
(2004) 01 PAT CK 0098

Patna High Court

Case No: L.P.A. No. 855 of 2003

Neel Kamal Prakash Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Jan. 5, 2004

Acts Referred:

- Constitution of India, 1950 - Article 12

Citation: (2004) 2 PLJR 659

Hon'ble Judges: Ravi S. Dhavan, C.J; Shashank Kr. Singh, J

Bench: Division Bench

Advocate: Rana Ishwar Chandra, for the Appellant; S.K. Ghosh, for State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. These proceedings are being dragged unnecessarily. The issue plainly is whether the Petitioner-Appellant Neel Kamal Prakash Sinha is entitled to be considered to receive an appointment, as a compassionate appointment, on the death of his mother, who was a Gram Sevika with the Central Bihar State Social Welfare Advisory Board. There is no issue that this Board partakes the nature of a State within the meaning of Article 12 of the Constitution of India. It is structured with State funds. Unfortunately, though appearance has been filed on behalf of the Board by a counsel, the latter does not appear.

2. This small matter has generated four cases, two writ petitions and two Letters Patent Appeals. The first writ petition was C.W.J.C. No. 12973 of 2002; Neel Kamal Prakash Sinha v. State of Bihar and Ors. The Petitioner was unsuited on the ground that his father was an agriculturist and in the circumstances had sufficient means of livelihood and was supported by the father and, in effect, the death of his mother was of no consequence so as to be considered for being given an appointment as a

compassionate appointment. This order on the writ petition is dated 20 December, 2002 was challenged in Letters Patent Appeal No. 82 of 2003. This appeal was permitted to be withdrawn.

3. The third case was C.W.J.C. No. 6724 of 2003. The learned Judge declined to grant any other order and dismissed the writ petition on the ground that the earlier petition had been dismissed. The order of dismissal on the second writ petition is dated 12.8.2003. Against that order the present Letters Patent Appeal (L.P.A. No. 855/2003) has been filed.

4. Learned Counsel virtually submits that there is an error on record that the Petitioner was unsuited on the ground of counsel's statement that his father was an agriculturist. Learned Counsel submits that the order records that it had been stated on an enquiry from counsel. Court's attention is drawn to an aspect on record that the Circle Officer, Sadar Patna has certified that the Petitioner-Appellant's father is "Bhumihini (landless). Learned Counsel submits that his father is not an agriculturist but a mere landless labourer. Learned Counsel submits that the matter be judged accordingly. In the circumstances, what remains is that his mother was a public servant. She died, he had applied to receive an appointment as a compassionate appointment. Learned Counsel also points out to the record that earlier the same Board had made appointments in similar circumstances and these are matters of record. This is submitted in paragraph 4 of the supplementary affidavit to which no denial has been made nor counsel for the Board appears in this matter.

5. Receiving the lowest post in the State, perhaps in a class IV category that also as a daily wager by a person who otherwise is a postgraduate and B.Ed., only shows desperation in a state where is rampant unemployment. There is no law, which governs compassionate appointment The State only has a policy. The Government organisations appear to resort to this policy merrily whenever it suits the administration to the organisations funded by the State. A Graduate with Post Graduate degree is prepared to do a job of a class IV employee and if there is a policy to recruit on compassionate appointment such an incumbent can hardly be kept out. One aspect the court will caution that the High Court does not say so but the State seems to be in state of indiscrimination in adopting this policy at its will and pleasure. The present Petitioner-Appellant can hardly be denied what others have received.

6. The appeal succeeds. The order-dated 20.12.2002 on C.W.J.C No. 12973/2002 is corrected so as not to be understood that the Petitioner-Appellant's father was an agriculturist, an aspect which unsuited the Petitioner-Appellant previously.

7. The appeal is allowed with posts on all four cases.