

(2009) 09 JH CK 0009
In the Jharkhand High Court

Kulsum Bano and Sarfaraz Akhtar

APPELLANT

Vs

Central Coal Fields Ltd., Chief Personnel Manager (NEE),
Personnel Manager (NEE) and Deputy Chief Manager (Press)

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Citation : (2009) 09 JH CK 0009

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Mr. Rahul Gupta, learned Counsel for the petitioner and Mr. Nagmani Tiwari, learned Counsel for the Respondents.

2. From the rival submissions made by the learned Counsel for the parties, the admitted facts of this case are:

That the husband of the petitioner No. 1 was an employee under the Respondent-C.C.L. He died in harness on 07.04.2000. After four month from the date of death of the deceased-employee, the petitioner No. 1 being the widow filed an application before the concerned authorities of the Respondent-C.C.L., praying for grant of appointment on compassionate grounds to her son (petitioner No. 2), under the terms and conditions of the N.C.W.A. Agreement.

In response, the Respondent-C.C.L. had issued a letter dated-03.09.2000, stating that since the petitioner's son for whom, the claim has been made, is a minor, therefore, the prayer of the petitioner No. 1 for grant of compassionate appointment to her son (petitioner No. 2) was rejected.

The petitioner No. 1 thereafter filed second application on 12.07.2002, reiterating her earlier prayer for grant of compassionate appointment to her son, on the ground that her son by that date, has attained the age of majority.

In stead of taking any prompt decision, the Respondents kept the matter pending

and ultimately, by the impugned order dated 06.08.2004 (Annexure-8), communicated their decision rejecting the petitioner's prayer for grant of compassionate appointment to her son. The only grounds stated therein, for rejection of the prayer was that the name of the son, namely, the petitioner No. 2, did not appear in the service records of the deceased- employee.

3. The petitioner has challenged the impugned order, inter alia, on the following grounds:

(i) The ground on which the prayer for compassionate appointment has been rejected is totally false, misleading and misconceived. The service records of the deceased-employee do reflect the name of the petitioner No. 2. Mr. Gupta, while elaborating this ground would explain that the petitioner has specifically stated in the writ application that in the service records, the name of the petitioner No. 2 as declared by the deceased- employee himself, does find a mention. Referring to Annexure-1, which is purportedly the excerpt of the service- records of the deceased employee, learned Counsel explains that the same contains the declaration given by the deceased-employee way back on 25.04.1997, on being called upon by the employer by a general Circular issued to all the employee to fill-up the relevant columns including the columns pertaining to the names of the members of the family of the employees. Annexure-1, according to the learned Counsel, does contain the name of the petitioner No. 2, namely, Sarfaraz Akhtar, aged four years on the date of declaration i.e. April, 1997. Learned Counsel adds that the aforesaid declaration confirms not only the fact that the petitioner No. 2 is the son of the deceased-employee but also the fact that in April, 1997, he was four years of age and had attained his age of majority in 2001.

(ii) That even otherwise, in none of the earlier correspondences, did the Respondent-C.C.L. ever take any such ground and on the contrary, the ground for rejecting the petitioner's prayer, as per the earlier communication dated-29.09.2000, was that the petitioner No. 2 was yet a minor on the date of application. Learned Counsel adds further, that on earlier occasion, upon considering these aspects of the controversy raised, this Court vide order dated-25.01.2006, had directed the Respondent-C.C.L. to annex the copy of the service book of the deceased-employee alongwith the original thereof with their counter affidavit. Learned Counsel submits that though counter affidavit has been filed by the Respondents but neither the original nor the copy of the service book of the deceased-employee has been produced by the Respondents.

4. Learned Counsel for the Respondent-C.C.L. would submit on the other hand, that the Respondents have rightly rejected the petitioner's claim for compassionate appointment, basically in view of the fact that the service records of the deceased-employee, does not mention the name of the petitioner No. 2, as being the son of the deceased-employee. Learned Counsel explains further that the declarations made by the deceased-employee during his lifetime in the Gratuity Nomination Form, LTC/LLTC Option Form, and C.M.P.F. do not reflect the name of the petitioner No. 2 and under such circumstances, the Respondents-

authorities have rightly arrived at the conclusion that there is nothing to substantiate the claim of the petitioner No. 2 that he is the son of the deceased-employee.

5. From the counter affidavit, it appears that in reply to the statements contained in the writ application, in which a reference has been made to Annexure-1, which is the purported excerpts of the Service Book of the deceased-employee, the Respondents have not specifically denied the same and have merely stated that the statements contained in the concerned paragraph of the writ application, referred to in Annexure-1, are matter of record.

6. In absence of any denial on the part of the Respondents about the genuineness of the document (Annexure-1), the Respondents cannot assert merely on the basis of absence of the name of the petitioner No. 2 in the several Nomination Forms, that the petitioner No. 2 is not the son of the deceased-employee or that the service records of the deceased-employee do not bear or declare the name of the petitioner No. 2 as the son of the deceased-employee.

7. The above facts amply indicate that prayer for compassionate appointment was made within four months from the date of death of the deceased-employee and even though, on the date of such application, the son of the deceased-employee was a minor, the Respondent- C.C.L. was obliged under the terms of the N.C.W.A. Agreement, to keep the name of the minor in the live roster and to consider grant of appointment on him on compassionate grounds after his attaining the age of majority. Instead of following the procedure, the Respondents authorities have intentionally avoided to consider the petitioner's claim for compassionate appointment honestly and sincerely. Apparently on account of the lapses and inaction on the part of the Respondents, there has been a considerable delay in taking an appropriate decision on the petitioner's prayer for compassionate appointment.

8. In the light of the above submissions, I find merit in this writ application. Accordingly, this writ application is allowed. The impugned order dated-06.08.2004 (Annexure-8), rejecting the claim of the petitioner No. 1 for grant of compassionate appointment to her son (petitioner No. 2) is hereby quashed. The Respondents are directed to take a fresh decision on the petitioner's application for grant of compassionate appointment to the petitioner No. 2, within a period of two months from the date of receipt/production of a copy of this order in view of the fact that it was the lapse on the part of the Respondents- authorities on account of which there has been a considerable delay in taking a decision. The Respondents shall effectively communicate their decision to the petitioner.

9. Let a copy of this order be given to the learned Counsel for the Respondent-C.C.L.