

(2005) 02 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 7983 of 2004

Sajjad Hussain

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 BLJR 745 : (2005) 2 PLJR 183

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, J.—Heard learned counsel for the parties.

2. The death of the Government employee occurred in 1984. The widow of the Government employee then applied in 1985 for a compassionate appointment in favour of the second son of the deceased Government employee, namely, the petitioner herein. At that time or immediately thereafter the first son of the deceased Government employee claimed that the applicant widow of the deceased Government employee was divorced by the Government employee during his lifetime. In view of such contention of the first son of the deceased Government employee, neither the application for giving compassionate appointment to the petitioner, nor the terminal dues payable to the family of the Government employee could be settled. Because of such contention of the first son of the deceased, a civil litigation was instituted which was terminated in 1989 in favour of the widow declaring that she was not divorced by the deceased Government employee during his lifetime. This information was given to the appropriate authority but still then nothing happened. In 1992 itself it was held out to the petitioner, being the second son of the deceased, that compassionate appointment is available to only one person and accordingly, the petitioner cannot be given a compassionate appointment for already a compassionate appointment has been given to the family. It may be true as has been submitted

by the learned counsel for the petitioner that before writing that letter or even thereafter no compassionate appointment had been given to the family of the deceased Government employee. However, in 1992 when this piece of information was conveyed to the petitioner, he did not react in the manner he ought to have reacted. On the other hand he relinquished his claim in favour of third son of deceased employee. Not only he relinquished, in 1997 he also filed an affidavit stating that he has no objection if the compassionate appointment is given to the third son of the deceased employee. The application of the third son has been rejected only on the ground that the said application was a belated application. The decision to reject the application of the third son was assailed by filing a writ petition by the third son without any success. Subsequent thereto the present writ application has been filed where it has been contended that the decision of 1992 as conveyed to the writ petitioner that he is not entitled to a compassionate appointment for a compassionate appointment has been given to a member of the family of the deceased employee is incorrect. It has been contended that despite the matter having been settled by the Civil Court in 1989, the terminal dues payable to the family was released only very recently and during this time the petitioner along with his family was hardly able to survive and had no means to approach the Court and, accordingly, only after receipt of such terminal benefits the petitioner has been advised and, accordingly, on such advise he has approached this Court. It is true that the laws of limitation have no application to writ petitions and therefore no claim in a writ petition can be said to be barred by limitation. However, what can be had in a writ petition can also be had in a civil suit. In the instant writ petition the petitioner is seeking a declaration that the decision conveyed in 1992 in relation to the application of petitioner made in 1985 is a wrong decision with consequential reliefs. Similar reliefs could be had by approaching the Civil Court; but whereas in 2004 the Civil Court could not be approached for such a relief in view of the provisions contained in Limitation Act, the question is could the petitioner approach the writ Court for the self same relief in 2004?

3. Learned counsel for the petitioner has cited a judgment of a learned Single Judge of this Court in the case of Mohan Prasad Singh Vs. The State of Bihar and Others, , for the proposition that in an appropriate case even in belated applications the Court exercising writ jurisdiction can grant appropriate relief. The said judgment of this Court is based on several judgments of the Supreme Court referred to in the self same judgment of this Court. The principles enunciated by the Supreme Court in the said judgments is that it is not the question of applying the principles of Limitation Act while entertaining a writ petition, but the question is whether the Court exercising writ jurisdiction, which is a discretionary jurisdiction, would exercise such discretion in belated matters or not. The Supreme Court has stated that when it is a matter of breach of fundamental right, the one and only thing that one has to take note of is whether by reason of delay, despite such breach, any third party interest has been created or is likely to be affected for entertainment of the writ petition at a belated stage. In other

words, it would not be appropriate to reject an application under Article 226 of the Constitution if it complains of breach of fundamental rights enshrined in the Constitution. In all other cases it would be a rule of practice based on sound and proper exercise of discretion not to enquire in to belated claims.

4. In the instant case, apart from the claim being belated, the subsequent conduct of the petitioner clearly demonstrates that he gave a go by to the complaint in relation to the 1992 decision specifically when he permitted the application of his younger brother to be considered and for that filed an affidavit also. It must be kept in mind that when an application for compassionate appointment is to be considered the first son will get the first priority of having his application considered first, the second son before the third son and third son before the fourth son. The claim of third son is not entertainable until it is found that the second son is unfit. By issuing a no objection to the consideration of the application of the third son after rejection of his application, may be on a non tenable ground, the petitioner clearly gave a go by to his right to be considered for a compassionate appointment.

5. In those circumstances, there is nothing further to be done in this writ petition and the same is, accordingly, dismissed. Petition dismissed.