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Court : Patna

Decided On : Jan-23-2002

Judge : Narayan Roy, J.

Appeal No. : C.W.J.C. No. 15453 of 2001

Appellant : Sanjay @ Sanjay Kumar Yadav

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Narayan Roy, J.

1. Heard Dr. Amrendra Kumar No. 1, learned Counsel for the petitioner and learned G.P. 9 for the State and also considered the counter-affidavit filed on behalf of the respondents.
2. By this writ application the petitioner has prayed for issuance of a writ of mandamus commanding upon the respondents to appoint him on compassionate ground as his grand father died in harness.
3. Short facts giving rise to this writ application are as follows. Grand father of the petitioner died in harness on 8-1-2001. The petitioner thereafter filed an application before the competent authority for his appointment on compassionate

ground on account of the death of his grand father as he was the sole surviving dependent as father of the petitioner pre-deceased his grand father on 21-6-99. The application filed by the petitioner was scrutinised and respondent No. 5 forwarded the same to respondent No. 3 vide letter No. 246 dated 28-2-2001. The application filed by the petitioner, however, was rejected by the authorities vide order as contained in Annexure B to the counter-affidavit dated 8-1-2002. The petitioner, now, has challenged the order rejecting his claim as contained in Annexure B to the counter-affidavit.

Learned Counsel for the petitioner submitted that petitioner being the only dependent of his grand father, was entitled to be appointed on compassionate ground for sustenance of the entire family as his father had already pre-deceased his grand father.

4. The fact that father of this petitioner pre-deceased his grand father, is not in dispute. Grand father of the petitioner died in harness on 8-1-2001 whereas father of this petitioner pre-deceased his grand father on 21-6-99. The question now arises as to whether the petitioner being grand son of the serving Government employee, is entitled for appointment on compassionate ground. A rule have been framed by the State Government from time to time facilitating appointment on compassionate ground in a case where Government employee died in harness. Rule specifically States that dependent of the Government employee who died in harness will be entitled for appointment on compassionate ground. However, there is one exclusion clause in the rule categorising certain persons who would not be dependent of Government employee. Grand son of a Government employee is not even included in the exclusion clause.

5. In the given facts and circumstances of the case, it is manifest that the petitioner was the only dependent after death of his grand father. It has come on affidavit filed on behalf of the petitioner that grand father of the petitioner had only one son namely the father of this petitioner who pre-deceased his grand father. The petitioner, in that view of the matter, was dependent of his deceased grand father and the provisions as contemplated in the rules as framed by the State Government, entitles the. petitioner to be appointed on compassionate ground to a

post commensurate with his qualification subject to availability of the post. The authorities, in this view of the matter, were not justified in rejecting the claim of the petitioner saying that there is no provision for appointment of a grand son on compassionate ground. The authorities were required to see as to whether the petitioner being grand son of the deceased employee was dependent or not. They could have also seen the exclusion clause whereby and whereunder grand son has not been excluded from the preview of appointment on compassionate ground. The order as contained in Annexure B to the counter-affidavit rejecting the claim of the petitioner, therefore, must be held to be violative of the provisions of the rules framed by the State Government and without jurisdiction.

6. For the reasons aforementioned, therefore, this application is allowed and the order as contained in Annexure B to the counter-affidavit is set aside and the matter is remitted back to the respondent No. 3 the Executive Engineer, Saran Canal Division, Gandak Yojna, Maharajganj in the district of Saran for reconsideration in accordance with law in the light of the observation made aforesaid. This exercise, however, must be completed by respondent No. 3 within a period of three weeks from the date of receipt/production of a copy of this order.

7. Let a copy of this order be served upon learned Counsel for the petitioner and also learned Counsel for the State.

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