

(2016) 07 JH CK 0059

In the Jharkhand High Court

Case No : L.P.A. No. 150 of 2014 with I.A. No. 3227 of 2015.

M/s Central Coalfields Limited through Sri Birendra Trivedi, G.M. (Admn.), Darbhanga House, PONCDC Campus, PSKotwali, Ranchi - Appellant @HASH Podin Devi, W/o Late Shankar Yadav, R/o Vill-Gharvatand, POTenughat, PSPeterbar, Distt. Bokaro

Date of Decision : 26-07-2016

Acts Referred:

Citation : (2016) 4 JBCJ 320 : (2017) 1 JCR 220

Hon'ble Judges : Virender Singh, CJ. and Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Anoop Kr. Mehta and Mr. B.V. Kumar, Advocates, for the Appellant CCL; Mrs. Anubha Rawat Choudhary, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, C.J. - I.A. No. 3227 of 2015

Since Mrs. Anubha Rawat Choudhary, learned counsel appearing for the respondent-writ petitioner has not raised any serious objection in allowing the instant application filed for condonation of delay of 299 days, we hereby, allow the instant application and condone the said delay in filing the accompanied appeal.

2. I.A. No. 3227 of 2015 stands disposed of accordingly.

L.P.A. No. 150 of 2014

1. We now take up the main appeal on board for its final consideration.

2. Heard learned counsel for the appellant and learned counsel for the respondent.

3. Aggrieved of the impugned order dated 01.05.2013 of the learned Single Judge in W.P.(S) No. 4946 of 2011, the appellant-Central Coalfields Limited (hereinafter to be referred as C.C.L.) had preferred the instant appeal on 05.04.2014. Record reveals that the instant appeal was dismissed on the

strength of the peremptory order dated 09.07.2014 for want of removal of the office defects. The appellant thereafter, moved C.M.P. No. 283 of 2014 for restoration of the main appeal which application was allowed by the Court on 14.05.2015.

4. The husband of the respondent-writ petitioner namely Shankar Yadav was an employee with the employer C.C.L. He was a Piece Rated Worker at Swang Colliery of the appellant-C. C.L. He stopped attending his duties at the said Colliery from 25.02.2002 in which regard an entry was made at Station Diary maintained at P.S. Peterbar. It was an entry of missing of Shankar Yadav. Till 13.03.2009 his whereabouts were not known on which date the concerned police station made an endorsement stating, "could not be found". It needs to be mentioned here that the name of the employee Shankar Yadav was struck off from the roll by the appellant on 05.03.2009.

5. The respondent-writ petitioner filed a Civil Suit being T.S. No. 20 of 2009 in the Court of Munsif, Bermo at Tenughat for a declaration that her husband (Shankar Yadav) had died civil death. The said Suit was decreed by the Court concerned on 23.01.2010 by declaring Shankar Yadav as dead. It is thereafter, the respondent-writ petitioner moved an application before the Project Officer, Swang Colliery of the appellant for appointment of her son Manoj Kr. Yadav, which application faced rejection vide Letter No. 2738 dated 02.07.2011. The respondent-writ petitioner thereafter, moved the Writ Court through the medium of W.P.(S) No. 4946 of 2011, which now stands allowed quashing the aforesaid order dated 02.07.2011 being without any legal basis with a direction to the appellant-C. C.L to consider the claim of the respondent-writ petitioner for arrears of death-cum-retiral dues and other benefits payable to her after death of her husband and also to pass an order of appointing her son (Manoj Kr. Yadav) within a stipulated period of six weeks. Compensatory interest @ 10% per Annum has also been awarded in favour of the respondent-writ petitioner. Hence the present Letters Patent Appeal.

6. At the very outset, Mrs. Choudhary, after getting instructions from the respondent-writ petitioner who has come present in person, states that the appellant-C. C.L has already given all the monetary benefits to her to the tune of about Rs. 4 lakhs. She further states that the respondent-writ petitioner has filed a contempt petition being Cont. Case (Civil) No. 725 of 2014, with regard to compassionate appointment in which pursuant to the notice a show cause has been filed by the appellant-C. C.L taking the plea that a discussion was held on 19.06.2013 which was communicated vide letter dated 09.12.2013 with regard to giving compassionate appointment in such like cases and it has been decided that no employment to the dependent of missing employee (deemed death) is to be considered. She further states that the appellant-C. C.L has relied upon that discussion note in the instant appeal also which is available at Annexure-7. She has drawn our attention to the said note.

7. Mr. A.K. Mehta, learned counsel appearing for the appellant-C. C.L submitted

that in terms of Clause 9.3.2 of the National Coal Wage Agreement-V (NCWA) the employment to the dependent of the worker can be provided only if the worker has died in service whereas, in the present case the husband of the respondent-writ petitioner went missing from duty from February, 2002 and when his whereabouts were not known for long 7 years, he was declared dead in which regard although the respondent obtained a decree of declaration in her favour, that would not bind the appellant to provide compassionate appointment to the son of the respondent-writ petitioner.

We do not find substance in the submission of Mr. Mehta. Admittedly, the husband of the respondent-writ petitioner remained on the 4role of the appellant-C. C.L for long 7 years and his name was struck off from the roll of the company on 05.03.2009, i.e. after 7 years. This by itself shows that in the records of the appellant-C. C.L the husband of the respondent-writ petitioner was shown as employee of the appellant. The declaration got by the respondent after 7 years by the Court concerned also confirms the date of civil death of her husband as 05.03.2009. From that angle also it is a case of death in harness. The view taken by the learned Writ Court on this aspect, thus, does not deserve to be disturbed.

8. Mr. Mehta has also relied upon Annexure-7 a communication dated 09.12.2013, which reflects that a decision has been taken on 19.06.2013 to the effect that the son of the respondent-writ petitioner namely Manoj Kr. Yadav would not be given compassionate appointment.

The decision taken by the Coal India Limited as reflected in the communication dated 09.12.2013 (Annexure-7), in our considered view would not change the fate of the present case. Even otherwise, this decision has been taken much later after the respondent-writ petitioner had earned a favourable judgment. Further, by an executive decision the provision of Clause 9.3.2 of the National Coal Wage Agreement-V (NCWA) or the decision of the Court already rendered cannot be overturned.

9. Resultantly, the appeal on hand filed by the appellant-C. C.L deserves to be dismissed being devoid of merits. We however, grant another six weeks" time to the appellant for compliance of the order of the learned Single Judge affirmed by us. Ordered accordingly.