

MD. ZAMIL AHMED

v.

STATE OF BIHAR AND ORS.

(Civil Appeal No. 4815 of 2016)

MAY 5, 2016

**[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]**

*Service Law:*

*Appointment on compassionate ground – Of the brother of the deceased employee – After taking undertaking from the appointee that he would maintain the family of the deceased – After 15 years of appointment, State terminated the services on the ground that appointment on compassionate ground was illegal and against the policy as the brother of the deceased does not fall within definition of ‘dependant of the deceased’ and hence not eligible for compassionate appointment – Writ petition challenging termination order dismissed – The order confirmed by Division Bench of High Court – On appeal, held: In view of undisputed facts of the case and more so in view of the fact that there was no false declaration nor suppression of any material fact for securing appointment, authorities concerned were not right in terminating the services/ cancelling the appointment after 15 years – The State was not entitled to take advantage of its own mistake – State directed to reinstate the services of the appellant with all the consequential benefits – Cost of Rs.5000/- imposed.*

**Allowing the appeal, the Court**

**HELD: 1. The fact that the appellant was younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of dependent at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment. It was a conscious decision taken by the State for giving an appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their bread earner. The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. It was a right decision**

A taken by the State as a welfare state to help the family of the deceased at the time of need of the family. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. [Paras 20, 21 and 22] [345-E-G; 346-C]

B 2. There is no justification on the part of the State to dig out the appellant's case after 15 years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependent of deceased" to claim compassionate appointment. Keeping in view the peculiar undisputed facts of the case and  
 C having regard to the totality of the circumstances, the State was not justified in terminating the appellant's services. [Paras 14 and 19] [344-F; 345-D]

D 3. The respondent-State is directed to reinstate the appellant in service with all consequential benefits such as payment of full back wages payable from the date of termination till the date of reinstatement in service. The appellant is also entitled to claim his seniority and notional promotions as per rules. [Para 25] [346-F]

E 4. Cost of the appeal is quantified at Rs.5000/- and the same be paid to the appellant by the respondent-State along with the arrears of back wages. [Para 27] [346-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4815 of 2016.

F From the Judgment and Order dated 20.12.2013 of the High Court of Judicature at Patna in LPA No. 758 of 2013.

Chandra Prakash, Adv., for the Appellant.

Rudreshwar Singh, Samir Ali Khan, Advs., for the Respondents.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

G 2. This appeal is filed against the final judgment and order dated 20.12.2013 of the High Court of Judicature at Patna in L.P.A. No. 758 of 2013 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein against the order dated 08.11.2010 of the learned Single Judge of the High Court in C.W.J.C. No. 5713 of  
 H 2006 in which it was held that the appellant being the brother of the

deceased was not entitled to claim compassionate appointment. His services were, therefore, terminated on this ground. A

3. In order to appreciate the short issue involved in this appeal, it is necessary to state a few relevant facts:

4. One Mohd. Rashid Alam, who was working as a Constable in District Police Force, was killed while on security duty. He left behind his illiterate wife and four minor children. Since there was no one in the family to support the widow and the minor children, the widow of the deceased submitted a petition to the State (Police Department) enclosing an affidavit giving assurance by the appellant, who is the brother of the deceased, that he would support the widow and the minor children of the deceased constable if he is given appointment. Accordingly, Memo No. 1267/P-02 dated 29.02.1991 was issued by the Director General of Police to appoint the appellant. Vide D.O. No. 1248/91, the appellant was appointed as constable w.e.f. 02.05.1991 after being declared medically fit on the post of Constable in the scale of 950-20-1150-25-1400. B  
C  
D

5. Thereafter the appellant successfully completed his recruits training course and since then he had been performing satisfactory duties in various districts and also taking care of the illiterate widow and four children of the deceased constable. The appellant also, in the meantime, got married two daughters of the deceased constable. E

6. After 15 years of service, on 04.06.2005, the appellant received a show cause notice from the senior Superintendent of Police, Patna. In the show cause notice, it was stated that why the appellant's services be not terminated because he being a "devar (brother of deceased)" was not included in the definition of dependent of the deceased and hence was not eligible to claim compassionate appointment in the State services. F

7. On 10.06.2005, the appellant gave his explanation and stated that ever since his appointment in February 1991, he has been looking after the widow and four children of the deceased constable. He gave them education and still maintaining the family of deceased as Head of the family. He also explained that his dismissal, after 15 years of satisfactory duty, would cause undue hardship to the widow and family of the deceased constable because even as on today, there is no earning member in the family. G  
H

- A           8. The senior Superintendent of Police, Patna did not accept the explanation offered by the appellant and terminated the services of the appellant on 23.06.2005 holding his appointment on compassionate ground to be illegal and against the policy.
- B           9. Aggrieved by the said order, the appellant filed an appeal before the Inspector General of Police on 01.08.2005.
- C           10. Since the appeal was not decided by the Inspector General of Police, the appellant filed petition being Writ Petition No. 5713 of 2006 before the High Court for quashing the order of termination passed by the senior Superintendent of Police, Patna with a further prayer to reinstate him with all consequential benefits or in the alternative to direct the authorities to decide the appeal filed by him. By order dated 08.11.2010, the learned Single Judge dismissed the petition. It was held that it was a case of a mistake committed by the authorities while giving such benefit to the appellant and hence this is a fit case for termination of appellant's services.
- D           11. Being aggrieved by the aforesaid order, the appellant filed an appeal being L.P.A. No. 758 of 2013. By order dated 20.12.2013, the Division Bench upheld the order of the learned Single Judge and dismissed the appeal.
- E           12. Against the said order, the appellant has filed this appeal by way of special leave before this Court.
13. We heard the learned counsel for the parties.
- F           14. Keeping in view the peculiar undisputed facts of the case and having regard to the totality of the circumstances, we are of the considered view that the State was not justified in terminating the appellant's services. In other words, the ground on which the appellant's services were terminated by the State after a period of 15 years of appellant's appointment does not appear to be well founded. This we say for the following reasons:
- G           15. Firstly, the appellant and wife of the deceased at the time of seeking compassionate appointment did not conceal any fact and nor filed any false or incorrect document/declaration. On the other hand, both of them disclosed their true family relations and conditions prevailing in the deceased family on affidavit.
- H           16. Secondly, the appellant, who is the brother of the deceased,

undertook to maintain the family of the deceased in the event of his securing the compassionate appointment and he accordingly also gave such undertaking to the State. A

17. Thirdly, there was no one in the family of the deceased to claim compassionate appointment except the appellant who, as mentioned above, was the close relative of the deceased, i.e., real younger brother and used to live with the deceased. He was otherwise eligible to claim such appointment being major, educated and only male member in the family. B

18. Fourthly, the appellant after securing the employment throughout maintained the family of the deceased in all respects for the last more than 15 years and he is continuing to do so. C

19. In the light of aforementioned reasons, which rightly persuaded the State to grant compassionate appointment to the appellant, we do not find any justification on the part of the State to dig out the appellant's case after 15 years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependent of deceased" to claim compassionate appointment. D

20. The fact that the appellant was younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of dependent at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment. E

21. In our considered view, the aforesaid facts would clearly show that it was a conscious decision taken by the State for giving an appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their bread earner. The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. In our view, it was a right decision taken by the State as a welfare state to help the family of the deceased at the time of need of the family. F G

22. In these circumstances, we are of the view that there was no justification on the part of the State to wōke up after the lapse of 15 years and terminate the services of the appellant on such ground. In any H

- A case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration and nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State.

23. It is for this reason, we are of the view that action on the part of welfare State in terminating the appellant's service on such ground cannot be countenanced. We, therefore, disapprove the action taken by the State.

24. In the light of foregoing discussion, we allow the appeal, set aside the impugned orders and in consequence allow the writ petition filed by the appellant (writ petitioner) and quash the appellant's termination order dated 23.06.2005 (Annexure -P-4 of SLP).

25. As a consequence thereof, the respondent-State is directed to reinstate the appellant in service with all consequential benefits such as payment of full back wages payable from the date of termination (23.06.2005) till the date of reinstatement in service. The appellant is also entitled to claim his seniority and notional promotions as per rules. It be fixed accordingly.

26. Let the appellant be reinstated in service within a month as an outer limit and the arrears of back wages, as directed, be paid to the appellant within three months by the respondent-State.

27. Cost of this appeal is quantified at Rs.5000/- and the same be paid to the appellant by the respondent-State along with the arrears of back wages.

Kalpana K. Tripathy

Appeal allowed.