

(2007) 05 JH CK 0049
In the Jharkhand High Court

Chilli Devi and Somaru Lal Raut	Vs	APPELLANT
Central Coal Fields Ltd. and Others		RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2007) 4 JCR 193

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Both the writ applications were heard together since a common question is involved. Accordingly, by this common order both the writ applications are being disposed of at this stage itself.

Relevant Facts of WP(S) No. 1008 of 2003

The prayer of the petitioner in this writ application is for issuance of an appropriate writ directing the respondents Central Coalfields Limited to provide employment to her son Jhanku Mahto on compassionate ground as the petitioner's husband Charka Mahto, who was an employee of the Central Coalfields Limited as TrammerIII posted at Rai Colliery, died in harness on 2.3.2002.

2. The case of the petitioner is that her husband Charka Mahto, who was an employee of the Central Coalfields Limited died while he was in service on 2.3.2002 in Gandhinagar Hospital at Ranchi. As per the provisions of National Coal Wage Agreement VI, the petitioner made an application before the Project Officer, Central Coalfields Limited, Bachra, where her husband was posted, for employment of her son Jhanku Mahto on compassionate ground. By issue of Annexure-2 dated 24.5.2002 the Senior Personnel Officer, Bachra, CCL, directed the petitioner to submit the required documents mentioned in the said letter for processing her case for appointment of her son on compassionate ground.

Pursuant thereto the petitioner submitted all the required documents but by issue of Annexure.-5 dated 26.7.2002, the request of the petitioner for employment of her son on compassionate ground under Para 9.3.2. of the National Coal Wage Agreement-VI was rejected on the ground that the elder son of the petitioner namely, Lagan Mahto was already employed with the CCL against Land Losers Scheme and, therefore, the claim for appointment on compassionate ground of her another son was not maintainable as per the prevailing norms of the Company.

3. It is submitted on behalf of the petitioner that the claim of the petitioner for appointment of her son Jhanku Mahto. on compassionate ground was rejected in most illegal and arbitrary manner. It is further submitted that the employment of the other elder son of the petitioner Lagan Mahto under Land Losers Scheme cannot be said to be a bar for appointment of another son of the petitioner on compassionate ground. It is further submitted that the appointment under Land Losers Scheme and appointment on compassionate ground are quite different from each other. Under the Land Losers Scheme the employment is provided to those persons, whose lands are acquired for the purpose of the employer company, and, therefore, providing employment under Land Looser Scheme is just a matter of give and take formula, i.e., if the land is provided by a land owner to the company then in lieu thereof he shall be provided with an employment, whereas for compassionate appointment as provided under the National Coal Wage Agreement under Para 9.3.2. that if an employee dies in harness while in service, one of his dependent is provided an employment.

4. In his reply to the counter-affidavit, the petitioner has given some of the instances, where the respondents have appointed those persons on compassionate ground even though other members of their family were under the employment of the Company under the Land Losers Scheme. The case of Hopna Manjhi has been cited stating that his son Ram Lal Manjhi was appointed in the same colliery as Land Losers and, thereafter, after the death of Hopna Manjhi his younger son Budhna Manjhi was given appointment on compassionate ground. Similar instance has been given of one Mahabir Manjhi whose son Mahadeo Manjhi was given appointment under the Land Losers Scheme but after the death of Mahabir Manjhi his younger son-in-law Deolal Manjhi was provided employment on compassionate ground under the provision of Para 9.3.2. of National Coal Wage Agreement-VI. Similarly, it is stated that the son of one Bhagi Mahto and of Gyani Mahto were provided employment on compassionate ground though their other sons were already in employment under the Land Losers Scheme.

5. On the other hand the case of the respondents as has been made out in the counter-affidavit is that no doubt the husband of the petitioner Charka Mahto was an employee of the CCL, and he died on 2.3.2002 while in service but Jhanku Mahto, the son of the petitioner, cannot be provided employment on compassionate ground under Para 9.3.2. of the National Coal Wage Agreement-

VI because of the fact that one son of the deceased employee, i.e., Lagan Mahto was already in the employment of the respondent's Company under the Land Losers Scheme and, therefore, the prayer of the petitioner for appointment of her another son Jhanku Mahto on compassionate ground was rightly rejected by the CCL under the prevailing norms of the Company.

6. So far as the allegation of discrimination is concerned, the respondents in their rejoinder to the reply of the petitioners have stated in Para 7 thereof that the said Budhan Manjhi got employment by playing fraud and by giving a false affidavit and for which suitable action is to be taken. In Para 9 of the rejoinder the respondents have stated that so far as the case of Bhagi Mahto is concerned, the same was of the year 1997 and at that point of time there was no bar for giving appointment to a dependant even if any member of his family was already employed. In Para 10 regarding the case of Gyani Mahto it is stated by the respondents that if a wrong has been committed the same cannot be allowed to be perpetuated.

Relevant Facts of WP(S) No. 1185 of 2003

7. The case of the petitioner in this writ application is that his father namely Babulal Raut, who was employed in the service of the respondents Central Coalfields Limited, died in harness on 30th October 1992. He applied for being appointed on compassionate ground, which was rejected by the respondents by issue of Annexure-2 dated 6.8.1998.

8. The respondents CCL in their counter-affidavit has stated that the father of the petitioner was an employee of CCL as Piece rated worker and posted at Kedia Open Cast Project. It is specifically stated in the counter-affidavit that the mother of the petitioner Smt. Sabitri Bai, i.e., the wife of the deceased employee was already in the employment of the CCL and, therefore, the question of giving appointment to the petitioner on compassionate ground cannot and does not arise since the family of the petitioner was not under any financial constraint or in distress. Therefore, the claim of the petitioner for giving him employment on compassionate ground was rightly rejected by issue of Annexure-2.

Therefore, from the cases of the respective parties, as noticed above, the point, which has to be considered and decided in this application is as to whether in a case where one of the family members of the deceased employee is already in the employment under a different Scheme or on his own merit then in that event whether the another dependent of the deceased employee can be provided employment on compassionate ground.

9. Mr. Kalyan Roy, learned Counsel appearing for the petitioner by relying on the decision in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, and the decision in the case of Steel Authority of India Limited v. Ranjit Kumar Thakur and Ors. reported in 2002 (3) JLR 391 submitted that even family benefit scheme assuring monthly payment to the family of the deceased employee was held to be not a substitute for compassionate appointment.

Mr. Roy also submitted that the right of employment under Para 9.3.2. of the National Coal Wage Agreement VI is a statutory right and, therefore, the same cannot be denied by the respondents solely on the ground that the other members of the family is already under the employment of the Company.

10. On the other hand Mr. Ananda Sen, learned Counsel appearing for the respondents CCL by relying on the decision in the case of *Sail and Another Vs. Awadhesh Singh and Others*, submitted that the Supreme Court has held that the memorandum of an agreement is not a statutory scheme and, therefore, it is not enforceable in an application under Article 226 of the Constitution of India. It was further submitted that the employment on compassionate ground is provided to the dependant of the deceased employee in order to save the dependants of the deceased so that they may not come on the road as destitutes and the very purpose of this scheme would get frustrated if the claim made by the dependent of the deceased is allowed notwithstanding the fact that the other dependent of the deceased was already in service.

11. The Supreme Court in the case of *Sail and Another Vs. Awadhesh Singh and Others*, while dealing with a case of a memorandum of agreement with National Joint Committee for Steel Industry for compassionate appointment evolved by Steel Authority of India held that it was not a statutory scheme and it cannot be enforced by filing writ applications because the scheme is not statutory. In the present case also as noticed above, following the same analogy it cannot be held that the National Coal Wage Agreement-VI was a statutory scheme.

12. Thus in view of this decision of the Supreme Court, the submission of Mr. Roy that the right of employment under Para 9.3.2. of the National Coal Wage Agreement-VI is a statutory right, cannot be accepted and, hence, rejected simply on the ground that admittedly it is only an agreement between the parties and it has got no statutory force.

13. So far as the case of "*Balbir Kaur*" (supra) cited by Mr. Roy it appears from the fact of the said case that the same is not applicable in the facts and circumstances of the case, the point in issue of the aforesaid case before the Supreme Court and point in issue before this Court in the present case are quite different and distinct.

14. In the case of *SAIL and Anr. v. Awadhesh Singh and Ors.* (supra), the Supreme Court has clearly held that the appointment on compassionate ground evolved by the employer is that on sudden death of an employee his dependants would not be on the road as destitutes and can maintain themselves if an appointment is given to any one of the dependants of the deceased. Such a scheme cannot at all be conceived if some other dependants of the deceased is already in service. The very purpose for which the scheme had been evolved would get frustrated if a claim on priority basis is made by a dependant of the deceased notwithstanding the fact that the other dependant of the deceased is already in service.

15. The same view has been taken by a Division Bench of this Court also in the case of *Sumit Kujur v. Central Coalfield Ltd. and Ors.* in LPA No. 484/2006, wherein this Court while dealing with this very provision, i.e., Para 9.3.2. of NCWA-VI held as follows:

It is well settled law that the object of compassionate appointment is to give immediate relief to the family members/dependants so that they may be saved from starvation and they may be able to run the family. It is with this object that the schemes have been formulated policy but the object of compassionate appointment is the same.

Rule of compassionate appointment is an exception to the provisions of Article 16 of the Constitution of India and, therefore, it must be strictly used in such cases only where the bereaved family is starving because of no breadwinner. This should be kept in mind that the rule of compassionate appointment cannot be extended to such an extent that the employment becomes hereditary. We are, therefore, of the view that this proposition shall be deemed to have been thereby implication under Clause 9.3.2. of NCWA-VL. In our view, therefore, the learned single Judge has rightly held that when the widow is already in employment and she is running the family, the other family member cannot claim compassionate appointment as a matter of right.

16. In view of the discussions above, by following the decision of the Supreme Court in the case of *Sail and Another Vs. Awadhesh Singh and Others*, and the decision of the Division Bench of this Court in LPA No. 484/2006, I hold that since one son of the writ petitioner is already in service with the CCL though under Land Losers Scheme, the petitioner or her son has got no statutory or enforceable right to get an appointment on compassionate ground after the death of her husband Charka Mahto. Similarly, since the mother of the petitioner of WP(S) No. 1185/2003 is already in service with CCL and, therefore, he is also held to be not entitled to be appointed on compassionate ground.

17. However, it is observed that the respondent CCL should take action in accordance with law against those persons who have been provided employment on compassionate ground though other family members of those employees are already in the service of the respondent CCL.

18. Accordingly, having found no merit, both the writ applications are dismissed.