IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5018 of 2023

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

... ... Petitioner

Versus

1. The State of Bihar through the 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 Selection Committee cum District Magistrate, Jehanabad.
5. The Deputy Development Commissioner, Jehanabad.
6. That Additional Collector, Jehanabad.
7. The Civil Surgeon, Jehanabad.
8. The Deputy Collector, District Establishment, Jehanabad.
9. The Assistant Commercial Commissioner, Jehanabad Circle, Jehanabad.
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.

... ... Respondents

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Appearance :
For the Petitioner/s : Mr.Anil Chandra, Advocate
For the Respondent/s : Mr.Ajay Behari Sinha, GA-8
Mr.Neeraj Raj, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 03-05-2023 Heard learned counsel for the petitioner and learned counsel for the State.

Petitioner, in the present case, is seeking quashing of the part of the order dated 07.09.2022 contained in Annexure '3' to the writ application whereby and whereunder upon reconsideration of the case of the petitioner the District

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Compassionate Appointment Committee has rejected the case of the petitioner for appointment on compassionate ground.

The petitioner had earlier moved this Court in CWJC No. 4156/2019 in which a direction was issued on 08.08.2019 to the respondents to consider the case of the petitioner.

Learned counsel for the petitioner does not dispute the fact that the elder son of the deceased government servant is employed in Andhra Bank, therefore he is gainfully employed.

Learned counsel for the petitioner is aware of the Hon'ble Full Bench judgment of this Court in the case of **Niraj Kumar Mallick & Ors. Vs. The State of Bihar and Anr.** reported in **2018 (2) PLJR 951** wherein this Court has considered the government circular/guidelines with regard to the appointment on compassionate ground in a case where the other sibling of the applicant is gainfully employed.

Learned counsel for the State relies upon the Hon'ble Full Bench judgment of this Court in the case of **Niraj Kumar Mallick & Ors.** (supra) and submits that no fault may be found with the impugned order.

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

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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 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.
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> 47. So far as the clarification that "gainfully employed"

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

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

(Rajeev Ranjan Prasad, J)

Rajeev/-

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