thereafter

again filed supplementary counter affidavit on 6th January, 2017. Further affidavits have been filed on behalf of respondent no. 6 also thereafter such as dated 18th January, 2017 and 30th January, 2017. Respondent no. 2 has also filed his affidavit thereafter on 18th January, 2017.

8. Learned counsel for the State in essence has supported the impugned judgment stating that it does not suffer from any illegality or factual infirmity. Respondent no. 5, Regional Deputy Director of Education, North Chotanagpur Division, Hazaribag has stated that the order of appointment to Class-III post of Rajesh Bakhla dated 21st May, 2007 Annexure-B to the supplementary counter affidavit of respondent no. 2 dated 7th December, 2016 passed by his predecessor has been withdrawn after due show cause to the said person, namely, Rajesh Bakhla. The matter has been placed before District Compassionate Appointment Committee, Chatra for final decision. According to him, in terms of the Government's circulars, decision to appoint a person on compassionate grounds was within the jurisdiction of District Compassionate Appointment Committee. The Regional Deputy Director of Education, North Chhotanagpur Division, Hazaribag was not the appointing authority. Respondent no. 2, in his supplementary affidavit dated 2nd February, 2017 has referred to the decision of District Compassionate Appointment Committee, Chatra held on 31st January, 2017, Annexure B thereof, which inter alia states as follows:

"(i) That as per Clause 15(Ga) of the letter no. 10167 dated 01.12.2015 issued by the Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, the Regional Deputy Director of Education, North Chotanagpur Division, is not competent authority for making appointment on compassionate ground.

(ii) That on account of the aforesaid direction, the District Compassionate Committee, Chatra is not authorised to change the post of Rajesh Bakhla which has been done by the compassionate committee on 22.09.2006."

9. It accordingly affirmed the decision of respondent no. 6, who has withdrawn the order of appointment of Rajesh Bakhla on Class-III Post as it was contrary to the recommendation of District Compassionate Appointment Committee dated 22nd September, 2006. As such the change in the cadre on the part of the then R.D.D.E, Hazaribag was unauthorized and contrary to the circular of the Department of Personnel, Administrative Reforms and Rajbhasa. Respondent no. 6 has, in his supplementary show cause dated 2nd February, 2017 enclosed the order dated 28th February, 2007 passed in W.P.(S) No. 40 of 2007 in the case of Rajesh Bakhla v. State of Jharkhand and others which reads as under:

The grievance of the petitioner is that in spite of the decision taken by the District Compassionate Appointment Committee to consider the petitioner for the appointment on compassionate ground and for that purpose to ask him to appear for interview as far back as on 30.10.05, no further step has been taken by the respondents till date. It has been submitted that the petitioner has duly

complied with all the requirements and that the respondents have now to issue the letter of appointment as per the said recommendation of the District Compassionate Appointment Committee, but till date nothing has been done to that regard.

Learned J.C to S.C I submitted that the Regional Deputy Director of Education, North Chotanagpur Division, Hazaribag is the competent authority to look the petitioner's grievance and pass appropriate order.

Considering the said submission made by learned counsel for the parties, this writ application is disposed of directing the Regional Deputy Director of Education, North Chotanagpur Division, Hazaribagh to take final decision on the petitioner's grievance within a period of six weeks from the date of receipt/production of a copy of this order"

10. Perusal of the instant order clearly shows that there was no specific direction upon the Regional Deputy Director, North Chotanagpur Division, Hazaribag to appoint the petitioner on a particular cadre post, but the direction was to take a final decision on the petitioner's grievance within stipulated time. The decision to appoint on compassionate ground is taken by the District Compassionate Appointment Committee. The respondent no. 6 now realizing his mistake has withdrawn the said order which stands approved by the District Compassionate Appointment Committee, Chatra in its meeting dated 31st January, 2017 (Annexure-B) referred to herein above.

11. The other person, Navin Kant Sinha had also approached this Court in W. P. (S) No. 11 of 2008 with a prayer to direct the respondent to issue letter of appointment in his favour on Class-III Post in the light of purported recommendation made by the District Compassionate Appointment Committee in its meeting held on 30th May, 2006. The said petitioner has cited example of Rajesh Bakhla whose name was also considered in the District Compassionate Appointment Committee in its meeting held on 30th May, 2006 and had been offered appointment to Class-III Post. Learned Single Judge in the case of Navin Kant Sinha v. State of Jharkhand & others by judgment dated 6th January, 2009 observed as follows:

" In my opinion, the petitioner had certainly made out a case which would call for reconsideration of his claim for his appointment to Class-3 post. While making the above observation, this Court is conscious of the fact that a candidate cannot claim appointment in any particular post where such appointment is granted to him on compassionate grounds. However, if , as in the facts and circumstances of the present case, there are circumstances to indicate that some element of discrimination in the matter of granting appointment to him in Class-4 posts while others were offered appointment to Class-3 posts, this Court would certainly feel inclined to issue appropriate directions to the concerned authorities for reconsideration of the petitioner's case.

11. In the light of the above facts and circumstances, the respondent no. 5

namely the Regional Deputy Director of Education, North Chotanagpur Division, Hazaribag, is directed to consider the petitioner's grievance, take a final decision on the matter and if the petitioner is found eligible for his appointment to Class-3 post and if there is a vacancy in Class-3 posts then, to consider the same in accordance with law and procedure and communicate such decision to the petitioner effectively.

This exercise must be carried out by the respondent No. 5 within three months from the date of his order.

With the above observations, this writ application is disposed of.

Let a copy of this order be given to the learned counsel for the respondent State."

12. Consequent thereto, the Regional Deputy Director, North Chotanagpur Division, Hazaribagh by an office order dated 27th March, 2009 has issued the order of appointment on Class-III Post to the said person. He had also recorded, as per the information furnished by the District Education Officer through letter no. 240 dated 27th March, 2009, that the said person, namely, Navin Kant Sinha had not joined on Class-IV Post. The District Compassionate Appointment Committee, Chatra however in its meeting held on 13th January, 2017 though referred to Resolution no. 13293 dated 5th October, 1991, where under change of cadre cannot be permitted in cases of appointment on compassionate ground, proceeded to come to a decision that no such change in the cadre of person Navin Kant Sinha can be made in view of the order passed in W.P.(S) No. 11 of 2008 and in view of the circular dated 1st December, 2015 bearing no. 10167 Clause 15(Ga) of the Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand.

13. So far as the case of Vikash Kumar is concerned, minutes dated 13th January, 2017 (Annexure B to supplementary counter affidavit of respondent no. 2 dated 18th January, 2017), it states that his case was also recommended for Class-IV Post in the compassionate appointment committee meeting held on 22nd September, 2006. It was however amended later on keeping into account the educational qualification of B.Com of the said candidate, Vikash Kumar. He was accordingly appointed on Class-III Post.

14. As it transpires, the District Compassionate Appointment Committee in its meeting held on 22nd September, 2006 sought to correct recommendation of Rajesh Bakhla and Vikash Kumar apart from certain other names made erroneously on Class-III post in its earlier meeting held on 30th May, 2006. As per the order passed in the writ petition, the appointment of Anuradha Devi on Class-III Post also relied upon by the petitioner in writ petition was found to be in a different transaction and in terms of a letter dated 25th February, 2005 issued by the Joint Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Govt. of Jharkhand.

15. The respondents in the writ petition through their counter affidavit have

clearly pleaded that recommendation to appoint on Class-III Cadre post made by Compassionate Appointment Committee on 30th May, 2006 was a mistake, which was corrected in the next meeting held on 22nd September, 2006 taking into account the letter no. 1078 dated 24th April, 2005 issued by Director, Secondary Education, Jharkhand, where under appointment on Class-III Post could not be undertaken on compassionate appointment. Such appointment could be made through J.P. SC as per letter dated 27th March, 2005.

16. The facts presented before this Court by way of counter affidavit in the writ petition, persuaded this Court to come to a definite finding that recommendation to appoint on Class-III Post made by minutes dated 30th May, 2006 were rectified in the subsequent compassionate appointment committee meeting held on 22nd September, 2006. Petitioner had admittedly also got appointment on Grade-IV Post as per the revised decision of compassionate appointment committee. It was also found that District Compassionate Appointment Committee had taken into account the letter dated 27th April, 2005 of Director, Secondary Education while making such correction in its meeting held on 22nd September, 2006. This Court observed that compassionate appointment is granted to meet exigency on the death of a bread earner under the scheme framed by the employer in the respective organization. Petitioner had failed to make out any case of discrimination in the decision making process in the meeting held by the Compassionate Committee which recommended him for appointment on Class-IV Post finally.

17. The reliance placed on the case of Anuradha Devi was found to be not in respect of the same transaction. Therefore it was held that the ratio rendered by the learned Division Bench in the case of Anil Kumar v. the State of Jharkhand & Ors. reported in 2012(1) JLJR 327 would not apply to the petitioner's case as they relate to the case of persons falling under the same recommendation, who were appointed on Class-III post and Class-IV Post in other cases. That was felt to be unreasonable by learned Division Bench.

18. The entire discussions made herein above shows two things (i) that compassionate appointment is permissible on the death of an employee in harness as per the scheme or circular prevalent in the organization. Once a person accepts the appointment on compassionate ground on a particular post, subsequent change of cadre on the same ground is not permissible. (ii) the other aspect relates to the factual matrix of the case presented before the writ court. This Court was led to believe that petitioner has not been able to make out a case of discrimination. However, as it emerges, subsequently despite the recommendation dated 22nd September, 2006 persons like Rajesh Bakhla and Vikash Kumar, who were covered under the same transaction, have been appointed on Class-III post by one or the other order in the same district. The appointment of Rajesh Bakhla on Class-III Post however was recalled during the pendency of review petition and affirmed by District Compassionate Appointment Committee as noted herein above.

19. This Court does not intend to make any comments on the said action in the absence of Rajesh Bakhla in the present writ petition. It however fails to reason as to why similar yardstick has not been applied in the case of Vikash Kumar also by the District Compassionate Appointment Committee in whose case as per the meeting held on 30th January, 2017, the District Compassionate Appointment Committee, Chatra has taken a different stand. In any case as has been observed herein above, once the appointment of petitioner was recommended on Class-IV post and recommendation for appointment on Class-III post was not permissible in view of the circular dated 27th March, 2005 also taken into account by District Compassionate Appointment Committee in its meeting held on 22nd September, 2006, petitioner cannot claim appointment on Class-III post as a matter of right. Any appointment made in the teeth of departmental circulars and recommendation dated 22nd September, 2006 of District Appointment Committee would not create a legal right in favour of the petitioner for appointment on Class-III Post. The concept of equality under Article 14 of Constitution of India does not flow in a negative manner. What may have been done contrary to the departmental circulars by the respondents even after their decision dated 22nd September, 2006 cannot clothe the petitioner with a legal right to claim appointment on Class-III post. The Deputy Commissioner and District Compassionate Appointment Committee, Chatra are accordingly directed to reconsider the case of Vikash Kumar and any other persons similarly situated in the light of observation made herein above. It is also open for the respondents to reconsider the case of Navin Kant Sinha, if it is found that his name was also considered in the same transaction like the petitioner or Rajesh Bakhla and Vikash Kumar, if necessary after seeking leave of the Court in view of the order dated 6th January, 2009 passed in W.P. (S) No. 11 of 2008 in his case, reference whereof has been made in the foregoing paragraphs as well.

20. In these background facts, it is now pertinent to discuss on the powers and scope of review. Petitioner herein has tried to make out a case that a mistake has inadvertently crept in the impugned judgment, which became apparent on discovery of new evidence which was not within his knowledge despite exercise of due diligence when the writ petition was being decided. The scope and powers of review are contained in Order 47 of Code of Civil Procedure quoted hereunder:

Order XLVII: 1. Application for review of judgment.(1) Any person considering himself aggrieved

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some

mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation. The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

The words "any other sufficient reason" as contained in Order 47 CPC has been interpreted in the case of *Chhajju Ram v. Neki* (AIR 1922 PC 112) approved by the Apex Court in *Moran Mar Basselios Catholicos v. Most. Rev. Mar Poulouse Athanasius & Ors* (1995) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". These principles have been reiterated by the Apex Court from time to time.

21. In a recent case of *Kamlesh Verma v. Mayawati and others* reported in (2013) 8 S.C.C 320, the principles under which review is maintainable has been summarized after discussing the precedent on the point. Their Lordships have also enumerated the grounds when the review will not be maintainable.

"Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* to mean " a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.*

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes or inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

22. In the light of principles enumerated above, the question which falls for consideration is whether the discovery of new material or evidence which was not within the knowledge of petitioner or could not be produced at the time the order was passed despite the exercise of due diligence has the effect to establish such a material error which undermines the soundness of the decision or has resulted in miscarriage of justice. Definitely the respondents failed to bring on record these facts relating to the appointment of Rajesh Bakhla or Vikash Kumar on Class-III post before writ court though they were part of the same transaction i.e. recommendation dated 22nd September, 2006. However, as is manifest the departure from the decision taken in the meeting dated 22nd September, 2006 was contrary to the departmental circulars and in teeth of settled principles of law in the matters of compassionate appointment, which have also been elaborately discussed in the relevant paragraphs of the impugned judgment. No candidate seeking appointment on compassionate grounds has a right to be appointed on a particular post. Compassionate appointment is granted to meet exigency created on the death of a bread earner in harness, as an exception to the General Rule of equality in matters of public appointment under Articles 14 and 16 of the Constitution of India. It is to be done under the scheme which is framed by the employer.

23. Therefore, as discussed herein above also in the foregoing paragraphs, what may have been done contrary to the departmental circulars and against the recommendation of District Compassionate Appointment Committee cannot create a legal right to claim appointment on Class-III post. At the sake of repetition, it is once again stated that concept of equality under Article 14 of the

Constitution of India does not flow in a negative manner. Therefore, the impugned order cannot be rendered unsound only on account of a decision taken by the respondent authorities which was contrary to the settled law. This Court being guided the salutary principles laid down by the Apex Court in the matters of compassionate appointment, came to a definite opinion that writ petitioner was not entitled to claim appointment on Class-III post. What has been done contrary to law and the departmental circulars as well as recommendation of District Compassionate Appointment Committee at its meeting held on 22nd September, 2006, rather needs to be corrected to uphold the principles of equality before law or equal protection of law as enshrined in Article 14 of the Constitution of India. But it is indeed a serious matter that action of the respondent in not stating the true and correct facts before writ court had a possibility to cause miscarriage of justice. This Court has accordingly, issued directions upon the Deputy Commissioner and District Compassionate Appointment Committee, Chatra to reconsider the cases of such persons in the light of the observations made herein above.

24. In such circumstances, this Court is of the firm view that the impugned judgment does not suffer from any such error warranting review. At the same time, this Court has to painfully observe that incorrect facts had been stated by the deponent Mr. Jamni Kant, son of Late K.N.Sahay, the then Executive Magistrate posted at Chatra in the counter affidavit filed on behalf of respondent no. 2. The persons Rajesh Bakhla and Vikash Kumar had been appointed on Class-III post before the date on which the said affidavit was filed. The action of the deponent Jamni Kant therefore prima facie amounts to making false statement on oath and also an act of criminal contempt of this Court which may have caused miscarriage of justice.

25. Let notice be issued on the deponent of counter affidavit dated 16th July, 2010 in W.P.(S) No. 2595 of 2008, Mr. Jamni Kant, son of Late K.N.Sahay, the then Executive Magistrate, Chatra now posted as Executive Magistrate Khunti as to why he be not prosecuted for making false statement on oath and why proceedings for criminal contempt of this Court be not initiated against him. Registry is directed to serve the notice forthwith upon the said person and register a case separately for proceeding in the matter.

26. However, in view of the detailed discussion and reasons recorded herein above, no case of review has been made out by the petitioner. Accordingly, the review petition is dismissed.

27. Let a copy of this order be also sent to Chief Secretary, Government of Jharkhand and Principal Secretary, Department of Personnel, Administrative Reforms & Rajbhasa, Government of Jharkhand for taking appropriate action.