

प्रेषक,

रजनीश कुमार

सरकार के संयुक्त सचिव।

सेवा में,

सभी विभागसभी विभागाध्यक्षपुलिस महानिदेशकसभी प्रमंडलीय आयुक्त

सभी जिला पदाधिकारी,

बिहार।

पटना, दिनांक 15.11.2024

विषय— मृत सरकारी सेवक के किसी आश्रित के gainfully नियोजित रहने की स्थिति में अनुकम्पा नियुक्ति के संदर्भ में।

प्रसंगः— सामान्य प्रशासन विभाग का पत्र संख्या-15783 दिनांक-19.11.2014

महाशय,

निदेशानुसार उपर्युक्त विषय के संबंध में कहना है कि मृत सरकारी सेवक के आश्रितों की अनुकम्पा नियुक्ति के संदर्भ में सामान्य प्रशासन विभाग के पत्र संख्या-13293 दिनांक-05.10.1991 द्वारा मार्गदर्शन निर्गत है जिसमें समय-समय पर कतिपय संशोधन किये जाते रहे हैं। प्रासंगिक विषय पर किये गये सभी संशोधनों को समेकित करते हुए सामान्य प्रशासन विभाग के पत्र संख्या-16100 दिनांक-23.08.2023 द्वारा एक समेकित मार्गदर्शन निर्गत किया गया है जिसे सामान्य प्रशासन विभाग के वेबसाइट पर Master Circular खण्ड में देखा जा सकता है।

2. सामान्य प्रशासन विभाग के पत्र संख्या-15783 दिनांक-19.11.2014 द्वारा gainfully नियोजन को परिभाषित करते हुए स्पष्ट किया गया है कि—

“Gainfully नियोजित रहने से तात्पर्य ऐसे नियोजन से है जिससे मृत सरकारी सेवकों के आश्रितों का भरण-पोषण हो सके।”

परन्तु अभी भी gainfully नियोजन के संदर्भ में मार्गदर्शन उपलब्ध कराने से संबंधित कतिपय अनुरोध सामान्य प्रशासन विभाग को प्राप्त हो रहे हैं।

3. अनुकम्पा नियुक्ति के संदर्भ में gainfully नियोजन को माननीय उच्च न्यायालय, पटना की पूर्णपीठ द्वारा सी०डब्लू०जे०सी०सं०-17143/2016 में दिनांक-02.05.2018 को पारित आदेश [Reported in 2018 (a)PLJR951] में निम्नवत् स्पष्ट किया गया है—

"47. So far as the clarification that 'gainfully employed' means such employment from which the employed dependent of the deceased government servant may provide sustenance or can maintain other dependents is concerned, it has to be looked at 'objectively' and not „subjectively“. It is not for the authority considering the application for compassionate appointment to find out as to whether the dependent in employment is willing to take care of other dependents or not. It would not be his concern that the gainfully employed sibling is actually providing sustenance to the other dependents or not. Any argument that the dependent in employment is not willing to provide sustenance/maintenance to other dependents or that the employed one is living separately is beyond the scope and ambit of consideration under the given scheme and policy of the government and this Court sitting in its writ jurisdiction under Article 226 of the Constitution of India would not go into enquiring the correctness of the facts so pleaded before the Court. It is because the writ Court is to be conscious of the judicial pronouncements of the Hon“ble Apex Court wherein it has been repeatedly held that a Court has no power to ignore a provision to relieve what it considers a distress resulting from its operation. We have quoted paragraph 10 and 11 of the judgment of Asha Ramchandra Ambedkar (supra) only to remind us what the Hon“ble Apex Court has held in the following words:-

“the Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however hard the case may be, it should never be done”.

48. In terms of the clarification offered by the department, on receipt of information that other siblings of the applicant are in employment, the competent authority would be required to objectively look into the nature of the employment and the resources being generated by the employed sibling from such employment. On an objective consideration where it is found that other sibling of the applicant is gainfully employed in such an employment from which he/she is in a position and has capacity to provide sustenance/maintenance to the other dependents, the application for appointment on compassionate ground would not fit in the scheme in terms of the clarification at Annexure- 'A' referred above but where it is found that the employment of the other sibling is of such a nature that it is not generating resources so as to make him able to provide both ends meet, for sustenance/maintenance to the other dependents of the deceased government employee and despite gainful employment of one of the dependents but because of his poor income from such employment he is not in a position to provide two ends meet to the other dependents, therefore they are on the verge of starvation, destitution and penury, the authorities of the State would be liable to consider the application of other dependent for appointment on compassionate ground. No

other plea in any form whatsoever would be a ground to provide the benefit of the scheme of compassionate appointment."

4. प्रासंगिक विषय के संदर्भ में कार्मिक एवं प्रशिक्षण विभाग, कार्मिक, लोक शिकायत एवं पेंशन मंत्रालय के कार्यालय आदेश संख्या-1667555281194 दिनांक-02.08.2022 की कंडिका-12 में वर्णित प्रावधान निम्नवत् है-

"12. WHERE THERE IS AN EARNING MEMBER

(a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/ Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.

(b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distresses of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

[OM No.: 14014/6/94-Estt. (D) Dated 09.10.1998]"

5. अतः अनुरोध है कि सेवाकाल में मृत सरकारी सेवक के आश्रितों में से किसी के नियोजित रहने की स्थिति में अन्य आश्रितों में से किसी एक को अनुकम्पा नियुक्ति का लाभ दिये जाने के बिन्दु पर उपर्युक्त कंडिका-3 में वर्णित न्यायादेश तथा कंडिका-4 में वर्णित भारत सरकार के सुसंगत प्रावधान के आलोक में विचार किया जाय।

विश्वासभाजन,

15/11/24
(रजनीश कुमार)

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