
(2010) 09 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 12407 of 2005

Sunil Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Citation : (2011) 1 PLJR 104

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Judgement

Ajay Kr. Tripathi, J.—Heard learned Counsel for the parties.

2. It may be a hard case but there is an old saying that the hard case makes bad laws. This is one of those cases which exemplify such a situation.

3. Father of the Petitioner was a Judicial Officer who retired. Post retirement he was given yet another assignment which was to work as a President of District Consumer Forum at Rohtas. In terms of the Consumer Protection Act, 1986 the holder of the post of the President is not continuance in Government service, post retirement. It is an independent appointment under the special Act. While still working as a President of the District Consumer Forum, father of the Petitioner passed away and he made a claim for appointment on compassionate ground with the District Compassionate Committee which accepted such a claim. Petitioner was appointed and he started working.

4. It is also the case of the Petitioner that during the course of rendering service under the State he was asked to go on election duty. During that period he was attacked by naxalites and he suffered extensive injury, evidence thereof has been brought on record. It is the stand of the Petitioner that the injury ultimately led to physical incapacity of the Petitioner's two legs.

5. That is another issue. The reason why the present writ application has been filed is the issuance of letter dated 7.8.2004, contained in Annexure-1, by virtue

of which appointment of the Petitioner made on compassionate ground came to be terminated. The District Magistrate realized that benefit of compassionate appointment could not be extended to a ward of retired employee. The initial appointment offered to the Petitioner was beyond the policy issued by the Department of Personnel and Administrative Reforms, Government of Bihar. Which is memo No. 13293 dated 5.10.1991 governing the issue.

6. There seems to be some background under which the District Magistrate was forced to take such a decision. Reflection thereof is available in the order itself. A writ namely, CWJC No. 3756 of 2001 was filed by one Smt. Narmada Devi which was disposed of on 23.8.2004. It is true on reading of the said order which has been annexed as Annexure-8 that the High Court in the said litigation did not quash the appointment of the Petitioner but the Court categorically held that appointment on compassionate ground is not available to a ward of retired employee. Since the appointment or claim thereof does not flow from any right guaranteed under the Constitution of India the same can only flow from administrative instructions or rules laid down by the Respondent authority. When the case of the Petitioner was cited as an instance before the High Court the Court categorically recorded that a wrong decision cannot be precedent to be followed by the Court. Obviously when the District Magistrate realized that the appointment of the Petitioner has come to be made in breach of the guidelines issued by the Personnel Department the consequential order contained in Annexure-1 had to be passed.

7. Learned Senior Counsel appearing on behalf of the Petitioner has been fair in his submission that rules relating to compassionate appointment actually does not envisage appointment of a ward of a retired employee even if on reassignment offered by the State but he submits that in larger interest of justice and also taking into consideration that the Petitioner has suffered physically, while rendering service under the State he ought to be accommodated, in exceptional circumstance. The Court has necessary power to mould the relief or grant a relief in larger interest of justice.

8. The issue is the validity of decision taken in Annexure-1. This Court does not find any illegality in the order keeping in view that decision to appoint the Petitioner on compassionate ground was wrong in the first place. The subsequent suffering undergone by the Petitioner while rendering service to the State is yet another issue. This Court therefore is not inclined to interfere with Annexure-1 in any manner. But if State has any policy to reach out to a citizen in a situation of the kind, the Court will not come in his way.

9. This writ application is dismissed with the liberty as above.