

**(2000) 12 PAT CK 0061**

**Patna High Court**

**Case No:** L.P.A. No. 1574 of 2000

Usha Gautam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Dec. 12, 2000

**Hon'ble Judges:** Ravi S. Dhavan, C.J; Aftab Alam, J

**Bench:** Division Bench

**Advocate:** Ganesh Prasad Singh and S.B.K. Manglam, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Aftab Alam, J.

The hunger of Government employment coupled with the scheme of appointment on compassionate grounds gives rise to strange and sad cases. Here is one such case in which two own sisters are vying with each other for appointment following the death of their father and they have made this Court the battle ground for their fight. One Janardan Pandey died on 30.7.1990 while working as an Assistant teacher in Mangal Seminary Inter College, Motihari. The writ petitioner-appellant being one of the daughters of the deceased made an application for appointment on compassionate grounds. On 31.8.1993 the District Compassionate Appointment Committee, East Champaran recommended her for appointment as Assistant teacher in an elementary school. It later transpired that she did not fulfil the eligibility criteria for appointment as an Assistant teacher as she had less than 45% marks in the matriculation examination. This gave rise to the first round of litigation between the writ petitioner on the one side and the Government authorities on the other. This issue was concluded by an order, dated 8.8.1995 passed by this Court in C.W.J.C. No. 4458 of 1995 filed at her instance. By that order this Court held that even on compassionate grounds one could be appointed only against a post for which one possessed the requisite qualifications. It is noted above that the petitioner did not have the minimum qualification for appointment as an Assistant

teacher in a primary school.

2. The writ petitioner-appellant was then appointed on the post of Clerk by an order issued by the Regional Deputy Director of Education, Tirhut Division on 26.12.1996. The petitioner went to join on 30.12.1996 but she was not allowed to join the post. It now appears that respondent no. 7, Kumari Chandana Pandey, the sister of the appellant who was trying for her own appointment under the scheme of harness made a complaint before the authorities that her elder sister, that is, the writ petitioner-appellant was married and was, therefore, excluded from the scheme of compassionate appointment. On verification the authorities presumably found the allegation to be true and hence, disallowed the writ petitioner-appellant to join the post pursuant to the order issued by the Regional Deputy Director of Education.

3. At that stage, the petitioner came to this Court for the second time in C.W.J.C. No. 8419 of 1997. It is significant to note here that neither in the first writ petition (C.W.J.C. No. 4458 of 1995) nor in the second writ petition (C.W.J.C. No. 8419 of 1997), her sister, Kumari Chandna Pandey was impleaded as a party respondent. It is also to be noted that in her writ petition, the writ petitioner-appellant simply stated her own side of the story and told the Court that despite the letter of appointment issued by the Regional Deputy Director of Education on 26.12.1996 she was not being allowed to join and she was not being paid her salary for the post of Clerk. She accordingly prayed for a direction to the concerned authorities to pay her salary from 30.12.1996. In the second writ petition there was no mention of the first writ petition filed by the writ petitioner and it was conveniently certified in the petition that she had not moved this Court earlier "for the reliefs as sought for in the present application".

4. In that case the respondent authorities filed a counter affidavit. In the counter affidavit the respondent authorities stated that the letter of the Regional Deputy Director of Education, dated 26.12.1996 appointing the writ petitioner-appellant to the post of Clerk was later cancelled on the basis of a letter, dated 27.3.1998 issued by the District Magistrate, East Champaran, Motihari on the grounds that (i) the Regional Deputy Director of Education was not competent to issue the appointment letter and (ii) the appointment was obtained by the petitioner by suppression of material facts inasmuch as she was a married person and was, therefore, not covered by the scheme of compassionate appointment and in fact even in the letter of the Regional Deputy Director of Education it was expressly stated that she would have to file an affidavit to the effect that she was still unmarried. In view of the counter affidavit, a learned Judge of this Court by order, dated 18.3.1999 dismissed the application by passing the following order :

From the perusal of the counter affidavit it appears that the appointment of the petitioner has been cancelled as the same was obtained on suppression of fact. In that view of the matter, no direction can be given for payment of salary.

However, if the petitioner is aggrieved by the order of cancellation of her appointment, she may file a fresh writ petition challenging the same.

5. This gave the writ petitioner-appellant the occasion to file the third writ petition being C.W.J.C. No. 3820 of 1999. This case too was originally filed without impleading the other sister as a party respondent who was later impleaded as respondent no. 7 by an order of this Court passed on 5.7.2000.

6. About the other sister, it may be stated here that she too in the meanwhile had been coming to this Court in writ petitions seeking directions in her favour and she too also employed the same tactic of not impleading the present writ petitioner-appellant as a party respondent in those cases. The result was that no complete picture was presented before this Court in any of the writ petitions filed by either of the two sisters and there was always a chance of this Court passing two incompatible orders. Thus neither of the two sisters had been totally fair in approaching this Court.

7. Be that as it may, C.W.J.C. No. 3820 of 1999 filed by the writ petition-appellant was finally dismissed by order, dated 8.11.2000 passed by a learned Judge of this Court sitting singly and this appeal is taken against that order.

8. The learned Judge after taking note of the material facts and circumstances of the case pointed out that the observations of the Court in the earlier order (as quoted above) that she had obtained the appointment by suppression of material facts appeared to be an insurmountable obstruction in her way. The learned Judge, however, has not based the judgment coming under appeal on the observation made in the earlier case but has examined materials produced before him to arrive at the finding that the writ petitioner-appellant was married on 16.5.1991 and she, thus, fell outside the scheme of compassionate appointments and this fact was suppressed by her in obtaining the appointment. For arriving at this finding, the learned Judge took into consideration, apart from the Xerox copies of the invitation cards, both of the bride's side as well as the bridegroom's side with respect to the appellant's marriage on 16.5.1991, the affidavit of her mother testifying that her husband had left behind three daughters two of whom, namely, Usha Gautam (the appellant) and one Kumari Kanak Lata were married.

9. Mr. Ganesh Prasad Singh, learned Senior counsel appearing for the appellant submitted that the finding was arrived at without giving a formal notice to the petitioner to present her case with respect to her date of marriage. We are unable to accept the submission. The matter was fully open before the Court and the pleadings of the other sister on this point were quite clear and unequivocal.

10. We further find that there appears to be complete discord between the appellant on the one side and her widowed mother and her unmarried sister on the other. Appointment on compassionate grounds is given to one member of the family not as a matter of succession but with the object that he or she would support the

widowed wife and the other unemployed children of the deceased Government employee. Viewed in this light also the writ petitioner-appellant hardly appears to be qualified for appointment on compassionate grounds as she is clearly seeking appointment as a matter of succession and not to support the members of the family of the deceased Government employee.

11. On hearing Mr. Ganesh Prasad Singh, learned Senior counsel for the appellant and on going through the order coming under appeal, we find no infirmity there and in our view no case is made out for any interference in appeal. It needs however, to be clarified that the dismissal of this appeal is not to be construed as expression of an opinion in favour of the other sister, namely, Kumari Chandna Pandey whose claim for appointment on compassionate grounds may be considered by the authorities on its own merits. In the result, this appeal is dismissed but with no order as to costs.

Ravi S. Dhavan, C.J.

I agree.