

Ramesh Kumar Singh and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Nov-25-2005

Judge : R.N. Prasad, J.

Acts : [Constitution of India](#) - Articles 14 and 16

Appeal No. : C.W.J.C. No. 2903 of 2000

Appellant : Ramesh Kumar Singh and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : J.C. to A.A.G.

Advocate for Pet/Ap. : Gyanand Roy and Jitendra Mishra, Advs.

Disposition : Petition dismissed

Prior history : R.N. Prasad, J. 1. The petitioners have approached 'this Court for quashing the order dated 29.6.1999 whereby their representation for appointment on Class III post on compassionate ground has been rejected, Annexure 1 and also for a direction to the respondents to consider their case for appointment against Class III post. 2. The father of the petitioners were in Government service, They died in harness. The petitioners filed applications for their appointment on compassionate ground. The cl

Judgement :

R.N. Prasad, J.

1. The petitioners have approached 'this Court for quashing the order dated 29.6.1999 whereby their representation for appointment on Class III post on compassionate ground has been rejected, Annexure 1 and also for a direction to the respondents to consider their case for appointment against Class III post.

2. The father of the petitioners were in Government service, They died in harness. The petitioners filed applications for their appointment on compassionate ground. The claim of the petitioners is that they had qualification and their names were recommended by the Committee for appointment on Class III post. The respondents instead of appointment as recommended by the Departmental Compassionate Appointment Committee issued letter dated 28.9.1992, Annexure 3, stating that on consideration it was found that Class IV post is Available and the department is ready to appoint them on Class IV post and as such submit an affidavit within a period of thirty days indicating the acceptance of appointment on Class IV post failing which their candidature for appointment on compassionate ground shall stand rejected. The petitioners thereafter filed an affidavit indicating the acceptance for appointment on class IV post. They were appointed as such vide letter dated 30.6.1993, Annexure 4, and they joined their post. They after joining filed a protest petition for their appointment on Class III post. They also filed representation for redressal of their grievance stating therein that in similar case some persons had been appointed on. Class III post and the High Court has also passed orders for appointment on Class III post. The said protest petition/ representation has been rejected vide Annexure 1, which has been impugned in this writ petition.

3. A counter affidavit and a supplementary counter affidavit have been filed on behalf of respondent No. 4 wherein it has been stated that vide resolution of the Personnel and Administrative Reforms Department dated 5.10.1991 the earlier decision for appointment on compassionate ground has been amended and it, has been decided that once a person is appointed on compassionate ground he cannot be allowed to get advantage of promotional post or change of cadre on compassionate ground, Annexure 'A', and as such the petitioners have no right to

seek appointment on compassionate ground to a particular class or cadre of post. The job offered need not be commensurate with the qualification. There were no Class III posts vacant/existing at the relevant time and as such the petitioners were appointed on Class IV post. One Manoj Kumar Mishra was appointed on Class III post on the direction of the High Court in C.W.J.C. No. 10699 of 1996 disposed of on 21.10.1997. The Apex Court has already decided such matter to the effect that no direction can be issued for appointment on Class III post. The order has also been annexed of this Court rejecting such claim.

4. A reply to the counter affidavit has been filed on behalf of the petitioners wherein the claim of the respondents as mentioned in the counter affidavit has been denied.

5. The submission of the learned counsel for the petitioners was that the petitioners had requisite qualification for appointment on Class III post. Their names were also recommended for appointment of Class III post and as such they are entitled to be appointed on Class III post. On the other hand the submission of the learned counsel for the respondents was that the petitioners have no vested right for appointment on compassionate ground on a particular class or cadre of post. They have accepted the offer of appointment made by the respondents on Class IV post and as such they cannot turn around for their appointment on Class III post.

6. It is an admitted position that the petitioners filed their applications for appointment on compassionate ground. They claim that they had requisite qualification for appointment on Class III post. The Compassionate Appointment Committee recommended their names for appointment on Class III post. The respondents issued letter, Annexure 3, stating therein that Class IV is available and they are willing to appoint on Class IV post. The candidates were asked to file an affidavit expressing their willingness for appointment on Class IV post. They filed affidavit to the aforesaid effect and thereafter they were appointed on Class IV post. They joined the Class IV post and thereafter they filed representation for their appointment on Class III post which has been rejected vide Annexure 1.

7. The appointment on compassionate ground is against the mandate of Articles 14 and 16 of the [Constitution of India](#) and rules of appointment. The object of appointment on compassionate ground is to provide financial help to the bereaved family as after the death of an employee the income of the deceased's family becomes zero. To tide over the sudden crisis, as indicated above, the appointment on compassionate ground is made. It is not an object to give a member of such family a post much less the post held by the deceased or any particular post. The Supreme Court, in the circumstances, in the case of State of Haryana and Ors. v. Rani Devi and Anr. : AIR 1996 SC2445 , has held in para 5 that appointment on compassionate ground extended to the dependent of the deceased's family is an exception to the right granted to the citizens under Articles 14 and 16 of the Constitution. Therefore, the appointee on compassionate ground cannot raise a plea for appointment on Class III post or a particular post. It is obvious that appointment on compassionate ground is made not on qualification/ merit test rather it is made to tide over the sudden financial crisis of the deceased's family. Better qualification/qualification cannot be a ground for appointment on Class III post as the comparative merit is not considered in such appointment. In the case of Umesh Kumar Nagpal v. State of Haryana and Ors. : [1994]3SCR893 the Apex Court had held that the only ground which can justify the compassionate employment is the penurious condition of the deceased's family, Neither qualification of his dependent nor the post which he held is relevant. If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater his status but to see family through economic calamity. In the case of Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. : [1998]3SCR432 it has been held that appointment on compassionate ground is in the nature of exception to the general provisions. An exception cannot subsume the main provision and thereby nullify the main provision by taking away completely the right conferred by the main provision. Therefore, care has to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of the other persons who are eligible for appointment, to seek employment against the post which would have been available to them. It has further been held that an appointee on

compassionate ground cannot insist for appointment on a particular post, the direction for creating supernumerary Class III post by the High Court was not held legal. In the case of *State of Bihar and Ors. etc. v. Samaz Zoha etc.* : (1996) IILLJ647SC , the Apex Court has held that the question that arises for consideration is whether the High Court is right in giving directions to appoint them afresh or give them promotion? It is not in dispute that there is no right vested in the candidates for particular appointment on compassionate grounds. The State had taken policy decision to appoint all the candidates irrespective of the qualifications as Class IV post and, therefore, the Committee consisting of the Secretary, Addl. Secretary and the Registrar met and decided the principle that all the available posts in Class IV should be made available to the candidates in the awaiting list for appointment on compassionate grounds. 12 posts available in Class III were reserved for appointment by promotion to the Class IV candidates who were entitled thereto as per the rules. The principle adopted by the Government can not be said to be unjustified or illegal. Undoubtedly, some candidates had gone to the Court and obtained orders and in compliance thereof, at pain of contempt petition, the Government, instead of appointing them to Class IV posts since by then the Class III posts were not available, upgraded Class IV post as Class III post and confirmed them as Class III employees. That order which was wrongly made by the High Court can not be a base to issue directions. In other words, if the directions are complied with all the Class IV posts would be converted into Class III posts which is against the discipline of the service. The High Court, therefore, was not justified in issuing directions in all the cases for appointment to Class III posts'. In the case of *Rupendra Kumar Singh v. The State of Bihar and Ors.* 1999 (1) PLJR 842, a similar question was involved and a Bench of this Court has negated the claim of the petitioner for appointment on Class III post.

8. Thus, on consideration, it can safely be said that the petitioners have no vested right to claim a particular post or cadre of post. Such appointment is an. exception to the rules of appointment. Besides, in the instant case, categorical stand of the respondents is that the petitioners were offered Class IV post and they accepted the same and joined the posts. There was no Class III post available at the relevant time. Furthermore, the resolution of the Government, Annexure 'A', is

clear. The earlier decision on compassionate ground has been amended/modified and decision has been taken that after appointment on compassionate ground, such appointee shall not be entitled again on the said ground for promotion or change of cadre.

9. Thus, on consideration I find no merit in the writ petition. Accordingly, it is dismissed.

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