

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3653 of 2020

Atul Kumar Srivastava, Son of Chhotan Prasad Srivastava, adopted Son of late Kamalawati Devi, Resident of Mohalla Ratanpura, P.S. Bhagwan Bazar, District- Saran, Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Government of Bihar, Patna.
2. Director, Health Services, Health Department, New Secretariat, Patna.
3. Deputy Director, Health, Saran Division, Chapra.
4. District Magistrate-Cum- Chairman, District Compassionate Appointment Committee, Gopalganj.
5. Deputy Collector (Establishment), Gopalganj.
6. Civil Surgeon-Cum-Chief Medical Officer, Gopalganj.
7. Medical Officer, Primary Health Centre, Bijaipur, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Jitendra Prasad Singh, Advocate
For the Respondent/s : Mr.Ajay Behari Sinha, GA-8

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 28-06-2021

Heard learned counsel for the parties online because of COVID-19 pandemic restrictions.

2. The petitioner has put to challenge the decision of the District Compassionate Appointment Committee, Gopalganj dated 17.10.2019, issued vide Memo No. 877 dated 20.12.2019, whereby his claim for appointment on compassionate ground has been rejected. The said communication has been brought on record by way of Annexure-14 to the writ application.



3. From the facts averred in the writ application it emerges that one Kamalawati Devi was working against the post of LHV in Primary Health Centre, Bijaipur under Civil Surgeon, Gopalganj. It is the petitioner's case that said Kamalawati Devi was married to one Mani Bhushan Prasad in the year 1975, who subsequently separated by a decree of divorce on a joint application. The said Mani Bhushan Prasad solemnized second marriage. Mani Bhushan Prasad and his second wife also died without any issue. It is the petitioner's further case that after death of Mani Bhushan Prasad said Kamalawati Devi started living with his brother, namely, Chhotan Prasad Srivastava and in the year 1987 she adopted the petitioner, son of said Chhotan Prasad Srivastava. Kamalawati disappeared in mysterious circumstances in the month of January 2001, who is still traceless. Immediately seven years after disappearance of said Kamalawati Devi the petitioner filed Succession Case No. 27 of 2008 in the court of learned Sub-Judge-I, Saran at Chapra, which was allowed in 2012 and accordingly in 2012 he was granted succession certificate after declaring civil death of said Kamalawati Devi. The petitioner claims to have received legal dues consequent upon civil death of said Kamalawati Devi, as stated in paragraph 10 of the writ application.



4. The petitioner had represented before the authorities claiming appointment on compassionate ground, consequent upon civil death of said Kamalawati Devi. As the matter of his appointment on compassionate ground was not being expedited he filed a writ application before this Court giving rise to CWJC No. 8853 of 2015, which was disposed of by an order dated 02.08.2016 with a direction to the respondents to consider the petitioner's claim within a reasonable time. The claim of the petitioner was, however, rejected by the District Level Compassionate Appointment Committee in its meeting held on 20.10.2016, which was communicated to him through Memo No. 47 dated 17.01.2017. He filed another writ application giving rise to CWJC No. 4100 of 2017, which was disposed of by an order dated 28.11.2018 remanding the matter back to the District Magistrate, Gopalganj to examine the petitioner's case after considering the legal value of the judgment of succession case as well as the report of the Circle Officer and to pass appropriate order in accordance with law.

5. The petitioner's case was again considered by the District Compassionate Appointment Committee, Gopalganj in its meeting held on 17.10.2019. The Committee noted that though it is the petitioner's claim that he was adopted by Kamalawati Devi



in 1987 when he was only three years old, in all his certificates in relation to educational qualification, his father's name has been mentioned as Chhotan Prasad Srivastava. In the certificate issued by IGNOU of having passed Bachelor of Arts, the petitioner's address has been mentioned as Mohalla Ratanpura (Ojha Toli), Bhagwanpur Bazar. The said Kamlawati Devi was resident of Village Naya Tola, Madhopur, Bakhtiyarpur in the district of Patna. The Committee refused to accept the petitioner's claim for appointment on compassionate ground for various reasons as is evident from the proceedings of the meeting itself, which has been brought on record by way of Annexure-14.

6. It is the peculiar case of the petitioner that he was adopted by said Kamalawati Devi in 1987 when the petitioner was only three years old though in all his certificates, his father's name has been described as Chhotan Prasad Srivastava. Even in the writ application the petitioner has described himself to be the son of Chhotan Prasad Srivastava, as against his claim that he was adopted by Kamalawati Devi. Further, it is the petitioner's case that there was separation between Kamalawati Devi and her husband but no document has been produced to demonstrate this fact.

7. In the counter affidavit filed on behalf of the State of



Bihar it has been stated that the Incharge Medical Officer, Primary Health Centre, Bijaipur, in the district of Gopalganj vide his letter No. 614 dated 13.12.2008 had sent an information to the SHO, Bijaipur Police Station about disappearance of Kamalawati Devi leading to Station Diary Entry No. 406/2008 dated 20.12.2008 and, thereafter, after laps of nearly five years of the said entry, civil death of Kamalawati Devi was declared vide DR No. 397/2013 dated 25.04.2013.

8. If the said Kamalawati Devi was missing since 2001 and the petitioner was her adopted son, it is not known as to what prevented the petitioner or his near relative to inform the police/ authorities about her disappearance.

9. From the pleadings itself it appears that the petitioner started taking steps only in 2008 with a plea that he was entitled to succeed Kamalawati Devi as her whereabouts were not known since 2001.

10. In view of the peculiar facts and circumstances of the case as noted above, in my opinion, it is not a fit case to exercise discretionary writ jurisdiction granting the relief as sought for by the petitioner. The object of permitting appointment on compassionate ground is to give succor to the family which has been suddenly plunged into penury due to untimely death of its



sole bread-winner. The Supreme Court has repeatedly observed that the object of providing such ameliorating relief should not be taken as opening and alternative mode of recruitment to public employment [(1997) 8 SCC 85].

11. The facts of the case, as noted above, do not make out a case for grant of relief as sought for. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.06.2021
Transmission Date	NA

