
(2016) 11 JH CK 0114
In the Jharkhand High Court
Case No : W.P. (S.) No. 5267 of 2010

Kumar Priya Raj

APPELLANT

Vs

The Steel Authority of India Limited

RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AIRJharR 562 : (2017) 1 JBCJ 676 : (2017) 1 JLJR 343 : (2017) 1 LLJ 429

Hon'ble Judges : Mr. Dr. S.N. Pathak, J.

Bench : Single Bench

Advocate : Mr. Sardhu Mahto, Advocate, for the Petitioner; Mr. Rajiv Ranjan, Senior Advocate, Mr. Shresth Gautam, Mr. Piyush Chitresh, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Dr. S.N. Pathak, J. - Heard Mr. Sardhu Mahto, learned counsel for the petitioner and Mr. Rajiv Ranjan, learned Senior Counsel appearing on behalf of the respondents assisted by Mr. Shresth Gautam and Mr. Piyush Chitresh.

2. The petitioner has filed this case for consideration of his case for appointment on compassionate ground and also for compensation for the delay caused by the respondents.

3. The brief fact of the case is that petitioner's father Binod Kumar Paswan was working as Machine Shop "Operative" in the Heat Treatment Section. After 32 years 3 months and 8 days of his satisfactory service, he met with an accident during duty hours within the Plant itself. He was admitted to the Bokaro Steel Hospital and thereafter shifted to Bokaro General Hospital where he succumbed to his injuries. The family members were assured by the Management to provide rehabilitation after report of the Medical Board. After death of the employee, his case was examined by a Medical Board which opined that death occurred due to "Respiratory Arrest ? accelerated hypertension with massive RA sided ? Intra

cerebral hemorrhage with mass effect". Wife of the deceased employee duly applied for appointment of her son on compassionate ground. The said representation of the petitioner's mother was duly forwarded by the Assistant General Manager (H/T) Machine to the General Manager (Shops) but no order has been passed on the said representation.

4. Learned counsel for the petitioner submits that though the Scheme clearly provides benefits of compassionate appointment to the family of deceased employee who died in harness but the respondents authorities are sitting tight over the matter and no order is being passed on the representation filed by mother of the petitioner and as such, a direction may be made to provide appointment to the petitioner with a further direction to provide compensation for the delay caused by the respondents.

5. On the other hand Mr. Rajiv Ranjan, learned Sr. counsel draws attention of this Court to para 17 of the counter affidavit and fairly submits that there is no record with the respondents with respect to representation filed by the petitioner. Learned counsel further draws attention towards clause 13.1 of Annexures 3 of the supplementary counter affidavit which reads as under:

"13.1 In case of death of a worker or permanent total disablement due to accident arising out of and in course of employment, compassionate employment to one of his/ her direct dependents (spouse, son, unmarried daughter) can be provided, if any one of them is not already employed in SAIL."

The above contention has been further clarified by learned counsel by pointing out Annexures 4 i.e. Personnel Policy Circular No. 156/90. Clause 3 of the said Circular speaks as under:

"3. Definition.

3.1 "Injury on work" means any personal injury caused to an employee by accident arising out of and in the course of employment duly certified by the controlling officer of the department concerned."

NOTE : Medical cases such as Heart attack, Diabetes, Epilepsy, Hypertension, Unconsciousness etc. do not come under the definition of I.O.W. Such cases may be referred to the nearest medical Unit along with the Medical Attendances Slip (Annexure-E) for necessary treatment."

Learned counsel for the respondents further submits that there is delay in approaching respondents authorities and also in filing writ petition before this Court. It is settled principle of law that compassionate appointment has to be done in view of Scheme floated by the organisation/agency. In the present case, as mentioned above Scheme of SAIL clearly stipulates that there cannot be compassionate appointment in case of death occurred due to heart attack, diabetes, epilepsy, hypertension, unconsciousness etc. Medical Board clearly opined that petitioner's father died due to "Respiratory Arrest ? accelerated hypertension with massive RA sided ? Intra cerebral hemorrhage with mass

effect" and as such, under the Scheme of respondents ? SAIL the family members of the deceased employee is not entitled for appointment on compassionate grounds.

Reliance has been placed in the Judgment passed by Hon"ble Apex Court in the case of Bhawani Prasad Sonkar v. Union of India and others reported in (2011) 4 SCC 209. Paragraph 15 of the said Judgment reads as under:

"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve."

6. From the facts narrated above it appears that the death of employee occurred due to "Respiratory Arrest" and as per Scheme of the respondents ? SAIL, the dependent of the deceased employee in such cases is not entitled for employment on compassionate grounds.

7. Considering rival contention of the parties as well as facts and circumstances of the case, I am of the considered opinion that petitioner is not entitled for the relief claimed in the instant writ petition. As a cumulative effect, this writ application merits dismissal.