

(2004) 05 JH CK 0068

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6241 of 2002

Chandan Kumar Singh

APPELLANT

Vs

Central Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 06-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 JCR 154

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant; Anand Sen, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. V. Shivnath, learned counsel for the petitioner and Mr. Anand Sen learned counsel for the respondents.

2. Some of the admitted facts of this case are that the petitioner's father expired on 17.8.1999 while he was in harness. It is also admitted that the application for compassionate appointment was made on 14.3.2001. Bereft of the circular brought on record by the respondents to the extent that an application can be filed within one year at that point of time (which was subsequently enhanced to one and half years), this Court is of the opinion that the object of compassionate appointment in the instant case apparently does not survive.

3. In the case of Shri Sharikar Nunia v. Bharat Coking Coal Limited and Ors., being WP (S) No. 5814 of 2002. I have held in paragraph 8 of the Judgment that the normal procedure for appointment is "open recruitment" following a lawful and legal procedure i.e., appointment based on vacancy followed by advertisement, screening and so on and so forth. The concept of compassionate appointment bye-passes such an elaborate transparency only for purposes of enabling the bereaved to tide over the colossal loss and misery which the family is suddenly faced with on account of death of its bread winner. This consideration is the only consideration, but such a consideration cannot be allowed to be kept

alive for years together because if it is allowed to do so and if it is kept alive, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when other persons are in the queue, waiting for their turn for regular appointment, their legitimate expectations would abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment was non-existent - his father having passed away more than 3-4 years ago. The fact remains that the seeker of this compassionate appointment has survived for so many years.

4. Under such circumstances, this Court is clearly of the opinion that the procedure which appears to have been evolved by the Coal Company giving compassionate appointment must be immediate provided there is a legal heir of appropriate age at that time. If not, and if such a deceased has a minor child at that stage, the benefit of compassionate appointment cannot be kept alive for that family because it will be against the concept of Articles 14 and 16 of the Constitution of India. In any event, this Court is of the opinion that such a procedure is very unreasonable because it upsets an elaborate, regular, transparent and open procedure of appointment and that too in a Public Sector Undertaking.

5. I have already referred quite a few cases to the Division Bench after taking into consideration the Judgment of the Supreme Court of India referred to in the case of Haryana State Electricity Board v. Naresh Tanwar and Anr. and Haryana State Electricity Board Vs. Naresh Tanwar and Another, and (1994) 4 SCC 138, respectively. In this context, the orders passed by this Court on 16.10.2003 in WP (S) No. 6023 of 2002 [See Bishwanath Hari @ Bishun Hari Vs. State of Jharkhand and Others, , Order dated 22.1.2004 in WP (S) No. 6593 of 2002 and Order dated 22.1.2004 in WP (S) No. 6589 of 2002 may be referred to. In those cases, this Court has referred the matter to the Division Bench for deciding the question as to what would be the meaning of the word "after a long lapse of reasonable period" as observed by Hon"ble Supreme Court of India in the case of "Haryana State Electricity Board v. Naresh Tanwar and Anr.". Taking into consideration the aforementioned observations, it will be desirable that this matter is heard by the Division Bench itself. Consequently, this case is also referred to the Division Bench.

6. The learned counsel for the petitioner shall file adequate number of paper book within one week for use.