

(2018) 07 PAT CK 0050

Patna High Court

Case No: Letters Patent Appeal No. 642, 714 Of 2016 In Civil Writ Jurisdiction Case No.
4514 Of 2013

Rakesh Kumar
Sharma And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: July 9, 2018

Acts Referred:

- Bihar Ancient Monuments And Archaeological Site, Remains And Art Treasure Act, 1976 - Section 2(j), 3, 3(1), 3(3), 4, 8, 12, 18, 18(1), 18(2), 19, 25

Citation: (2018) 3 PLJR 657

Hon'ble Judges: Rajendra Menon, CJ; Rajeev Ranjan Prasad, J

Bench: Division Bench

Advocate: P.K. Shahi, Manish Dhari Singh, Manish Kumar, Sarvesh Kumar Singh, Ravi Kumar, Tej Pratap Singh, Pratik Kumar Sinha, Piyush Lall

Final Decision: Disposed Of

Judgement

1. Heard Mr. Rajesh Kumar Verma, learned counsel for the petitioners and Mr. Madhuresh Singh, learned counsel for the respondent.

2. The instant writ petition has been filed by the petitioners for quashing the order dated 20.7.2017 passed by the Central Administrative Tribunal,

Patna Bench (for short "the Tribunal") in Original Application No. O.A./050/00789/2016 whereby it has allowed the original application filed by

the respondent after quashing the orders dated 5.8.2015 with a direction to the petitioners to consider the case of the respondent for appointment on

compassionate ground again within a period of 4 months in the light of the new Circular dated 30.5.2017.

3. Learned counsel appearing for the petitioners submitted that the order impugned is bad in law as also on facts. The case of the respondent for engagement on compassionate ground was considered on the basis of instructions prevailing at the time of consideration of such engagement. The Tribunal erroneously allowed the application after quashing the order dated 5.8.2015 considering the revised letter dated 30.5.2017 issued by the Department of Posts, Government of India. He contended that the revised scheme for compassionate appointment vide letter dated 30.5.2017 would come into effect from the date of issue of the letter and will be applicable to all cases pending and arising on or after the said date. According to him, the cases which have already been settled cannot be reopened on the basis of the revised letter dated 30.05.2017. In other words, his contention is that the letter dated 30.5.2017 would have prospective effect but vide impugned order the Tribunal has made the application of the said letter retrospectively which is not permissible in law. In support of his submission he has placed reliance on the judgments of the Supreme Court in the matter of State Bank of India and Ors. Versus Jaspal Kaur reported in (2007) 9 SCC 571 and Canara Bank and another versus M. Mahesh Kumar reported in (2015) 7 SCC 412 and the judgment of a Division Bench of this Court in the matter of Rajendra Singh versus State of Bihar reported in 2015 (4) PLJR 243.

4. Per contra, learned counsel appearing for the respondent submitted that there is no error in the impugned order passed by the Tribunal. He contended that the petitioners erroneously rejected the application of the respondent taking into consideration the scheme for compassionate appointment prevalent in 2015. He submitted that the father of the respondent while working as Gramin Dak Sevak had expired on 10.06.2014 leaving behind his four married daughters and two married sons. The respondent being son of the deceased Gramin Dak Sevak preferred his application for engagement. His application was rejected without taking into consideration the fact that he had adopted two sons of one his married sisters who had already died. He contended that if the points would have been given for those two dependent adopted sons of the respondent, the respondent would

have secured 50 points and would have been engaged as Gramin Dak Sevak. He has further contended that since the petitioners had brought a policy under which the point system had been dispensed with and the dependent of the deceased Gramin Dak Sevak was made eligible for engagement on compassionate ground, the Tribunal rightly directed the petitioners to reconsider the case of the respondent in the light of the revised letter dated 30.5.2017.

5. We have heard learned counsel for the parties and carefully perused the record.

6. The brief facts of the case are that one Radha Krishna Upadhyaya while working as GDSBPM(Gramin Dak Sevak Branch Post Master) at

Pandey Upadhyaypur, BO(Bhojpur) expired on 10.6.2014 leaving his four married daughters and two married sons. The left over service of the

deceased was 8 years 6 months and 24 days. The respondent preferred his application on 6.4.2015 for his engagement on compassionate ground. His

case was placed before the Circle Relaxation Committee (for short "C.R.C.") in its meeting held on 28.7.2015. The C.R.C. examined the case

of the respondent in view of the prevailing scheme for engagement on compassionate ground and awarded the respondent 19 points. As per the

scheme, only such cases were to be recommended by the C.R.C. which could secure 50 points or above. As the respondent had secured only 19

points, his case was not recommended by the C.R.C. for engagement on compassionate ground vide order dated 05.08.2015 passed by the petitioner

no.4.

7. Being aggrieved by non-recommendation of his case and rejection of his application, the respondent filed the original application before the Tribunal.

He claimed that he should have been given 15 points for two sons of the deceased daughter of the deceased Gramin Dak Sevak. He further claimed

that since those two sons of his deceased sister were studying and dependent on him he should have been given 25 points under the head studying dependent.

8. The petitioners contested the claim before the Tribunal.

9. The specific case of the petitioners was that the two sons of the deceased sister of the deceased Gramin Dak Sevak could not be termed as

â€˜dependent family memberâ€™ because as per the Scheme of compassionate engagement of the deceased Gramin Dak Sevak the dependents are defined as :

(a) Spouse; or

(b) Son including adopted son; or

(c) Married son living with parents and dependent for livelihood on the GDS on the date of death of the GDS; or

(d) Daughter including daughter; or

(e) Married/widowed daughter/divorced daughter wholly dependent on the GDS at the time of his. Her death: or

(f) Daughter-in-law of deceased GDS who is wholly dependent on GDS, if the only son of the GDS is predeceased, provided she gives an undertaking

that she is not availing the same benefit from her own parenthood.

(g) Brother or sister in the case of unmarried GDS wholly dependent on the GDS at the time of his/her death.

10. Having considered the submissions of the parties instead of deciding the issue raised by the respondent as to whether the respondent was entitled

to have been awarded more points as claimed by him, the Tribunal allowed his application on grounds that the latest letter dated 30.5.2017 has

introduced a revised scheme for compassionate engagement of an eligible dependent of deceased Gramin Dak Sevak under which the points system

has been dispensed with.

11. The Tribunal set aside the order dated 05.08.2015 whereby the claim of the respondent for compassionate engagement was rejected and the

petitioners were directed to consider the case of the respondent again in the light of the letter dated 30.5.2017.

12. Having noticed the facts of the case and the arguments advanced on behalf of the parties, the only question to be determined by us is whether the

letter dated 30.05.2017 whereby revised scheme for compassionate engagement of Gramin Dak Sevak was brought into effect could have been taken

into consideration by the Tribunal for quashing the order passed by the petitioner no.4 taking into consideration the prevailing instructions for

engagement on compassionate ground.

13. As far as the claim of the respondent regarding his entitlement to additional points is concerned, we are of the opinion that the same is totally misconceived. The sons of the daughter of the deceased GDS cannot be termed as “dependent family member” as per the scheme of the compassionate engagement of the deceased Gramin Dak Sevak.

14. We find substance in the submission of the learned counsel for the petitioners that the revised scheme for engagement of Gramin Dak Sevak dated 30.5.2017 will have prospective effect.

15. It is now well settled that appointment on compassionate ground is not a source of recruitment, it is an exception to the general rule that the public services should be made on the basis of merit by open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of the employees who died in harness do not have any special claim or right to employment except by way of concession that may be extended by the employer under the rules or by a separate scheme. The scheme of a compassionate appointment does not create a vested right in favour of the claimant. Since it is an exception to the general rule carved out in the interest of justice in certain exigencies by way of policy of an employer the policy is binding both on the employer and the employee. Being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

16. By now it is well settled that the claim of compassionate appointment under the scheme of a particular year cannot be decided in the light of subsequent scheme that come into force much after the claim. It is true that the scheme of compassionate appointment to the deceased Gramin Dak Sevak was revised subsequently on 30.5.2017 whereby point system has been dispensed with and the scheme has been extended to the dependent of the missing Gramin Dak Sevaks also.

17. However, the case of the respondent for engagement on compassionate ground was considered on the basis of instructions prevailing at the time of consideration of his engagement.

18. In State Bank of India & Ors. versus Jaspal Kaur (supra) the supreme Court observed as under:

the High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 4.8.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005...

19. In *Rajendra Singh versus State of Bihar* (surpa) a division bench of this Court held in paragraphs 11 and 12 as under:

11. In our opinion, if a person had a right to be considered for appointment on compassionate ground and he applied for such appointment, his eligibility has to be tested on the basis of the law existing on the date of his application and subsequent amendment, prescribing enhanced educational qualification or change in other eligibility criteria will not render him unsuitable for being considered for such appointment.

12. In view of the discussion as above, we hold that in the matters of appointment on compassionate grounds, the eligibility of a person, seeking such appointment, shall be tested on the basis of the eligibility criteria under the law as existing on the date of such application. Subsequent change in the eligibility criteria will not take away such person's claim to be considered for appointment on compassionate ground.

20. The ratio laid down by the Supreme Court in *State Bank of India versus Jaspal Kaur* (surpa) and *Rajendra Singh* (Supra) would make it clear that in the matter of appointment on compassionate grounds, the eligibility of a person seeking such appointment is required to be tested on the basis of eligibility criteria under the law as existing on the date of such application. Any subsequent change in the eligibility criteria will neither confer any vested right on the claimant nor take away such person's claim to be considered for appointment on compassionate ground.

21. In the case in hand the respondent had made his application for compassionate engagement on 06.04.2015. Hence, his case was considered by the petitioner no.4 on the basis of the instructions prevailing at that point of time. The subsequent change of policy vide revised scheme dated 30.05.2017 could not have been made applicable in the case of the respondent for the purpose of setting aside the impugned order of non recommendation dated 05.08.2015.

22. Keeping in mind the discussions made hereinabove and the ratio laid down in the cited decisions we are of the opinion that the order impugned passed by the Tribunal whereby the order of non recommendations of compassionate engagement of the respondent has been set aside and the petitioners have directed to consider the case of the respondent again in the light of the revised letter dated 30.5.2017 cannot be sustained.

23. Accordingly, the same is set aside.

24. The writ petition stands allowed.

25. There shall be no order as to costs.