
(2007) 05 PAT CK 0030
In the Patna High Court
Case No : CWJC No. 14585 of 2005

Ravi Bhushan Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 3 PLJR 727

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard Learned Counsel for the petitioner and the Learned Counsel appearing on behalf of the respondents. The mother of

the petitioner died while posted as Assistant Teacher in the Government High School at Khodaibag, Chapra on 27.6.1998. The petitioner applied

for appointment on compassionate ground on 21.6.1999. Father of the petitioner was also in Government service and retired on 31.3.1999 as

admitted by the petitioner in his application for appointment on compassionate grounds. The grievance of the petitioner is that his application is still

pending consideration when applications for appointment on compassionate grounds have their own urgency.

2. A counter affidavit has been filed on behalf of the respondents, it urges that elder brother of the petitioner was in Government service employed

as a Clerk in the Industrial Development Authority. Since father of the petitioner was also in Government service the petitioner was not eligible for

compassionate appointment under the Government circular dated 5.10.1991 which provides that ""if husband and wife are both in Government

service and one of them dies, in such situation the benefit of appointment on compassionate ground cannot be given to anyone of their legal heirs"".

3. Learned Counsel for the petitioner relied upon a Division Bench judgment of this Court reported in *Jyoti Kumari Vs. The State of Bihar and*

Others, to submit that the mere fact that both the father and mother of the petitioner were in Government service cannot be a ground to deny him

the benefit of appointment on compassionate ground as his father was not in service on the date when his mother was deceased, since the father

had already retired earlier in time. This was the spirit of the findings of the Division Bench in para 6 of the judgment.

4. Learned Counsel for the respondents relied upon another Division Bench judgment of this Court reported in *Ashok Kumar Choudhary Vs. The*

State of Bihar and Others, where the aforesaid circular came up for interpretation more particularly para 13 of the same, to submit that one of the

family members had retired from the Government service was a very relevant consideration in determining a claim for appointment on

compassionate ground, and the issue of penury and destituteness due to loss of the breadwinner, in that background.

5. this Court has considered the submissions on behalf of the parties. this Court finds that Division Bench in the case of *Jyoti Kumari (supra)* on

consideration of the circular dated 5.10.1991 held that it would ultimately remain a matter for consideration in the background of both the mother

and the father being in Government service, whether the family was in a state of destituteness and penury so as to have the need for compassionate

appointment. The Division Bench did not mandate that if one of the spouse had retired before the claim for appointment on compassionate ground

came to be made, the applicant was ipso facto entitled for compassionate appointment.

6. In the case of *Ashok Chaudhary (supra)* it was held that an appointment on compassionate ground was an antithesis to appointment by open

competition of merit guaranteed under Articles 14 & 16 of the Constitution. It is settled law that every appointment on compassionate ground is

made by shutting the door on the face of another eligible candidate from consideration altogether, who may have his own urgency for appointment

in contradistinction to a claim for compassionate appointment which may nonetheless be not less urgent. The Division Bench held as follows:--

13. According to the aforesaid provision, if both the husband and wife are in Government Service and one of them dies, in that situation the benefit of appointment on compassionate ground will not be available, to the dependent of the family. If the aforesaid sub-clause 1 (Anga) is read in isolation without considering the other provision of the circular/instructions including the application form as contained in Annexure 1 and the object of appointment on compassionate ground, then the submission advanced on behalf of the counsel for the petitioner has some force, but after taking into consideration other provisions of the circular/instructions and the object of compassionate appointment, I am not inclined to accept the submission advanced on behalf of the petitioner. If any statutory provision which is subject matter of consideration is clear and unambiguous, then the plain meaning has to be given, unless said meaning defeats the object of the provision or leads to anomaly, absurdity and inconsistency. If the provision is capable of more than one meaning the principle of purposive construction should be applied, so that the purpose and object for which the provision has been made are given effect to. The sole purpose of appointment on compassionate ground is to tide over the financial crisis in case of emergency. If at the relevant time the family has financial resources to meet the hardship, then no dependent can be appointed on compassionate ground. If the provision as contained in clause 1 (Anga) is interpreted in the manner as suggested by the petitioner, then that would frustrate the very object of appointment on compassionate ground. If one of the spouses dies and the other spouse retires, then the dependent is to be appointed on compassionate ground even though the source of livelihood is available to the family in the shape of pension and other retrieval benefits. If appointment on compassionate ground is made in such a situation, then it would be an appointment on the ground of descent and not to meet the sudden hardship caused to the untimely death of an employee. In a case where only one spouse is employed and he dies and the dependent claims for appointment on compassionate ground, in that case also the crucial test is to see as to whether the family had financial resources or not to meet the emergent situation, and if it is found that the family has other sources to maintain itself, then the appointment on compassionate ground will be denied. Thus, in my view the said clause cannot be interpreted to mean that if one of the spouses has retired at the

time of death of the other spouse, the dependent will be appointed on compassionate ground. Even if the other spouse has retired at the time of death of the deceased employee but is recipient of the retiral benefits and the pension, even in that case no appointment could be given to the

dependent on compassionate ground for the simple reason that the family is not in financial crisis for which appointment is to be made.

Thus, the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to be found out whether the family has

other sources of livelihood or not at the relevant time to meet the hardship, and once it is found that the financial condition is sufficient to tide over

the crisis, then no appointment can be made on compassionate ground and the question whether the other spouse is continuing in service or has

retired is wholly immaterial.

7. It is not in dispute in the present case that the father of the petitioner was alive when mother of the petitioner was deceased and was receiving

retiral benefits. The father has been deceased in the year 2004 after the death of the mother of the petitioner in service. The family is also entitled to

death-cum-retiral benefits with regard to mother of the petitioner. There is no material in the writ application to arrive at any prima facie conclusion

of destitution or penury on the part of the petitioner.

8. This Court on consideration of entire matter is satisfied that no case has been made out by the petitioner for any direction for consideration of his

case for compassionate appointment. The writ application is accordingly dismissed.