

Mithalesh Kumar and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-27-2007

Judge : Navin Sinha, J.

Appellant : Mithalesh Kumar and anr.

Respondent : The State of Bihar and ors.

Disposition : Application dismissed

Judgement :

Navin Sinha, J.

1. Heard learned Counsel for the petitioners and learned Counsel for the State.
2. The claim in the writ application is for compassionate appointment of petitioner No. 1.
3. The writ application was dismissed on 4.10.2004, on the ground that petitioner No. 1 had made an application for compassionate appointment beyond the stipulated period of five years as directed by the Government instructions.
4. The matter travelled in L.P.A. No. 763 of 2005, which was remanded by order dated 28.11.2006 that there was no finding of the Court as to under what circumstances the application of the claim of the petitioners was barred.

5. This, Court has reheard the entire writ application on merits.

6. The father of petitioner No. 1 is stated to have died in service on 25.8.1991. The entire sheet anchor of the writ petition is a letter dated 15.9.1991 at Annexure-1 alleged to have been written by the petitioner No. 2 requesting for compassionate appointment for herself. Allegedly when this did not materialise she gave a representation at Annexure-6 on 12.8.1995 to the same effect. Petitioner No. 1 was admittedly a minor when his father died. Having attained majority on 25.8.1999, he is alleged to have given an application again through his mother, at Annexure-7, requesting that he may be appointed on compassionate ground in : lieu of his mother.

7. It is the case of the petitioners that an application for compassionate appointment was made well in time. Non-consideration of the same led to a change in circumstances requiring petitioner No. 1 to apply for the same. There was a continuity in the applications from the date of death.

8. The impugned order rejects the claim for compassionate appointment as having been made after ten years of the death.

9. In the counter affidavit on behalf of the Respondents it was been specifically averred in paragraph 8 that Annexures 1, 6 & 7, which are the sheet anchor of the case of the petitioners was, in fact, never submitted in the office. What the petitioners did submit was an application dated 25.4.2001 at Annexure-A to the counter affidavit. No rejoinder to the counter affidavit has been filed by the petitioners.

10. This Court, in the facts and circumstances, accepts the contention of the Respondents that the application for compassionate appointment of petitioner No. 1 was made after approximately 10 years of the death of his father. The application was, therefore, well beyond the time period of five years from the date of death. The law is well settled by the Supreme Court in the case of National Hydroelectric Power Corporation and Anr. v. Nanak Chand and Anr. reported in : (2005)ILLJ240SC . the question of granting compassionate appointment after such passage of time simply does not arise. Compassionate appointment is an

exception made to enable the family to tide over the immediate crisis, caused due to sudden death.

11. In Nanak Chand case (supra) the employee was deceased on 10.12.1976. After attaining majority in 1986 his son filed an application for appointment on compassionate ground, which was rejected on the ground that the application had been made after ten years of the death of the father. The High Court held that he was entitled to relief. Setting aside the order, the Supreme Court at paragraph 5 held as follows:

5. It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis.

12. This Court finds an additional feature that the writ application is itself based on documents which are suspect. The petitioner has chosen not to controvert the same.

13. In the circumstances, this Court finds no merit in the application, which is, accordingly, dismissed.

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