

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9312 of 2021

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Rahul Kumar Son of Late Shyam Sunder Tiwari Resident of Village- Narena,P.S.
Bounsi, District- Banka.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Principal Secretary, Building Construction and Housing Department, Govt. of Bihar, Patna.
3. Secretary cum Commissioner, Personnel and Administrative Reforms Department, Bihar, Patna.
4. Secretary-cum- Commissioner, Public Works Department, Bihar, Patna.
5. Additional Secretary, Finance Department, Bihar, Patna.
6. Under Secretary, Building Construction and Housing Department, Bihar, Patna.
7. Engineer-in- Chief, Building Construction and Housing Department, Bihar, Patna.
8. Chief Engineer, Building Construction and Housing Department, Bihar, Patna.
9. Superintending Engineer, Building Construction Department, Building Circle, Bhagalpur.
10. Executive Engineer, Building Construction Department, Building Division, Bhagalpur.
11. Executive Engineer, Building Construction Department, Building Division, Banka.
12. Sub Divisional Officer, Building Construction Department, Building Sub Division Banka.
13. Chief Engineer, Rural Engineering Organization, Bihar, Patna.
14. Executive Engineer, Rural Engineering Organization, Works Division, Munger.
15. Commissioner, Bhagalpur Division, Bhagalpur.
16. Collector-cum- District Magistrate, Banka.

... ... Respondent/s

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Appointment on compassionate ground - application of petitioner rejected vide order dated 14/01/2021- on the ground that same had filed Belatedly only on 16.12.2020- Hence Time barred.

Father of petitioner had joined as chaukidar on 15.6.1979 and died in harness on 24/09/2003 - the mother of petitioner had applied for compassionate employment and to pay death and other benefits of her husband- Her claim was rejected vide order dated 28/04/2009 purportedly raising issue regarding the validity of the appointment of the husband of the mother of petitioner- order was challenged by the mother in cwjc number 9681 of 2013 - which was allowed by a coordinate bench of this court vide judgement dated 29/8/2016- in pursuant to said judgement respondents has consider the case and vide order dated 29/11/2017 services of husband of mother of petitioner was regularised in the regular establishment with effect from 22.10.1984 and ordered to pay the pension to the mother of petitioner.

Then this petitioner filed an application for grant of compassionate employment on 16-12 -2020 which was rejected by the Impugned order dated 14/01/2021 on the ground that the same is time barred .

Petitioner plea that the validity of the appointment of his father had itself been under a cloud - which ultimately cleared vide order dated 29/11/ 2017 - in view of clause 5 (VI) of the resolution of the Finance Department dated 17/10/ 2013 which postulates that after an employee is brought into the regular services of the Government and he dies, the benefit of appointment on compassionate ground shall be granted to the dependents. Hence Petitioner's application has been illegally rejected on the ground of time barred.

State respondent argued that the father of petitioner died on 24/9/2003 and petitioner filed a application after the lapse of 5 years and any application made thereafter is liable to be rejected in terms of resolution dated 27/4 /1995 of the personal and Administrative Reforms department government bihar, Patna

The time limit of 5 years of any application made for compassionate appointment is in the ordinary course - present case is not a usual case in as much as in the instant case validity of services of father of petitioner was itself decided only on 29.11 2017 and services of father of petitioner was regularised with effect from 22/10/1984 - Hence any claim any claim for grant of compassionate employment could have arisen only pursuant to order dated 29/11/2017 which is also legally permissible as per clause 5 (VI) of the resolution of the Finance Department dated 17/10/2013 .

Hence it is held , that the claim of the petitioner for grant of compassionate employment would remain alive for a period of five years Starting from 29.11.2017, the day on which services of the father of petitioner was regularized in regular establishment though with effect from 22/10/1984 - Thus the application filed by petitioner on 16/12/2020 cannot be said to be Time barred - impugned order dated 14.01.2021 passed by superintending engineer building circle, Bhagalpur, being perverse and contrary to law - is set a side - Respondents is directed to consider the case of petitioner for compassionate appointment a fresh on merit and pass appropriate order within a period of four weeks of receipt/production of copy of this order.

This writ application stands allowed.

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9. Superintending Engineer, Building Construction Department, Building Circle, Bhagalpur.
10. Executive Engineer, Building Construction Department, Building Division, Bhagalpur.
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15. Commissioner, Bhagalpur Division, Bhagalpur.
16. Collector-cum- District Magistrate, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajiv Kumar Singh, Advocate
For the Respondent/s : Mr.Uday Shankar Saran Singh (GP-19)
Mr. Uday Bhan Singh, AC to GP-19

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT



Date : 28-02-2024

The present writ petition has been filed for quashing the order dated 14.01.2021, whereby and whereunder the case of the petitioner for grant of compassionate appointment has been rejected on the ground of being time barred inasmuch as he had filed application for compassionate appointment belatedly only on 16.12.2020. The petitioner has further prayed to direct the respondent-authorities to appoint the petitioner on compassionate ground.

2. The present case has a chequered history inasmuch as the father of the petitioner had joined as Chaukidar on 15.06.1979 with the respondent-Department and he is stated to have died in harness on 24.09.2003. The mother of the petitioner had then applied for grant of compassionate employment and had also requested the respondents to pay the retiral dues and other benefits of her husband, however, when she failed to receive any solace from the respondents, she had filed a writ petition bearing CWJC No. 1106 of 2005, whereafter she had also filed a contempt petition bearing MJC No. 877 of 2009, alleging non-compliance of the order passed in the



said writ petition, whereupon, the Secretary, Personnel and Administrative Reforms Department, Bihar, Patna had rejected the claim of the mother of the petitioner, vide order dated 28.04.2009, purportedly raising the issue regarding the validity of the appointment of the husband of the mother of the petitioner. The said order dated 28.04.2009 was challenged by the mother of the petitioner before this Court by filing a writ petition bearing CWJC No. 9681 of 2013, which was allowed by a Coordinate Bench of this Court vide judgment dated 29.08.2016. The Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna was directed to look into the grievances of the petitioner and consider the case of the husband of the mother of the petitioner in terms of paragraph no. 53 of the judgment rendered in the case of **Secretary, State of Karnataka and others vs. Uma Devi(3) and others**; reported in **(2006)4 SCC 1**. The respondents had then considered the case of the mother of the petitioner and vide order dated 29.11.2017, issued by the Deputy Secretary to the Government, Building Construction Department, the



services of the husband of the petitioner was regularized in the Regular Establishment with effect from 22.10.1984 and it was directed that pension be paid to the mother of the petitioner.

3. It appears that the petitioner had then filed an application for grant of compassionate employment on 16.12.2020, however, the same has been rejected by the impugned order dated 14.01.2021, passed by the Superintending Engineer, Building Circle, Bhagalpur on the ground that the same is time barred.

4. The learned counsel for the petitioner has submitted that the validity of the appointment of the father of the petitioner had itself been under a cloud which was ultimately cleared vide the aforesaid order dated 29.11.2017, by which the services of the father of the petitioner was regularized in the Regular Establishment. Thus, in view of clause-5(vi) of the resolution of the Finance Department dated 17.10.2013, which postulates that after an employee is brought into the regular services of the Government and he dies, the benefit of appointment on compassionate ground shall be granted to the



dependents, the petitioner, being dependent of the deceased employee, had filed application for grant of compassionate employment on 16.12.2020, however, the same has been illegally rejected on the ground of the same being time barred, hence it is prayed that the impugned order dated 14.01.2021, passed by the Superintending Engineer, Building Circle, Bhagalpur, be quashed and the respondents be directed to consider the case of the petitioner for grant of compassionate employment.

5. *Per contra*, the learned counsel for the respondent-State has submitted that since the father of the petitioner died on 24.09.2003, the case of the dependents, for grant of compassionate employment, had stood time barred after lapse of five years and any application made thereafter, is liable to be rejected in terms of the resolution dated 27.04.1995 of the Personnel and Administrative Reforms Department, Government of Bihar, Patna, thus there is no merit in the present writ petition, hence the same is fit to be dismissed.

6. I have heard the learned counsel for the parties and perused the materials on record. This



Court finds that in the ordinary course, any application made for compassionate employment, beyond five years of the death of the deceased, by his dependent, is liable to be rejected, however, the present case is not a usual case inasmuch as in the instant case the validity of the services of the father of the petitioner was itself decided only on 29.11.2017, by an order passed by the Deputy Secretary to the Government, Building Construction Department, Government of Bihar, Patna whereby and whereunder, the services of the father of the petitioner was regularized in the Regular Establishment w.e.f. 22.10.1984, hence any claim for grant of compassionate employment could have arisen only pursuant to 29.11.2017, which is also legally permissible as per clause-5(vi) of the resolution of the Finance Department dated 17.10.2013. Therefore, this Court, upon a just, legal and constructive interpretation of the aforesaid provisions deems it expedient to hold that the claim of the petitioner for grant of compassionate employment would remain alive for a period of five years, starting from 29.11.2017, the day on which the services of



the father of the petitioner was regularized in the Regular Establishment of the State Government, though with effect from 22.10.1984, thus, it cannot be said that the application filed by the petitioner for appointment on compassionate ground on 16.12.2020, is time barred, hence the order dated 14.01.2021, passed by the Superintending Engineer, Building Circle, Bhagalpur, being perverse and contrary to law is set aside and he is directed to consider the case of the petitioner for appointment on compassionate ground, afresh on merits as also in light of the observations made herein above and pass appropriate orders, within a period of four weeks of receipt/production of a copy of this order.

7. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14.03.2024
Transmission Date	N/A

