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**Court :** Patna

**Decided On :** Jan-19-2005

**Judge :** Chandramauli Kr. Prasad, J.

**Acts :** Service Law

**Appeal No. :** Civil Writ Jurisdiction Case No. 9759 of 2003

**Appellant :** Binod Kumar

**Respondent :** State of Bihar and ors.

**Advocate for Def. :** Prabhat Kumar Singh, JC to SC III

**Advocate for Pet/Ap. :** Bindhyachal Singh, Adv.

**Disposition :** Application dismissed

**Judgement :**

**Chandramauli Kr. Prasad, J.**

1. Prayer of the petitioner in this application filed under Article 226 of the Constitution of India is to quash the order dated 24.7.2003 (Annexure 8) whereby the appointment of the petitioner on compassionate ground has been cancelled.

2. Short of unnecessary details facts giving rise to the present application are, that the petitioner's father Bindeshwar Singh while working as Ward Attendant, a Class

IV post in Sadar Hospital, Hajipur died on 18.4.1995. At that particular point of time petitioner's mother was also in service in the State Government as a Class IV employee. However, after retirement of his mother, petitioner filed application inter alia stating that her mother had retired and she is not getting any pension and in the aforesaid premise prayed for appointment on compassionate ground. The prayer of the petitioner for appointment on compassionate ground was considered by the District Compassionate Appointment Committee in its meeting held on 23.7.1996, which recommended for appointment of the petitioner to any class IV post, in the light of the recommendation of the District Compassionate Appointment Committee, the Civil Surgeon-cum-Chief Medical Officer, Hajipur by memo dated 24.8.1996 (Annexure 2) appointed the petitioner to a class IV post and posted at Primary Health Centre, Patepur. In pursuance of the aforesaid order petitioner joined the service.

3. Later on, a show cause notice was issued to the petitioner asking him to show cause as to why his services be not terminated inter alia on the ground that petitioner was not entitled to be appointed on compassionate ground as on the date of death of his father in harness petitioner's mother was already in the service of the State Government. Petitioner submitted his reply and on consideration of the same by the impugned order petitioner's appointment has been found to be illegal and accordingly, cancelled.

4. Mr. Bindhyachal Singh appearing on behalf of the petitioner submits that at time when the petitioner was appointed on compassionate ground, his mother had already retired from service and, as such, petitioner was entitled to be appointed on compassionate ground and his appointment cannot be cancelled only on the ground that the petitioner's mother was in service on the date petitioner's father died.

5. JC to SC III, however, appearing on behalf of the respondents submits that this question stands concluded by the judgment of a Division Bench of this Court in the case of Ashok Kumar Choudhary v. State of Bihar, 2000 (4) PLJR 651 in which it has been held that even if other spouse has retired at the time of the death of the deceased employee in that case no appointment could be given to the dependent

on compassionate ground. He points out that petitioner's mother was still in service when his father died. In this connection he has drawn my attention to the following passage from paragraph 13 of the judgment:

'Thus in my view the said clause cannot be interpreted to mean that if one of the spouses has retired at the time of death of the other spouse the dependent will be appointed on compassionate ground. Even if the other spouse has retired at the time of death of the deceased employee but is recipient of the retiral benefits and the pension, even in that case no appointment could be given to the dependent on compassionate ground for the simple reason that the family is not in financial crisis for which appointment is to be made.

Thus, the crucial test to decide as to whether a person is to be appointed on compassionate ground or not is to find out whether the family has other sources of livelihood or not at the relevant time to meet the hardship, and once it is found that the financial condition is sufficient to tide over crisis, then no appointment can be made on compassionate ground and the question whether the other spouse is continuing in service or has retired is wholly immaterial.'

6. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Singh. Undisputedly at the time when the petitioner's father died, his mother was in employment of the State Government and it is further admitted that at the time when petitioner's was appointed, she had retired. The objective of compassionate appointment is to give immediate succour to the family of the deceased so as to tide over the crisis falling on account of demise of the public servant in harness. However, in case, in which the other spouse is in service, the crisis can be effectively dealt with. In view of the Division Bench judgment of this Court in the case of Ashok Kumar Choudhary this question need not detain me any further. When compassionate appointment is not available in case other spouse has retired on the date of death and getting pension by no process of reasoning in case in which the other spouse is in employment on the date of death and have retired later on, can be given the benefit of compassionate appointment. In case petitioner's mother was not getting pension on the date when he was appointed, nothing prevented his mother to bring an appropriate action for

that purpose. In my opinion mere non payment of actual pension shall not entitle the petitioner the benefit of compassionate appointment.

7. Mr. Singh, then contends that the petitioner had not suppressed the fact of his mother being an employee of the State Government and later on retiring and, as such, the respondents are estopped from cancelling the petitioner's appointment on the principle of promissory estoppel. As I have found that the petitioner was not eligible for appointment on compassionate ground, nothing prevented the respondents to examine the same and after giving opportunity to the petitioner to hold it to be illegal and the principle of promissory estoppel is not remotely attracted in the facts of the present case.

8. Mr. Singh lastly submits that the petitioner had worked for about eight years and hence termination of his service after such a long gap is unequitable. I do not have the slightest hesitation in rejecting this submission of Mr. Singh.

9. The principle of equity is invoked when the law on the subject is silent to do complete justice between the party. Here the petitioner was not eligible to be appointed but was appointed depriving more qualified and needy persons and in such circumstance the appointment of the petitioner can not be saved by invoking the principle of equity.

10. In the result, I do not find any merit in the application and it is dismissed accordingly but without any order as to cost.

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