
(2009) 01 JH CK 0011
In the Jharkhand High Court

Bharat Coking Coal Ltd. and Others

APPELLANT

Vs

Md. Alam Ansari

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 18

Citation : (2009) 1 JCR 615

Hon'ble Judges : R.K. Merathia, J; Prashant Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Merathia and Prashant Kumar, JJ.—This Letters Patent Appeal has been filed by M/s. Bharat Coking Coal Limited-Management against the order dated 25.8.2005 passed by the learned Single Judge in WP (S) No. 4050 of 2004 allowing the writ petition filed by the respondent and remitting the case to the appellants to consider his case for appointment on compassionate ground taking into consideration the provisions of "The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (hereinafter referred to as "1995 Act").

2. Mr. Amit Kumar Sinha, learned Counsel appearing for the appellants submitted that Section 33 of 1995 Act applies to regular appointment and not the appointment to be made as per the provision of National Coal Wage Agreement-VI (hereinafter to be referred to as "N.C.W.A."). He further submitted that it is not practicable also to apply Section 33 of 1995 Act in such appointment to be made on compassionate ground. He further submitted that N.C.W.A. has got binding force on the management as well as on the employees. In this regard, he relied on the judgment of the Supreme Court in Mohan Mahto Vs. Central Coal Field Ltd. and Others, Therefore was wrongly held by the learned Single Judge that N.C.W.A. cannot override 1995 Act.

3. Mr. Shekhar Prasad Sinha, learned Counsel appearing for the respondent-writ

petitioner, on the other hand submitted that Section 33 of 1995 Act is applicable in the case of compassionate appointment also. He further submitted that one Ganga Bhandari and Pintu Kumar, who were also physically handicapped upto 50%, were appointed on compassionate ground and, therefore, the management cannot discriminate with the writ petitioner.

4. We find force in the submission of learned Counsel for the appellants. Firstly, it appears that Section 33 of 1995 Act applies to regular appointment. Secondly, it appears that in the case of appointment on compassionate ground, it is not practicable to apply the said provision. Moreover, in the case of Mohan Mahto (supra), it has been held that NCWA is binding on the parties in terms of Section 18(3) of the Industrial Disputes Act, 1947.

5. So far as the ground of the writ petitioner with regard to discrimination is concerned, firstly with regard to Ganga Bhandari, the contention of the management was that his disability was not ascertained. Therefore, there appears to be a dispute whether Ganga Bhandari was disabled or not; and if he was disabled, upto what extent. Moreover, even if one or two persons suffering from disability were appointed on compassionate ground, against the provision contained in Clause 9.4.0 of NCWA illegally, the writ Court cannot allow such illegality to perpetuate. Sub-clause (iv) of Clause 9.4.0 of NCWA clearly provides that the dependants to be considered for employment should be physically fit and suitable for employment.

6. Taking into consideration all relevant aspects and after examining the case from different angle, in our opinion, it is not possible to uphold the impugned order.

7. In the result, this Letters Patent Appeal is allowed.

8. The order dated 25.8.2005 passed by the learned Single Judge in W.P. (S) No. 4050 of 2004 is set aside and the writ petition is dismissed. However, no costs.