

(2009) 03 JH CK 0036

Jharkhand High Court

Case No: L.P.A No. 241 of 2008

Balkesh Laguri

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: March 5, 2009

Citation: (2009) 123 FLR 811

Hon'ble Judges: Gyan Sudha Misra, C.J; D.K. Sinha, J

Bench: Division Bench

Advocate: R.P. Gupta, for the Appellant; M.J. Rahman, JC to GP III, for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal has been preferred by the appellant, Balkesh Laguri, against the order dated 10.6.2008 passed in W.P.(S) No. 3587/2007, by which the learned Single Judge had been pleased to dismiss the writ petition, holding therein that the petitioner-appellant herein could not have been allowed to claim appointment on compassionate ground in place of his deceased father.

2. The learned Single Judge had rejected the petition on two grounds. First of all, the learned Single Judge held that the petitioner applied for appointment on compassionate ground on 22.1.2001 and even though the appointment was not granted to him, he waited for a period of approximately 7 years and filed the writ petition for the first time on 3.7.2007. Thus, the learned Single Judge was pleased to hold that if the dependent of the deceased like the petitioner survived for 9 years without a job on compassionate ground, then in view of the ratio of the case reported in [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), he could not claim appointment after the crisis in his family was over. Thus, on the ground of delay in filing the writ petition, by which the order denying appointment of the petitioner on compassionate ground was assailed as also the fact that the petitioner/appellant survived without a job after the death of his father for a long number of years, it was held that he was not entitled to any job on compassionate

ground in place of his deceased father. The petitioner-appellant, therefore, has preferred this appeal against the order of the learned Single Judge.

3 The counsel for the appellant submitted that the appellant had filed an application seeking appointment on compassionate ground within a reasonable time of the death of his father as he had applied for appointment on compassionate ground on 22.1.2001 after the death of his father on 9.2.1999. Thereafter, the authorities did not dispose of his representation for a long number of years and therefore, the appellant was compelled to file the writ petition in the year 2007. In the process, the counsel for the appellant has sought to contend that the delay in not allowing the representation of the petitioner-appellant has to be attributed to the authorities and not to the petitioner so as to deny him the appointment on the ground of delay.

4 In so far as survival of the petitioner-appellant for a long number of years after the death of his father is concerned, it was explained and submitted that the appellant somehow managed to survive and look after his family under grave financial constraints and mere survival cannot be inferred as a situation where the circumstance of the family can be treated to be financially sound.

5. Countering the submission of the counsel for the appellant, the counsel representing the respondent-State of Jharkhand submitted that the claim of the petitioner-appellant for compassionate appointment in place of his deceased father is not legally fit to be sustained, as the appellant's father was not in a regular job and he had been appointed for a temporary period to discharge duties in a project floated by the World Bank. The order of appointment of the appellant's father clearly indicated that the appointment was to be terminated after the period of four months and even before he could complete the period of four months, he expired and he also invited the attention of this Court to the Circular No. 3/C2-2067/90 Ka 13293 dated 5th October, 1991, on the basis of which he cannot claim appointment and in the said Circular, it has been specifically indicated as follows:

(1) Kinka Chayan Ho Sakta Hai -

(Ka) Anukampa Ke Adhar Par Niyukti Ka Labha Waise Mrita Sarkari Sewak Ke Ek Hi Aashrit Ko Anumanya Hoga Jinki Mrityu Sewakal Me Hui Hai.

(Kha) Es Hetu Sarkari Sewak Use He Mana Jayega Jiski Niyukti, Swikrit Pad Ke Virudh Vidhiwat Ke Gaie Ho.

(Ga) Sewakal Me Mru Sarkari Sewak Ke Ashriton Ko Hi Anukampa Ke Aadhar Per Nikukti Ki Ja Sakti Hai....

A translated version of the substance would indicate that the dependants of only those deceased employees would be entitled to compassionate appointment whose appointment was made on sanctioned post as per rule.

6 Relying upon this Circular, it was submitted that even as per the Rule, compassionate appointment could not have been granted when the deceased employee himself had not been discharging duties on regular basis against the sanctioned post.

7. In addition to this technical plea, it was also submitted that the petitioner-appellant has eight acres of landed property, on which the; family is dependent and therefore, even on the ground of financial hardship, the petitioner has no case.

8. This part of the submission, of course, has been refuted by the counsel for the appellant, who submitted that the petitioner-appellant has no landed property and he has somehow survived.

9. On an analysis of the case presented by the counsel for the contesting parties, it is difficult to overlook that the appellant's father had been discharging duties in a temporary capacity and in a particular project of a temporary nature for a period of four months only and hence, as per the Circular, the appellant has no case for compassionate appointment.

10. Besides the above, if the appellant survived for approximately 9 years on the basis of whatever property was in his possession, clearly the ratio of the case relied upon by the learned Single Judge reported in [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), as also the case reported in [State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir](#), will be clearly applicable.

11 Thus, the contention of the counsel for the respondents is far more weighty and substantial than that of the appellant. Therefore, apart from the reasons, which have been assigned by the learned Single Judge, the appeal has no merit even in view of the Circular of the respondent State. Consequently the appeal is dismissed.