

(2003) 04 OHC CK 0032

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5329 of 2001

Mamata Mohanty

APPELLANT

Vs

Chairman, Coal India Limited and Others

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 CLT 13

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : S.N. Kar, for the Appellant; S. Mohanty, N.C. Sahoo, S. Mohanty, R.R. Swain and D. Mohanty (For O.P. Nos. 1, 3 and 4), for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The petitioner's husband late Debakalyan Mohanty was working as a Senior Mining Engineer in the South Eastern Coalfields Limited (for short, "S.E.C.L."). Which is a subsidiary of Coal India Limited (for, short "C.I.L."). He was posted at Gevra Project of S.E.C.L in Madhya Pradesh (now Chhatisgarh). On 30.12.1995 late Debakalyan Mohanty died in harness. On 16.1.1996 the petitioner applied to the Chairman of C.I.L. for compassionate appointment. She was appointed in the post of Clerk Grade-III in S.E.C.L. and posted at Gevra by order dated 10.10.1996. She joined in S.E.C.L. Gevra as Clerk Grade-III on 14.11.1996. But thereafter, on her request, she was transferred to Mahanadi Coalfields Limited which is another subsidiary of C.I.L. and posted at Sambalpur as Clerk Grade-III. She was then posted at Talcher as Clerk Grade-III but she did not join at Talcher and instead, requested for monetary compensation in lieu of compassionate appointment by her letter dated 27.9.1999. She was paid monetary compensation at the rate of Rs. 3000/-per month with effect from 1.1.1996 and at the rate of Rs. 4500/-per month with effect from 11.11.1999. The petitioner wrote a letter dated 23.12.1999 to the Chairman, C.I.L., Calcutta to pay the dues of her late husband detailed in the said letter dated 23.12.1999.

But by letter dated 15.6.2000, the General Manager (MP & IR), C.I.L.. intimated the petitioner that C.I.L.. had taken up the matter with S.E.C.L. authorities and have been informed that her late husband was not entitled to any payment mentioned in the said letter dated 23.12.1999. A copy of the said letter dated 15.6.2000 of the General Manager (MP & IR), C.I.L.. has been annexed to the writ petition as Annexure-1. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution of India for quashing the said letter dated 15.6.2000 in Annexure-1 to the writ petition and for directing the opp. parties to pay the unpaid dues towards salary and other allowances of her late husband Debakalyan Mohanty. The petitioner has also prayed for a direction to the opp. parties to enhance the monthly monetary compensation of Rs. 9,000/-per month which was payable as monthly monetary compensation to dependent female of an Executive in E-I Grade in lieu of employment or to employ the petitioner in the Executive E-I Grade.

2. Mr. S.N. Kar, learned counsel for the petitioner submitted that the guidelines on the scheme for monetary cash compensation in lieu of employment to female dependents of Executives have been laid down in the circular dated 8.4.1995 of the C.I.L.. and as per the guidelines, the petitioner was entitled to 85% of the E-I scale (gross emoluments.). He further submitted that the basic pay of E-I scale was Rs. 4000/- in the year 1996 and was revised to Rs. 8600/- with effect from 1.1.1997 in September, 2000. According to Mr. Kar, the petitioner was entitled to 85% of Rs. 4000/- + allowances with effect from 1.1.1997, but the petitioner has been given at the rate of Rs. 3000/- per month with effect from 1.1.1996 and at the rate of Rs. 4500/- per month with effect from November, 1999,

3. Mr. Kar further submitted that on the death of her husband who was working in an Executive Post, the petitioner was entitled to compassionate appointment in an Executive Post commensurate with her qualification, but she was not given such compassionate appointment in an Executive Post and was forced to accept cash compensation instead. Mr. Kar submitted that relying on its decision in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, the Supreme Court directed in the case of Smt. Phoolwati Vs. Union of India and Others, that the second son of the deceased appellant in that case should be given employment in a "suitable post commensurate with his educational qualification". Mr. Kar argued that since the petitioner in this case was a M.A. & Ph.D. in Psychology she was entitled to appointment as Industrial Psychologist under C.I.L. but instead, she was given an appointment in Clerk Gracte-III post which was not commensurate with her educational qualification. Mr. Kar vehemently argued that if no suitable post was available in which the petitioner could be accommodated, the opp. parties should have created a supernumerary post commensurate with the educational qualification of the petitioner to accommodate her.

4. Regarding payment of the unpaid dues of the late husband of the petitioner, Mr. Kar submitted that the unpaid dues have been detailed in the letter dated

23.12.1999 of the petitioner annexed to the writ petition as Annexure-2 series. He argued that the petitioner's late husband had a medical check up at Cuttack and the certificates with regard to the said medical check up have also been annexed to the writ petition. The petitioner was entitled to salary for the 4 months from May, 1994 to September, 1994 when the late husband of the petitioner had gone to Cuttack for such medical check up. Mr. Kar referred to the various documents annexed to the writ petition as Annexure-2 series to show that the late husband of the petitioner was entitled to the dues mentioned in the letter dated 23.12.1999 of the petitioner. Yet, in the letter vide Annexure-1 to the writ petition, the General Manager (MP & IR), C.I.L. has informed the petitioner that her late husband was not entitled to any payment mentioned in the said letter dated 23.12.1999. According to Mr. Kar, appropriate directions should be issued to the opp. parties to pay the said unpaid dues of the late husband of the petitioner. He cited the decision of the Supreme Court in *Surjit Singh Vs. State of Punjab and Others*, in which some directions were given for reimbursement of medical expenses claimed by the Government servant.

5. Mr. Sanjit Mohanty, learned counsel for the opp. parties 1, 3 and 4, on the other hand, submitted that in the circular dated 8.4.1995 of C.I.L. laying down the guidelines on the scheme for monetary cash compensation in lieu of employment to female dependents of Executives, it is clearly stated that in case of death of an Executive in harness, the female dependent of an Executive will be paid compensation of Rs. 3000/- per month. According to Mr. Mohanty, since monetary compensation has been quantified at Rs. 3000/-per month, the petitioner was not entitled to 85% of the E-1 Grade gross emoluments as submitted by Mr. Kar. He further submitted that subsequently, in November, 1999 the Board of Directors of C.I.L. revised the aforesaid monetary compensation for a female dependent of an Executive to Rs. 4500/- per month and accordingly, the petitioner was entitled to Rs. 4500/- per month and not at the rate of 85% of the revised pay in E-I scale. Mr. Mohanty vehemently argued that the decisions of the Board of Directors, C.I.L. relating to cash compensation in lieu of employment are policy decisions and cannot be interfered with by the Court in exercise of powers of judicial review under Article 226 of the Constitution. He cited the decision of the Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, wherein the Supreme Court held that when a Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources and the Court would dissuade itself from entering into the realm which belongs to the executive. The aforesaid observations were made by the Supreme Court in the context of claim for medical allowance. In reply to the contention of Mr. Kar that the petitioner was entitled to compassionate appointment in a post commensurate with the educational qualification of the petitioner, Mr. Mohanty submitted that the office memorandum dated 13.3.1981 of the C.I.L. provides that employment of dependents would be in non-executive post according to job requirement and not in executive post and, therefore, the petitioner could not be considered for

appointment to an Executive Post. Mr. Mohanty cited the decision of the Supreme Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, in which it was held that Court cannot direct compassionate appointment to be made contrary to statutory instructions and argued that in the present case also, the Court cannot direct compassionate appointment contrary to the instructions in the said office memorandum dated 13.3.1981 of C.I.L. Mr. Mohanty submitted that in Umesh Kumar Nagpal Vs. State of Haryana and Others, the Supreme Court further held that posts in Class-III and Class-IV which are the lowest posts alone can be offered on compassionate appointment and such provision for compassionate appointment in the lowest post would be justifiable and valid and would not be discriminatory but no other posts are expected or required to be given by the public authorities for the purpose of such compassionate appointment. Mr. Mohanty pointed out that in the aforesaid decision of the Supreme Court in Umesh Kumar Nagpal v. State of Haryana and Ors. (supra), the Supreme Court further held that despite the aforesaid position of law, some of the High Courts have justified and even directed compassionate appointment in posts above Class-III and Class-IV. In the said judgment of the Supreme Court in the case of Umesh Kumar Nagpal (supra), the Supreme Court also observed that the decision of the Supreme Court in Smt. Sushtna Gosain and Ors. v. Union of India and Ors. (supra) has also been mis-interpreted to the point of distortion while justifying compassionate appointment in posts above Class-III and Class-IV. Mr. Mohanty also relied on the decision of the Supreme Court in State of Haryana and Ors. v. Rani Devi and Anr. 1996 Lab IC 2065 and the decision of the Supreme Court in Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, in support of his aforesaid arguments. Regarding payment of outstanding dues of the late husband of the petitioner, Mr. Mohanty submitted that as per the communication in Annexure-1 to the writ petition, nothing was payable to the late husband of the petitioner.

6. The first question to be decided in this writ petition is whether the petitioner is entitled to 85% of E-I scale (gross emoluments), both pre-revised and revised, or is entitled to Rs. 3000/- per month and Rs. 4500/- per month with effect from January, 1996, and November, 1999 respectively. The relevant portion of the circular dated 8.4.1995 on which both Mr. Kar and Mr. Mohanty have relied on is extracted herein below :

"*****

The matter regarding the quantum of cash compensation paid to the female dependents of Executives in the above cases was again discussed in the CMD's meeting held on 9th March, 1995 wherein it was mentioned that the cash compensation paid to non- executive works out to 85% and 128% of the minimum wages of a Category-I employee prevailing in January, 1994 in case of normal death and death due to mine accident respectively, Based on the above logic it was decided that the cash compensation to be paid to a female dependent of Executive be regulated on the basis of E-I scale (gross

emoluments) as on January, 1994 as under:

(i) In case of accident of duty : Rs. 4,500 per month upto the age of 58 years.

(ii) In case of death in harness: Rs. 3,000/- per month upto the age of 58 years.

This will be applicable in future and even in respect of these female employees who are already in employment. It means, if female employees already appointed and working, opt for the monetary compensation in lieu of further employment, they may be allowed to do.

*****"

A plain reading of the aforesaid circular would show that in CMD's meeting held on 9th March, 1995/April, 1995, the matter regarding the quantum of cash compensation paid to the female dependents of Executives was discussed where it was mentioned that the cash compensation paid to non-executive works out to 85% and 128% of the minimum wages of a category-1 employee prevailing in January, 1994 in case of normal death and death due to mine accident respectively and based on this logic, it was decided that the cash compensation to be paid to a female dependent of Executive be regulated on the basis of E-1 scale (gross emoluments) as on January, 1994 and would be in the case of accident of duty Rs. 4500/- per month and in case of death in harness Rs. 3000/- per month. Thus, no decision was taken that the cash compensation to be paid to a female dependent of an Executive should be 85% of E-1 scale (gross emoluments) and the decision taken was that cash compensation to be paid to a female dependent of an Executive would be Rs. 4500/- per month in the case of accident of duty and Rs. 3000/- per month in the case of death in harness. Since no decision has been taken by the authorities of C.I.L. to pay cash compensation equivalent to 85% of E-1 scale (gross emoluments) to a female dependent of an Executive in case of accident of duty or in case of death in harness, the Court cannot direct the opp. parties to pay cash compensation equivalent to 85% of E-1 scale (gross emoluments), pre-revised or revised, to the petitioner.

7. Mr. Kar, however, vehemently argued that since the logic of the said decision was to grant 85% of the E-1 scale (gross emoluments), the Court can still direct the opp. parties to pay 85% of the E-1 scale (gross emoluments). We are unable to accept the aforesaid argument of Mr. Kar. In *Tata Cellular Vs. Union of India*, the Supreme Court held :

"94. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness,

(iii) Procedural impropriety."

The petitioner's case is not that the aforesaid decision to award cash compensation of Rs. 3000/- per month in case of death in harness to a female dependent of an Executive was contrary to any law and was illegal. The petitioner's case also is not that the said decision is irrational and differs from Wednesbury unreasonableness in the sense that is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived in such a decision (Associated Provincial Picture Houses v. Wednesbury Corpn. (1948) 1 KB 223 . The petitioner's case also is not that the aforesaid decision suffers from procedural impropriety or that the petitioner should have been heard before the aforesaid decision was taken. The petitioner's only case is that the decision to award cash compensation of Rs. 3000/- per month is not logically consistent inasmuch as 85% of E-1 scale (gross emoluments) works out to more than Rs. 3000/- per month. We are afraid, only on this ground the Court cannot interfere with the policy decision of the opp. parties to pay cash compensation of Rs. 3000/- per month with effect from January, 1994 or to pay cash compensation of Rs. 4500/- per month with effect from November, 1999 to a female dependent of an Executive who had died in harness.

8. The next question to be decided is whether the petitioner was entitled to compassionate appointment in an Executive Post commensurate with her qualification. In paragraph-4 of the additional affidavit filed on behalf of the opp. parties 1, 3 and 4 on 2.2. 2003, it is stated that the office memorandum dated 13.3.1981 of the C.I.L. provides that employment of the dependents should be in Non-Executive posts and according to the job requirement of the post. It is further stated in paragraph-4 of the said additional affidavit that the cadre scheme of Ministerial staff/Non-Executive of C.I.L. shows that Clerk Grade-III is the initial point of clerical cadre in Non-Executive post and the petitioner was given employment by S.E.C.L. in Clerk Grade-III. It is, thus, clear that under the scheme for compassionate appointment of C.I .L., no such compassionate appointment can be made to Executive Post but only to Non-Executive Post. Further, since in the cadre scheme of Ministerial staff of all Non- Executives of C.I.L., the post of Clerk Grade-III was the entry point, the petitioner was offered compassionate appointment to the post of Clerk Grade-III.

9. Mr. Kar, learned counsel for the petitioner, however, submitted that the petitioner being an M.A. and Ph. D. in Psychology, the post of Clerk Grade-III was not commensurate with her qualification and the petitioner should have been offered a post of industrial Psychologist or such other post commensurate with her qualification and in support of his submission relied on the decisions of the Supreme Court in Smt. Sushma Gosain's case and Smt. Phoolwati's case (supra). But we find on a reading of the decision of the Supreme Court in Smt. Sushma Gosain's case (supra) that the Supreme Court after finding that Sushma

Gosain had made an application for appointment as lower Division Clerk as far back as in November, 1982 had been denied appointment arbitrarily held that in all claims for appointment on compassionate ground, there should not be delay in appointment as the purpose of providing such appointment is to mitigate the hardship due to death of the bread earner in the family. The Supreme Court further held that such appointment should, therefore, be provided immediately to redeem the family in distress and it is improper to keep such case pending for years and if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant. In the aforesaid case of Smt. Sushma Gosain (supra), the Supreme Court was not called upon to decide as to whether the applicant for compassionate appointment is entitled to be appointed to a post which is commensurate-with his qualification. In Smt. Phoolwati's case (supra) the Supreme Court found that Phoolwati's husband Ram Krishan Lal was employed in the Government of India Printing Press and died in harness on 25.3.1989. Phoolwati and her three children continued to reside in the quarter after the death of her husband. The Government tried to evict her from the said quarter in spite of her repeated request to allow her to stay in the quarter on payment of rent. She filed an application before the Tribunal and made a prayer for interim relief to allow her to live in the said quarter. The Tribunal, however, dismissed her application on the ground that her husband died about a year ago and she cannot retain the quarter which was allotted to her husband while in service. She filed a SLP before the Supreme Court praying for permitting her to stay in the quarter as well as to employ one of her three sons in the said Printing Press according to his qualification and the Supreme Court after quoting the observations of the Supreme Court in Smt. Sushma Gosain's case (supra) directed the Union of India to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualification. In the aforesaid case of Smt. Phoolwati (supra) also there was no occasion for the Supreme Court to decide the question as to whether the applicant for compassionate appointment is entitled to be appointed to a post commensurate with his qualification.

10. In Umesh Kumar Nagpal v. State of Haryana and Ors. (supra), on the other hand, the Supreme Court found that the State Government's instructions in question did not justify compassionate appointment in Class-II post and yet, the State Government had made an exception and provided compassionate employment in Class-II post on the ground that the person concerned had technical qualification, such as, M.B.B.S., B.E., B.Tech. etc. Yet the Supreme Court found that the High Court took the view in the impugned judgment that the Government can exercise its discretion judiciously in making appointments to Class-1 and Class-II posts on compassionate ground in very exceptional circumstances and also recommended that the Government should frame a policy in making such appointments. The Supreme Court held that the only ground which can justify compassionate appointment is the penurious condition of the deceased's family and neither the qualifications of his dependent nor the

post which he held is relevant. The Supreme Court further held that the observation of the High Court that appointments should be made in exceptional circumstances in Class-I or Class-II posts were contrary to law. The Supreme Court further held that the decision in Smt. Sushma Gosain's case (supra) has been misinterpreted to the point-of distortion and the decision does not justify compassionate appointment either as a matter of course or in employment in posts above Class-III and Class-IV. The relevant portion of the said judgment of the Supreme Court in Umesh Kumar Nagpal v. State of Haryana and Ors. (supra) are quoted herein below :

"... The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes-III and IV. That is legally impermissible,

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of the Court in Sushma Gosain v. Union of India has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is

the penurious condition of the deceased's family. Neither the qualifications" of his dependant nor the post which he held is relevant..."

The aforesaid law laid down by the Apex Court in Umesh Kumar Nagpal v. State of Haryana and Ors. (supra) has been quoted and reiterated in State of Haryana and Ors. v. Rani Devi and Anr. (supra) and Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. (supra) cited by Mr. Mohanty.

11. In view of the aforesaid clear law laid down by the Supreme Court that the only object of compassionate appointment is to give minimum financial relief to the family of the deceased employee and such object is mitigated by making such compassionate appointment in Class-III and Class-IV posts and that, posts above Class-III and Class-IV cannot be offered for such compassionate appointment on the ground that the applicant had higher qualification, we cannot possibly hold that The petitioner was entitled to be appointed in an Executive post or any other post commensurate with her qualification of M.A. and Ph. D. in Psychology.

12. The last question to be decided is whether the Court should quash the impugned communication dated 15.6.2000 of the General Manager (MP & IR) to the petitioner in Annexure-1 to the writ petition by which the petitioner was informed that her late husband was not entitled to any payment mentioned in her letter dated 23.12.1999. The claims of the late husband of the petitioner mentioned in the said letter dated 23.12.1999 relate to a period when late husband of the petitioner was working under S.E.C.L. The S.E.C.L. in their letter dated 29.1.2003 to the Director (Personnel), M.C.L., Sambalpur (Orissa), copy of which has been annexed to the additional affidavit filed on behalf of the opp. parties 1, 3 and 4 as Annexure-R series, have dealt with the said claims itemwise. The petitioner has filed an affidavit in reply to the said additional affidavit filed by the opp. parties 1, 3 and 4 on 19.2.2003 disputing itemwise rejection of the claim of the petitioner in the said letter dated 29.1.2003 of S.E.C.L. Neither the counsel for the petitioner nor the counsel for S.E.C.L. have addressed us at length on the merits of their contentions on the said claims. Hence, we do not express any opinion on the merits of the said claims of the petitioner in the letter dated 23.12.1999 in Annexure-2 to the writ petition and instead, leave it open to the petitioner to make her claim either in a suit or in a separate writ petition against the S.E.C.L. as she may be advised.

13. For the aforesaid reasons, the writ petition is dismissed with liberty to the petitioner to file a separate suit or writ petition, as she may be advised, regarding claims of her late husband Debakalyan Mohanty against the South Eastern Coalfields Limited towards any alleged unpaid dues. No costs.

M. Papanna, J.

I agree.