

(2008) 12 PAT CK 0035

In the Patna High Court

Case No : Letters Patent Appeal No. 286 of 2007

The State of Bihar and Others

APPELLANT

Vs

Bivekanand Singh and Another

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Citation : (2008) 12 PAT CK 0035

Final Decision : Allowed

Judgement

Mihir Kumar Jha, J.—Having heard counsel for the parties in the matter of limitation, for the facts and reasons mentioned in I.A. No. 2085/2007, the delay in filing of the appeal is condoned.

2. This appeal by the State of Bihar and its officials is directed against the order dated 29.8.2006 passed in C.W.J.C. No. 11181/2005 whereby and whereunder the order of termination of the respondent-writ petitioners has been set aside with a direction to reinstate them in service with all consequential benefits.

3. The facts giving rise to the aforementioned writ application lie in a narrow compass. The father of respondent-writ petitioner No. 1 died on 30.4.1983 at a point of time when his age was only 10 years and 3 months approximately. It has been claimed that on 1.2.1985 he had filed an application for his appointment on compassionate ground in terms of the circular of the State Government and when such appointment was not made in the next five years, his mother had approached for such compassionate appointment of his son (writ petitioner No. 1) and ultimately he was appointed on 30.3.1994 under the orders of the competent authority, whereafter he is said to have joined on 1.4.1994. Almost similar if not worse is the fact of the respondent-writ petitioner No. 2 whose father is said to have died on 14.1.1980 while he was aged about four years and four months, whereafter his mother is said to have filed an application for seeking appointment on compassionate ground on 20.1.1981 which is said to have culminated into an order of appointment of writ petitioner No. 2 on 30.3.1994, whereafter he too is said to have joined the post on 1.4.1994.

4. Within a couple of years of the appointment of both the writ petitioners the competent authority, namely, the District Education Officer, West Champaran, Bettiah had detected that their appointments were made in the teeth of the provisions made in the circular of the State Government as were prevalent on the date of death of their father/the deceased employee and as such their payment of salary was withheld w.e.f. December" 96 and they were asked to explain their such illegal appointment. While petitioner No. 1 is said to have submitted his show cause reply, there is no averment in the writ application nor any document has been enclosed to show that a similar show cause reply was also filed on behalf of writ petitioner No. 2. However when in terms of the show cause notice dated 22nd October, 1997 and the reply filed one of the two appellant-writ petitioner no decision was taken for almost next two years, a writ application was filed before this Court by both of them, being C.W.J.C. No. 10525/1999, confined to the prayer for payment of their salary with effect from December, 1996. This Court having noticed that though a show cause notice pertaining to their illegal appointment had been issued against both the writ petitioners and yet no final decision had been taken, had directed for payment of their salary for the period December, 1996 onwards for the period in which they had actually performed their duty. At the same time keeping in view the show cause notice issued against them this Court in its order dated 17.12.2004 while disposing of the aforesaid writ application had clarified that the order of this Court would not stand in the way of the respondent to proceed in the matter in accordance with law.

5. Pursuant to the aforementioned liberty given by this Court a detailed enquiry was conducted in the matter of appointment of the two writ petitioners as also some other persons facing the similar allegation of their appointment being made in the teeth of the provisions made in the circulars of the State Government with regard to compassionate appointment. The two writ petitioners were also afforded opportunity of hearing in course of such enquiry and thereafter the Regional Deputy Director of Education of Tirhut Division, Muzaffarpur by the impugned order dated 6.6.2005 had directed for termination of their service on the ground that they were not fulfilling the requisite condition of age on the date of death of their father in terms of the circular of the State Government issued by the Personnel and Administrative Reforms Department in its letter No. 12754 dated 12.7.1977, which laid down that apart from the other things the dependant family member must fulfil the prescribed age for appointment in the Government service and such benefit of appointment on compassionate ground could be extended normally within two years of the date of death of the deceased employee.

6. A counter affidavit in the writ application was filed by the respondents wherein it was explained that the decision to appoint both of them on 30.3.1994 almost 11 to 14 years of the date of death of the concerned employee and that too in complete violation of the circular of the State Government dated 12.7.1977 having been found as early as in the year 1996 itself, the services of the

respondent writ petitioners were terminated after enquiry and opportunity of hearing.

7. The learned Single Judge has allowed the writ application precisely on the ground, that even though the writ petitioners were minors, the applications on their behalf were already filed within a period of two years as per stipulation made in the circular of the State Government dated 12.7.1977 and thereafter if the matter remained pending for next 11 to 14 years and ultimately led to their appointment in the year 1994, their such appointment could not be terminated after their continuation in service for more than ten years. Reliance placed by the respondent writ petitioners in this regard on the judgment of this Court in the case of Brajendra Prasad Poddar Vs. The State of Bihar and Others, as also the judgment of this Court in the case of Naresh Ram Vs. The State of Bihar and Others, were approved by the learned Single Judge while setting aside the impugned order of termination of their service.

8. Counsel appearing on behalf of the appellant State and its officials has submitted that the view taken by the learned Single Judge cannot be supported in law, inasmuch as if the appointment of the respondent writ petitioners was in teeth of the circulars in force on the date of death of their respective father, the deceased employee, the same could not have been said to have been cured by their appointment.

9. It was further submitted that as a matter of fact the decision relied by the writ petitioners and approved by the learned Single Judge in the case of Brajendra Prasad Poddar (supra) was wholly misconceived, inasmuch as a subsequent Division Bench in the case of Anil Kumar Singh Vs. The State of Bihar and others, had held the said judgment to be per incurium. Referring to the other judgment of Naresh Ram (supra) relied by the learned Single Judge for allowing the writ application, it was contended that as a matter of fact this Court had not decided that a compassionate appointment made even if the person concerned was not entitled, could not be cancelled. Counsel for the State in fact has placed strong reliance in this regard on the judgment of this Court in the case of Anil Kumar Singh (supra) as also another Division Bench in the case of Arun Kumar Mishra Vs. The State of Bihar and Others, to contend that the appointment on compassionate ground cannot wait for attainment of majority of the applicant and has to be made only if the applicant attains majority within the prescribed period for making such application. Reference in this connection has been also made on certain observations made by the Apex Court in the case of Sanjay Kumar Vs. The State of Bihar and Others,

10. On the question of long continuation counsel for the State had pointed out that as a matter of fact the appointment of the petitioners was under scanner from 1996 itself when their payment of salary had been stopped followed by a show cause notice in the year 1997 but before an order could be passed the matter having been made subjudice before this Court in a writ application filed by the petitioner in the year 1999, the final order could not be passed till the

disposal of the writ application on 17.12.2004 but as soon as the said writ application was disposed of, the enquiry was completed and the impugned order came to be passed after affording an opportunity of hearing on 6.6.2005. Counsel for the State has, thus, submitted that the long continuation in service could not have tilted the balance of equity in their favour if the initial appointment was bad and in teeth of the very policy under the Scheme of compassionate appointment.

11. A strong reliance in this regard was placed by the learned Counsel on the judgment of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the judgment of this Court in the case of State of Bihar and Others Vs. Prashant Kr. Sharma and Others. Learned Counsel appearing on behalf of the appellant State of Bihar had summed up his submission by taking a definite stand that the scheme of compassionate appointment being an exception, carved out of normal route of recruitment, in favour of the dependant of employee dying in harness, the same has to be strictly made in terms of the policy/circular and cannot be used indiscriminately for grant of employment on compassionate ground which would shut the door of employment for others. In this connection reference was placed on the judgment of the Apex Court in the case of Raghubansh Rai and Another Vs. Supan Kumar and Others,

12. Counsel appearing on behalf of the respondent writ petitioners had, however, apart from reiterating the submissions made before the learned Single Judge had sought to defend the impugned order by taking a plea that as they did not misrepresent any fact and were appointed by the authorities after they had become major, their appointment should not have been cancelled by the impugned order and if that has been set aside on equitable considerations by this Court the same need not be interfered in appeal by this Court.

13. In the opinion of this Court the submissions made by the counsel for the appellant State is fit to be accepted, inasmuch as it is an admitted position that neither of the two writ petitioners were fulfilling the conditions laid down in the policy on compassionate ground which was in force on the date of death of their father. It is not in doubt that when the father of writ petitioner No. 1 died on 30.4.1983 or that the father of petitioner No. 2 died on 14.1.1980 the circular in force contemplating compassionate appointment was one dated 12th July, 1977 which is Annexure 3 to the Memo of Appeal. From a bare perusal thereof it would be clear that among the compulsory and mandatory conditions for appointment on compassionate ground there was a specific clause even with regard to eligibility of age as would be evidenced from paragraphs 2 and 4 thereof. Such mandatory conditions to be compulsorily followed in fact needs to be quoted and reads as follows:

?fcgkj ljdkj] dkfeZd foHkkx] Kki la[;k 3@vkj 1&304@73 dk0 & 12754] fnukad 12 tqykbZ] 1977 dh izfrfyi A?

fo"K; % Isokdky esa ljdkjh Isodks dh vklef;d e`R;q ds pyrs muds ifjokj ds vkfJr InL;ks dks jkT; ljdkj ds v/khu oxZ&3 ,oa oxZ&4 ds inksa ij fu;qfDr esa izkFkfedrk A

funs"kkuklkj v/kksgLrk{kjh dks dguk gS fd Isokdky esa ljdkjh Isodks dh vklef;d e`R;q ds pyrs cgqrsjs ekeys esa muds ifjokj ds vkfJr InL;ks dks ?kksj vkfFkZd ladV dk lkeuk djuk iM+rk gS A ,slh foifRr ds le; lacaf/kr ljdkjh Isod ds ifjokj dks lgk;rk nsus ds iz"u ij "kklu dqN le; ls fopkj dj jgk Fkk A bl laca/k esa jkT; ljdkj us fu.kZ; fy;k gs fd ,sls ljdkjh Isodks ds ifjokj ds fdLh ,d InL; dks oxZ&3 ,oa oxZ&4 ds inksa ij] tgkaW yksd Isok vk;ksx ds ijke"kZ dh vko;"drk ugh gS] fu;qfDr esa izkFkfedrk nh tk;s A mDr izkFkfedrk ds fy, fuEufyf[kr "krZ ,oa rF; vfuok;Z gksxs &

1- e`r ljdkjh Isod ds ifjokj dh vkfFkZd fLFkfr vPNh u gks] vFkkZr~ ml ifjokj dk dksbZ Hkh InL; fdLh Hkh izdkj dk thfodksiktZu dk dk;Z u djrk gks vkSj ;fn djrk Hkh gks rks mldh vkenuh iwjs ifjokj ds lk/kkj.k Hkj.k&iks"k.k ds fy, vi;kZIr gks ,oa mldh lEifRr vkSj nsunkjh dks ns[krs gq, bl izdkj dh lgwfy;r nsuk tk;t gks A

2- mi;qZDr dksfV ds ljdkjh Isod ds ifjokj ds InL; dks in fo"ks"k ds fy, fu/kkZfjr vgZrk;s miyC/k gks rFkk mudh mez fofgr vk;q&lhek ds vUnj gks A fo"ks"k ifjfLFkfr esa Isok&lafgrk ds fu;e 54 ds v/khu vk;q lhek esa NwV nh tk ldrh gS A

3- fu;qfDr foHkkx }kjk fuxZr ljdkjh vkns"k la[;k 8167 fu0] fnukad 21 twu 1966 ds vuqlkj jkT; ljdkj ds v/khu fu;qfDr ds fy, mEehnokjksa dks fu;kstuky; esa ukekadu djuk vko;"d gS] fdUrq mDr ljdkjh Isod ds ifjokj ds InL; dks bl vkns"k ls eqfDr nh tkrh gS A lFk gh lacaf/kr O;fDr in fo"ks"k ij fuq;fDr ds ik= gS ;k ugh bldk fu.kZ; fu;qfDr inkf/kdkjh Loa; djsxas A

4- bl lgwfy;r dk ykHk lkekU;r;k ljdkjh Isod dh e`R;q dh frfFk ls nks o"kksZ rd izkIr jgsxk A

5- fu;qfDr fcYdqy vLFkk;h ,oa rnFkZ vk/kkj ij gksxh vkSj laoxh; ojh;rk ds fy, bldh ekU;rk nh tk;sxh A fofgr izfdz;k ds ikyu ds ckn gh mudh fu;qfDr fu;fer dh tk ldsxh A

6- bl vkns"k esa mfYyf[kr ^^ifjokj^^ls lkekU; rkRi;Z gS] ifRu] iq= ,oa vfookfgr iqf=;kWa A

7- e`r ljdkjh Isod ds ifjokj ds InL; dh fu;qfDr ds fy, vkosnu nsrs le; vfuok;Z :Ik ls vuqyXu lwpuk;sa Hkh nsuh gksxh A

2- fu;qfDr izkf/kdkjh vuqdEik ds vk/kkj ij fu;qfDr ds fy, fn;s x;s vkosnu dh rF;kRed tkWap Lora= :i ls djus ds ckn lEc) foHkkx dk vkns"k izkIr djsxk vkSj vkns"k nsus ds iwoZ foHkkx gj ekeys esa dkfeZd foHkkx dk ijke"kZ ysxk A

3- ljdkj us ;g Hkh fu.kZ; fy;k gs fd lHkh lacaf/kr foHkkx vius v/khuLFk lkoZtfud izfr"Bku] Lok;Rr"kkLh fudk; ,oa LFkkuh; laLFkk;sa rFkk uxjikfydkvks vkfn ls mi;qZDr lqfo/kk;s iznku djus ds fufeRr funsZ"k djs A

(underlining by me)

14. From the aforementioned extract of the circular which in fact was the policy

under the Scheme for appointment on compassionate ground, it would be clear that a person seeking appointment on compassionate ground must fulfil the requisite condition of age as laid down in the Bihar Service Code. It is an undisputed fact that when the death of the father of both the writ petitioners took place or even the date on which the application was filed they had not attained majority, which is a mandatory condition for appointment in government service. As noted above, the date of death of father of writ petitioner No. 2 is 14.1.1980 on which date he was aged about 4 years and 4 months approximately and even the application which was filed on 21.1.1981 (Annexure 4 to the writ application) clearly went to show that the mother of the writ petitioner No. 2 had not even sought appointment of this four years old child but her own appointment. It is again an admitted fact that even in the case of writ petitioner No. 1 when his father died on 30.4.1994 he was aged about 10 years and 3 months approximately and when an application was filed for his compassionate appointment on 1.2.1985, he was aged about 12 years only.

15. A question would thus arise as to whether their appointment after 11 to 14 years of the death of their father was either in keeping with the spirit and scope of the circular in force dated 12.7.1977 or was to achieve the object of compassionate appointment which is only to provide immediate source of livelihood to the members of the family of the deceased employee. It was this aspect which was considered by the Apex Court in the case of Sanjay Kumar (supra) which again was a case arising out of the circulars of compassionate appointment of this State wherein it was held that-

the compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood

16. The Apex Court in fact in that case having found that Sanjay Kumar on the date of the application was a minor had held that he was not eligible for appointment and in that context it was laid down as a proposition of law by the Apex Court that there cannot be reservation of a vacancy till such time as the dependant of the deceased employee would become a major after a number of years, inasmuch as the very basis of compassionate appointment is to ensure an immediate relief to the family of the deceased employee dying in harness.

17. Apart from the aforesaid binding precedent, I am also of the view that the judgment relied by the writ petitioners and approved by the Hon"ble Single Judge in the case of Brajendra Prasad Poddar (supra) having been held to be per in curium in the subsequent judgment of this Court in the case of Anil Kumar Singh (supra) could not have been held to be a correct law for allowing the writ application. This Court in the case of Anil Kumar Singh (supra) had not only examined the entire scheme of compassionate appointment including the circular dated 12.7.1977 but had clarified that in terms of the said circular and its clarificatory circular dated 17.5.1980 the provisions of compassionate appointment in this State became effective with effect from 12.7.1975, inasmuch

as a period of two years from the date of death was one of the condition precedent for appointment on compassionate ground. This Court in fact had also in the aforesaid case of Anil Kumar Singh (supra) had taken note of the subsequent circular and had held that they were prospective in nature and could not govern the death taking place when they had not come into force. As a matter of fact the Division Bench after making a complete analysis of the circular and the earlier decision of this Court including that of Brajendra Prasad Poddar had held as follows:

26. From the conspectus of the aforesaid decisions, it is clear that the policy decision adopted by the State of Bihar for employment to the dependants of a deceased government servant, the following conditions must be fulfilled.

(i) only a dependant within the meaning of the said circulars may be provided employment subject to the conditions that the family fell within the low income so that it is not in a position to maintain itself.

(ii) At least one of the dependants of the deceased employee must be eligible for appointment either on the date of death of the deceased employee or within the period when the application for appointment on compassionate ground could be filed in terms of the circular letter No. 12754 dated 12.7.77 within two years and in terms of circular letter No. 6817 dated 25.5.89 becomes 5 years.

(iii) From the tenure of the aforementioned circular letters it is evident that the time limit fixed cannot be altered nor any relaxation possible in relation thereto.

(iv) Although, the provisions for the prescribed time limit has been done away with by reason of 1991 circular, Clause 10 thereof specifically provides that the said circular would be applicable only from the date of issuance thereof and in case wherein death has taken prior thereto, the same shall not be considered and/or re-considered.

(v) The appointment on compassionate ground must be upon compliance with all the terms and conditions laid down therein.

27. In view of the aforementioned discussions as also the decisions of the Supreme Court as noticed hereinbefore, there cannot be any doubt that the observations made in Brajendra Poddar's case (supra), does not lay down any binding precedent. The said decision has to be read in the context of the circulars and in peculiar facts and circumstances of that case as it had clearly been stated therein that the State in that case was in a position to relax the age of the applicant.

28. ...

29. It has further to be borne in mind that by reason of the aforementioned circular letters not only the widow or the son but even the unmarried daughter and widowed daughter-in-law are entitled for consideration for appointment on compassionate ground. In that view of the matter, even if one of the dependants

of the deceased family who is not eligible for appointment keeping in view of the age, the qualification and other considerations, one of the other dependants as mentioned in the said circular may be appointed on compassionate ground. It would not be, therefore, correct to say that only because the son was a minor, he could file an application for appointment even after attaining majority. In fact, if such an interpretation is given the same would frustrate the very object and purport of the policy decision of the State in as much as thereby no immediate relief to the family in distress can be provided. If any such application is entertained after a long delay, by that time not only the existing vacancies may be filled up by regular appointment, but also other cases of similar nature may arise where grant of immediate relief by providing employment to the dependant of the deceased employees may crop up. What is material for consideration is the time when the relief is to be granted to a family in distress and not to reserve job for one of the dependants.

30. ...

31. This aspect of the matter as also the decision of the Supreme Court in Susma Gosain case had not been taken note of by this Court in Brajendra Prasad Poddar Vs. The State of Bihar and Others,

(Underlining by me)

18. Thus, the very basis of allowing the writ application by placing reliance on the earlier judgment of this Court, which has been rendered per in curium would make the impugned order vulnerable. In fact in a subsequent Division Bench of this Court in the case of Arun Kumar Mishra (supra) has taken the similar view.

19. 3. Apart from other reasons, it has been held by the Hon''ble Supreme Court in several decisions that the appointment on compassionate ground serves a purpose, namely, to provide some relief to the family of the deceased employee facing financial problems on account of premature death of the concerned employee. Such purpose can never be served if the appointment on compassionate ground is not granted immediately when it is required and is granted several years later. We can not lose sight of the fact that under Article 16 of the Constitution of India, no person can be employed on the ground of descent alone. The appointments given on compassion ground are not hit by the prohibition contained in Article 16 of the Constitution because the purpose for which, appointment is given, is different, namely, providing some relief to the family of a deceased employee. If such purpose is not served by giving such appointment, it would amount to giving appointment on the ground of descent which is prohibited by Article 16 of the Constitution.

4. It has also been held by this Court and the Hon''ble Supreme Court that grant of appointment on compassionate ground will not wait for the attainment of majority of the concerned applicant. It is open to the dependants to make application within time prescribed under the circular and in a given case. If the applicant attains majority within the period prescribed for making such

application, even though, he was minor at the time when the concerned employee died, his application can not be thrown out on the ground that he was not eligible for appointment on the date on which the concerned employee had died. What is, however, material is the fact that he should make application within the time prescribed by the Rules or circulars, as the case may be. The Supreme Court has also held that the appointment on compassionate ground should be given strictly in accordance with the scheme, and the Courts have no power to direct for appointment on compassionate ground de hors the rules on considerations which are not relevant under the scheme or rules. Assuming that the scheme has been framed for the benefit of the dependants of the deceased employees and in the sense it is a beneficial provisions, that does not mean that the requirement of the scheme be stretched to such an extent that the very purpose of the scheme is defeated."

20. Judged in this background either from the angle of the object of compassionate appointment or the law laid down in this regard by the Apex Court and by this Court as noted above, this must be held that the appointment of the two writ petitioners were in the teeth of the provisions made in the scheme, i.e. the circular of the State Government dated 12.7.1977 and as such, were void ab initio. This Court can also not loose sight of the fact that such anomaly in the compassionate appointment of the petitioners was came to be noticed in December, 1996 itself when payment of salary of both the writ petitioners was stopped and an enquiry was started. It is on record that the show cause notice was also issued to the petitioners and all of whom were appointed in the teeth of the circular of the State Government and the show cause reply filed by writ petitioner No. 1, which is Annexure 7 to the writ application, would itself go to show that it was admitted by him that either on the date of death or on the date of filing of his alleged first application on 20.7.1984 on 1.2.1985 he was a minor. There being thus no dispute to the facts as alleged in the show cause notice if the respondents came out with the impugned order of termination, pursuant to the observation of this Court made in C.W.J.C. No. 10525/99 they cannot be held to be guilty of acquiescing their rights in the appointment of the petitioners by allowing to continue in service. The appointment of the petitioners in fact within a span of two years itself was found to be patently illegal and in the teeth of the policy decision of the State Government and therefore, if the respondents did not pass any order on the show cause of reply for a period of five years due to pendency of C.W.J.C. No. 10525/99 filed by the two writ petitioners, it cannot be said that any right had accrued in favour of the writ petitioners or that their initial void appointment came to be cured by mere continuation in service for a period of ten years.

21. This aspect of long continuation in service in fact stands settled and sealed in the judgment of the Constitution Bench of the Apex Court in the case of Uma Devi (supra) wherein a note of caution in fact has been issued to the courts for being not swayed away on account of continuation of such illegal appointment.

The Apex Court in that context had held as follows:

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms' length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

22. That being so, this Court would not find any merit in the submission of the counsel for the respondents writ petitioners that their services should not have been terminated only because they had continued in service for a period of more than ten years. The plea of equity in fact as raised by the counsel for the respondent writ petitioners is a plea of desperation inasmuch as it is well settled that one who seeks equity must do equity as was observed by a Division Bench of this Court in the case of *State of Bihar v. Prashant Kumar Sharma* (Supra).

The Division Bench in that case after discussing the judgments on this issue had held that:

33. ...If such persons whose initial appointments are bad are allowed to occupy the office and post simply because they continued to hold the same then it would be adding premium to an illegality. What was illegal would continue to be illegal. What was void would continue to be void. Either of these cannot be legalized nor can the Court grant relief in favour of such persons applying the principles of equity. The equity bridges the gaps and not the voids. Under the service law, appointments are to be made following certain norms and principles. When a procedure is prescribed then the same is to be followed. If contrary to all these any one can be appointed then everyone must be appointed. If everyone cannot be appointed then anyone, a blue eyed baby or chose one, picked one, selected one or elected one by the concerned officer cannot be appointed. Principle of equity cannot run contrary to law and the right of equality enshrined under the Constitution of India....

23. The reliance placed by the counsel for the respondent writ petitioners on the judgment of this Court in the case of Naresh Ram (supra) is also wholly misplaced inasmuch as what was held therein is that the sole consideration which should be weighed for canceling an appointment made on the ground of compassionate ground should be entitlement and eligibility of person concerned. As a matter of fact this Court in the case of Naresh Ram (supra) had not even allowed his case and had remitted the matter back with a direction to the Director of Health Services to examine the case of Naresh Ram for appointment on compassionate ground and to find out whether he was entitled for appointment on compassionate ground. If the ratio of the said judgment is applied, obvious the answer in the case of the respondent writ petitioners of this appeal would be in negative inasmuch as they were not entitled to be appointed on compassionate ground in view of the fact that they were minors on the date of death of their father and in fact could become major only after 8 to 14 years of the death of their father. Thus, far from helping the case of the petitioners the ratio of Naresh Ram (supra) actually goes against them.

24. This Court in fact on the basis of material on record is fully satisfied that the two petitioners had obtained their appointment not only in violation of the policy of compassionate appointment but in fact one of them (writ petitioner No. 2) got appointed even if there was no application on his behalf for claiming such appointment, inasmuch as the only application which was brought on record on behalf of writ petitioner No. 2 is his mother's application seeking compassionate appointment for herself and not her son, who was aged about four years and four months on the date of death of his father and around five years when his mother had filed application. If such illegal appointment which must be held to be void ab initio in view of there being teeth of the policy decision on compassionate ground came to be cancelled the same was not fit to be interfered in the extra ordinary jurisdiction of this Court under Article 226 of the

Constitution which is based on the principles of justice, equity, fair play and good conscience.

25. The appointment of the respondent writ petitioners long after the death of the deceased employee ranging between 11 to 14 years would only create an impression that not only the whole object and purpose of compassionate ground as laid down in the policy decision of the State Government was faulted but even the concept of Article 16 of the Constitution was totally brushed aside. Article 16 of the Constitution of India guarantees to all its citizens equality in the matter of appointment to any office under the State. An appointment on compassionate ground is an exception carved out to the general rule with recruitment to public service which is to be made in transparent manner by allowing all eligible persons to compete and participate in the selection process. Such appointments are required to be therefore made on the basis of selection and merit. Dependents of employees dying in harness do not have any special/additional right to public service other than one conferred, if any by the employer. The whole object of granting compassionate ground is only to enable the family to tide over the certain crisis. The object is not to give a member of such family a post much less a post held by the deceased. That being the solitary avowed object as also held by the Apex Court in the case of State Bank of India (supra) this Court has no hesitation in coming to a conclusion that the appointment of the respondent writ petitioners made after 11 to 14 years of the death of the father after acquiring majority beyond the period as prescribed in the policy of such appointment on compassionate ground was itself wholly unsustainable and therefore, if the appellant State had taken a decision to terminate such services, the same could not have been interfered by this Court.

26. Thus, for the reasons indicated above, this appeal is allowed and the impugned order passed by the learned Single Judge is set aside and the writ application is dismissed.

27. There would be, however, no order as to costs.

Chandramauli Kr. Prasad, J.

I agree.