

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.589 of 2019**

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Rajiv Kumar Son of Late Vijay Kumar @ Vijay Kumar Singh Resident of Village-Nepura, Post Office-Pawapuri, Police Station-Deep Nagar, District-Nalanda

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary Department General Administration, Government of Bihar, Patna
2. The Director General Of Police Bihar, Patna
3. The Director General-Cum-General Commandant Bihar Grih Raksha Bahini, Patna
4. The Divisional Commandant, Bihar Grih Raksha Bahini, Magadh Division, Gaya.
5. The District Commandant, Bihar Grih Raksha Bahini, Aurangabad.
6. The Senior Superintendent of Police, Patna
7. The Superintendent of Police, Central, Patna
8. The Officer-In-Charge Pirbahor P.S. Pirbahore, Patna.
9. The Collector-Cum-Chairman, District-Compassionate Appointment Committee, Aurangabad, District-Aurangabad.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr.Jitendra Kumar Roy  
For the Respondent/s : Mr.Manish Kumar

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 19-09-2019**

Father of the petitioner has been traceless since 23.9.2005. On account of his being traceless, wife of the government servant, namely Vijay Kumar, made an application on 29.1.2013 before the authorities requesting for payment of the dues of the deceased which she would be entitled to on account of death of the traceless employee (husband). The claim was based on



the fact of civil death of the deceased employee having occurred seven years after he became traceless. In the said letter the wife has also requested the authorities to offer appointment on account of death of the employee in harness as civil death had occurred while her husband was still in service. The Commandant has recommended/forwarded the application to the Compassionate Committee for consideration.

The Compassionate Committee has taken note of the fact that the application has been received after more than five years from the date on which the deceased employee became traceless. The authorities, however, have overlooked the fact that the right to claim benefit treating the employee to be deceased would accrue only after lapse of seven years from his becoming traceless. Prior to that the petitioner or his mother could not have made any assertion or claim deeming him to have suffered a civil death, as presumption of civil death arises only upon completion of seven years on account of employee being traceless.

The Compassionate Committee however, in view of the provisions contained in the scheme for compassionate appointment requiring the application to be made within five years, has sought guidance from the General Administration Department as to what



has to be done on the application of the petitioner which has been received more than five years after the employee became traceless.

Counsel for the petitioner has referred to a decision of this Court in the case of Kundan Kumar vs. State of Bihar reported in (2017) 4 PLJR 625.

The case of the petitioner is squarely covered by the aforesaid decision. In the instant case also the wife of the deceased employee had diligently made application in January 2013 itself. Since the employee became traceless on 24.9.2005 the presumption of civil death would have arisen only after seven years, i.e. in September 2012. For compassionate appointment in such cases, the legal heir/dependent would be eligible only after declaration of civil death. Only when the seven years period under Section 108 of the Evidence Act lapses the legal heir or dependent would become eligible for claiming compassionate appointment. Therefore date with effect from which employee has become traceless is not relevant.

In the circumstances the claim made by the petitioner's mother cannot be said to be belated or delayed in any respect. The authorities are required to consider claim of the petitioner as per admissibility/eligibility on all other grounds. The authorities cannot deny the petitioner consideration on the ground that the



application has been made more than five years after the employee became traceless.

District Compassionate Committee should proceed to consider claim of the petitioner having regard to all other requisites for grant of compassionate appointment in accordance with the procedure and scheme for compassionate appointment. Let final decision be taken by the District Compassionate Committee, Aurangabad (respondent No. 9) within a period of eight weeks from the date of receipt/production of a copy of this order.

In view of decision in the case of Kundan Kumar (supra) taken note of hereinabove this Court would observe that to avoid such delay and consideration in such matters arising out of civil death authorities may consider the desirability of issuing appropriate guidelines in this regard from the General Administration Department to the various compassionate appointment committees in light of decision in the case of Kundan Kumar (supra). Such an observation is being recorded so that claim for compassionate appointment can be considered compassionately and without going through unnecessary delay in seeking guidance individually. These observations are not to be



treated as directions and are subject to exercise of discretion by  
the State Government in this regard.

Writ petition is allowed.

**(Madhuresh Prasad, J)**

SNkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25.09.2019
Transmission Date	N/A

