
(2010) 08 JH CK 0009
In the Jharkhand High Court

Gulwanti Devi

APPELLANT

Vs

Bharat Coking Coal Limited and Others

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Citation : (2010) 4 JLJR 28

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The case of the petitioner is that one late Sarju Thakur, husband of the petitioner, a permanent employee of M/s. Bharat Coking Coal Limited died in harness on 15.4.1996, leaving the petitioner and four minor children. The name of this petitioner and her two sons does find mentioned in the service excerpt of her husband prepared in the year 1987. After the death of her husband, the petitioner applied for compassionate appointment in terms of Clause 9.5.0 of the National Coal Wage Agreement. Upon completion of all the formalities, Personnel Manager, M/s. Bharat Coking Coal Limited issued a letter dated 26.3.1998 relating to appointment of the petitioner on compassionate ground. However, before the petitioner could be appointed, one Bhunehwari Devi claiming herself to be legally wedded wife of late Sarju Thakur put objection on the appointment of the petitioner. Subsequently, the said Bhunehwari Devi and her children filed Title Suit No. 53 of 1998 before the learned Munsif I, Dhanbad for declaration that they are the legally heirs of late Sarju Thakur. This petitioner was arrayed as one of the defendants in that suit. In course of the proceeding, when said Bhunehwari Devi (plaintiff No. 1) died, her name was expunged from the cause title of the case. However, that suit was decreed in favour of the plaintiffs.

2. Being aggrieved with that decree, this petitioner preferred Title Appeal No. 103 of 2004 wherein plaintiffs of the Title Suit as well as Project Officer were made respondents. While the appeal was pending for adjudication, the appellant

and the respondents (heirs and legal representatives of the deceased Bhuneshwari Devi) with the intervention of the common friends got the matter settled amicably and the terms of compromise were reduced in writing. Accordingly, Title Appeal was decreed in terms of the compromise which are as follows:

(a) Plaintiff/Respondents namely, Geeta Devi and Memini Kumari shall be entitled to receive half of all service benefits of late Sarju Thakur including P.F., Gratuity etc. while the remaining half of the service benefits will go to the defendants/Appellant Gulwanti Devi.

(b) If need arises both the parties shall execute other and further documents to carry aforesaid terms of apportionment of service benefits into effect.

(c) As regards compassionate employment, if any provided by employer BCCL to Gulwanti Devi, the plaintiff/Respondents shall have no objection to it.

3. After the decree was passed, the petitioner filed a representation praying therein to allow her to join her duties but the Project Officer, Dhansar Industry Colliery, respondent No. 3 rejected the representation on the ground that terms and conditions incorporated in the compromise petition are not binding upon the Bharat Coking Coal Limited.

4. Being aggrieved with that order dated 11.6.2008 as contained in Annexure 3, this writ application has been filed for its quashing and also for a direction to the respondent to allow the petitioner to join her duties.

5. Learned Counsel appearing for the petitioner submits that though the petitioner is not the first wife of the deceased employee but name of this petitioner and her children were there in the service excerpt of the deceased employee and that in terms of the compromise arrived at in between the parties, the petitioner is to be given employment by the Bharat Coking Coal Limited, who was also party to the suit as well as the appeal and in whose presence the Title Appeal was decreed in terms of compromise and hence, the Bharat Coking Coal Limited can be said to have acknowledged the terms of the compromise as signature has been put by the Counsel appearing for the Bharat Coking Coal Limited on the compromise petition filed before the court and under this situation, the respondent-Bharat Coking Coal Limited cannot deny appointment to the petitioner on the plea that the petitioner is the second wife of the deceased employee when the appeal had been decreed in terms of compromise whereby it had been agreed by the parties that this petitioner is to be given employment by the Bharat Coking Coal Limited.

6. Learned Counsel further submits that status of this petitioner being recognized by the deceased employee as wife, she is entitled to the amount to be payable towards Provident fund and Gratuity. In similar situation, when dispute arose in the matter of grant of succession certificate in between the first wife and the second wife who had been made nominee by the deceased, the Hon?ble

Supreme Court in a case of Vidyadhari and Ors. v. Sukhrana Bai and Ors. AIR 2008 Jhr 377 has held that second wife is entitled to grant of succession certificate. In that view of the matter, the petitioner is entitled to be appointed in terms of Clause 9.5.0 of the National Coal Wage Agreement.

7. On the other hand, learned Counsel appearing for M/s. Bharat Coking Coal Limited submits that it was admitted in the Title Suit and even in Title Appeal filed by this petitioner that Bhunehwari Devi was the legally married first wife of late Sarju Thakur. In that view of the matter, the trial court held that the petitioner does not have status of the wife of the deceased employee and that finding was never disturbed or reversed by the appellate court though the appellate court in terms of compromise arrived at in between the heirs of Bhunehwari Devi (the plaintiffs) and this petitioner decreed the appeal and as such, the petitioner being not legally wedded wife is not entitled to be appointed in terms of Clause 9.5.0 of the National Coal Wage Agreement.

8. Before adverting to the submissions advanced on behalf of the parties, the Clauses 9.3.1 and 9.4.0(iii) of the National Coal Wage Agreement which relate to employment to dependant need to be taken notice of which reads as under:

Clause 9.3.1- Employment would be provided to one dependant of the workers who are disabled permanently and also those who die while in service.

Clause 9.4.0(iii) - The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the employee and almost dependant on the earnings of the employee may be considered.

In so far as female dependants are concerned, their employment would be governed by the provisions of Clause 9.5.0.

9. From its perusal it is quite specific that one of the dependants of the husband is the wife which would always mean legally wedded wife. Here in the instant case, the trial court had declared Smt. Bhunehwari Devi as the legally wedded wife and so far this petitioner is concerned, it was held that she has no status in the life of late Sarju Thakur. In that view of the matter, the petitioner having not the status of wife is not entitled to be appointed on compassionate ground in terms of Clause 9.5.0 of the National Coal Wage Agreement in spite of the fact that the appeal was decreed in terms of the compromise arrived at in between the heirs of Bhunehwari Devi and this petitioner whereby one of the terms was that employment would be given to the petitioner as that compromise would not be binding upon the respondent-Bharat Coking Coal Limited under the teeth of clause stipulated under 9.5.0 of the National Coal Wage Agreement. In the case referred to above (Vidyadhari and Ors v. Sukhrana Bai and Ors.) status of the second wife has never been recognized either by the High Court or by the Supreme Court as that of legally wedded wife. However, the Hon^{ble} Supreme Court keeping in view that second wife had been made nominee and had had

four children held that she is entitled to grant of succession certificate.

10. Thus, the petitioner would not be entitled to have appointment on compassionate ground but she will be entitled to receive amount of provident fund and gratuity in terms of compromise as arrived in between the petitioner and the heirs of Bhunehwari Devi.

11. With the aforesaid observation, this writ application stands dismissed.