

(2009) 03 JH CK 0016

Jharkhand High Court

Case No: Writ Petition (S) No. 5434 of 2008

Crescentia Ekka

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision: March 17, 2009

Citation: (2009) 122 FLR 630

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Advocate: Rajesh Kumar, for the Appellant;

Judgement

D.G.R. Patnaik, J.

Petitioner's prayer in this writ application is for a direction upon the respondents to appoint the petitioner on the Class-III post forthwith in consonance with the recommendation of the District Compassionate Committee, Gumla made on 18.10.2001.

2. Counter affidavit has been filed on behalf of the respondent No. 3.
3. Heard learned Counsel for the petitioner and learned Counsel for the respondents.
4. The case of the petitioner in brief is that her husband Rajesh Toppo was an employee in the office of the respondent No. 3. He met with an untimely death on 1.3.2001. Upon such premature death of her husband, there being no other earning member in the family, the petitioner applied for her appointment under the respondents on compassionate grounds. The petitioner had possessed the requisite educational qualifications for her appointment to the Class-III post and accordingly she had opted for such appointment.

Her application for compassionate appointment was duly considered by the District Level Committee constituted on 18.10.2001. The District Compassionate Appointment Committee had approved the candidature of the petitioner and had

recommended for her appointment on the Class-III post in the Department of Alternative Medicine within the district of Gumla. The letter of recommendation of the District Compassionate Appointment Committee was received in the office of the Deputy Commissioner, Gumla and the same, with the endorsements of the Deputy Commissioner, was forwarded to the respondent No. 3 namely the District Ayush (Desi) - Medical Officer, Gumla for implementation.

The grievance of the petitioner is that inspite of the fact that the appointment of the petitioner on compassionate ground was recommended for Class-III post, the respondent No. 3 had offered her a Class-IV post of Cleaner in the Scale of Rs. 2550-3200/-.

The contention of the petitioner is that being in abject financial crisis, the petitioner had no option but to accept the offer of her appointment in the Class- IV post and accordingly she had submitted her joining on 22.3.2002.

Accusing the respondents of having practiced fraud upon the petitioner, she has prayed that the respondents be directed to grant her appointment to Class-III post.

Sri Rajesh Kumar, learned Counsel for the petitioner would argue that even if the Class-III post was not vacant in the particular department at the relevant time, the respondents were under the mandatory obligation to offer her appointment to Class-III post at any other place/department. In support of his argument, learned Counsel would want to obtain support from the judgment of the Supreme Court in the case of *Abhishek Kumar v. State of Haryana and others* 2007 (112) FLR 700 (SC)

5. The stand taken by the respondents in the counter affidavit is that though the petitioner's candidature was approved for her appointment on Class- III post but the recommendation as made by the District Compassionate Appointment Committee was for her posting in the specified department namely the Department of Alternative Medicine within the district of Gumla. It is stated that when the recommendation was made, it was found that there were altogether two posts of Class-III including one post of Storekeeper and one post of Steno-cum-Typist in the department and both the posts were already filled up by two incumbents namely Ashok Kumar Sinha and Masih Dhani Ekka respectively. Two other Class-III posts of Compounder were though vacant, but the candidates to be appointed to the post of Compounder had to possess the technical qualification which, the petitioner did not possess as per her academic qualifications. As such, the petitioner could not possibly be offered the post of Compounder though the same was vacant at the relevant time. It was under such circumstances that the Class-IV post was offered alternatively to the petitioner which she had accepted, and after having accepted, she has continued to work in the said post all along and it is now after more than six years that the petitioner has raked up a fresh issue claiming her appointment on Class-III post.

Learned Counsel for the respondents submits that since the petitioner had voluntarily accepted the Class-IV post without any counter offer to accept Class-III post in any other department within the district, the petitioner cannot raise a claim at such a belated stage as has been made by her in the instant writ application.

6. From the rival pleadings, the admitted facts which emerge are that the petitioner's candidature for her compassionate appointment to the Class-III post, on the basis of her academic qualification etc. was considered and accepted by the District Compassionate Appointment Committee, and a recommendation was accordingly made by the Committee for her appointment. Letter of recommendation (Annexure-3) issued by the Committee also indicates that the petitioner was to be appointed in the Class-III post in the department of Alternative Medicine in the district of Gumla. It appears from the counter affidavit of the respondents that two of the Class-III posts in the aforesaid department were already filled up whereas two more vacancies, though existing in the Class-III category, could be filled up only by persons who possess the technical qualifications which, admittedly, the petitioner did not possess.

It also appears that the petitioner was made aware of the fact that no other vacancy in the Class-III post existed in the aforesaid department and therefore she was offered the Class-IV post. The petitioner did not volunteer any offer declaring that she would be prepared to be appointed either in any other Government department within the district nor did she make any other alternative offer declaring that she would accept her appointment in any other district within the State. Instead, she had accepted the Class-IV post without any reservation or under protest. Even if her plea that she had to accept the offer of Class-IV post under the compulsion of financial distress is accepted, yet, in absence of any declaration made by her that she would be prepared to accept the Class-III post in any other Government department within the district or elsewhere and in absence of any protest or reservation, while accepting the Class-IV post and further, she having not only accepted the Class-IV post but continued to remain in the same for more than six years, she cannot possibly now make any grievance against the respondents for offering her the Class-IV post instead of Class-III post.

7. The judgment in the case of Abhishek Kumar (supra) referred to by the learned Counsel for the petitioner would not apply to the facts of the present case. In the case of Abhishek Kumar, though the matter related to denial of compassionate appointment on the ground of non-existence of vacancy but the distinguishing feature on facts is that the offer for the appointment of the writ petitioner therein was made in accordance with State wise list prepared by the concerned authorities. The writ petitioner on being informed that vacancy in the Class-III post was not available in the district which he had claimed, he made a categorical declaration that he was ready and willing to join anywhere in the State. It is in this context that the Apex Court had observed that in the light of the declarations made by the writ

petitioner expressing his willingness to join anywhere in the State and in the light of the fact that the Statewise list was prepared, the District Magistrate concerned or any other officer, could not disobey the order passed by the higher authority and even if no post was available in a particular district, such a post could be available in some other district within the State.

8. The petitioner's prayer for issuance of a writ of mandamus directing and commanding upon the concerned respondents to appoint the petitioner on Class-III post, cannot therefore, be accepted in the light of the facts and circumstances of the petitioner's case.

9. However, in the light of the declaration made by the District Compassionate Appointment Committee that the petitioner does possess the requisite qualifications for her appointment to the Class-III post and subject to the conditions laid down in the Rules prescribed, the respondent authorities shall consider the petitioner's case for her promotion to the Class-III post against any existing or future vacancy.

With these observations, this writ application is disposed of at the stage of admission.

Let a copy of this order be given to the Counsel for the respondent-State.