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**(2004) 08 PAT CK 0039**  
**In the Patna High Court**  
**Case No : CWJC No. 3604 of 2004**

Vimal Kumar Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 04-08-2004

**Acts Referred:**

**Citation :** (2004) 2 BLJR 1572 : (2004) 4 PLJR 93

**Hon'ble Judges :** R.S. Garg, J

**Bench :** Single Bench

**Advocate :** Amaresh Kumar Singh, for the Appellant; Ashok Kumar Singh, SC III, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.S Garg, J.—Heard learned counsel for the parties.

2. The petitioner's father disappeared somewhere in the year 1983 and since thereafter the petitioner is running from pillar to post submitting that there is a legal presumption of civil death of the person, who has not been heard by the persons who should know his whereabouts within a period of 7 years, therefore, the petitioner would be entitled to appointment on compassionate ground. On an earlier occasion, the petitioner came to this Court in CWJC No. 998 of 1999 which was disposed of on 18.12.2000; the Court refused to interfere in the matter but, however, observed that no FIR was lodged after the employee became traceless and that the authorities were asking the petitioner to produce the succession certificate in that regard. The Court also observed that no specific orders can be passed but if the petitioner obtains such succession certificate then he may approach the authority, who will pass a reasoned order thereon. The petitioner thereafter relying upon the wisdom of the respondents in demanding the succession certificate filed succession case No. 49 of 1999 on 28.9.1999. The case was decided in favour of the petitioners/successors and a succession certificate was issued on 20.8.2001. The petitioner thereafter again made an application to the Department submitting therein that in accordance with the

requirement the succession certificate has been obtained by him, therefore, his entitlement be decided. The District Education Officer made certain commendations to the Establishment Deputy Collector. The application of the petitioner was taken up for consideration in the District Establishment Committee on 14.6.2003 and the same was rejected in accordance with the directions of the State Government. The order contained in Annexure-7 does not say that what were the directions of the State Government and what were the considerations.

3. Learned counsel for the petitioner submits that in accordance with law there is a presumption u/s 108 of the Evidence Act that if a person is not heard for 7 years by those who must know about his whereabouts then there would be a presumption of civil death but the presumption would become effective from the date when such declaration is made by a competent Court or from a date when a lis is brought before the Court. He submits that the presumption would arise only on 28th September, 1999 or on 20th August, 2001 and as on these dates the petitioner was a major he is entitled to appointment.

4. Learned counsel for the respondents, on the other hand, submits that the succession certificate is not in relation to the right of appointment but is in relation to the assets and receipts of the deceased, therefore, the succession certificate could not cut any ice.

5. When this Court asked him that if a succession certificate cannot be issued in relation to the right of successor for his appointment on compassionate ground then why the authorities asked him for a succession certificate and raised the question before this Court in the earlier writ application, learned counsel for the State bursted out saying that it might have been a foolishness on the part of the respondents but the law would not change.

6. I am shocked and surprised to hear this argument. On one side the authority has misled a person and compelled him to file a succession certificate case and when the question of succession certificate is raised in the Court, the counsel says that it was a foolishness on the part of the State Officers. Let me observe even at this stage that if a foolishness committed by the officers of the respondent misleads the petitioner so also this Court then they cannot be allowed to say that the right of the petitioner is adversely affected, The officers of the State must know that a succession certificate is issued by a competent Court in relation to the properties, assets and liabilities of the deceased because the person claiming as a successor is entitled to succeed to the properties. When realising this legal position, if the authorities start demanding a succession certificate in relation to the right/personal right of a person who is seeking appointment on compassionate ground then they cannot be allowed to say that their action was wrong, therefore, the petitioner should be thrown out.

7. It was next contended by the counsel for the respondents that the petitioner's father was not heard after 1983, therefore, in light of the Circular of the State Government as contained in Annexure-8, the presumption would be that he died

somewhere in the year 1990. According to him, if the father was dead in the year 1990 and the petitioner was a minor on that date, the petitioner would not be entitled to his appointment. He also submits that Annexure-8 might have been issued in a different context.

8. I am really surprised to hear this argument, Annexure-8 is an order dated 25.9.1998 issued by the Department of Personnel and Administrative Reforms in relation to appointment on compassionate ground of son of one Hari Narayan Singh. If that was an order in relation to compassionate appointment then it has to be observed that it is an order of the State Government, applying its fullest wisdom to the cases of compassionate appointment wherein the person/claimant seeks appointment on compassionate ground when the person/employee of the State Government is not heard for last 7 years. The State cannot be allowed to say that in relation to one man they would issue an order under the special, circumstances and for another man they would say that the earlier order was issued in a different context. The State in a democratic set up has to treat its citizens equally except as provided under the Constitution for a reasonable classification. In a case of compassionate appointment, there cannot be any discrimination even on a reasonable classification. They are one class. The breadwinner had died in harness while in service and the family needs some succour. It cannot be argued that for Mr. X the policy would apply and for Mr. Y the policy would not apply. If the State authorities wanted the petitioner to file a succession certificate case and relying upon the State's word, the High Court required him to obtain such succession certificate and approach the authority then at least the State should show respect to the judgment of this Court wherein the Court asked the respondent authorities that if with such a succession certificate an application is made for appointment on compassionate ground then a reasoned order should be passed. If the petitioner and the Court were persuaded to accept the submissions of the counsel for the State that a succession certificate is needed as a foundation to consider the case of the petitioner then the respondents cannot be allowed to say that it was a foolishness on the part of the respondents- officers and the petitioner would not be entitled to appointment because the presumption would arise in the year 1990 and must water has flown after the death of the deceased. The order contained in Annexure-7 simply says that after considering the case of the petitioner the same has been rejected. The order does nowhere say as to what were the reasons for rejecting the claim. Nobody knows that it was rejected on the ground that some officer demanded the succession certificate because of foolishness of the date of death would be presumed to be somewhere in 1990 or the High Court was wrong in directing the petitioner to obtain the succession certificate and making an application or the petitioner was a minor at the time of the death of his father. The order contained in Annexure-7 is bad. It deserves to be and is accordingly quashed.

9. it is also to be seen from Annexure-6 that the Personnel and Administrative Reforms Department vide its letter dated 3.5.2003 informed the District

Magistrate, Katihar in response to his letter No. 206/Health dated 27.2.2003 that in relation to a traceless person no appointment can be made on compassionate ground. This order contained in Annexure-6 runs contrary to Annexure-8. When same Department issues different and varied circulars then its honesty comes at a stake. The Department itself knows that what circulars were earlier issued and whether observing those circulars, fresh circulars have to be issued or not. If letter No. 3 dated 25.9.1998, contained in Annexure-8 observed that such a person would be deemed to be dead after lapse of 7 years and the question of compassionate appointment can be considered then the very same Department could not issue yet another letter on 3.5.2003 observing that in case of a traceless person compassionate appointment cannot be granted. The Government and its officers should not be run on the whims, caprice and arbitrariness of the officers holding the post. After all there must be some discipline in the said officer also. The law does not change with the change of the man; the law does not change with the change of the understanding; the law does not change with the change of the time; the law remains the same for all the times to come. Annexure-6 for the reasons aforesaid deserves to and is accordingly quashed.

10. The District Establishment Committee is hereby directed to reconsider the case of the petitioner taking into consideration that the entitlement of the petitioner would be on the date of submitting/obtaining the succession certificate, case and not prior to that. They would also be obliged to observe that in case of a person, who is found traceless for 7 years or more and there is declaration by the competent Court then a civil death would be presumed and the successor of such a person, if satisfied the other conditions, then the would be entitled to appointment on compassionate ground. If this time the District Compassionate Appointment Committee runs contrary or counter to these observations then each and every member of the said Committee would be exposing themselves to a great risk.

11. Though the petitioner has been given his reliefs but at this juncture I must again observe that the respondents are obliged and required to make certain rules in relation to appointment on compassionate ground. The rules must be in relation to the entitlement of the person/persons. In case there are more than one person/ competitor then what should be the criteria for the competent authority and whether the foolish orders should be observed or not.

12. The petition is allowed with costs of Rs. 3000/- (Three thousand).