

Pramod Kumar Vs. Health

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Court : Jharkhand

Decided On : Jul-06-2015

Appellant : Pramod Kumar

Respondent : Health

Advocate for Pet/Ap. : Mr. K. P. Deo

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 7519 of 2012
Pramod Kumar, son of Ramchandra Prasad Singh, resident of Dudhimati, P.O.,
P.S. & District Koderma Petitioner Versus

1. The State of Jharkhand through the Secretary Department of Health, Govt. of Jharkhand, Ranchi
 2. The Deputy "Commissioner-cum-Charmian, District Compassionate Appointment Committee, Koderma
 3. The Civil Surgeon-cum- Chief Medical Officer, Koderma ... Respondents ---
- CORAM : HONBLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner : M/s. K. P. Deo. & Anil Kr. Sinha, Advocate For the Respondent : J.C. to G.P. III --- C.A.V. On 24.6.2015 Pronounced on 6.7. 2015 Prayer in this application is for quashing the order dated 10.11.2012 issued by the respondent No. 2, whereby and whereunder, the application for appointment on compassionate ground to the suitable post of clerk has been rejected. It has

further been prayed that after quashing the order dated 10.11.2012 issued by the respondent No. 2, a direction be given to the respondents to consider the appointment of the petitioner on class III post on compassionate ground, as similarly situated persons have already been given such benefits. The petitioner applied for appointment on compassionate ground on the death of his father, namely, Ramchandra Prasad Singh who was working as an Assistant Teacher in Rajkiya Primary School, Tetariyadih in the District of Koderma and died in harness on 23.4.2003. The District Compassionate Appointment Committee, Koderma considered the case of the petitioner in its meeting held on 27.12.2004 and ultimately took a decision to appoint the petitioner on a class IV post as orderly in the office of Civil Surgeon-cum- Chief Medical Officer, Koderma. The petitioner on being aggrieved of not having secured appointment on a class III post, preferred a writ petition before this Court vide W.P.(S) No. 821 of 2007 which was disposed of on 8.8.2012 with a direction to the petitioner to make a representation before the Deputy Commissioner-cum-Chairman, District Compassionate Appointment Committee, Koderma, who was to take an appropriate decision in accordance with law. Subsequent thereto the impugned order as contained in memo No. 555 dated 12.11.2012 was passed in which on the basis of memo No. 13293

2. issued by the Department of Personnel, Administrative Reforms, Bihar, Patna dated 5.10.1991, the claim of the petitioner for being appointed on class III post was rejected. Heard Mr. K. P. Deo, learned counsel for the petitioner and Mr. Jalisur Rahman, learned junior counsel to G.P. III, appearing for the respondents. It has been submitted by Mr. K. P. Deo, learned counsel for the petitioner that the petitioner has a brilliant academic career and he is a Post Graduate degree holder in 1st Class. The petitioner has passed typewriting and shorthand examination and he is also a Diploma holder in computer. It has further been submitted that the respondents have misinterpreted the circular dated 5.10.1991, as the same is only related to benefit by way of promotion or change of posts which according to the circular was not permissible in the case of compassionate appointment. Learned counsel further adds that from the very initial stage the petitioner had brought to the notice of the authorities his qualification and he was justified in his claim to be appointed on a class III post on the basis of his qualification. Learned counsel further submits that in similarly situated circumstances, one Digvijay Kumar Singh

and one Shivanand Jha have been granted compassionate appointment on class III posts pursuant to the direction issued by this Court. It appears from the file that although a reply on behalf of the petitioner to the counter affidavit is on record but as would appear no counter affidavit has been filed on behalf of the State. Mr. J.

Rahman, Learned junior counsel to G.P. III, on the other hand, has submitted that the circular as contained in memo No. 13293 dated 5.10.1991 precludes a person who has been appointed on compassionate ground to be considered for appointment on a higher post or for changing of post and in such circumstance, the impugned order as contained in memo No. 555 dated 12.11.2012 has been passed in accordance with law. Mr. Rahman has further submitted that the case of Digvijay Kumar Singh and Shivanand Jha cannot be equated with that of the petitioner as the petitioner had already joined in the class IV post of orderly and he is continuing on the same and therefore at this late juncture it would not be proper to issue a direction to consider the case of the petitioner for a suitable post of class III, as the same shall be against the circular dated 5.10.1991. In the case of Digvijay Kumar Singh v. State of Bihar and others (C.W.J.C. No. 962 of 1999), the Circular of the Department of Personnel & Administrative Reforms dated 5.10.1991 was under consideration. The 3. relevant portion of the order dated 27.3.2000 passed in the case of Digvijay Kumar Singh (Supra) is quoted hereunder:- "... In my view, the concerned respondents have misunderstood the scope of earlier observation and direction of this Court. The petitioner's case was not for subsequent promotion or change of post but it raised a grievance that the initial consideration of his appointment on compassionate basis was not done fairly and in accordance with law because relevant facts were not taken into consideration. ..." So far as the judgment which has been relied upon by the learned J.C. to G.P. III appearing for the respondents in the case of Anil Kumar v. State of Jharkhand and others, reported in 2003(1) JCR260 the petitioner in the said case had represented for adjustment in Collectorate cadre, six years after his initial appointment which fact is easily distinguishable from the facts of the present case since the claim of the petitioner was at the initial stage itself. The petitioner on his case being not considered for class III post, as he was having higher qualifications, had moved this Court in W.P.(S) No. 821 of 2006, whereby the Deputy Commissioner-cum-Chairman, District Compassionate Appointment

Committee, Koderma was directed to consider the representation and take appropriate decision. The impugned order as contained in memo No. 555 dated 12.11.2012 has referred to the circular of the Department of Personnel & Administrative Reforms dated 5.10.1991 and simply on the basis of said circular rejected the claim of the petitioner for compassionate appointment in class III post. The respondent No. 2 while rejecting the claim of the petitioner has not considered the circular dated 5.10.1991 in its proper perspective. The respondent No. 2 should have taken into consideration the candidature of the petitioner on the basis of higher qualification, which he had in his possession and that similarly situated persons who were appointed in class IV post have subsequently been granted class III posts. Since the circular dated 5.10.1991 has not been considered in its right perspective and that similarly situated persons, namely, Digvijay Kumar Singh and Shivanand Jha who are possessing qualification for class III posts on compassionate ground and have been given such benefits and in such circumstance, the case of the petitioner also deserves to be reconsidered by the respondent No.

2. Accordingly, the order as contained in Memo No. 555 dated 12.11.2012 passed by the respondent No. 2 is hereby quashed and set aside. The matter is remitted back to the respondent No. 2 to consider the 4. claim of the petitioner for compassionate appointment on a class III post based on his qualification by taking into consideration the orders passed by this Court in C.W.J.C. No. 962 of 1999 in the case of Digvijay Kumar Singh v. State of Bihar & others as also the fact that in similarly situation another person, namely, Shivanand Jha though initially appointed in a class IV post has been recommended for being appointed in a class III post after giving an opportunity of hearing to the petitioner and thereafter pass a reasoned order within a period of six weeks from the date of receipt/ production of a copy of this order. This writ petition stands disposed of with the above observations and directions. (RONGON MUKHOPADHYAY, J.) MK