

**Arbind Singh and ors. Vs. the State of Bihar and ors.**

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**Court : Patna**

**Decided On : Dec-18-2000**

**Judge : Sachchidanand Jha, J.**

**Appeal No. : C.W.J.C. Nos. 13039 and 13125 of 2000**

**Appellant : Arbind Singh and ors.**

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

**Disposition : Petition Dismissed**

**Judgement :**

**Sachchidanand Jha, J.**

1. These two writ petitions making similar grievance and on same facts have been heard together and are being disposed of by this common order. There are ten petitioners in all. They seek direction upon the respondents to appoint them on Class III posts on compassionate ground as per their qualification. They have already been offered appointment on Class IV posts.

2. The grievance of the petitioners is that though they possess the requisite qualification for appointment to Class III posts they have been offered appointment on Class IV posts on the basis of competitive test. It is said that the circulars of the State Government regarding compassionate appointment do not envisage holding

of any competitive test. It has been urged that in any case if the respondents wanted to hold any competitive test, they should have informed the petitioners and given opportunity to prepare them for such test.

3. The nature and scope of compassionate appointment has been subject-matter of several decisions. I may refer to one of them, namely, *Umesh Kumar Nagpal v. The State of Haryana and Ors.* : [1994]3SCR893 . The following passage from the judgment is apposite on the point:

The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provisions of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest post in non-manual and manual categories and hence, they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

4. It is a matter of regret, going by the experience which this Court has had while dealing with the cases relating to compassionate appointment, that little regard is being paid to a fore stated aspects of the matter. The authorities concerned seem to be labouring under the impression that in all cases of death of the Government servant in harness one of his wards is necessarily to be appointed on compassionate ground irrespective of the financial condition of the family. It would be appropriate to quote the observations of the Supreme Court on this point in the aforementioned case as under:

Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment some times as a matter of course irrespective of the financial condition of the family of the deceased and some times even in posts above Classes III and IV. That is legally impermissible.

However, I do not wish to go into that aspect of the matter in these cases. The petitioners have already been offered appointment on Class IV posts and in the absence of any challenge thereto it may be futile to go behind them.

5. Adverting to the point raised on behalf of the petitioners, it may be straightaway be mentioned that Annexure-2 series by which the petitioners were asked to appear before the District Magistrate, does not refer to any kind of test to be held for making selection, it merely calls upon the candidates to appear along with their certificates in support of their educational qualifications, affidavit death certificate, etc. - apparently for the purpose of verification. Even if it be assumed that the petitioners were subjected to test, in my opinion, the authorities are not precluded from screening the merit of the candidates for deciding as to whether they should be appointed on Class III or Class IV posts. The circulars in question provide for compassionate appointment either on Class III or on Class IV posts. Considering the level of academic attainment on the basis of Matriculation or Intermediate examinations, about which less said the better, I think it is but desirable that some kind of screening is made for the purpose. While examining the grievance of similarly situated petitioners who had been appointed against inferior post on compassionate grounds, in the case of Umesh Kumar Nagpal the Supreme Court observed:

If the dependant 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 to his status but to see the family through the economic calamity.

6. The public employment has been described as national wealth of the country in which every eligible citizen has a share. The wealth cannot be allowed to be appropriated by only the dependants of the deceased Government servants merely on the ground of their death in harness. The provision, though at a tangent with the equality clause contained in Annexures 14 and 16 of the Constitution, has been up-held merely because it intends to enable the deceased family to meet the sudden crisis caused on account of untimely death of the bread-earner. The provision cannot be stretched so as to convert the process of compassionate appointment into the ordinary appointment. The petitioners having already been

offered Class IV posts on compassionate ground, they should feel happy and satisfied.

7. In the above premises, I do not find any merit in these writ petitions which are accordingly dismissed.

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