

(2012) 07 JH CK 0178
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1288 of 2005

Fulchand

APPELLANT

Vs

Central Coalfield Ltd. and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 SCT 512

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : N.K. Sahani, for the Appellant; Amit Kumar Das, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Tatia, C.J.—This writ petition has come up on reference made by a Single Bench of this Court vide order dated 21.04.2011 in view of two conflicting judgments of the Single Benches, one delivered in C.W.J.C. No. 2918 of 2000 (Ramsai Oraon v. Chairman-cum-Managing Director, C.C.L. & Ors.) in which it has been held that no compassionate appointment can be given to another member of the family, once a member of family is already in employment of the same employer and contrary view was taken by the Coordinate Bench of this Court in the case of Sakaldeep Munda v. Central Coalfields Limited and others in W.P. (S) No. 5017 of 2003 and it has been held that second member of the deceased's family can get employment even when one of his family members is already in employment with the same employer. Learned counsel for the respondents drew our attention to the judgment of the Hon'ble Supreme Court delivered in the case of Sail and Another Vs. Awadhesh Singh and Others, wherein the Hon'ble Supreme Court held that very purpose of the scheme is to give appointment to the person in harness and second appointment will frustrate the scheme of giving appointment to the dependent of the deceased. Therefore, in view of the decision of the Hon'ble Supreme Court, the issue as referred to this Court does not survive.

2. Learned counsel for the petitioner submitted that the respondents themselves took a policy decision, dated 16.04.2008 providing for appointment to the second member of the family of the deceased.

3. We have considered the submissions of the learned counsel for the parties. The petitioner sought compassionate appointment on the ground that his mother, who was employed with Central Coalfields Limited has died, therefore, he is entitled to the compassionate appointment. The respondents' contention was that the mother of the petitioner died but the petitioner's father is already in service with the respondent-Company. Therefore, he is not entitled to the appointment.

4. Paragraph-6 of the judgment of Hon'ble Supreme Court delivered in the case of SAIL v. Awadhesh Singh and another (Supra) is complete answer to the controversy as in the case of SAIL (Supra) the Hon'ble Supreme Court has not accepted the policy of giving appointment to the dependents, whose family member is already in employment. Para-6 of the said judgment is quoted hereunder:

6. Having regard to the submissions made by the learned counsel for both parties, the only question that crops up for our consideration is whether under the memorandum of agreement it is permissible for a dependant of the deceased to claim an appointment on compassionate ground, even when some other dependant of the deceased is already in service. Be it stated that the memorandum of agreement in question is not a statutory scheme and therefore would be unenforceable in an application under Article 226 of the Constitution of India. The memorandum of agreement for appointment on compassionate ground had been evolved by the employer so that on the 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 dependant of the deceased is already in service. The very purpose for which such 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. In this view of the matter we are unable to sustain the decision of the Patna High Court in the impugned judgments. It may be stated that a Bench of this Court has already taken a similar view in the case of S. Mohan v. govt. of T.N. With which we have our respectful concurrence.

5. In view of the above reasons, it is held that appointment can not be given to the second member of the family by the respondents in a case where another family member is already in employment. Therefore, the law laid down in the judgment delivered in the case of Sakaldeep Munda is no more good law in view of the said judgment of Hon'ble Supreme Court.

6. With regard to learned counsel for the petitioner's prayer that the

respondents may be directed to consider his case under the policy decision dated 16.04.2008, we are of the considered opinion that in the facts of the case, no such direction can be given to the respondent-authority because of the reason that the employee died in the year 2002 and this policy decision came into existence on 16.04.2008. Therefore, while answering the referred issue, we are dismissing the writ petition of the petitioner as no useful purpose will be served by sending the matter back to the learned Single Judge after answering the question referred above. This writ petition is accordingly dismissed.