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## **Sunil Kumar Vs State of Bihar**

### **Civil Writ Jurisdiction Case No.8951 of 2013**

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**Court:** PATNA HIGH COURT

**Date of Decision:** July 13, 2016

**Acts Referred:**

Constitution of India, 1950 - Article 226

**Citation:** (2017) 1 BBCJ 119 : (2016) 4 PLJR 590

**Hon'ble Judges:** Mr. Shivaji Pandey, J.

**Bench:** Single Bench

**Advocate:** Mr. Anjani Kumar, Senior Advocate, AAG 6 and Mr. Saran Prasad, AC to AAG 6, for the Respondent; Mr. Rajendra Prasad Singh, Senior Advocate, Mr. Priyadarshi Matrisharan and Mr. Mukesh Kumar Singh, Advocates, for the Petitioners

**Final Decision:** Disposed Off

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### **Judgement**

Mr. Shivaji Pandey, J.(Oral) - Heard the parties.

2. In the present writ petition, petitioners have come forward with a prayer to quash the letter dated 17.10.2012 issued by the Principal Secretary,

Forest Department, Government of Bihar by which it has been mentioned that once the appointment has been made on compassionate ground on

particular post the same cannot be modified or improved in any manner, further petitioners have challenged office order no.17 dated 23.2.2013 by

which the Range Forest Officer, Munger has striped off the petitioners, from the post of Forest Guard reverted by back to the post of office peon

(class IV) .

3. The short facts of this case are as follows: The matter relates to compassionate appointment. Father of Sunil Kumar (petitioner no.1) was Forest

Guard in Forest Division Munger and died in harness on 15.7.2000. Father of Utam Kumar Sharma (petitioner no.2) was Truck Driver in Forest

Division Munger and died in harness on 29.3.2000. Similarly father of Radhey Shyam Rai (Petitioner no.3) was also truck driver in Forest Division

Munger and died in harness on 23.9.1996.

4. After death of their father all of them applied for compassionate appointment. Cases of these petitioners were referred to District Compassionate Committee. The District Compassionate Committee in its meeting dated 19.11.1998 recommended for appointment of petitioner

no.3 on Class-III post, similarly the District Compassionate Committee in its meeting dated 5.7.2002 recommended for appointment of petitioner

nos. 1 and 2 on Class III, if class III posts are not available then to Class-IV post. As per prescription they did not have requisite height, petitioner

nos.2 and 3 were appointed as Class-IV post employee on 15.9.2993, similarly petitioner no.1 was also appointed on class IV post on

15.10.2003 as he did not have minimum height for the appointment on the post of Forest Guard.

5. It appears from the record that the Chief Conservator of Forest, Bihar Patna vide letter dated 13.10.2013 informed the Commissioner-cum-

Secretary that he has received letter dated 29.8.1973 from the Department of Personnel mentioning qualification for appointment of Forest Guard

in which height has been shown 5'4""", sought confirmation for further action. From the aforesaid letter it appears that for appointment of Forest

Guard, the height of candidate has been provided 5'4"" and chest is provided 32-34"". The Commissioner vide letter dated 12.11.2003 confirmed

the letter thereby approved the qualification mentioned in the said letter. In view of the said confirmation letter mentioning 5'4"" height for Forest

Guard, taking opportunity of height mentioned therein, these petitioners filed representation submitting that their candidature for the Forest Guard

has been rejected on the ground that they did not have requisite height for appointment of Forest Guard but in view of letter of Personnel and

Administrative Department requested, as like others, their position be improved and be accommodated to the post of Forest Guard.

6. The Conservator of Forest wrote a letter dated 1.4.2004 and in terms of letter of Personnel and Administrative Department, sought guideline-

cum-approval about the adjustment of petitioners on the post of Forest Guard in view prescribed height of guard as 5'4"" so that their hardship can

be mitigated.

7. In pursuance thereof the Regional Conservator of Forest considered the letter granted approval of the request for upgrading the grade of these

petitioners from peon to the Forest Guard and accordingly all petitioners were upgraded to the post of Forest Guard and their services were

confirmed vide letter dated 7.12.2012.

8. While they were discharging the duty as Forest Guard a letter from the Government was received by the Chief Conservator of Forest in which it

has been mentioned that once person has been appointed, it became final, alteration, modification or change of grade has been prohibited. In

pursuance of that letter the impugned order has been passed whereby petitioners have been brought down to the post of peon.

9. Learned counsel for the petitioners submits that in a similar circumstance one Raj Kumar Prasad who was appointed on Class-IV post, later on

his position was improved as Forest Guard and also placed reliance on the information received under RTI which indicates that Subash Kumar

Mahto was appointed as IV grade employee, later on Conservator of Forest-cum-Regional Director Balmikinagar, Balmikinagar Tiger Project,

brought him on Class-III post. He further submits that their cases are not in isolation but other persons have been given same treatment as has been

given to the present petitioners. He further submits that order has been issued without giving notice to the petitioners which is clear from paragraph

26 of the writ petition.

10. Learned counsel for the State has submitted that petitioners were appointed on compassionate ground under scheme, in terms of scheme, once

appointed on particular post, later on cannot be changed or improved as the same became final.

11. Before dealing with the issue of the present case it is necessary to deal with the view of the Hon<sup>ble</sup> Supreme Court as well as this Court, the

whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. The object is not to give a member of

such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family

to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the

deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be

offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence

that alone can be offered on compassionate grounds, the object being to relieve the family of the financial destitution and to help it get over the

emergency. It is also of the view that compassionate employment cannot be granted after a lapse of a reasonable period so much so after lapse of

period specified in the rules. The consideration for such appointment does not create vested right which can be exercised at any time in future. The

object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate

appointment cannot be claimed and offered after a lapse of time and after the crisis is over. The concept is that the appointment on compassionate

ground is not source of appointment but for certain reasons the benefit is conferred in terms of scheme. It will be relevant to quote paragraph 5 and

6 of the judgment of the Hon<sup>ble</sup> Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana and others, reported in (1994) 4

SCC 138:

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate

appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these

observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to

do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the

rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the

family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be

claimed and offered whatever the lapse of time and after the crisis is over.

12. The compassionate appointment cannot be granted unless there is rule or scheme for granting such appointment and so much so any

appointment is subject to the rule or scheme framed by the State Government or the authority. The compassionate appointment cannot be made de

hors to the rule. Reliance can be placed on the judgment of Hon"ble Supreme Court in the case of Live Insurance Corporation of India v.

Asha Ramehhandra Ambekar (Mrs.) and another, reported in (1994(2) SCC 718).

13. In such view of the matter, it has to be examined the scheme of compassionate appointment as admittedly in this case petitioner was

recommended for Class-III post but in actuality they were appointed on Class-IV post. The Chief Conservator of Forest, Patna has sought

clarification from the Commissioner-cum-Secretary about the necessary clarification for appointment of Forest Guard where from it appears the

necessary height for the appointment of Forest Guard was shown to 5'4"" and in pursuance thereto by a subsequent letter of clarification position of

the petitioners was improved from Class-IV to Class-III post. It will be relevant to examine the scheme of compassionate appointment and

necessarily Clause (9) (d ,oa [k) which are as follows:

vuqdEik ds vk/kkj ij fdLh in ij fu;qfDr gksus ij iqu% mls vuqdEik dk nksckjk ykHk nsrs gq;s mldh izksUufr vFkok laoxZ ifjorZu ugha fd;k tk

ldsxkA

[k& bl ifji= dk dksbZ ykHk vcrd fu;qDr gks pqds fdLh O;fDr dks laoxZ@in ifjorZu gsrq vuqekU; ugha gksxkA

14. In clause Ka and Kha it has specifically been mentioned that once a person is appointed on compassionate ground he cannot be given any

benefit of promotion or change of his/her status or change of the cadre. So rule specifically provides that once a person has been appointed his

position cannot be changed or improved as has been seen herein above. The Hon"ble Supreme Court is of the view that the appointment on

compassionate ground is not the source but mere privilege is given to tide over the family financial crisis, any person can not be appointed or

changed in status de hors to the Scheme or Rule. Recently, in the case of Brajesh Kumar v. The State of Bihar & others ( C.W.J.C. No. 15917

of 2007) the same issue was raised, and this Court has criticized the action of the respondent, improving the position from Class-IV to Class III. In

this case the Court has taken view that, position of employment cannot be changed at later stage and directed to bring back the persons have been

given enhancement.

15. Similar issue again came for consideration before this Court in the case of Amrendra Kumar Tripathi & ors v. The State of Bihar & others

(C.W.J.C. No. 9123 of 2013) and this Court held that, once appointment in particular grade, reached to finality, cannot be changed subsequently..

It will be relevant to quote paragraph nos. 17, 18, 19 and 20 of the aforesaid judgment:

17. The compassionate appointment cannot be made in absence of Rule or Regulations issued by the Government or the Public Authority. The

request is to be considered strictly in accordance with Government Scheme, no discrimination as such has laid with the authority to make

compassionate appointment de hors to the scheme.

18. Further in the case of M.G.B. Gramin Bank v. Chakrawarti, reported in 2014(13) S.C.C. 583, the Hon"ble Supreme Court held that the

consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested

right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment

should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

19. In view of the aforesaid judgments, it is admitted fact that in pursuance of the decision of the District Compassionate Appointment Committee

the petitioners have joined the post. The Scheme for compassionate appointment specifically provides in clause-9 that once a person has joined the

post there cannot be any change of the cadre, meaning thereby, it has got exhausted. Persons cannot say that because others have been appointed

in class-III post his position should also be improved. In the present case, the authority of his own has not taken any action, but when one Brajesh

Kumar Singh has approached this Court in C.W.J.C. 15197 of 2007, raising grievance about these petitioners that they first joined the class-IV

post, when they filed a representation their position was improved as class-III post. The Court has taken a very serious view of the matter and held

that once a person has joined the post of class-IV his position cannot be improved from class-IV post to class-III post, thereupon the authority

has taken action.

20. It will be relevant to quote certain paragraphs of the judgment, which are as follows:-

The submission as with regard to the discrimination of the case of the petitioner has two facets. The appointment of the petitioner was made in the

year 2007, whereas, the decision of the District Compassionate Appointment Committee to review those cases was taken in the year 2005,

therefore, it was open for the petitioner to refuse such appointment and not to join the Class-IV post of peon. The petitioner did not do so and, in

fact, happily joined the post of Peon offered to him and after joining the said post, he had filed this writ application on 6.12.2007 for claiming parity

with the aforementioned four persons. To that extent, the petitioner will be bound by the principle of estoppel, inasmuch as, he had already

accepted the appointment on Class-IV post and therefore he cannot be allowed to reprobate and reprobate in the matter of appointment from

Class-IV post to Class-III post.

The other aspect, which would really make the case of the petitioner distinguishable, is that the petitioner wanted to be appointed against a Class-

III post of Teacher. The post of Teacher in all the schools, whether, primary, middle or secondary have been governed by the statutory

Recruitment Rules, which require a person to be trained. The Government executive order of relaxation of training being contrary to the statutory

Recruitment Rules, the same cannot be at least made basis for issuing a direction by this Court. In the case of other four persons, they were not

seeking appointment on the post of Teacher but on any other Class-III post. How far that decision of review by the Establishment Committee was

correct, inasmuch as, those four persons were also already appointed on Class-IV post, is a matter of concern and should be looked into by the

competent authority but, that cannot be a ground for perpetuating an illegality by also appointing the petitioner on a Class-III post. Article 14 and

16 to the Constitution of India as with regard to equality and equal opportunity in public employment cannot be enforced in a negative manner. 1/2

Before parting with, this Court must notice the submission of the learned counsel for the petitioner that if the appointment of the petitioner on a

Class-III post was not permissible, the case of four persons, who were given favourable treatment of being allowed to take the Class-III post after

being appointed on Class-IV post on compassionate ground, should also be reviewed.

There is a difficulty for this Court to straightway pass an order against them inasmuch as, none of the four persons have been impleaded party to

this writ application but, then, as the case of these four persons may become bad precedent for the State and its functionaries, this Court would

direct the Principal Secretary of the Personnel and Administrative Department to look into this aspect of the matter and examine the case of the

aforesaid four persons and if it is found that their reappointment on Class-III post after being appointed on Class-IV post was not permissible, he

would pass an appropriate order for reverting them to Class-IV post but, of course, after following the principles of natural justice".

16. As the scheme is very much clear as well as consistent view of this Court that once a person is appointed and that offers is accepted, joining

the post without any protest, later on any clarification from the department will not create any right, so much so any vested right for improvement of

his position and change in the cadre.

17. But before finally deciding this issue it is very much clear that respondent authority without any show cause or explanation has withdrawn the

benefit of Class-III post and reverted them to the Class-IV posts. Before passing adverse order it was bounden duty of the competent authority to

extend the benefit of natural justice asked the explanation or show cause and only then an adverse order could have been passed by the

respondent.

18. Before parting with the judgment it has come during the argument that certain persons mentioned herein above were appointed on Class-IV

posts and having been upgraded to Class-III post which is impermissible in law. The respondent authority will examine cases of the persons

mentioned herein above in the body of this judgment and will take remedial measure so that it may not be used as precedent in future but any

action against any person will be subject to following the principles of natural justice.

19. In such circumstances, the impugned order vide office order dated 23.2.2013 passed by the respondent authority are kept in abeyance subject

to the final order passed by the respondent authority. It is directed to the respondent authority to offer show cause/explanation with regard to

upgrading of Class-IV post to Class-III post and after receipt of the same pass a reasoned order in accordance with law.

20. With the aforesaid observation this writ petition is disposed of.