

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No.03 of 2024

1. Managing Director Shashi Ranjan, aged about 39 years
Jharkhand Industrial Area Development Authority,
Ranchi, JIADA Bhawan, Namkum Industrial Area,
Lowadih, P.O. & P.S. – Namkum, District-Ranchi.
2. Managing Director, Bokaro Industrial Area Development
Authority, BIADA Bhawan, Balidih, B.S. City, P.O. & P.S.
Balidhi, District – Bokaro, now Regional Director,
Keerthishree G., aged about 33 years, Jharkhand
Industrial Area Development Authority, Bokaro Region,
JIADA Bhawan, Bokaro Region, Balidih, B.S. City, P.O.
& P.S. Balidhi, District – Bokaro.

... ... **Respondent Nos.3 & 4/Appellants**
Versus

1. The State of Jharkhand.
2. The Deputy Commissioner, Bokaro, P.O. & P.S. B.S.
City, District – Bokaro.

... ... **Respondent Nos. 1 & 2/Respondents**

3. Santosh Kumar Singh son of Late Mathura Singh,
resident of Plot No.C/16, BIADA Housing Colony, P.O. &
P.S. Sector – 12 District – Bokaro.

... ... **Petitioner/Respondents**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellants : Mr. C.A. Bardhan, Advocate
For the State : Mr. Mohan Kumar Dubey, AC to AG

Order No. 04/Dated 22nd July, 2024

I.A. No.957 of 2024

1. This interlocutory application has been preferred
under Section 5 of the Limitation Act for condoning the
delay of 12 days in preferring this Letters Patent Appeal.
2. Heard the parties.
3. Having regard to the averments made in the
application and submissions made on behalf of the
appellants, we are of the view that the appellants were

prevented from sufficient cause in filing the appeal within the period of limitation. As such, the delay of 12 days in preferring the appeal is hereby condoned.

4. I.A. No. 957 of 2024 stands allowed.

L.P.A. No.03 of 2024

5. The instant appeal is under Clause 10 of the Letters Patent is directed against the order dated 01.11.2023 passed by learned Single Judge of this Court in W.P.(S) No.6130 of 2022 whereby and whereunder the decision taken by the authority as contained in letter dated 08.09.2022 by which the appointment on compassionate ground has been denied, has been quashed and set aside with a direction upon the competent authority, i.e., Respondent Nos. 3 and 4 to pass a reasoned order on the application of the petitioner for compassionate appointment within two months from the date of order.

6. The brief facts of the case, as per the pleading made in the writ petition, are required to be enumerated which read as under:-

7. It is the case of the petitioner that the father of the Petitioner Late. Mathura Singh was working in a capacity of Industry Extension Officer under the respondent and he has died on 16.09.2000 while in service. Thereafter, the petitioner has made a representation on 28.10.2000 for his employment on compassionate ground in place of his

deceased father who was a permanent employee under the respondent at the time of his death.

8. The respondents asked the petitioner to submit the application for appointment on compassionate ground through the necessary Form along with the other documents and accordingly the petitioner has submitted the same.

9. The District Compassionate Committee in its Meeting held on 16.07.2002 recommended for providing compassionate appointment to the petitioner in Fourth Grade post and same has been intimated to the petitioner by Memo No.568 Dated 27.09.2002.

10. Thereafter the matter remained pending before the Authority for consideration and thereafter by an Office Order as Memo No. 725/BIADA dated 01.06.2005 the Petitioner was asked to join in the Third Grade Post on Daily Wages basis at the rate of Rs.69.00 only till the next order as there was no availability of vacant post in Third Grade since due to the death of the father of the petitioner on the compassionate ground the petitioner is entitled for an employment in the post of Third grade.

11. In pursuant to Office order Memo No.516/BIADA dated 10.04.2006 the Daily wages service of the petitioner has been stopped.

12. Thereafter vide Letter no.443 dated 27.05.2013 the petitioner was asked by the respondents to reply the queries for consideration of his employment on compassionate ground. Accordingly, the petitioner submitted an application before the Authority on 29.05.2013 for immediate redressal of the demand of the petitioner.

13. When no response was received by the petitioner, he made a representation on 24.11.2022 before the Respondent authority but no action was taken by the respondents on his representation.

14. The matter was kept pending for years together and on 08.09.2022 the claim of the writ petitioner was rejected. Hence, the Writ Petition has been filed for a direction upon the respondents to provide employment on compassionate ground, however, no prayer was made to set aside the order dated 08.09.2022 passed by the appellant.

15. The learned Single Judge, after hearing the parties, vide order dated 01.11.2023 has quashed the decision taken by the authority by which the appointment on compassionate ground has been denied, with a direction upon the competent authority, i.e., Respondent Nos. 3 and 4 to pass a reasoned order on the application of the petitioner for compassionate appointment within two months from the date of order.

16. Against the aforesaid order, the instant appeal has been filed.

17. It is evident from the factual aspect that the father of the writ petitioner died in harness on 16.09.2000. The writ petitioner, who is the dependent son of the deceased employee, had made application on 28.10.2000 for consideration of his case for appointment on compassionate ground.

18. The matter was placed before the District Compassionate Committee. The Committee vide its minutes dated 16.07.2002 has recommended the case of the writ petitioner for appointment on Fourth Grade post. The aforesaid decision was communicated to the writ petitioner vide Memo No.568 dated 27.09.2002.

19. It has been contended on behalf of the appellant based upon Annexure-3 dated 01.06.2005, that the recommendation so made by the District Compassionate Committee was already acted upon since the writ petitioner was provided appointment but on daily rated capacity @ Rs.69/- per day remuneration.

20. The writ petitioner, thereafter, has been disengaged and subsequent thereto, fresh application was made on 29.05.2013. The said application was kept pending for years together and finally the request made for

consideration of his appointment on compassionate ground has been finally rejected on 08.09.2022.

21. The writ petition has been filed seeking direction upon the respondents to provide employment on compassionate ground. The said writ petition has been allowed. Although there was no prayer for quashing the rejection order dated 08.09.2022 but the learned Single Judge, in order to consider the claim of the petitioner based upon the factual aspect as involved in the present case, has interfered with the decision so taken by the authority and the decision dated 08.09.2022 has been quashed and set aside with a direction upon the Respondent Nos. 3 and 4 to pass a reasoned order on the application of the petitioner for compassionate appointment.

22. The same is under challenge in this appeal.

Argument advanced on behalf of appellant

23. Mr. C.A. Bardhan, learned counsel appearing for the appellant has taken the following ground in assailing the impugned judgment :-

- (i) The learned Single Judge has not appreciated the fact that even though there was no prayer in the writ petition for quashing of the rejection order dated 08.09.2022, however, the same has been quashed.
- (ii) The appointment has already been provided to the writ petitioner sometime in the year 2005 which was

accepted but subsequently, he was disengaged in the year 2006.

- (iii) In the year 2013, the application was again made for reconsideration of his case for appointment which has been rejected by passing the order dated 08.09.2022 but the learned Single Judge has not taken into consideration the vital aspect of the matter regarding the appointment already made in favour of the writ petitioner on daily rated capacity.

24. Learned counsel appearing for the appellant, based upon the aforesaid grounds, has assailed the impugned judgment.

Submission on behalf of the Respondent State

25. The State has appeared through Mr. Mohan Kumar Dubey, learned AC to A.G.

26. The respondent State is a formal party due to the reason that the JIADA is an autonomous body. However, whatever decision has been taken by the State has been followed by the appellant JIADA.

27. It is the admitted case of the appellant that they are having no independent scheme for the purpose of consideration of the case for appointment on compassionate ground, rather, whatever schemes have been formulated by the State of Jharkhand or the erstwhile State of Bihar, which has been followed by the State of

Jharkhand after its creation on or after 15.11.2000 are being followed by its adoption.

28. It has further been admitted that the erstwhile State of Bihar has formulated the scheme for the purpose of providing appointment on compassionate ground by bringing in force the circular dated 05.10.1991.

Analysis and Consideration

29. This Court has heard learned counsel for the appellant and gone through the finding recorded by the learned Single Judge in the impugned order.

30. The admitted fact as per the material available on record is that the father of the writ petitioner has died on 16.09.2000. The writ petitioner made application on 28.10.2000 for his appointment on compassionate ground.

31. It is admitted fact that the said application seeking appointment on compassionate ground was sent before the District Compassionate Committee. The District Compassionate Committee vide its minutes of meeting dated 16.07.2002 has recommended the writ petitioner to be appointed on Fourth Grade post which was communicated to the writ petitioner vide Memo No.568 dated 27.09.2002.

32. The further admitted fact is that the writ petitioner was not provided with appointment in terms of the recommendation so made by the District Compassionate

Committee and the appointment on Fourth Grade post was not provided, rather, the writ petitioner was provided employment by issuing an engagement order engaging him in the daily rated capacity @ Rs.69/- per day.

33. The writ petitioner has accepted the same but subsequent thereto he has also been disengaged.

34. The further admitted fact is that the said disengagement order was not challenged by the writ petitioner, rather, an application was made on 29.05.2013 requesting the authority to reconsider the case of the writ petitioner for appointment on compassionate ground.

35. The said application was kept pending for years together and the decision was taken on 08.09.2022 by rejecting the said claim.

36. The writ petitioner, being aggrieved with the said decision, has challenged the same by filing writ petition being W.P.(S) No.6130 of 2020 and thereby the order was passed by the learned Single Judge allowing the writ petition with a direction upon the respondent Nos. 3 and 4 to pass reasoned order on the application of the petitioner for compassionate appointment.

37. This Court before proceeding to consider the argument advanced on the behalf of the appellant, deems it fit and proper to refer the circular dated 05.10.1991 based upon which the case of the writ petitioner was considered

by placing it before the District Compassionate Committee. The aforesaid circular dated 05.10.1991 is the scheme floated by the erstwhile State of Bihar which has also been followed by the State of Jharkhand on or after 15.11.2000. The aforesaid circular provides the provision of consideration of the case of one or the other dependents whose bread earner has died in harness.

38. The limitation has been provided to make such application within a period of five years. Initially although there was no limitation in the circular but by virtue of corrigendum, the period of five years has been inserted in the circular dated 05.10.1991.

39. It is not the case of the appellant that the application so made by the writ petitioner was beyond the period of limitation of five years, rather, it is the admitted case of the appellant that the application for consideration of appointment on compassionate ground was filed by the writ petitioner within the period of five years.

40. The question which requires consideration herein is that –

As to whether the respondents can be allowed to breach the recommendation so made by the District Compassionate Committee to provide appointment to the writ petitioner on Fourth Grade post, the

substantive post, which is based upon the Government circular dated 05.10.1991?

41. The appellant has not acted upon in terms of the decision taken by the District Compassionate Committee which itself, according to our considered view, is in deviation to the circular dated 05.10.1991 wherein it has been reflected that the case of one or the other dependent will be placed before the District Compassionate Committee and subject to availability of the vacancies, the appointment is to be made.

42. The moment the District Compassionate Committee has recommended the case of the writ petitioner for appointment on Fourth Grade post which itself suggests that there was no case of non-availability of vacancy of Fourth Grade post.

43. The appellant, although without acting upon the recommendation made by the District Compassionate Committee, had provided the writ petitioner with the engagement order for his engagement as daily rated employee that too the said engagement order subsequently has been cancelled, meaning thereby, the appellant has again breached their promise which they ought to have taken into consideration based upon Circular dated 05.10.1991.

44. The writ petitioner had accepted the offer of daily rated engagement for the reason that due to the sudden demise of the bread earner, he was having no option but to accept the offer of appointment. But, even thereafter he was disengaged within a period of one year only.

45. The writ petitioner, thereafter, had again made application on 29.05.2013. The said application was kept pending and subsequently it was rejected on 08.09.2022.

46. The writ petitioner, after rejection of the claim vide letter dated 08.09.2022, has filed the writ petition.

47. This Court has found from the pleading made in the writ petition, particularly, in the prayer portion, that there was no prayer for quashing of the decision dated 08.09.2022 but the pleadings are there in the rejoinder to counter affidavit which are being referred herein:

“10. That in the counter affidavit vide annexure-D office of the respondent No.4 vide its letter No.465 dated 8.9.2022 has stated to issue the letter to the petitioner negating the claim that government vide circular no.963 dated 12.02.2021 effective from 01.12.2015 deleting the clause 15(1) but the same has not been received as yet by the petitioner.

11. That the petitioners case is of the year 2000 and is fully covered in existing policy of the respondents No.3 and 4 and in the eye of law the circular of 2021 as stated above issued by the respondent state has no relevancy in the case of petitioner, as because the circular of 2021 can take only perspective effect.”

48. Since one ground has been taken on behalf of the appellant that in absence of any prayer no relief could have been granted by the learned Single Judge, but this Court is not in agreement with such contention for the reason that it is settled position of law that even in absence of such prayer if the pleadings are there, the writ court is having jurisdiction to mould the prayer, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***State of Rajasthan Vrs. Hindustan Sugar Mills Ltd. & Ors.***, reported in ***AIR 1988 SC 1621***, wherein, it has been laid down at paragraph-4 which reads as under:-

“4.The High Court was exercising high prerogative jurisdiction under Article 226 and could have moulded the relief in a just and fair manner as required by the demands of the situation.”

49. Further, the Hon'ble Apex Court in the case of ***Air India Statutory Corporation & Ors. Vrs. United Labour Union & Ors.***, reported in ***(1997) 9 SCC 377***, wherein, it has been held at paragraph-59, which reads as under:-

“59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite

prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by a catena of decisions of this Court starting from Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1 : AIR 1975 SC 2299] to Bommai case [(1994) 3 SCC 1]. **It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law.”**

50. This Court, in view of the aforesaid position of law and coming to the record pertaining to the writ petition, has found therefrom that the pleadings are there with respect to consideration of the case of the writ petitioner, however, there is no prayer for quashing of the order dated 08.09.2022.

51. This Court, therefore, is of the view that if in such circumstances, i.e., availability of the pleadings, even if the prayer for quashing of the order dated 08.09.2022 has not been made and the learned Single Judge if has interfered with the order dated 08.09.2022, the same, according to our considered view, cannot be said to suffer from an error, reason being that so long as the decision taken by the authority concerned dated 08.09.2022 could not have been quashed and set aside, there could not been direction to be passed by the learned Single Judge so far as the substantive prayer made in the writ petition, i.e., direction

upon the respondents to consider the case of the writ petitioner for appointment on compassionate ground.

52. The learned Single Judge, on the basis of the aforesaid premise, if has quashed the order dated 08.09.2022 even in absence of the prayer, which according to our considered view, cannot be said to suffer from an error.

53. The second ground has been taken that appointment on compassionate ground has been consummated by accepting appointment which was made in the capacity of daily rated employee.

54. The law although is settled as per the Hon'ble Apex Court in the judgment rendered in the case of ***State of Rajasthan vs. Umrao Singh***, reported in **(1994) 6 SCC 560** wherein the law has been laid down that once the appointment on compassionate ground has been consummated, the concerned dependent, who has got the appointment, will have no occasion to again come to the court of law for upgrading such appointment, reference in this regard be made to the relevant paragraphs of the aforesaid judgment which are being quoted hereunder as :-

“8. Admittedly, the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3- 1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a

consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of “endless compassion’. Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.”

55. But the law is also settled that each judgment is to be tested on the basis of the applicability of the facts and circumstances, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***Dr. Subramanian Swamy vs. State of Tamil Nadu & Ors*** reported in ***(2014) 5 SCC 75*** wherein at paragraph 47 of the Hon'ble Apex Court has observed as under :-

47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. “The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.”

56. This Court, in order to consider the applicability of the fact of consummating the offer of appointment and comparing with the factual aspect, has found that the writ

petitioner had never been granted appointment in substantive post as per the recommendation made by the District Compassionate Committee for his appointment on Fourth Grade post.

57. The writ petitioner's case for consideration of appointment on compassionate ground is the circular dated 05.10.1991. This Court has not found anywhere in the circular any provision for providing appointment in the daily rated capacity and it cannot be, reason being that if the appointment is to be made on compassionate ground depending upon the vacancies which itself suggest that the appointment, on compassionate ground, was/is to be provided against the substantive post and not in the daily rated capacity.

58. Further, the petitioner although had been appointed on daily rated capacity but subsequently he has again been disengaged. The petitioner, thereafter, has made an application on 29.05.2013 which has been rejected on 08.09.2022.

59. This Court, therefore, is of the view that what has been contended on behalf of the appellant by taking the ground to interfere with the order, cannot be considered for the purpose of interfering with the order, otherwise, when the case of the appellant is that the appointment has been provided but not on substantive basis, rather, on daily

rated capacity, that too contrary to the recommendation made by the District Compassionate Committee then it will not only lead to miscarriage of justice to the dependent of the deceased employee, rather, it will also be said to be action taken contrary to the scheme which has been floated by the State but adopted by the appellant.

60. The question may come that why after such a lapse the appointment on compassionate ground is to be given. There is no denial of the fact that the appointment on compassionate ground is to be provided without any delay, rather, the same is to be provided expeditiously. But, the said aspect of the matter will not be applicable herein, since it is the appellant who had provided appointment but on daily rated capacity in the year 2005 and later on in year 2006 he was disengaged and thereafter the application was made by the writ petitioner for his appointment on compassionate ground on 29.05.2013 but the same was rejected on 08.09.2022.

61. The application, which has been admittedly made within the period of limitation, will be said to be kept pending initially by providing appointment on daily rated capacity and subsequently by rejecting the claim in the year 2022.

62. This court, therefore, is of the view that it is the appellant who is at fault and the law is well settled that a

wrong doer cannot be allowed to take advantage of its own wrong, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***Kusheshwar Prasad Singh v. State of Bihar and Others*** reported in **(2007) 11 SCC 447** wherein it has been held that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong. For ready reference paragraphs 15 and 16 are being quoted hereunder as:-

“**15.** In *Union of India v. Major General Madan Lal Yadav* [(1996) 4 SCC 127] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated: “It is a maxim of law, recognised and established, that no man shall

take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”.

63. Similar view has been reiterated by Hon'ble Apex Court in the case of ***Indore Development Authority v. Shailendra (Dead) through legal representatives and others*** reported in **(2018) 3 SCC 412** at paragraph 143 which is being quoted hereunder as:-

“143. When once the court has restrained the State authorities to take possession, or to maintain status quo they cannot pay the amount or do anything further, as such the consequences of interim orders cannot be used against the State. It is basic principle that when a party is disabled to perform a duty and it is not possible for him to perform a duty, is a good excuse. It is a settled proposition that one cannot be permitted to take advantage of his own wrong. The doctrine *commodum ex injuria sua nemo habere debet* means convenience cannot accrue to a party from his own wrong. No person ought to have advantage of his own wrong. A litigant may be right or wrong. Normally merit of lis is to be seen on date of institution. One cannot be permitted to obtain unjust injunction or stay orders and take advantage of own actions. Law intends to give redress to the just

causes; at the same time, it is not its policy to foment litigation and enable to reap the fruits owing to the delay caused by unscrupulous persons by their own actions by misusing the process of law and dilatory tactics.”

64. This Court, having discussed the factual aspect and coming back to the impugned order, has found that the learned Single Judge has taken into consideration the entire aspects of the matter while allowing the writ petition, which according to our considered view, cannot be said to suffer from an error.

65. Accordingly, this Court is of the view that the instant appeal deserves to be dismissed.

66. Accordingly, the instant appeal fails and is dismissed.

67. Pending interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, A.C.J.)

(Arun Kumar Rai, J.)

Birendra/**A.F.R.**