

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1179 of 2024
In
Civil Writ Jurisdiction Case No.6835 of 2017

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Dhananjay Kumar Singh, son of Late Vishwanath Singh, resident of Village-
Mishrawalia, P.O. and P.S.-Rajpur in the district of Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The District Magistrate, Rohtas, Sasaram cum Chairman, District Compassionate Committee, Rohtas.
5. The Superintendent of Police, Rohtas, Dehri On Sone, Rohtas.
6. The Sub-Divisional Officer, Bikramganj.
7. The Sub-Divisional Police Officer, Bikramganj, Rohtas.
8. The Officer in Charge, Police Station, Rajpur, Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Bimal Kumar, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 09-04-2026

Heard the leaned Counsel for the parties.

2. The present intra court appeal has been preferred against the judgment dated 02.09.2024 passed by the learned Single Judge in CWJC No. 6835 of 2017, whereby the writ petition preferred by the writ petitioner/appellant was dismissed.

3. CWJC No. 6835 of 2017 was filed by the appellant,



seeking following reliefs:

“2.i) That the order bearing memo no. 2 dated 11.04.2016 issued by the respondent no. 4, District Magistrate, Rohtas contained in annexure-8 may be quashed.

ii) That the respondents may be directed to consider the claim of the petitioner for compassionate appointment in the light of order dated 03.01.2014 passed in C.W.J.C.No. 17571/2012 contained in annexure-6.

iii) That any other relief or reliefs may be allowed which will be just, proper and equitable on the opinion of this Hon’ble Court.”

4. The brief facts of the case are that the appellant’s father, while serving on a Class-IV post, was kidnapped on 02.12.1999. An FIR was lodged by the appellant’s mother vide Rajpur P.S. Case No. 156/1999 under Sections 364/120B/34 of the Indian Penal Code and, upon completion of investigation, a charge-sheet was submitted. Thereafter, the appellant’s mother applied for compassionate appointment, which was recommended by the Rajpur Police Station, and by the S.D.O., Bikramganj, vide Letter No. 910 dated 13.07.2009, before the District Compassionate Appointment Committee. Thereafter, Committee rejected the appellant’s claim. Being aggrieved, the appellant preferred C.W.J.C. No. 17571 of 2012, which was disposed of by the learned Single Judge with a direction to the authorities concerned to reconsider the matter. Pursuant thereto, the District Compassionate Appointment Committee, Rohtas,



again rejected the appellant's claim vide Memo No. 02 dated 11.04.2016. Aggrieved thereby, the appellant preferred C.W.J.C. No. 6835 of 2017, which came to be dismissed on 02.09.2024.

5. The learned single judge in CWJC No. 6835 of 2017, passed the following order, after hearing the parties and upon consideration of the materials available on record:

*“15. In the present case, the petitioner has not been able to brought on record any evidence in respect of his claimin accordance with the statutory provision contained in Section 108 of the Act. The petitioner has relied on **order dated 19.09.2019 passed in C.W.J.C. No.589 of 2019 (Rajiv Kumar Vs. The State of Bihar)** by a Co-ordinate Bench of this Court, wherein the Co-ordinate Bench relying on the judgment passed in the case of **Kundan Kumar Vs. The State of Bihar**, reported in **(2017) 4 PLJR 625**, in which following observations have been made which is inter alia reproduced hereinafter:*

*“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 the 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 subjected to exercise of discretion by the State Government in this regard.”*



16. I find it apt to reproduce paragraph no. 14 to the decision of the Apex Court in the case of *L.I.C. of India vs. Anuradha* reported in 2004 (10) SCC 131, which is, *inter alia*, reproduced hereinafter:

14. On the basis of the abovesaid authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words: the law as to presumption of death remains the same whether in the common law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. In the scheme of the Evidence Act, though Sections 107 and 108 are drafted as two sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by



applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a court, tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings, the occasion for raising the presumption does not arise.

(emphasis supplied)

17. Learned counsel, however, has not been able to refer the said reporter before this Court and even considering the ground of eligibility of the petitioner, I do not find any merit in the present writ petition considering the fact that the petitioner has not been able to bring on record any evidence in accordance with the provision of Section 108 of the Act to show that the competent court has declared the father of the petitioner to have attained civil death on a lapse of seven years. The case of the petitioner is also not well founded considering the fact that the petitioner's father was found missing since 02.12.1999 and nowhere the petitioner has stated in the writ petition as on date he is facing financial constraint and he is on the verge of poverty in spite of the fact that specific direction made in the writ petition that the father of the petitioner was the only sole bread earner.

18. In the case of **Jagdish Prasad v. State of Bihar reported in (1996) 1 SCC 301**, Hon'ble Apex Court, while considering the object of compassionate appointment held that the object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family.

19. In case of **State of U.P. v Paras Nath reported in (1998) 2 SCC 412** the Hon'ble Apex Court held that the purpose of providing



employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. It was further observed that none of these consideration can operate while the application is made after a long period of time.

20. Considering the aforesaid facts of the case, this Court is of the opinion that a mere presumption of death under Section 108 of the Evidence Act would not be sufficient to proceed with the application seeking compassionate appointment. It requires a declaration from the competent court of law where the evidences maybe adduced, I do not find merit in the present writ petition, accordingly, the present writ petition stands dismissed.”

6. Learned Counsel for the appellant submits that the learned Single Judge has failed to consider that an F.I.R. was duly lodged regarding the missing of the appellant's father and, upon investigation, the case was found to be true, establishing that he remained untraceable. It is further submitted that, in law, where a person remains missing for a continuous period of seven years, a presumption of death arises, and in this regard a death certificate dated 01.03.2009 was issued in accordance with the Registration of Births and Deaths Act, 1969, thereby the appellant is entitled to be considered for compassionate appointment and the impugned order is unsustainable in the eyes of law.



7. Learned Counsel for the respondents submits that the matter has been duly and correctly considered by the learned Single Judge, who has passed a well-reasoned and speaking order. It is further submitted that the appellant's father went traceless in the year 1999, and a considerable lapse of time has since occurred; thus, the claim for compassionate appointment is wholly misconceived, as such appointment is not a vested right but is intended to provide immediate relief against sudden financial hardship. It is further pointed out that the issuance of a death certificate cannot be equated with a declaration of civil death in the eyes of law, and therefore, the ground urged by the appellant is legally untenable. Learned counsel for the respondents, further, referred to paragraphs 7 and 8 of the counter affidavit, which are reproduced hereinbelow:

"7. That it is humbly submitted that thereafter the appellant preferred CWJC no.6835 of 2017 in which order passed on 02.09.2024 and the writ petition dismissed with observation that the presumption of death under section 108 of evidence act would not be sufficient to proceed with the application seeking compensate appointment and also observed that it requires a declaration from the competent of law were the evidences may be adduced. It is humbly submitted that the appellant has not filed any declaratory suit before the competent court and this LPA is meritless.

8. That it is humbly submitted that as per the case of the appellant his father became traceless on 02.12.1999 and he is claiming regarding civil



death of his father after expiry of 7 years period from the date of traceless of the father of the appellant. It is humbly submitted that appellant has not filed any case regarding declaration of civil death of his father and filed application for compensate appointment and he is claiming that on 01.03.2009 death certificate of the appellant was granted. It is humbly submitted that without any declaration of civil death, death certificate cannot be granted to the petitioner.”

8. The limited issue that arises for consideration is whether, in the facts and circumstances of the present case, particularly in view of the inordinate lapse of time since the appellant’s father became traceless, the impugned order passed by the learned Single Judge warrants interference in intra-court appellate jurisdiction.

9. It is well settled that compassionate appointment is an exception to the general rule of public employment and is intended to provide immediate financial relief to the family of a deceased employee facing sudden financial hardship. At this juncture, it is apposite to take note of the decision of the Hon’ble Supreme Court, in the case of ***Umesh Kumar Nagpal v. State of Haryana***, reported in ***(1994) 4 SCC 138***, wherein it has been held as follows:

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is



not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

10. The aforesaid principle has been reiterated in the case of ***Central Coalfields Ltd. v. Parden Oraon***, reported in ***(2021) 16 SCC 384***, the Hon’ble Supreme Court has observed the following:

“8. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.

9. The application for compassionate appointment of the son was filed by the respondent in the year 2013 which is more than 10 years after the respondent's husband had gone missing. As the object of compassionate appointment is for providing immediate succour to the family of a deceased employee, the respondent's son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.”

11. Similarly, in the case of ***State of W.B. v. Debabrata Tiwari***, reported in ***(2025) 5 SCC 712***, the Hon’ble Supreme Court has observed that compassionate appointment, if granted after the crisis has passed, serves no purpose as the



scheme is founded on immediacy and its object otherwise stands

frustrated, the relevant paragraph is reproduced hereinbelow:

“29. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the breadearner vide Jagdish Prasad v. State of Bihar [Jagdish Prasad v. State of Bihar, (1996) 1 SCC 301: 1996 SCC (L&S) 303]. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) v. Prahalad Mani Tripathi [I.G. (Karmik) v. Prahalad Mani Tripathi, (2007) 6 SCC 162 : (2007) 2 SCC (L&S) 417]. In the same vein is the decision of this Court in Mumtaz Yunus Mulani v. State of Maharashtra [Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] , wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.

33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the breadearner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant



compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a breadwinner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate appointment would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.”

12. Upon perusal of the materials available on record, it is apparent that the appellant's father became traceless in the year 1999 and a considerable period of time has since elapsed. Such an inordinate lapse of time assumes decisive significance in the context of compassionate appointment, which is conceived not as a mode of public employment, but as a tailored exception intended to meet an immediate and emergent financial exigency arising on account of the loss of the bread earner. In this backdrop, it is pertinent to take note of the judgment of the Hon'ble Supreme Court in **Debabrata Tiwari** (supra), wherein it has been authoritatively held that where there is a prolonged delay, whether attributable to the applicant or the authorities, the foundational element of immediacy stands significantly



diminished and loses its force, the relevant paragraph is reproduced under:

“35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh [Haryana SEB v. Hakim Singh, (1997) 8 SCC 85 : 1998 SCC (L&S) 31] would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependants of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

46. The sense of immediacy in the matter of compassionate appointment has been lost in the present case. This is attributable to the authorities of the appellant State as well as the



respondent-writ petitioners. Now, entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail, because admittedly, the respondent-writ petitioners have been able to eke out a living even though they did not successfully get appointed to the services of the Municipality on compassionate grounds. Hence, we think that this are therefore not fit cases to direct that the claim of the respondent-writ petitioners for appointments on compassionate grounds, be considered or entertained.”

13. In view of the settled legal position and the law laid down by the Hon'ble Supreme Court, it is reasonable to presume that over such an extended period, the family of the deceased has been able to sustain itself, and therefore, the original financial crisis which justified compassionate appointment may no longer subsist. It has been categorically emphasized that entertaining such claims after a considerable lapse of time would be of no avail and would defeat the very object of the scheme. The Apex Court has further cautioned that compassionate appointment cannot be treated as a matter of inheritance or succession, nor can it be claimed as a vested right, but must remain strictly confined to its limited purpose of alleviating immediate financial distress. Any deviation from this principle, particularly by entertaining stale claims, would run contrary to the constitutional mandate governing public employment.



14. In the facts of the present case, a considerable time has elapsed since the appellant's father went traceless, as a result of which the element of immediacy or exigency stands substantially diluted. Consequently, consideration of compassionate appointment at this belated stage would be inconsistent with the settled legal principles, since the very purpose of such appointment, i.e., to provide immediate relief against sudden financial hardship stands defeated with the passage of time, particularly where the family has sustained itself during the intervening period. In such circumstances, entertaining the claim at this stage would not only be unwarranted but would also amount to extending the benefit of compassionate appointment beyond its intended scope, thereby defeating the object of the scheme and running contrary to the principles governing public employment.

15. In view of the facts and materials available on record, the discussions made hereinabove, and the law laid down by the Hon'ble Supreme Court, this Court finds no illegality or perversity in the order passed by the learned Single Judge warranting interference.

16. Accordingly, the present intra court appeal stands dismissed.



17. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
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