

THE STATE OF BIHAR AND ORS. ETC.

v.

SAMSUZ ZOHA ETC.

MARCH 22, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

*Appointment on compassionate grounds—Co-operative Department of Government of Bihar—Vacancies of Class IV, and Class III posts—State Government taking a policy decision to make all appointments on compassionate grounds to class IV posts irrespective of qualifications of individuals and reserving class III posts to be filled by promotion—Some of the candidates appointed to class IV posts filing a writ petition in High Court for appointment to class III posts—High Court directing the Government to appoint the petitioners to class III posts either by promotion or by fresh appointment—Held, High Court not justified in giving directions—There is no right vested in the candidates for particular appointment on compassionate grounds—The principle adopted by the Government cannot be said to be unjustified or illegal.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7086-87 of 1996 Etc.

From the Judgment and Order dated 7.12.95 and 26.10.94 of the Patna High Court in M.J.C. No. 727/95 and C.W.J.C. No. 8550 of 1993.

Altaf Ahmed, Additional Solicitor General, Anil Kumar Jha, M.M. Kashyap, B.B. Singh, S.B. Upadhyay and Gopal Singh, for the appearing parties.

The following Order of the Court was delivered :

Leave granted in SLP (C) Nos. 2383-2384 of 1996.

We have heard learned counsel on both sides.

A rather unfortunate situation has been created by the orders of the High Court in interfering with the appointments made on compassionate

A ground by the Government. These appeals by special leave arise from different orders of the High Court of Patna. The first batch taken up is of appeals arising out of SLP (C) Nos. 2383-84/96. In this case the Government had resolved to appoint on compassionate ground the dependent son or daughter of the deceased employee who died in harness. A long list of persons awaiting such appointments was prepared by the Co-operative Department. The Department recommended candidates for certain posts depending upon the qualifications etc. A committee was constituted by the Government consisting of the Secretary, Co-operative Department, Additional Secretary and the Registrar of the Co-operative Department. The Committee had first identified the vacant posts and then decided to make recommendations of the candidates. At that time since more than 40 posts of Class IV was available, the committee had recommended appointment of all the candidates as Class IV employees. It is also seen that 12 posts in Class III were available but they kept reserved for promotion from existing Class IV employees. The candidates who were appointed as Class IV approached the High Court by way of writ petition the first of which is CWJC No. 739/1991 titled *Ghidharya Devi & Ors. v. State of Bihar & Ors.* The High Court by order dated August 26, 1991 directed the respondents to consider afresh their appointments to any one of the Class III posts either by promotion or fresh appointment whichever was possible in accordance with the rules and regulations. Feeling aggrieved, the respondents filed a Review Petition. After considerable delay, the Review Petition came to be dismissed and appointments were directed to be made by April 30, 1992. Consequently, the appellant did not come in appeal to this Court against that order which thus has become final. Following the above order directions have been given in respect of different persons who had filed separate writ petitions. In some of the cases the appeals have now come to be filed before us.

The question that arises for consideration is whether the High Court is right in giving directions to appoint them afresh or give them promotion? It is not in dispute that there is no right vested in the candidates for particular appointment on compassionate grounds. The State had taken policy decision to appoint all the candidates irrespective of the qualifications as Class IV post and, therefore, the committee consisting of the Secretary, Addl. Secretary and the Registrar met and decided the principle that all the available posts in Class IV should be made available to the candidates in the awaiting list for appointment on compassionate grounds.

12 posts available in Class III were reserved for appointment by promotion to the Class IV candidates who were entitled thereto as per the rules. The principle adopted by the Government cannot be said to be unjustified or illegal. Undoubtedly, some candidates had gone to the Court and obtained orders and in compliance thereof, at pain of contempt petition, the Government, instead of appointing them to Class IV posts since by then the Class III posts were not available, upgraded Class IV post as Class III post and confirmed them as Class III employees. That order which was wrongly made by the High Court cannot be a base to issue directions. In other words, if the directions are complied with all the Class IV posts would be converted into Class III posts which is against the discipline of the service. The High Court, therefore, was not justified in issuing directions in all the cases for appointment to Class III post.

Appeals are accordingly allowed but in the circumstances without costs. It is needless to mention that their cases would be considered and appointment made against the available vacancy in the order of seniority to the Class IV post.

*SLP (C) NO. 18334 of 1995*

Special Leave Petition is dismissed.

R.P.

Appeals allowed.