
(2019) 12 PAT CK 0112

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20649 Of 2019

Roushan Kumar @ Raushan Kumar

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2019) 12 PAT CK 0112

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Prashant Singh, Satya Prakash, Aditya Nath Jha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. The petitioner is aggrieved by the decision of District Compassionate Appointment Committee, Saran at Chapra, whereby his request for appointment on compassionate ground, consequent upon the death of his mother as a Government Servant has been turned down.
3. It is the petitioner's own case that his mother died in harness on 11.12.2001. His father, who is alive, is a Government Servant. Claiming to be the sole dependent of the deceased Government employee, he applied for his appointment on compassionate ground which has been rejected in the light of a policy decision of the State of Bihar which contemplates that benefit of compassionate appointment shall not be given to the dependents of the deceased family, in case, the husband and the wife, both, are in Government Service and one of them dies. It is the petitioner's case that petitioner's father had deserted the petitioner's mother long back in the year 1995 and the petitioner was thus wholly dependent on his deceased mother, who died in 2011. It is his further case that soon before her death, the petitioner's mother had executed a will in his favour in respect of her self acquired properties and the

earnings from her service. The probate, it is stated, has also been granted in favour of the petitioner.

4. Learned counsel appearing on behalf of the petitioner, assailing the impugned order contends that the said policy decision of the State Government which prohibits compassionate appointment to dependents of the family of the deceased Government Servant, if the husband and wife, both, are in Government service and one of them dies, shall not apply in case when one of the spouses was deserted by the other. He submits that in the absence of any material before the District Compassionate Appointment Committee that the father of the petitioner was maintaining the petitioner, his claim ought not to have been rejected.

5. The decision which has been taken by the District Compassionate Appointment Committee is apparently in consonance with the policy decision of the State Government as contained in Circular No. 13293 dated 05.10.1991.

6. The Supreme Court in case of Umesh Kumar Nagpal v. State of Haryana, reported in (1994) 4 SCC 138 has categorically held that compassionate appointment cannot be made in the absence of rules or regulations issued by the Government or a public authority and an application for such appointment can be considered strictly in accordance with the scheme of the Government. No discretion is left with any authority to make compassionate appointment dehors the scheme, the Supreme Court, has declared. A claim for appointment on compassionate ground has been considered as reasonable and permissible, keeping in mind sudden financial crisis in the family of such employee, who served the State and dies while in service. Such appointment on compassionate ground cannot become another source of recruitment, which is merely an exception to the requirement of strict adherence to Articles 14 and 16 of the Constitution, taking into consideration the fact, the sudden death of the employee in service, leaves his family without any means of livelihood. Such appointments on compassionate ground can be made only in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased and not otherwise. [(State of Haryana v. Ankur Gupta, reported in (2003) 7 SCC 704]. In subsequent decision in case of Food Corporation of India v. Ram Kesh Yadav, reported in (2007) 9 SCC 531, the Supreme Court has held that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointment and no compassionate appointment can be directed dehors the policy of such appointment. In subsequent decision, in case of V. Sivamurthy v. State of A.P., reported in (2008) 13 SCC 730, the Supreme Court again reiterated that compassionate appointment can neither be claimed, nor be granted, unless the rules governing service permits such appointments. Such appointments, the Supreme Court observed, shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

7. Appointment on compassionate ground has been conceptualized to meet the

sudden crisis occurring in a family, on account of the death of the bread winner, while in service. The 'crisis' cannot be permitted to be converted into boom, the Supreme Court remarked in case of V. Sivamurthy (Supra). In case of SBI v. Raj Kumar, reported in (2010) 11 SCC 661, the Supreme Court again reiterated that the dependents of employees, who died in harness, do not have any special claim or right to employment, except, by way of concession that may be extended by the employer under rules or by a separate scheme, to enable the family of the deceased to get over sudden financial crisis. The Supreme Court added that 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". Recently, in case of State of H.P. v. Prakash Chand, reported in (2019) 4 SCC 285, after having taken note of a series of previous decisions, has categorically held in paragraph-10, that in exercise of power of judicial review under Article 226 of the Constitution, it is not open for the High Court to rewrite the terms of the policy of appointment on compassionate basis. The Supreme Court has further said that such appointment is not a matter of right, but must be governed by the terms, on which the State lays down the policy of offering employment/assistance to a member of the family of the deceased government employee.

8. Coming back to the facts of this case as noted above, and the reason why the petitioner's application for his appointment on compassionate ground has been rejected, in my opinion, the decision, under challenge, is in accord with the scheme of the State Government, framed for granting appointment on compassionate basis. The relief, which the petitioner is seeking, is contrary to the scheme of the State Government for grant of appointment on compassionate ground as present in the Circular No. 13293, dated 05.10.1991. The plea that the petitioner's father, who is a government servant, is not maintaining him, cannot be a ground for this Court to issue a writ of mandamus directing the respondents to appoint the petitioner on compassionate basis deviating from the scheme of the Government. I am mindful of the fact that it is petitioner's own case that he inherited the entire property left behind by his deceased mother including the terminal benefits.

9. In any view of the matter, sympathy cannot replace law. A remark made by the Supreme Court in case of LIC v. Asha Ramchandra Ambekar, reported in (1994) 2 SCC 718, which is apt, can be beneficially referred to, paragraph-10 of which reads as under:

"10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all Wisdom". Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however,

inconvenient it may be".

10. For the reasons aforesaid, I do not find any merit in this application. It is accordingly dismissed.