

Kripesh Kumar Vs. Education

Kripesh Kumar Vs. Education

SooperKanoon Citation : sooperkanoon.com/110071

Court : Jharkhand

Decided On : May-05-2017

Appellant : Kripesh Kumar

Respondent : Education

Advocate for Pet/Ap. : Mr. Rahul Kumar

Judgement :

1 W.P.(S) No. 5436 of 2016 IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 5436 of 2016 With I.A. No. 2939 of 2017 Kripesh Kumar, S/o Kashi Vishwanath, R/o New Area, P.O. Hazaribagh, P.S. Sadar, District Hazaribagh
Petitioner Versus 1. The State of Jharkhand through the Secretary, Department of School Education and Literacy, Govt. of Jharkhand, at HEC, P.O. & P.S. Dhurwa, Ranchi 2. The Secretary, Personnel Administrative Reforms Rajbhasha Department, Govt. of Jharkhand, at Project Bhawan, P.O. & P.S. Dhurwa, Ranchi 3. The Director, Department of School Education and Literacy, Govt. of Jharkhand, at HEC, P.O. & P.S. Dhurwa, Ranchi 4. The Deputy Commissioner cum Chairman of the District Compassionate Committee, Hazaribag, P.O., P.S & District Hazaribagh.

5. The District Superintendent of Education, Hazaribagh, P.O., P.S & District Hazaribagh Respondents CORAM : HON'BLE MR. JUSTICE DR. S.N. PATHAK For the Petitioner : Mr. Rahul Kumar, Advocate For the Respondents : Mr. Rakesh Kumar Sahi, J.C. to AAG C.A.V. on 07.04.2017 Pronounced on

05.05.2017 I.A. No. 2939 of 2017 This Interlocutory Application has been filed by the petitioner praying therein to amend the prayer portion of the main writ petition by incorporating the sentence quashing the decision of the District Establishment Committee held on 09.07.2013, by which the prayer of the petitioner for compassionate appointment, has been rejected by the said Committee and also for quashing the letter of the Personal Department dated 09.02.2013, wherein it has been opined that the petitioner is not entitled for appointment on compassionate ground in view of the fact that the pensionary benefits has already been availed by his father. 2 W.P.(S) No. 5436 of 2016 Learned counsel for the petitioner submits that as he came to know about the order of rejection only after filing of the writ petition which was brought on record by the respondents authorities by way of counter affidavit and the copy of rejection order was never served to the petitioner as such the orders dated 09.02.2013 and 09.07.2013 could not be challenged in the writ petition filed earlier. In view of above, prayers made in I.A. may be incorporated in the prayer portion of the main writ petition. Learned counsel for the respondents have no objection to the proposed amendment. Prayers as sought for in the Interlocutory Application is allowed. Let the same be incorporated in the prayer portion of the main writ application. I.A. No. 2939 of 2017 stands allowed. W.P.(S) No. 5436 of 2016 Heard the parties.

2. In the instant writ petition, the petitioner has inter alia prayed for issuance of writ of certiorari for quashing the orders dated 09.02.2013 and 09.07.2013 passed by the Personnel Department and District Establishment Committee respectively. Further prayer for writ of mandamus directing the respondents to offer letter of appointment to the petitioner on any suitable post on compassionate ground. FACTUAL MATRIX³ The father and mother, both were Assistant Teachers in different schools. The Father of the petitioner was working as Assistant Teacher at Middle School, Barala, Bishnugarh, Hazaribagh from where he superannuated with effect from 30.09.2008. The father of the petitioner is an old ailing person suffering from various diseases. The mother of the petitioner, who was working as Assistant Teacher at Girls Primary School, Kariathpur, Ichak, Hazaribag, died in harness while in service on 13.07.2011, leaving behind her husband namely, Kashi Vishawanath and his son (petitioner) which also find support from the

certificate issued by the Circle Officer, Sadar, Hazaribagh dated 3 W.P.(S) No. 5436 of 2016 10.08.2011. Upon the death of his mother, on 29.10.2011, the petitioner applied for appointment on compassionate ground in her place. Thereafter, respondent authorities vide its letter dated 09.02.2013 has opined that the petitioner is not entitled for appointment on compassionate ground on the ground that parents of the petitioner were employed and the pensionary benefit has regularly been received by the father of the petitioner. It is the case of the petitioner that the District Establishment Committee, relying upon the decision of the Personnel Department in its meeting convened on 09.07.2013, has rejected the claim of the petitioner for appointment on compassionate ground and hence, this writ petition has been filed.

4. Mr. Rahul Kumar, learned counsel for the petitioner submits that the petitioner was fully dependent upon her mother, who died in harness and the financial condition of the family had turned precarious upon the demise of the bread earner. It is also submitted that the matter of compassionate appointment of the petitioner was placed for consideration before the District Compassionate Committee, which had convened its meeting on 05.11.2011 and in which no decision has been taken in relation to the case of the petitioner and a direction was sought from the Department of Personnel, Administrative Reforms & Rajbhasha through Memo No. 1339/ Est. dated 19.12.2011. Accordingly, direction was received from the said department vide its Memo No. 1310 dated 11.02.2013 that the petitioner is not entitled for appointment on compassionate ground.

5. Learned counsel further submits that the Government's Circular dated 05.10.1991 is only applicable with respect to the cases where both father and mother are in employment but in the case of the petitioner, the father has already been superannuated and hence, the prohibition imposed by the said circular is not applicable with respect to the petitioner. It is also submitted that the said position has also been clarified by the Respondent's Personnel Department vide its letter dated 23.09.2005 that in case if, one of the employee has ceased to be in employment or superannuated, the ward shall be entitled for the appointment on compassionate ground, if he fulfills the conditions of 4 W.P.(S) No. 5436 of 2016 the Resolution dated 12.07.1977. It is also contended that the

respondents authorities vide letter dated 09.02.2013 has opined that the petitioner is not entitled for appointment on compassionate ground since his father is regularly receiving the pensionary benefit and subsequently, vide its meeting dated 09.07.2013 has illegally and arbitrarily rejected the claim of the petitioner. He further submits that in cases where father and mother of wards are in government service and either of them has retired or died in harness, the wards would be entitled for appointment on compassionate ground.

6. Learned counsel for the petitioner argues that there can be no distinction in the case of the petitioner and the respondents cannot resort to pick and choose method in the matter of appointment on compassionate ground. He has submitted that the father of the petitioner is an old and ailing person and has spent his pensionary benefits on his treatment which is still continuing and the mother was the sole earning member in the family and the respondents cannot take the prohibition imposed by 1991 Resolution in the case of the petitioner as the same is applicable only when both father and mother are in employment. In course of his argument, learned counsel for the petitioner relied upon several judgments of the Hon'ble Patna High Court and Hon'ble Apex Court, which are as follows: I. Dilip Kumar Das Vs. State of Bihar in Civil Writ Jurisdiction Case No. 8160 of 1998 dated 22.09.1999. II. Jyoti Kumari Vs. State of Bihar in Civil Jurisdiction Case No. 7264 of 2003 dated 21.10.2005. III. 2003

(8) Supreme 5 (Dr. R.N. Rajanna Vs. State of Karnataka and Anr.)

7. On the other hand, counter affidavit has been filed by the respondents. Mr. Himanshu Kumar Mehta, learned AAG assisted by Mr. Rakesh Kumar appearing on behalf of the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that writ petition is devoid of any merit and in view of the Circulars of the State Government, petitioner is not entitled for any relief. Learned counsel draws the attention towards paragraph 12 of the counter affidavit wherein it has been stated that, letter no. 13293 dated 05.10.1991 of Department of Personnel & Administrative Reforms 5 W.P.(S) No. 5436 of 2016 clearly says in para 1 (e) that - wards of the employee whose both mother and father had been in Government service, they would not be entitled for appointment

on compassionate ground.

8. Learned counsel for the respondents further argues that in view of the clarifications of the Department of Personnel Administrative Reforms & Rajbhasha vide Memo No. 1310 dated 11.02.2013, the petitioner is not entitled for appointment on compassionate ground. It is thus argued that in view of the aforesaid circulars, the claim of the petitioner has rightly been rejected by the Committee on 09.07.2013 and writ petition has become infructuous and liable to be dismissed. 9. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the impugned order is not tenable in the eyes of law on the following ground: (I) The Government Circular dated 05.10.1991 itself speaks that Wards of the employee whose both mother and father had been in Government service, they would not be entitled for appointment on compassionate ground. From perusal of the aforesaid Circular it transpires that when out of the husband and wife, if one dies but the other remains in service then in such circumstances only, the dependent cannot get any appointment on compassionate ground. On the other hand, in the case in hand, though both the father and mother of the petitioner were in service but admittedly the petitioner's father retired from service in 30.09.2008. Petitioner's mother was in service when her husband retired but she died in harness on 13.07.2011. Therefore, when the petitioner applied for his appointment on compassionate ground in place of her deceased mother, admittedly, none of his parents was in service. Under these circumstances, the claim of the petitioner has been rejected by the respondents authorities by wrong interpretation of the said Government Resolution/ Circular.

10. The compassionate appointment is not granted as a matter of right. The very object of compassionate appointment is to mitigate the hardship caused to the family due to untimely death of the bread 6 W.P.(S) No. 5436 of 2016 earner. If both husband and wife are in government employment and one dies in harness and other continues in service, then there is no ground for providing appointment on compassionate ground to the dependent for the simple reason that other bread earner is still alive. 11. Similarly, when both the husband and wife are in Government service and one dies while other remains in employment, then no

benefit of compassionate appointment can be given to any of the dependents of the deceased employee. Thus, the condition precedent for nonapplicability of the aforesaid provision is that at the time of death of one spouse, the other spouse is in employment. If the other spouse has already retired then the said clause, on the face of it, appears to be nonapplicable. In the instant case, the position is same.

12. The Hon'ble Patna High Court taking into consideration the judgment reported in case of Dilip Kumar Das V. State of Bihar reported in 2000 (2) PLJR 203 reiterated the same views. Taking it in a correct perspective, the impugned orders need interference and are fit to be quashed and set aside. 13. As a cumulative effect of the aforesaid rules, guidelines, schemes, legal proposition and the judicial pronouncement, this Court is of the considered view that impugned orders dated 07.02.2013 and 07.09.2013 are not tenable in the eyes of law and the same deserve to be quashed and set aside. The case of the petitioner needs to be reconsidered and as such it is remitted back to the respondents authorities for taking a fresh decision in light of the Circular of the State Government and in view of the legal proposition set at rest in the aforesaid judgment. Needless to say that the entire exercise should be completed within six weeks from the date of receipt of a copy of this order.

14. In the result, this writ application is disposed of with the aforesaid observations/directions. (Dr. S. N. Pathak, J.) punit

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com