
(2013) 12 JH CK 0037
In the Jharkhand High Court
Case No : Writ Petition (S) No. 178 of 2013

Kiran Kunwar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 1 JLJR 304

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : H. Waris, for the Appellant; Arbind Kumar, J.C. to G.P. II, for the Respondent

Final Decision : Disposed Off

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking quashing of order dated 11.07.2012 and for grant of pensionary benefits of her husband. The husband of the petitioner was appointed on 22.02.1988 as Path Mazdoor (Road Labour) with the respondent-Road Construction Department. The husband of the petitioner died in harness on 20.03.2004 and thereafter, the petitioner made several representations for grant of the retiral benefits. On 12.02.2009, the petitioner made a representation for grant of appointment to her son on compassionate ground. By the impugned order dated 11.07.2012, the claim of the petitioner seeking appointment for her son on compassionate ground has been rejected.

2. A counter-affidavit has been filed contending that, since the husband of the petitioner was illegally appointed, compassionate appointment to her son cannot be granted. In the counter-affidavit, it is thus stated.

9. That it is stated that the answering respondent submitted that the deceased husband of the petitioner working as temporary path mazdoor/road labour and the petitioner is not entitled for family pension.

10. That it is stated that the answering respondent submitted that the husband

of the petitioner was temporary labour due to that reason the petitioner is not entitled for gratuity and earned leave.

11. That it is stated that the answering respondents submitted that the authority was not responsible for delayed payment of provident fund amount Rs. 52,525/- and group insurance scheme amount Rs. 34,646/- and paid that amount with interest on 20.03.2012 and the petitioner was submitted the document on 20.12.2011 before the authority and the concerned authority was paid the amount on 20.03.2012 without any delay. The petitioner was not entitled for any interest regarding delayed payment.

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13. That it is stated that the answering respondents submitted that the claim of the petitioner for compassionate appointment was rejected by the authority passed reasoned order vide office order No. 534 dated 11.07.2012 and intimate the petitioner.

3. The learned counsel appearing for the petitioner has submitted that, though the husband of the petitioner continued in service for more than 16 years, after his death the claim of the petitioner is sought to be denied on the ground that the appointment of the husband of the petitioner was illegal. He has further submitted that, the respondents have granted retiral benefits on account of her husband and therefore, it is not open to the respondents to contend that initial appointment of the husband of the petitioner was illegal and therefore, her son cannot be granted appointment on compassionate ground.

4. As against the above, the learned counsel appearing for the respondent-State of Jharkhand has supported the impugned order and submitted that, since the name of the husband of the petitioner was not even recommended by the Compassionate Appointment Committee the appointment of the husband of the petitioner was illegal. He has further submitted that, since the husband of the petitioner was appointed as a temporary Path Mazdoor, the son of the petitioner cannot be granted appointment on compassionate ground.

5. On a perusal of the impugned order dated 11.07.2012, I find that the only ground taken for rejecting the claim of the petitioner seeking appointment for her son on compassionate ground is that, the appointment of the husband of the petitioner was illegal. From the counter-affidavit, I gather that it has been stated by the respondents that, since the name of the husband of the petitioner was not recommended by the Compassionate Appointment Committee, the appointment of the husband of the petitioner was illegal. I, am unable to accept the contention. The husband of the petitioner was appointed on 22.02.1988 and he died on 20.03.2004 and thus, he continued in service for more than 16 years. After the husband of the petitioner died, the contention raised on behalf of the respondents that the initial appointment was not legal cannot be made a ground for rejecting her claim. The learned counsel appearing for the respondents has submitted that, since the husband of the petitioner was appointed on temporary

basis, the son of the petitioner cannot be granted appointment on compassionate ground. I find the submission not tenable. The husband of the petitioner though appointed as temporary Path Mazdoor, was employee in a Government Department and his appointment was made in lieu of the service of his father who was also employee in the Department of Road Construction Department Division and therefore, the husband of the petitioner was employee in a Government Department. Moreover, the respondents have granted some pensionary benefits to the petitioner and thus, they have recognised the service of the husband of the petitioner.

6. In view of the aforesaid, the policy/guidelines of the Government of Jharkhand for appointment on compassionate ground would be applicable in the case of the petitioner also and therefore, I am of the view that the claim of the petitioner for appointment of her son on compassionate ground has been wrongly rejected by the respondents. From the pleadings, I further find that all admissible retiral dues to the petitioner has not been paid to the petitioner and therefore, I hereby direct respondent No. 4 to ensure that all the retiral benefits to the petitioner is paid within a period of eight weeks from the date of production of a copy of this order. Respondent No. 2 is directed to consider the claim of the petitioner for appointment of her son in accordance with law, afresh. Accordingly, this writ petition is disposed of and the impugned order dated 11.07.2012 is hereby quashed.