

IN THE HIGH COURT OF JHARKHAND, RANCHI
W.P.(S) No.5579 of 2018

Shiva Singh Sardar, son of late Sunil Singh Sardar, aged about 26 years, resident of Village-Suksari, PO and PS-Chandil, District-Saraikella Kharsawan (Jharkhand) Petitioner

---Vs.----

- 1.The State of Jharkhand
- 2.The Deputy Commissioner, Saraikella-Kharswan, At+PO & District-Saraikella Kharsawan
- 3.The Special Land Acquisition Officer, Saraikella-Kharsawan, At +PO & District –Saraikella Kharsawan
- 4.Deputy Development Commissioner, Saraikella Kharsawan, At+PO and District Saraikella Kharsawan
- 5.District Welfare Officer, Saraikella-Kharsawan, At+PO and District- Saraikella Kharsawan
- 6.Sub Divisional Officer, Saraikella, Kharsawan, At+PO and District- Saraikella-Kharsawan Respondents

PRESENT

HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:	Mr. P. Gangopadhyay, Advocate Mr. Shailendra Kr. Singh, Advocate
For the Respondent-State	:	Mr. Prem Pujari Roy, A.C to G.P-VI

C.A.V. on 19th June, 2020

PRONOUNCED ON 25/06/2020

Heard Mr. P. Gangopadhyay, the learned counsel assisted by Mr. Shailendra Kr. Singh, the learned vice-counsel appearing for the petitioner and Mr. Prem Pujari Roy, the learned A.C to G.P-VI appearing on behalf of the respondent-State.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have

complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has preferred this writ petition for quashing the order dated 19.03.2018 whereby the prayer of the petitioner for appointment on compassionate ground was rejected by the authorities.

4. Mr. P. Gangopadhyay, the learned counsel for the petitioner submitted that father of the petitioner was employed on the post of Chain-man in the office of the Special Land Acquisition Officer, Suwarnrekha Project, Chandil. He died in harness on 25.04.2009. The petitioner has filed a petition for his compassionate appointment on 28.06.2013 before Special Land Acquisition Officer, Suwarnrekha Project, Chandil which was decided in the meeting held on 13.03.2018 presided by the Deputy Commissioner, Saraikella-Kharsawan whereby the application of the petitioner was rejected on the ground that he has passed only 8th class. He submitted that the petitioner again filed a petition for compassionate appointment before the Deputy Commissioner by way of Annexure-3 which was recommended by the Special Officer, Suwarnrekha Project to the Deputy Commissioner on 02.08.2013. The petitioner has also submitted the certificate of 10th pass from Hindi Vidyapeeth, Deoghar. The petitioner has submitted second application which was forwarded by the respondent no.3 on 22.12.2017. The said application was considered by the District Level Committee on 13.03.2018 and the same was rejected on the ground that the petitioner was not complying with the criteria/rules and guidelines of the compassionate appointment. At the first instance, it was not fulfilled and thereafter the second application has been filed after lapse of 5 years

which was not in the line of the scheme of compassionate appointment that one should made application within 5 years.

5. Mr. P. Gangopadhyay, the learned counsel for the petitioner submitted that the authority concerned has rejected the claim of the petitioner arbitrarily. He relied in the case of “*Canara Bank vs. Mahesh Kumar*” reported in (2015) 3 JLJR 21 (SC) and submitted that in view of this judgment the case of the petitioner is fit to be allowed. Paragraph no.9 of the said judgment is quoted hereinbelow:

“9. Before advertng to the arguments of the learned counsel for the parties, it is necessary to examine the scope of the Scheme dated 8.05.1993 vide Circular No.154/1993 for “compassionate appointment”. The object of the Scheme is to help dependants of employees of Canara Bank who die or become totally and permanently disabled while in harness and to overcome the immediate financial difficulties on account of sudden stoppage of the main source of income. The employment under the scheme will be considered only if there are indigent circumstances necessitating employment to one of the dependants and the deceased employee’s service record is unblemished. Mere eligibility will not vest a right for claiming employment. As per para 3.1, application for employment should be sought within 2½ years from the date of death of the employees. In para 3.2, it is stated that in case of the dependant of the deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration.”

6. The learned counsel for the petitioner further relied in the case of “*Bablu Murmu v. State of Jharkhand*” reported in 2017 (2) JBCJ 116. Paragraph no.7 of the said judgment is quoted hereinbelow:

“7. Having gone through records of the case and arguments placed by respective counsels for the parties, I am of the considered view that case of the petitioner has been wrongly rejected as it amounts to hostile discrimination. On the date when the meeting of the District Establishment Committee under the Chairmanship of Deputy Commissioner was held, the case of the petitioner was very much there and was also recommended by the Director, Soil Conservation. The fault lies on the part of the respondents who did not place the case of the petitioner in the said meeting and as such decision in his case could not be taken on the said date resulting the present scenario which amounts to hostile discrimination as similar persons were given appointment in Class-IV posts who were having same and similar qualification and were not Class 10th pass. In this regard, it is relevant to quote here the Judgment rendered in the case of Canara Bank and another Vs. M. Mahesh Kumar and others reported in 2015(3)JLJR 21 (SC).

“Para 9 Claim of compassionate appointment under scheme of particular year cannot be decided in the light of subsequent scheme that came into force much after the claim. Request of compassionate appointment is to be considered strictly in accordance with the governing scheme and no discretion is left with the authorities to make compassionate appointment de hors the scheme.”

7. Mr. Prem Pujari Roy, the learned counsel appearing for the respondent-State submitted that the petitioner has filed application for compassionate ground at the first instance at that time also he was not qualified as he was not having 10th pass certificate and he was only 8th passed and in that view of the matter it was rejected. He further submitted that the second application of the petitioner was rightly rejected as he was not fulfilling the criteria in view of the scheme wherein it is prescribed that one has to apply within 5 years of death and it has been rightly rejected.

8. Mr. Prem Pujari Roy, the learned counsel for the respondent-State further submitted that in view of the rules and regulation of the scheme of compassionate appointment, the petitioner is not entitled for appointment on compassionate ground. He relied in the case of "*Sanjay Kumar v. State of Bihar & Ors.*" in Special Leave Petition (Civil) No.12876 of 2000=2000 *Supp. (2) SCR 710*. The relevant paragraph no.3 is quoted hereinbelow:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

9. In view of the above facts and the rival submissions of the learned counsel appearing for the parties, the Court has considered the facts of the case as well as the judgments relied by the parties. The petitioner at the first instance filed an application for compassionate appointment, at that time, he has not having requisite qualification for appointment. The petitioner on the second occasion filed an application for compassionate appointment which was filed after lapse of 5 years

which is the condition precedent in the scheme for such appointment. In case of "*Bablu Murmu*" supra, the Court came to the conclusion that it was the fault on the part of the respondent, who did not place it in the meeting and in that view of the matter, "*Bablu Murmu*" case has been directed to be considered. In "*Canara Bank*" case, the Hon'ble Supreme Court was considered about the applicability of the scheme as to which scheme is applicable in the case of the petitioner of that case and came to the conclusion that claim of compassionate appointment in the scheme for a particular year cannot be decided in the light of subsequent scheme, which came into force after much later of the scheme and in that view of the matter the Hon'ble Supreme Court has directed to consider the case of the petitioner for compassionate appointment. Thus, these two judgments relied by the petitioner are not helping the petitioner. The case of the respondents is fully covered in view of the case rendered by the Hon'ble Supreme Court in the case of "*Sanjay Kumar*" supra. It is well settled provision of law that the compassionate appointment is being provided in view of sudden jerk in the family and no aspirant has a vested right to claim compassionate appointment, a reference can be made in the case of "*N.C. Santhosh v. State of Karnataka and Or.*" reported in 2020 SCC Online SC 279. Paras-19 and 25 of the said judgment is quoted hereinbelow:

"19. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In Steel Authority of India Limited v. Madhusudan Das it was remarked accordingly

that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirant.

“25. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

10. In view of the above discussion, no relief can be extended to the petitioner in this writ petition and accordingly, the instant writ petition [W.P.(S) No.5579 of 2018] stands dismissed.

12. I.A., if any, also stands dismissed.

(Sanjay Kumar Dwivedi, J.)

*Jharkhand High Court, Ranchi
Dated : 25/06/2020
SI/ NAFR,*