

(2012) 05 PAT CK 0059

In the Patna High Court

Case No : LPA No. 1965 of 2011 in CWJC No. 6674 of 2010 with I.A. No. 8703 of 2011

The State of Bihar and Others

APPELLANT

Vs

Manish Narain

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 PLJR 705

Hon'ble Judges : R.M. Doshit, C.J.;Birendra Pd. Verma, J

Bench : Division Bench

Advocate : S.D. Sanjay, A. Chaturvedi, for the Appellant; Basant Kumar Choudhary, Durga Nand Jha, for the Respondent

Judgement

Hon"ble R.M. Doshit, C.J.—Feeling aggrieved by the judgment and order dated 20th July, 2010 passed by the learned Single Judge in C.W.J.C. No. 6674 of 2010, the respondents State of Bihar and others have preferred this Appeal under Clause 10 of the Letters Patent. The matter at dispute is the compassionate employment as Assistant Teacher in a High School, claimed by the writ petitioner, the respondent herein.

2. The petitioner is the son of one Dr. Shail Kumari Choudhary. The said Dr. Shail Kumari Choudhary was an Assistant Teacher in M.K.P. Vidyapati High School, Laheriasarai, Darbhanga, a Government High School. She passed away on 12th March, 2006 in harness. Pursuant to her passing away, the petitioner, then around 30 years of age possessing a master"s degree in Computer Applications claimed compassionate appointment as an Assistant Teacher in the High School. The District Magistrate, Darbhanga under his communication dated 11th February, 2010 informed the petitioner that his claim for compassionate employment as an Assistant Teacher cannot be considered by the District Compassionate Committee; the subject matter was under the control of the Education Department; the District Magistrate had no authority to recommend

compassionate appointment of the dependents of the teaching and non-teaching employees of the Government schools.

3. Feeling aggrieved, the petitioner filed above C.W.J.C. No. 6674 of 2010 under Article 226 of the Constitution.

4. According to the petitioner his father, the husband of the late Dr. Shail Kumari Choudhary had deserted the said Dr. Shail Kumari Choudhary. Late Dr. Shail Kumari Choudhary was the only bread-earner in the family. She was supporting a large family comprising her children and her ailing parents-in-law. Pursuant to the prevailing Rules the petitioner was entitled to appointment as Assistant Teacher in the School. The learned Single Judge accepted the claim made by the petitioner.

5. The petition was contested by the State Government.

6. The learned Single Judge has accepted that there was a family dispute between the father of the petitioner and his parents and siblings. That the father of the petitioner had deserted his mother late Dr. Shail Kumari Choudhary and that the late Dr. Shail Kumari Choudhary was the only bread earner in the family. The learned Single Judge held that the claim for compassionate employment made by the petitioner ought to have been considered according to the scheme prevalent at the time of the death of late Dr. Shail Kumari Choudhary and not according to the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 which were framed later. The said Dr. Shail Kumari Choudhary having died before the date of the Rules of 2006, the said Rules could not have been applied to the case of the petitioner. The learned Single Judge was pleased to hold that the petitioner, a dependent member of the family of the deceased, was entitled to the benefit of the service conditions which regulated the service of the late Dr. Shail Kumari Choudhary.

7. Although, the learned Single Judge upheld the impugned order dated 22nd June, 2009 and the decision dated 23rd July, 2009 made by the District Compassionate Committee, the learned Single Judge directed, "The application for compassionate appointment of petitioner is directed to be considered as per Rule of Bihar Panchayat Primary Teachers, (Appointment and Service Conditions) Rules, 2006". The said order was later modified by the order dated 27th October, 2010 made on M.J.C. No. 3933 of 2010. The reference to the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 was replaced by "The Bihar Nagar Nikaya Madhyamic Evam Uchatar Madhyamic Sikshak (Niyojan and Seva Sharta) Niyamavali, 2006". Therefore, this Appeal.

8. Learned Additional Advocate General Mr. S.D. Sanjay has appeared for the appellant State of Bihar. He has submitted that the learned Single Judge has fallen into a manifest error in holding that the petitioner was entitled to a compassionate employment as an Assistant Teacher under the Bihar Nagar Nikaya Madhyamic Evam Uchatar Madhyamic Sikshak (Niyojan and Seva Sharta) Niyamavali, 2006. Mr. Sanjay has submitted that under the prevalent scheme for

compassionate employment in case of husband and wife both being employed in Government service, death of one would not entail a compassionate employment to the member of the family. He has submitted that in the present case the father of the petitioner, Dr. Shree Narayan Jha is employed as Reader in a Constituent College. The said Dr. Shree Narayan Jha is earning a monthly salary of around Rs. One lakh and that he is in receipt of the family pension on the death of late Dr. Shail Kumari Choudhary. The petitioner is, therefore, not entitled to compassionate employment. He has submitted that the claim that the father of the petitioner had deserted late Dr. Shail Kumari Choudhary is not supported by any material on record. The learned Single Judge ought not to have believed a bare statement made by the petitioner. In support of his submission Mr. Sanjay has relied upon the Government Order dated 5th October, 1991. Mr. Sanjay has relied upon the judgment of the Full Bench of this Court in the matter of State of Bihar vs. Rajeev Ran Vijay Kumar (Full Bench), [2010 (3) PLJR 294]. He has further submitted that the learned Single Judge has also erred in modifying the order by referring to the Bihar Nagar Nikaya Madhyamic Evam Uchatar Madhyamic Sikshak (Niyojan and Seva Sharta) Niyamavali, 2006.

9. The Appeal is contested by the respondent-writ petitioner.

10. Learned counsel Mr. Basant Kumar Choudhary has appeared for the respondent-petitioner. He has supported the judgment of the learned Single Judge. He has submitted that the Rules of 2006 do permit compassionate employment as Assistant Teacher on condition that the person concerned should give consent to be appointed as such and should acquire the requisite training within six years of the appointment. He has relied upon the judgment of this Court in the matter of Brajesh Kumar vs. State of Bihar, [2010 (1) PLJR 339].

11. The application for compassionate employment made by the petitioner is brought on record at Annexure-7 to the writ petition. In the said application at item 5 under the heading, "particulars of the members of the family of the deceased Government servant", the petitioner has mentioned the names of his grand-parents, his father Dr. Shree Narayan Jha, his brother and himself. Except the bare statement made in the writ petition there is nothing on record to suggest that the father of the petitioner Sri Narayan Jha had deserted his wife late Dr. Shail Kumari Choudhary. It is apparent that the story of the desertion has been cooked up by the petitioner to bring himself within the four corners of the scheme for compassionate employment applicable to him. In our view, the learned Single Judge has manifestly erred in believing that the father of the petitioner, Dr. Shree Narayan Jha had deserted his wife late Dr. Shail Kumari Choudhary. Any property dispute the said Dr. Shree Narayan Jha may have against his parents and siblings has no bearing on the present subject matter. The above-referred Order dated 5th October, 1991 contains the consolidated instructions in respect of a compassionate employment to the dependent members of the family of the deceased Government servant who die in harness. The said Order specifically provides that in case the husband and wife both are

employed in Government service, death of one would not entail compassionate employment to the member of the family of the deceased. Thus, in our view the said Dr. Shree Narayan Jha having been employed in Constituent College, the petitioner is not entitled to compassionate employment. It may be noted here that the Constituent Colleges are funded by the Government. In other words, the said Dr. Shree Narayan Jha is employed in public employment and he receives salary from the Government fund.

12. We may also note that the learned Single Judge having held that petitioner's claim was not governed by the Rules which came into force after the death of late Dr. Shail Kumari Choudhary; has manifestly erred in directing that the petitioner's claim for compassionate employment as an Assistant Teacher be considered in light of the provisions contained in the said Rules. The Bihar Municipal Body Elementary Teachers (Employment & Service Conditions) Rules, 2006 have been notified on 1st July, 2006. Rule 10 of the said Rules provides that the dependent members of the teaching and non-teaching staff of the schools can be made as trained or untrained teacher on compassionate ground provided that such dependent gives consent for such appointment. Untrained dependent will have to secure required training within six years from the date of appointment. In the matter of Brajesh Kumar (supra), this Court held that the Assistant Teachers appointed prior to 2006 Rules cannot be brought in the same class in which the teachers appointed under 2006 Rules have been put. The Notification issued by the Department of Personnel and Administrative Reforms, Government of Bihar dated 22nd June, 2009 will have application in case of such teachers who are either absorbed or appointed on or after 1.7.2006. The aforesaid judgment was considered by a Full Bench of this Court in the matter of Rajeev Ran Vijay Kumar (supra). The Full Bench, after elaborately discussing the case law and the various circulars issued by the Government of Bihar held, "a legal heir or dependent having no legal right to be appointed to a Government, post, cannot claim it as a matter of right. ...As has been stated in many a decision, a compassionate appointment by its very nature is an exception and the same has to be treated as exception for all purposes." The Full Bench expressly overruled the above referred decision in the matter of Brajesh Kumar (supra).

13. On the facts of the present case it is not the real issue whether or not the petitioner was entitled to compassionate employment as an Assistant Teacher in a Government school pursuant to Rule 10 of the Rules of 2006. The real issue is whether the petitioner is entitled to compassionate employment at all. As recorded hereinabove, the dependent members of the family where both parents are employed in Government service are specifically excluded from the benefit of the compassionate employment in case of the death of one of the parents. Indisputably, the petitioner's father being employed in the Government service, petitioner is not entitled to compassionate employment. For the aforesaid reasons, the Appeal is allowed. Impugned judgment and order dated 20th July, 2010 passed by the learned Single Judge in C.W.J.C. No. 6674 of 2010 is set

aside. Consequently, the order dated 27th October, 2010 made on M.J.C. No. 3933 of 2010 also stands set aside. C.W.J.C. No. 6674 of 2010 and M.J.C. No. 3933 of 2010 are dismissed.

Birendra Prasad Verma, J.

I agree.