

(2008) 07 JH CK 0028
In the Jharkhand High Court

Bharat Coking Coal Limited and Others	APPELLANT
Vs	
Savitri Bhuian	RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Citation : (2008) 4 JCR 52

Hon'ble Judges : Gyan Sudha Mishra, C.J.; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the Management of M/s Bharat Coking Coal Limited against the order dated 12.12.2007 passed by the learned Single Judge in W.P.(S) No. 262.6 of 2007 by which the writ petition was allowed and the order dated 13.3.2007 which was under challenge before the learned Single Judge was set aside and the matter was remitted back to the respondent- M/s Bharat Coking Coal Limited, appellant herein, to reconsider the claim of the petitioner/respondent herein for fresh appointment on compassionate ground.

2. To explain the position, it may be relevant to state that the deceased-husband of the respondent, Savitri Bhuian, during his life time had filed a writ petition being W.P.(S) No. 246 of 2005 challenging the order of his dismissal from the service of the appellant- M/s Bharat Coking Coal Limited (B.C.C.L. in short) but during pendency of the said writ petition, the matter was settled in the "Lok Adalat" and the appellant- B.C.C.L. had agreed to reinstate the deceased-husband of the respondent and the respondent's husband had agreed not to claim back wages. Unfortunately, the husband of the respondent expired and could not avail the benefit of the order of reinstatement which was settled in the "Lok Adalat".

3. As the husband of the respondent expired, she claimed compassionate appointment in place of her deceased-husband which was refused by the appellant- B.C.C.L. on the plea that although the matter had been settled in the

"Lok Adalat" for reinstatement of the deceased-husband of the respondent, he was not finally reinstated as there was no continuity of service since he was not subjected to medical examination from which it could be inferred that finally he was not reinstated and hence the wife of the deceased i.e. the respondent herein could not claim compassionate appointment.

4. Since appointment was denied to the wife of the deceased-respondent herein, she was compelled to file a fresh writ petition being W.P.(S) No. 2626 of 2007 wherein it was contended on her behalf that she was entitled to compassionate appointment in place of her deceased-husband as he had already succeeded in securing an order of reinstatement. The learned Single Judge was pleased to allow and dispose of the writ petition holding therein that the deceased husband of the respondent will have to be treated in service as the order of his reinstatement had already been passed in the "Lok Adalat". However, the learned Single Judge remitted the matter to the Management of the appellant- B.C.C.L. with a direction to reconsider the denial of appointment to the wife of the deceased-respondent herein within a period of eight weeks from the date of receipt/production of a copy of that order. The appellant-Management, instead of considering the matter as directed by the learned Single Judge, has filed this appeal, assailing the order passed by the learned Single Judge.

5. The Counsel for the appellant-Management of the B.C.C.L. has submitted that the deceased-husband of the respondent could not be treated in service as the deceased-husband had not been finally re-employed since he could not be finally sent for medical check up before the Medical Board and as he could not obtain a health clearance certificate, he could not be finally re-employed and hence could not be deemed to be in service so as to grant compassionate appointment to the wife of the deceased.

6. We have considered over the matter but found no substance in the plea raised by the appellant-Management as it is an admitted position that the deceased-husband of the respondent had not sought a fresh appointment from the B.C.C.L. and he had merely challenged the order of dismissal which had gone in his favour. Since the Management had agreed to take him back in service on condition that the delinquent would not claim back wages and that was the compromise arrived at in the "Lok Adalat", hence the appellant-Management cannot be allowed to back out from the compromise which it had entered in the "Lok Adalat" and had agreed to grant him appointment. Thus, in the eye of law, the deceased-respondent ought to have been held to be in service of the appellant-Management and the plea raised that he had not secured health clearance certificate cannot be allowed to come in the way of his widow to secure appointment as it is common knowledge that the question of health could have been a condition for appointment only if it were a fresh appointment. Admittedly, the deceased was not a fresh appointee and he had secured merely an order of his reinstatement.

7. In that view of the matter, we fully agree with the view taken by the learned

Single Judge, who has been pleased to set aside the order denying compassionate appointment to the wife of the deceased, who is the respondent herein. We, therefore dismissed this appeal with a direction that the order of appointment after consideration be passed expeditiously in favour of the respondent but not later than period of four months from the date of receipt/production of a copy of this order.