

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.525 of 2022
In
Civil Writ Jurisdiction Case No.17804 of 2019

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Md. Shamshad Alam, Son of Late Mahmood Alam, Resident of Mohalla-
Mahbood Khan Tola, P.S. K. Hat, District- Purnia.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The District Magistrate, Purnia.
4. The Deputy Collector (Establishment), Purnia.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shahabuddin Azeem @ S. Azeem, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-03-2025

Appellant has assailed the order of the learned Single Judge dated 26.08.2022 passed in CWJC No. 17804 of 2019.

2. Appellant's father who was a Daftary in the Office of Superintendent of Police, Purnia died in harness on 29.12.1991. As on the date of his father's death, he was minor and aged about ten years. It is learnt that he had filed an application for compassionate appointment as and when he attains major in the year, 1999. Thereafter, there was inaction on the part of the respondents and, resultantly, he was pursuing the matter and ultimately he has



knocked the doors of this Court in filing CWJC No. 15697 of 2011 and it was disposed of on 14.11.2013 with certain directions. For non-compliance of the order dated 14.11.2013 passed in CWJC No. 15697 of 2011, the appellant was compelled to file contempt petition *vide* MJC No. 4448 of 2014 and it was disposed of on 22.02.2018 reserving liberty to the appellant to assail action of the respondents. Thereafter, he has filed CWJC No. 17804 of 2019 and it was disposed of on 26.08.2022 with certain observations which reads as under:-

"This Court would observe that petitioner cannot be permitted to file successive writ petitions, one after the other seeking the same relief, which has been granted in the earlier writ proceedings. If at all the authorities have not complied with the earlier direction of this Court, the petitioner's remedy would lie in the enforcement of the order passed in the earlier proceedings, in which MJC No. 4448/2014 as per the records is pending. There is no material on record to show that any order has been passed by the authorities after the petitioner's earlier writ proceedings, which may require any interference by this Court.

The writ petition is misconceived and dismissed."

3. Feeling aggrieved by the aforementioned order of the learned Single Judge dated 26.08.2022, he has filed the present Letters Patent Appeal No. 525 of 2022.



4. Learned counsel for the appellant submitted that there was no fault on the part of the appellant. He has been denied compassionate appointment in the light of social scheme of the State Government in providing compassionate appointment. Therefore, learned Single Judge has committed error in making observation that appellant was filing litigation after litigation. It was fundamental right of the appellant as and when he is aggrieved by the orders or a decision, he has to invoke certain statutory remedy and it has been invoked while filing CWJC No. 17804 of 2019.

5. Heard learned counsel for the respective parties.

6. Compassionate appointment is not a fundamental right and it is governed in accordance with the Rules or Executive Order of the State Government. No doubt, compassionate appointment is governed by social legislation or social scheme of the State Government which was in vogue as on 29.12.1991, the date on which appellant's father died assuming that there is five years limitation period in the year 1991, that has lapsed in the year 1996 whereas appellant has filed application for compassionate appointment in the year 1999. Further, it is to be noted that appellant family survived in hardship from 1991 to 1999, the date on which application for compassionate appointment has been made. Hon'ble Supreme Court time and again held that there is no vested right in



respect of seeking compassionate appointment. Recently, Hon'ble Supreme Court in the case of **Canara Bank vs. Ajithkumar G.K. (Civil Appeal No. 255 of 2025 arising out of SLP (Civil) No. 30532 of 2019)** decided on 11.02.2025 has laid down 26 criterias for compassionate appointment which are as under:-

"11. Decisions of this Court on the contours of appointment on compassionate ground are legion and it would be apt for us to consider certain well-settled principles, which have crystallized through precedents into a rule of law. They are (not in sequential but contextual order):

*(a) Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the rule of equality in the matter of public employment [**General Manager, State Bank of India v Anju Jain** reported in (2008) 8 SCC 475].*

*(b) Compassionate appointment cannot be made in the absence of rules or instructions [**Haryana State Electricity Board v. Krishna Devi** reported in (2002) 10 SCC 246].*

*(c) Compassionate appointment is ordinarily offered in two contingencies carved out as exceptions to the general rule, viz. to meet the sudden crisis occurring in a family either on account of death or of medical invalidation of the breadwinner while in service [**V. Sivamurthy v. Union of India** reported in (2008) 13 SCC 730].*

(d) The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased or an incapacitated employee



to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress [Sushma Gosain v. Union of India reported in (1989) 4 SCC 468].

(e) Since rules relating to compassionate appointment permit a sidedoor entry, the same have to be given strict interpretation [Uttaranchal Jal Sansthan v. Laxmi Devi reported in (2009) 11 SCC 453].

(f) Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants [SAIL v. Madhusudan Das reported in (2008) 15 SCC 560].

(g) None can claim compassionate appointment by way of inheritance [State of Chattisgarh v. Dhirjo Kumar Sengar reported in (2009) 13 SCC 600].

(h) Appointment based solely on descent is inimical to our constitutional scheme, and being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve [Bhawani Prasad Sonkar v. Union of India reported in (2011) 4 SCC 209].

(i) None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible [Union of India v. Amrita Sinha reported in (2021) 20 SCC 695].

(j) An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case



within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over [Eastern Coalfields Ltd. v. Anil Badyakar reported in (2009) 13 SCC 112].

(k) The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased. Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Class III and IV is legally impermissible [Umesh Kumar Nagpal v. State of Haryana reported in (1994) 4 SCC 138].

(l) Indigence of the dependents of the deceased employee is the first precondition to bring the case under the scheme of compassionate appointment. If the element of indigence and the need to provide immediate assistance for relief from financial destitution is taken away from compassionate appointment, it would turn out to be a reservation in favour of the dependents of the employee who died while in service which would directly be in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution [Union of India v. B. Kishore reported in (2011) 13 SCC 131].

(m) The idea of compassionate appointment is not to provide for endless compassion [I.G. (Karmik) v. Prahalad Mani Tripathi reported in (2007) 6 SCC 162].



(n) *Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; the dependent must fulfil the eligibility criteria for such appointment [State of Gujarat v. Arvindkumar T. Tiwari reported in (2012) 9 SCC 545].*

(o) *There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions [Sanjay Kumar v. State of Bihar reported in (2000) 7 SCC 192].*

(p) *Grant of family pension or payment of terminal benefits cannot be treated as substitute for providing employment assistance. Also, it is only in rare cases and that too if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death/incapacitation, can be considered for appointment upon attaining majority [Canara Bank (supra)].*

(q) *An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial resources available to the dependent of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution [National Institute of Technology v. Niraj Kumar Singh reported in (2007) 2 SCC 481].*

(r) *Dependents if gainfully employed cannot be considered [Haryana Public Service Commission v. Harinder Singh reported in (1998) 5 SCC 452].*



(s) *The retiral benefits received by the heirs of the deceased employee are to be taken into consideration to determine if the family of the deceased is left in penury. The court cannot dilute the criterion of penury to one of “not very well-to-do”. [General Manager (D and PB) v. Kunti Tiwary reported in (2004) 7 SCC 271].*

(t) *Financial condition of the family of the deceased employee, allegedly in distress or penury, has to be evaluated or else the object of the scheme would stand defeated inasmuch as in such an eventuality, any and every dependent of an employee dying-inhar-ness would claim employment as if public em-ployment is heritable [Union of India v. Shashank Goswami reported in (2012) 11 SCC 271, Union Bank of India v. M. T. Lath-eesh reported in (2006) 7 SCC 350, National Hydroelectric Power Corporation v. Nank Chand reported in (2004) 12 SCC 487 and Punjab National Bank v. Ashwini Kumar Taneja reported in (2004) 7 SCC 265].*

(u) *The terminal benefits, invest-ments, monthly family income including the family pension and income of family from other sources, viz. agricultural land were rightly taken into consideration by the au-thority to decide whether the family is living in penury. [Somvir Singh (supra)].*

(v) *The benefits received by widow of deceased employee under Family Benefit Scheme assuring monthly payment cannot stand in her way for compassionate appoint-ment. Family Benefit Scheme cannot be equated with benefits of compassionate ap-pointment. [Balbir Kaur v. SAIL reported in (2000) 6 SCC 493]*

(w) *The fixation of an income slab is, in fact, a measure which dilutes the ele-*



ment of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. [State of H.P. v. Shashi Kumar reported in (2019) 3 SCC 653].

(x) Courts cannot confer benediction impelled by sympathetic consideration [Life Insurance Corporation of India v. Asha Ramchandra Ambekar reported in (1994) 2 SCC 718].

(y) Courts cannot allow compassionate appointment de hors the statutory regulations/instructions. Hardship of the candidate does not entitle him to appointment de hors such regulations/instructions [SBI v. Jas-pal Kaur reported in (2007) 9 SCC 571].

(z) An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [Kendriya Vidyalaya Sangathan v. Dharmendra Sharma reported in (2007) 8 SCC 148]."

It would be of some relevance to mention here that all the decisions referred to above are by coordinate benches of two Judges. "

7. In the light of the aforementioned criterias read with the fact that appellants family has overcome harness in the family from the year 1991 to 1999 and even to this day. Therefore, appellants has not made out a case so as to interfere with the orders of the learned Single Judge dated 26.08.2022 passed in CWJC No. 17804 of 2019 to the extent that appellants was slept over for many



years in knocking the doors of the Courts time and again. He had cause of action accrued depending upon the certain development, therefore, the aforementioned observation of the learned Single Judge stands expunged.

8. With the aforesaid observations, the present Letters Patent Appeal stands dismissed on the issue of belated claim and no vested right to claim compassionate appointment.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

Vikash/-

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

