

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12607 of 2014

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Ravi Shankar Kumar Son of Late Vijay Thakur Resident of Village- Gowasha Shikhpura, P.S.- Pandarak, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. Director in Chief Health Services, Bihar, Patna.
3. Director, Health Services, Bihar, Patna.
4. Superintendent, Jawaharlal Nehru Medical College Hospital, Bhagalpur.
5. District Magistrate, Bhagalpur cum chairman District Compassionate Appointment Committee, Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
For the Respondent/s : Mr. Manish Kumar, AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

Date : 28-02-2025

Heard Mr. Shiv Kumar, learned counsel for the petitioner and learned AC to AAG 14 for the State.

2. The present writ petition has been filed for quashing the memo no. 1533 dated 27.03.2014 issued under the signature of Respondent No. 4 whereby the petitioner has been informed that his application for compassionate appointment will be considered after disposal of LPA and for quashing the letter memo no. 1323 dated 23.03.2023 issued under the signature of Respondent No. 4 by which the application filed by the



petitioner for appointment on compassionate ground has been rejected by the Respondent No. 4 on the ground that the service of the father of the petitioner was not valid.

3. Learned counsel for the petitioner submits that the father of the petitioner was initially appointed on daily wage basis on 28.03.1987. Thereafter, vide memo no. 1161 dated 29.03.1990, the service of the father of the petitioner has been absorbed to the post of peon in the scale of 775-1025 w.e.f. the date of joining and after more than 12 years from his appointment, the father of the petitioner has received a letter dated 29.05.1999 by which the father of the petitioner was informed that his appointment is prima facie irregular and father of the petitioner was restrained from work and his salary was also stopped by the authority concerned. The father of the petitioner has filed a writ petition bearing CWJC No. 6541 of 1999 and during the pendency of the aforesaid writ petition the father of the petitioner has been terminated from the service w.e.f. 30.05.1999 after the holding that his joining was irregular. The same was challenged by the father of the petitioner in the aforesaid writ petition and the same was heard along with other similar matters on 26.02.2004 and it was held that the petitioners came to this Court seeking their salary but during the



pendency they were terminated from service and the petitioner and other similarly situated persons are given liberty to take appropriate proceeding before the appropriate forum challenging the order of termination. The father of the petitioner has again filed a writ petition bearing CWJC No. 5114 of 2004 for quashing the order dated 21.09.1999 whereby he was terminated from service w.e.f. 30.05.1999 and the same was heard along with other similar cases and by common order dated 26.06.2006 passed in LPA No. 946 of 2003 and analogous cases, it was disposed of with direction to the authority, namely, Health Department, Government of Bihar to reconsider the cases of all the affected employees in light of the Constitution Bench Judgment passed in the case of Secretary, State of Karnataka vs. Uma Devi reported in 2006(3) PLJR 386 then after more than two year from the order dated 26.06.2006 passed in LPA No. 946 of 2003 and analogous cases, an enquiry report has been communicated to the father of the petitioner by which his appointment was held illegal by the enquiry committee.

4. Learned counsel for the petitioner further submits that before issuing enquiry report with respect to father of the petitioner, neither the father of the petitioner was given any opportunity of hearing nor any notice to the show cause has



been issued to him by the enquiry committee. Enquiry committee has issued the enquiry report in clear violation of principle of natural justice, equity and fair. Then father of the petitioner has again filed CWJC No. 8225 of 2009 for quashing the enquiry report with respect to him whereby appointment was held illegal and further for directing the respondent authority to reinstate him on the post on which he was working earlier before termination from service with all the salary and other consequential benefits. The aforesaid writ petition was also heard along with other similar cases and finally vide order dated 06.10.2009 the imugned enquiry report as well as termination order has been quashed and the concerned authorities have been directed to reinstate the petitioners on the post on which they were working before the termination with all the consequential benefits. The order dated 06.10.2009 passed in CWJC No. 6575 of 2009 and analogous cases have been affirmed upto the Hon'ble Supreme Court. The father of the petitioner has filed a contempt petition bearing MJC No. 4848 of 2010 for initiating contempt of court proceeding against concerned authority for violation of order dated 06.10.2009 passed in CWJC No. 8225 of 2009. During the pendency of the aforesaid contempt petition, an order has been issued vide memo no. 540 dated



30.01.2012 under the signature of the Respondent No. 4 by which father of the petitioner has been reinstated on the post on which he was working. Soon thereafter, the father of the petitioner died in harness on 15.04.2012 due to illness while working as Darban in the Jawaharlal Nehru Medical College Hospital, Bhagalpur.

5. Entire dues salary due to the father of the petitioner from the date of termination until his reinstatement in terms of the order dated 06.10.2009 passed in CWJC No. 8225 of 2009 has been paid to the petitioner vide order dated 14.12.2022 (Annexure-26) of the writ petition.

6. The petitioner has filed an application along with all the relevant documents on 10.04.2013 in which he has requested for his appointment on compassionate ground. But no action has been taken by the authority concerned then the petitioner has filed a writ petition bearing CWJC No. 14471 of 2013 and the same was finally heard and disposed of on 31.07.2013 by which the Respondent No. 4 was directed to examine the claim of the petitioner and if he fulfills the requirements for appointment on the compassionate ground then the Respondent No. 4 is directed to immediately forward the case of the petitioner to the District Compassionate



Appointment Committee within a period of one month from the date of receipt of this order. Thereafter, the petitioner has filed an application before the Respondent No. 4 along with a copy of the order dated 22.08.2013 requesting him to forward his application to the District Compassionate Appointment Committee as soon as possible. But the Respondent No. 4 has not sent his application for appointment on compassionate ground to the District Compassionate Appointment Committee. Thereafter, the petitioner has received a letter issued vide memo no. 1533 dated 27.03.2014 whereby the petitioner was informed that his application for appointment on compassionate ground will be considered after disposal of the LPA filed in the Hon'ble Court.

7. Learned counsel for the petitioner submits that while deciding the identical matters, this Hon'ble Court vide order dated 13.02.2014 passed in CWJC No. 1031 of 2013 has held that once termination order has been quashed by the Hon'ble Court and that order has become final then the concerned authority are legally bound to consider the case of the dependents of the deceased employee for appointment on the compassionate ground in accordance with law. And from bare perusal of the rejection order dated 23.02.2013 it transpired that



the authority has mentioned in the impugned order that the state authority has filed an application for recall of the order passed in LPA no. 300 of 2015 and on the sole ground the application of the petitioner for appointment on compassionate ground has been rejected by the authority concerned. He further submits that as per the order of this Court which was passed in compliance of the order passed in LPA No. 300 of 2015 and the similarly situated person, namely, Munna Kumar has filed a writ petition bearing CWJC No. 1322 of 2018 by which this Court has directed to consider the case of the said Munna Kumar within a period of three months and the said Munna Kumar has been appointed by the authority concerned on the basis of compassionate appointment and the case of the petitioner is on the same footings.

8. Learned counsel for the State has filed a detailed counter affidavit stating therein that in pursuant to the order this Court, the Respondent No. 4 has sent entire documents submitted by the petitioner along with letter bearing no. 4727 dated 04.09.2014 for necessary compliance before the District Magistrate-cum-Chairman of Commission Committee, Bhagalpur but the same was returned with some objections and accordingly the Respondent No. 4 has asked the petitioner to



submit non employment certificate from the concerned Circle Officer. The petitioner has submitted an application dated 19.09.2014 stating therein that he had already submitted an application to Circle Officer Office and the Circle Officer is engaged in flood and relief control and apart from that the appointment of father of the petitioner was done without following the laid down criteria and without roster clearance and the said authority has challenged the order which was passed in favour of the father of the petitioner in LPA. Another counter affidavit has been filed on behalf of the Respondent No. 5 stating therein that the application of the petitioner was not accompanied with the required non employment certificate of all the dependents of the deceased. The Respondent No. 4 has also not made any clear cut recommendation for the appointment on the compassionate ground of the petitioner and therefore the Respondent No. 4 asked petitioner vide letter no. 860 dated 18.09.2014 to be present in the meeting of the District Compassionate Committee held on 22.09.2014 with all the requisite certificates/papers. And finally the application of the petitioner for appointment on compassionate ground has been rejected vide memo no. 1323 dated 23.03.2023 issued by the Respondent No. 4.



9. By referring some orders passed in Civil Appeal No. 8649 of 2018 as well as Civil Appeal No. 7879 of 2019 by the Hon'ble Supreme Court, in which neither the petitioner nor his late father was a party and further this Court by its order dated 11.01.2024 passed in MJC No. 47972 of 2018 (Annexure-29) has held that the aforesaid orders passed by the Supreme Court are in personam and not in rem.

10. He referred to paragraph no. 4 of the order dated 11.1.2024 passed in MJC No. 4797 of 2018 which is quoted hereinbelow:-

“4. The learned counsel for the petitioner has further submitted that again a show-cause has been filed on behalf of the opposite party no.1 on 14.05.2019, wherein again,a false statement has been made by the contemnors to the effect that the State has challenged the orders passed by the Hon'ble High Court and all such orders, including the aforesaid orderdated 06.10.2009, passed in CWJC No.1514 of 2008 have beenset aside by the Hon'ble Apex Court by a judgment dated 17.10.2019, passed in Civil Appeal No.7879 of 2019 (the State of Bihar & Ors. vs. Devendra Sharma) and other analogous cases totalling 47 in all, inasmuch as paragraph no.1 of the said judgment dated 17.10.2019, clearly specifies that some other appeals are also on board against the orders passed by the High Court on other dates and further paragraph no.2 thereof state that the appeals mentioned in the said judgment are being disposed off by the



common judgment, whereas paragraph no.45 of judgment dated 17.10.2019 passed in Civil Appeal No.7879 of 2019 would show that the order dated 12.07.2011 and similar orders passed by the Hon'ble High Court, challenged in various appeals under consideration by the Hon'ble Apex Court have been set aside. Thus, it is submitted that since the order dated 06.10.2009, passed in CWJC No.1514 of 2008 was neither challenged before the learned Division Bench of this Court by filing any appeal nor before the Hon'ble Apex Court, the aforesaid judgment dated 17.10.2019, passed by the Hon'ble Apex Court in the case of Devendra Sharma (supra) does not have any bearing in the present case."

11. Learned counsel for the petitioner submits that it has been emerged from the aforesaid that the father of the petitioner was reinstated pursuant to the direction of this Court on 30.01.2012 and while he was working, he died in harness on 15.04.2012 due to illness which suggests that father of the petitioner was in service on the date of his death. So the petitioner is eligible for appointment on compassionate ground and apart from that the similarly situated person, namely, Munna Kumar whose case was considered by the authority concerned and Munna Kumar has been appointed on the basis of compassionate ground by the authority concerned and in the present case the authority has intentionally not considered the case of the petitioner and the respondents have rejected the case of the petitioner for appointment on compassionate ground by



referring some orders passed in Civil Appeal No. 8649 of 2018 as well as Civil Appeal No. 7879 of 2019 by the Hon'ble Supreme Court in which neither the petitioner nor his late father was a party and apart from that from perusal of the order dated 11.01.2024 passed in MJC No. 47972 of 2018, this Court has held that the aforesaid orders passed by the Supreme Court are in personam and not in rem.

12. Having heard learned counsel for the parties and perused the material available on record, it transpires from the aforesaid that on the date of death, the father of the petitioner was in service and apart from that the state authority has paid all the retirement cum death benefits to the petitioner. One hand the state had admitted that his father was in service and on other hand, the state has rejected the claim of the petitioner on the ground that his father was not in service. Apart from that the letter no. 1323 dated 23.02.2023 (Annexure-27) by which the respondents have rejected the case of the petitioner for appointment on compassionate ground, refers some orders of the Hon'ble Apex Court in which neither the petitioner nor his late father was a party and apart from that the order passed in MJC No. 47972 of 2018, it is crystal clear that this Court has held that the aforesaid orders passed by the Hon'ble Apex Court



are in personam and not in rem.

13. In view of the aforesaid, letter no. 1533 dated 27.03.2014 (Annexure-11) and letter no. 1323 dated 23.02.2023 (Annexure-27) are hereby set aside and the authorities (Respondent Nos. 4 & 5) are directed to take a fresh decision in accordance with law for appointment of the petitioner on compassionate ground, considering all the aforesaid facts within a period of three months from the date of production/receipt of copy of this order and take the matter to a logical conclusion considering his father to be in service on the date of his death.

14. Accordingly, the writ petition is allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.04.2025
Transmission Date	NA

