IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2899 OF 2007

SUSHIL KUMAR YADAV .. APPELLANT

vs.

STATE OF BIHAR & ORS. .. RESPONDENTS

O R D E R

This civil appeal is directed against the order passed by the Division bench whereby the Division Bench has affirmed the order of the learned single Judge whereby learned Single Judge has upheld the termination of service of appellant.

The appellant was appointed on 12.2.1993 on account of the fact that his father died during election operation and he approached the Chief Minister and it was ordered by the said Chief Minister that since his father was died while discharging his duty during election, therefore, the incumbent may be considered for appointment. Accordingly, appellant was appointed on mercy petition as Constable in Police Department and the appointment continued up to 2001. Thereafter, a notice was issued to the appellant that there was no Rule for compassionate appointment at the relevant time. Therefore, his services were terminated by the order dated 24.1.2003 on the ground that as per the Rule 661 of Bihar Police Manual a Selection committee is required to be constituted for selection of candidate for the post of Constable and that his selection was not done in accordance with the Manual, therefore, his services were terminated.

Aggrieved by this order, the appellant approached the High Court and was unsuccessful. His writ petition was dismissed on 16.8.2005 by the learned single Judge. Therefore, he preferred a Letters Patent Appeal before the Division Bench which was dismissed by the order dated 24/1/07. Hence he approached this court by present appeal.

Notice was given to the other side. Having considered the submissions made by the parties, we have no hesitation in saying that the appointment of incumbent initially in 1993 was an infraction of the Rules at the relevant time. The Police Manual contemplates a selection by advertising the post and a proper procedure has been laid down in the Rules. But such procedure was not followed in this case. But the appellant was appointed purely on the ground that his father had died in Election operation and therefore the appointment was made purely on the mercy petition. It is true that there is no such scope for mercy petition in the Rules. But the appellant approached the Chief Minister and it was mentioned that his father has died in the Election operation. It is on equity that he was given appointment on the post of Constable in 1993, he had undergone all training and he continued for more than ten years and suddenly in 2001 the State woke up to realize that his appointment is bad. Ordinarily, we would not have interfered in the matter but looking into the fact that incumbent was appointed purely on the ground of mercy as his father died in discharging his duties as Government servant. Therefore, the equity requires that such appointment should not have been disturbed by the Authorities. We are satisfied on the ground of equity that the incumbent should be allowed to continue as he has been in service from 1993 and was appointed only on the ground

of his father being died while discharging his duties during the Election. Therefore, it was an equity which prevails with us. Without laying down any precedent and going on the merit of this case, we think that it would be just and proper to allow this incumbent to continue in service as he has lost his father in discharge of service.

Consequently, we set aside the order of the termination dated 24.1.2003 and the order of the learned single Judge as well as that of the Division Bench.

Let the appellant be reinstated, but he will not be entitled to any back wages.

The appeal is allowed accordingly. NO order as to costs.

.....J.
(A.K. MATHUR)

.....J.
(P. SATHASIVAM)

NEW DELHI;
JULY 24, 2008.

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