IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.718 of 2025
In
Civil Writ Jurisdiction Case No.5018 of 2023

==========

Rajeev Kumar Son of Late Suresh Kumar, Resident of Village- Gonawa Road, Harnaut, P.O. and P.S- Harnaut, District- Nalanda, Bihar.

... ... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The District Magistrate, Jehanabad.
4. The Chairman, District Compassionate Committee-cum-District Magistrate, Jehanabad.
5. The Deputy Development Commissioner, Jehanabad.
6. The Additional Collector, Jehanabad.
7. The Civil Surgeon, Jehanabad.
8. The Deputy Collector, District Establishment, Jehanabad.
9. The Assistant Commercial Commissioner, Jehanabad Circle.
10. The Assistant Director, Social Security (nominated SC Officer), Jehanabad.
11. The District Employment Officer, Jehanabad.
12. The District Education Officer, Jehanabad.
13. The Executive Engineer, Road Construction Department, Jehanabad.
14. The Executive Engineer, Public Health Division, Jehanabad.

... ... Respondent/s

==========

Appearance :

For the Appellant/s	:	Ms. Priyanka Singh, Advocate Mr. Ramesh Kumar Singh, Advocate Ms. Eashita Raj, Advocate
For the State	:	Mr. Harendra Prasad Singh, AAG-8

==========

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-09-2026

This *intra-court* appeal lays a challenge to an order

WEB COPY

dated 03.05.2023 passed by the learned Single Judge in CWJC No. 5018 of 2023, whereby the learned Single Judge has dismissed the appeal by stating (at page nos. 43 to 46 of the petition) as under :

> *"Having regard to the facts and circumstances of the case, there being no dispute with the reasons prescribed by the competent authority in Annexure '3', this Court is of the considered opinion that the decision of the District Compassionate Appointment Committee is in accordance with the government's policy and the judgment of the Hon'ble Full Bench in the case of Niraj Kumar Mallick & Ors. (supra). Paragraph nos. 46 and 47 of the said judgment are being reproduced hereunder for a ready reference:*
>
> > *"46. I am of the considered opinion that keeping in mind the object of the compassionate appointment and well settled legal proposition that it is not a source of recruitment, it is a policy decision based on a sound public policy provided in the clarification that where any of the dependents of the deceased government servant is "gainfully employed", no other dependent would be entitled to get the benefit of the scheme of compassionate appointment. Government has come out with a policy that the dependent who is gainfully employed is living separately from other dependents cannot be a reason to provide appointment and irrespective of that whether employed one lives together or separately the other dependents would not get the benefit of compassion. The word "dependents" here take into it's fold all the siblings of the applicant. The clarification as contained in Clause (d) of Annexure-A to the counter affidavit is based on the views expressed by the Hon'ble Division Bench of this Court in the case of Vishal Kumar (supra) and at the*

WEB COPY

same time it is in consonance with the law laid down by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal (supra) as also other judgments of the Hon'ble Supreme Court.

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. It is because the writ Court is to be conscious of the judicial pronouncements of the Hon'ble Apex Court wherein it has been repeatedly held that a Court has no power to ignore a provision to relieve what it considers a distress resulting from its operation. We have quoted paragraph 10 and 11 of the judgment of Asha Ramchandra Ambedkar (supra) only to remind us what the Hon'ble Apex Court has held in the following words;-

> *"the Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.*

WEB COPY

Disregardful of law, however hard the case may be, it should never be done".

This writ application has no merit. It is dismissed accordingly."

2. Suffice to state that the writ petition before the learned Single Judge was second round of litigation by the petitioner, who had earlier approached this Court in CWJC No. 4156 of 2019, which was disposed of vide order dated 08.08.2019 by stating (at page no.28 of the petition) as under :

"Respondent nos. 3 and 4 should ensure that claim of the petitioner is examined in light of Full Bench Judgment and decision is taken by the authority expeditiously, without undue delay and preferably within three months from the date of receipt/production of a copy of this order. It is made clear that earlier rejection of the claim of the petitioner in the meeting dated 20.12.2017 shall not stand in the way of fresh consideration.

Writ petition stands allowed."

3. Pursuant to the directions given by this Court on 08.08.2019, the respondents have passed an order dated 07.09.2022 whereby they have rejected the request of the petitioner for compassionate appointment. We note that the learned Single Judge in the impugned order has noted the fact that the elder son of the deceased, Government servant, is employed in Andhra Bank and therefore, he is gainfully employed.

WEB COPY

4. The learned Single Judge has also referred to a judgment of the Full Bench of this Court in ***Niraj Kumar Mallick & Ors. vs. The State of Bihar & Anr****, reported in* ***2018 (2) PLJR 951,*** wherein this Court has considered the Government circulars/guidelines with regard to the claim for compassionate appointment, which more particularly in a case where the other sibling of the applicant seeking compassionate appointment is gainfully employed has no right for compassionate appointment. The learned Single Judge has also quoted paragraph nos. 46 and 47 of the ***Niraj Kumar Mallick*** (*supra*), which paragraphs we have already reproduced above.

5. A perusal of the conclusion drawn by the Full Bench, it is clear that pursuant to a public policy inasmuch as where any of the dependents of the deceased Government servant is gainfully employed, no other dependent would be entitled to get the benefit of the compassionate appointment.

6. A reference is also made that the Government has come out with a policy that the dependent who is gainfully employed and living separately from other dependents cannot be a reason to provide appointment. That is, irrespective of that whether employed one lives together or separately, the

WEB COPY

other dependents would not get the benefit of compassion.

7. If the above being the position and there is no denial to the fact that the eldest son of the deceased employee i.e., the sibling of the petitioner is employed in Andhra Bank, the said policy will come into play. The conclusion drawn by the learned Single Judge cannot be faulted.

8. We are of the view that the appeal apart from being without merit is also barred by delay of 771 days. The appeal is dismissed both on merits and on delay.

(V. Kameswar Rao, CJ)

(Partha Sarthy, J)

Shiv/Shailendra

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2026
Transmission Date	N/A

WEB COPY