

(2003) 04 PAT CK 0037
In the Patna High Court
Case No : L.P.A. No. 719 of 1996

Vina Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Citation : (2003) 2 BLJR 970 : (2003) 3 PLJR 114

Hon'ble Judges : Ravi S. Dhavan, C.J.;R.N. Prasad, J

Bench : Division Bench

Advocate : Mridula Mishra, for the Appellant; A.K. Singh, SC 3, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—Heard learned Counsel for the appellant and learned Counsel for the State.

2. The contention basically is that upon her father's death on 19 June, 1987 admittedly the petitioner was a minor but in pursuance of an application she filed on 1 May, 1989 and again on 25 August, 1992 she was within the field of eligibility by having attained majority and to be considered in prsuance of a circular of the Government so issued in 1989.

3. The order on the writ petition is, to the effect, that upon death of a Government servant having occurred if a person applying is a minor then that person cannot be considered for a job on the ground of compassionate appointment. To this extent the judgment on the petition, the Court is afraid, is in-error.

4: There is a Government Circular No. 3/C/20-30/88 Ka. 6817 dated 25 May, 1989. It is reproduced :

fo"k;%& lsokdky esa e`r ljdkjh lsodksa ds vkfJrksa dks oxZ&3 ,oa oxZ&4 ds inkSa ij vuqdeik ds vk/kkj ij fu;qfDr dh izf?;kA

dkfeZd ,oa iz"kklfud lq/kku foHkkx ds ifj= la- 12754 fnukad 12&7&1997 esa ljdkj }kjk Isokdky esa e`r ljdkjh Isodksa ds fdLh ,d vkfJr dks oxZ&3 ,oa oxZ&4 ds inksa ij vuqdEik ds vk/kkj ij fu;qfDr djus dk izko/kku fd;k x;k gSA bl ifji= dh dafMdk&4 esa bl lgqfy;r dk YkkHk ljdkjh Isod dh e`R;q ds nk o"kksZa ds vUnj fu/kkZfjr dh xbZ gSA

2- fcgkj jkT; vkjktif=r egkla?k rFkk f"kd deZpkjh inkf/kdkjh leUo; lfeFr ds }kjk ekax dh xbZ Fkh fd vuqdEik ds vk/kkj ij fu;qfDr gsrq vkosnu nsus dh fu/kkZfjr le; lhek nks o"kZ dks c<+kdk 5 ?ik?p?o"kZ dh tk;A bl lEcU/k esa mDr leUo; lfeFr ,oa jkT; ljdkj ds chp fnukad 19&11&1988 ,oa 10&11&1988 dks gq, le>kSrs dk;kZoU;u ds flyflys esa ljdkj us bldh lkxksaikx leh{kk dh vkSj eglwl fd;k fd mDr ifji= dh dafMdk&4 dks la"kkSf/kr djuk mifpr gksxkA

3- bl ifjis{; esa mDr ifji= dh dafMdk&4 dks ljdkj }kjk fuEu :i ls la"kkf/kr djus dk fu.kZ; fy;k x;k gSA

e`r ljdkjh Isod ds vkfJr }kjk vuqdEik ds vk/kkj ij fu;qfDr gsrq vkosnu nsus dh vof/k ljdkjh Isod dh e`R;q dh frfFk ls ?ikap+? o"kZ jgsxh vkSj ;g le; lhek c<+kbZ ugha tk;sxA

mi;qDr fu.kZ; lHkh izkdj ds vuqdEik ds vk/kkj ij gksus okyh fu;qfDr;ksa ij rkRdkfyd izHkko ls ykxw gksxkA

vr% bl fu.kZ; ds vkyksd esa le; lhek {kkUr djus dk izLrko dkfeZd ,oa iz"kklfud lq/kkj foHkkxksa dks Hkstus dh vko";drk ugha gSA D;ksafd le; lhek fdLh Hkh ifjLFkfr esa 5 ?+ikap? o"kksZa ls vf/kd ugha gksxhA

6. This Circuter apparently is reiterated in Circular No. 3/C 2-60108/94 Ka. 2822 dated 27 April, 1995. This Circular, it appears, is overriding another Circular No. 3/C 2-2067/90 Ka dated 19 May, 1992, The 1992 Circular was to the effect that should a Government servant die and if the ward is a minor then the application for seeking compassionate appointment would not be considered. The 1995 circular in Clause 6 stated :

^^vuqdEik ds vk/kkj ij vkfJr ds }kjk fu;qfDr gsrq vkosnu i= lefiZr djus dh le;&lhek e`r ljdkjh Isod dh e`R;q dh frfFk ls 5 o"kZ rd gh jgsxhA**

7. Clause 6 as it occurs in 1995 circular is without any reservation.

8. The Court mentions this in this order because certain circulars issued by the State Government are with references to the Patna High Court taking certain decisions and passing orders. It may not be misunderstood that the High Court has given any direction to the State Government. The time has come now that the State Government should take its policy decision and act on a law.

9. Thus, in a cause as was brought by CWJC No. 1685 of 1994 and on the application as was made on 25 August, 1992 prima facie the appellant was within the filed of eligibility. In accordance with the Circular of the Government itself, her case needs to be considered.

10. The appeal succeeds.