
(2011) 04 JH CK 0135

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7168 of 2006

Smt. Parwati Devi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Citation : (2011) 04 JH CK 0135

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This Writ Petition has been filed by the Petitioner for following relief:

For issuance of a writ, writs, order/orders, directions/directions or a writ in the nature of mandamus commanding upon the Respondents to give job to Grade-III as a fresh appointee in Grade-III Post of the Jharkhand Police or in the State Govt. Cadre.

2. In nut shell, the Petitioner's case is that the Petitioner is widow of Sub-Inspector of Police late Paras Nath Upadhayay who died on 6.10.1997 during his service tenure. The Respondent No. 4 allowed her family pension and the then State of Bihar appointed Mahavir Upadhayay-son of the Petitioner on compassionate ground on the post of "Bal Arakshi". The Petitioner's son had been possessing the certificate of Bihar Examination Board, Jharia since 1994.

3. I have heard the learned Counsel for the parties and perused the record. Learned Counsel for the Petitioner contended that the Petitioner was appointed as "Bal Arakshi" and thereafter, he was appointed as constable by the D.I.G., Ranchi. During the course of his employment, he also completed his graduation degree and thereafter he had sought the compassionate appointment on the basis of qualification which he had received during the course of employment. He further contended that according to the Circular, no suitable information

regarding the availability of post was sought from the Department as contemplated in (Annexure-17) the writ petition, so he was not given befitting appointment under the Scheme of compassionate appointment. He further contended that at that time when he was offered the appointment, he was under the compelling circumstances to tide over the family, so he accepted the said appointment and that would not make any difference to seek further appointment on the higher post on compassionate ground.

4. Learned Counsel for the Respondents refuted the contentions and contended that he has also been appointed as Constable by the order of D.I.G. under the Scheme of compassionate appointment and now he cannot claim the appointment on other post only on the ground of die in harness of his father.

5. It is well settled principle of law that the appointment/recruitment of the candidates must be made by the competitive test. The Constitution of India emphasizes that the recruitment must be fair and it should be through a competitive examination. There should be no discrimination among the candidates. Further, to meet the contingencies or to tide over the family of the person who died in harness for the same an exception has been carved out of the general Rule. It is settled position of law that if such appointments of the dependents of the deceased are made that should conform with the rules and the Scheme formulated by the appointing authority. If once a person has taken the benefit of the appointment on compassionate ground under die in harness rule, the right to seek further appointment on the same ground does not exist, he could not claim again to seek further appointment under the die in harness scheme on the said ground if he has joined the services. If he feels that he should have appointed on some other places which is available for him, he should not have joined and he could refuse to join to the said post. If once he has joined the post, the principle of estoppel applies and he cannot claim further that he should be appointed on another post suitable to him under the circumstances, under the die in harness Scheme. In the case in hand, the Petitioner has also joined as a Constable and he cannot claim further to be appointed again in the Department on the basis of said Rule. Now he would have to face the regular appointment competing with other candidates.

6. In view of the above, I do not find any force in the petition. This writ petition is dismissed accordingly.