

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18148 of 2015

Brajesh Kumar Jha Son of Late Hari Shankar Jha R/o Village Narayanpur,
P.O. Daulapur, P.S. Khodabandpur, District Begusarai

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Minor Irrigation Department, Government of Bihar, New Secretariat Building, Bailey Road, Patna-800 001
2. The Principal Secretary, Minor Irrigation Department, Govt of Bihar, New Secretariat Building, Bailey Road, Patna.-800 001
3. The General Administration Department, Govt of Bihar, Old Secretariat Building, Patna-800 015
4. The Executive Engineer the then Nalkoop Division, Samastipur
5. The Executive Engineer, Minor Irrigation Division, Samastipur
6. The Collector, Samastipur cum Chairman, District Compassionate Committee, Samastipur
7. The Deputy Collector, Establishment, Samastipur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Durga Nand Jha, Advocate Ms. Arpana Jha, Advocate Mr. Md. Nurul Hoda, Advocate
For the Respondent/s	:	GP-12

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 19-11-2025

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant application for
the following relief(s) :-

*“(i) The decision of the District Compassionate
Committee taken in its meeting dated 28.5.2015
inter-alia denouncing the on petitioner's claim
for appointment on compassionate ground in*



view of the admitted employment of the petitioner's elder brother and accordingly rejecting the petitioner's application for appointment on compassionate ground, be declared as highly illegal, arbitrary and beyond the material as in conflict with the basic principle required to be followed in granting employment on compassionate ground and accordingly the impugned decision be set aside;

(ii) The respondents be directed to take decision for appointment of the petitioner on compassionate ground in consideration of the worst pecuniary condition of the deceased family dependent upon the deceased bread-earner of the family and accordingly as per the request and endorsement of the petitioner's mother, the deceased's wife, the petitioner be appointed on the compassionate ground for smooth running of the family without facing any difficulties;

(iii) The respondents be directed to grant all the consequential benefits to the petitioner for which he is found legally entitled to.

(iv) Any other relief or reliefs be granted to the petitioner as he is legally entitled in the facts and circumstances of the case.”

3. The case of the petitioner in brief is that his father who was working as *Nalkoop Chalak* in Minor Irrigation Division, Samastipur died in harness on 24.9.2012. The petitioner filed his application for appointment on



compassionate ground along with all relevant documents including the application of his mother expressing her desire for his employment.

4. The application of the petitioner was forwarded to the District Compassionate Committee, who in their meeting held on 28.5.2015 rejected the case of the petitioner on the ground that the elder brother of the petitioner was employed.

5. It is submitted by learned counsel for the petitioner that the respondents erred in rejecting the application for compassionate appointment filed by the petitioner on the ground of employment of his elder brother. The respondents failed to take into consideration the fact that the elder brother has been living separately and was not maintaining the family.

6. The application is opposed by learned counsel for the respondents. Referring to the contents of the counter affidavit, it is submitted that the application filed by the petitioner for compassionate appointment was considered by the District Compassionate Committee who by their order dated 28.5.2015 rejected the application on the ground of the elder brother of the petitioner being employed. This decision was taken in light of the Government Circular contained in



letter no.12754 dated 12.7.1977 of the Personnel and Administrative Reforms Department.

7. Heard learned counsel for the parties and perused the material on record.

8. The facts not in dispute are that the father of the petitioner having died in harness on 24.9.2012, the petitioner filed an application for appointment on compassionate ground on 7.11.2014 which was rejected by the District Compassionate Committee by its order dated 28.5.2015. The reason given by the District Compassionate Committee was the Government Circular contained in letter no.12754 dated 12.7.1977.

9. It would be relevant to take into consideration the Full Bench judgment of this Court in the case of **Niraj Kumar Mallick vs. the State of Bihar & Ors.; 2018 (2) PLJR 951** wherein this Court was interpreting the clarification issued by the General Administration Department bearing no.15783 dated 19.11.2014 which said that in case of any of the dependants of a Government servant being gainfully employed, whether they are living with the other dependants or not, other dependants shall not be entitled for benefit of appointment on compassionate ground. It further



stated that gainfully employed meant such employment from which the dependants of the deceased Government servant may be maintained or in other words, they can get their sustenance.

10. With respect to the argument by learned counsel for the petitioner that the elder brother has been living separately and was not maintaining the family, it would be relevant to take into consideration the judgment in the case of **Niraj Kumar Mallick** (*supra*), wherein this Court held as follows :-

“47. So far as the clarification that 'gainfully employed' means such employment from which the employed dependent of the deceased government servant may provide sustenance or can maintain other dependents is concerned, it has to be looked at 'objectively' and not 'subjectively'. It is not for the authority considering the application for compassionate appointment to find out as to whether the dependent in employment is willing to take care of other dependents or not. It would not be his concern that the gainfully employed sibling is actually providing sustenance to the other dependents or not. Any argument that the dependent in employment is not willing to provide sustenance/maintenance to other dependents or that the employed one is living separately is beyond the scope and ambit of consideration under the given scheme and policy of the government and this Court



sitting in its writ jurisdiction under Article 226 of the Constitution of India would not go into enquiring the correctness of the facts so pleaded before the Court.”

11. It would further be relevant to refer to the judgment in the case of **Umesh Kumar Nagpal vs. State of Haryana & Ors.; (1994) 4 SCC 138** wherein considering the object and purpose of compassionate appointment, the Hon'ble Supreme Court proceeded to hold as follows :-

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object



of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

12. So far as the facts of the instant case are concerned, it is not in dispute that the elder brother of the



petitioner is employed. It is on this ground that the application of the petitioner was rejected in view of the letter no.12754 dated 12.7.1977 of the General Administration Department, Bihar.

13. Clause 1 of the letter no.12754 dated 12.7.1977 provides that a decision had been taken by the State Government that appointment on compassionate ground will be made only on Class-III and Class-IV posts where the requirement of consultation with the Bihar Public Service Commission is not essential. It further provides that for appointment on compassionate ground, it would be necessary that the financial condition of the family of the deceased employee is not good meaning that no member of the family is gainfully employed, not earning an amount to maintain the other members of the family in a reasonable manner.

14. So far as the case of the petitioner herein is concerned, there being no dispute with respect to the fact that the elder brother of the petitioner is already employed, it cannot be stated that the financial condition of the family of the petitioner was such that the family could not be maintained from the income of the petitioner's elder brother.

15. In view of the facts and circumstances of the



case, the Court finds no error in the order of the respondents rejecting the application of the petitioner for appointment on compassionate ground on account of elder brother of the petitioner being in employment.

16. The Court finds no merit in the instant application.

17. The application is dismissed.

(Partha Sarthy, J)

Shiv/-

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CAV DATE	N/A
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