

(2004) 09 JH CK 0060
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5164 of 2004

Dheni Devi

APPELLANT

Vs

Central Coalfields Limited and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2004) 4 JCR 708

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Atanu Banerjee, for the Appellant; Ananda Sen, for the Respondent

Judgement

Tapen Sen, J.—Heard the parties.

2. The concept of compassionate appointment was a concept which was developed in the olden days when the country did not have so many public sector undertakings and when the labour force of this nation was not so large.

3. When the labour force was low, the management/employers, during those days, did feel that on the death of the bread winner, the family should immediately be provided succour and relief so that they do not suffer. Times have now changed.

4. Courts are now flooded with petitions after petitions complaining glaring irregularities in matters relating to appointment stating that these appointments have been made without following a transparent procedure.

5. This Court is of the opinion that there are only two known sources of recruitment. The first is by filling-up of vacancies in a transparent manner by calling for names through advertisements/ publications and/or from the local Employment Exchanges. The obvious object is that the proposed employer has the option to select the best of hands. If these advertisements are widely circulated throughout the country then the proposed employer has a further

choice of recruiting the best of hands from across the nation and filling-up the vacancies. The other source of recruitment is by filling-up a post lying vacant through the process of promotions. These are the only two known sources of recruitment.

6. The third source, which seems to have gathered momentum during the past was appointments made as a result of judicial orders. These orders were either in the shape of directions to give compassionate appointment or in the shape of giving legitimate recognition to schemes such as the National Coal Wage Agreement floated by the Coal Companies on the basis of agreements entered upon by and between the management on the one hand and the trade unions on the other.

7. The instant case attempts to enforce Clause 9.3.2 of the National Coal Wage Agreement insofar as the Central Coalfields Limited is concerned. This Court takes judicial notice of the fact that the Central Coalfields Limited is a Government of India undertaking and by no stretch of imagination it can be said to be an undertaking that belongs to a handful of people of Bokaro or of other places where the said organization has its collieries and/or offices. It belongs to the entire nation and in the process of making appointments, the Central Coalfields Limited is entitled to seek the best of hands from across the country without being coerced to make appointments on the basis of an agreement which appears to this Court to be contradictory and in direct violation of Articles 14 and 16 of the Constitution of India. A seeker of compassionate appointment upsets a transparent procedure. When a person is employed by these Companies it does not mean that it is obliged to provide employment to everybody claiming under him on his death because a seeker of compassionate appointment, attempts to upset an otherwise elaborate transparent procedure and frustrates a long queue of proposed appointees who may be waiting for their turn having applied on the basis of a vacancy and/or publication. The procedure of giving compassionate appointment appears to this Court to be a double edged weapon because on the one hand it deprives the management from making a selection of the best of hands from across the country and on the other, it attempts to block an otherwise transparent procedure of appointment mentioned above. This Court, therefore, feels that it is now high time that the system should change and instead of compassionate appointment, perhaps money compensation or some monetary package should be substituted in place of appointments on the basis to a claim raised under compassion so that the family, after taking the money, is compensated adequately. But this adequate compensation should not be at the cost of the employer's right to appoint the best of hands from a wide choice nor can it deprive the management to receive applications from all over the country.

8. That apart, the facts of the instant case shows that the death occurred in 1997 whereas we are now almost at the close of the year 2004. Where is the object of compassionate appointment? The object to provide immediate succour, is totally and completely lost because the family has survived right from 1997 till

date.

9. These are questions and points which, in the opinion of this Court, requires consideration by a Division Bench. Accordingly, this court refers the same to the Division Bench to consider the question as to whether the system of compassionate appointment is ultra vires Articles 14 and 16 of the Constitution of India and as to whether, in place of compassionate appointment, all proposed employers should be directed to frame fresh policies such a monetary packages in lieu of compassionate appointment?

Delist and transmit as indicated above. Office to do the needful.