
(2016) 10 JH CK 0037
In the Jharkhand High Court
Case No : W.P. (S) No. 3053 of 2016

Pankaj Giri

APPELLANT

Vs

Bharat Coking Coal Ltd. Dhanbad

RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 AIRJharR 825 : (2017) 2 JBCJ 441

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

Bench : Single Bench

Advocate : Mr. Rahul Kumar, Advocate, for the Petitioner; Mr. Anoop Kumar Mehta, Advocate, for the BCCL

Final Decision : Disposed Off

Judgement

Dr. S.N. Pathak, J.— Heard learned counsel for the parties.

2. In this writ application, the petitioner has inter alia prayed for quashing of the order contained in Ref. No.329 dated 26.04.2016 issued under the signature of respondent - Project Officer whereby and where under the claim for compassionate appointment of the petitioner has been regretted with a direction to the petitioner to obtain succession certificate of payment of Pension, Provident Fund dues while ignoring the service excerpts, the statutory forms and the Deed of Adoption where the deceased mother of the petitioner has nominated the petitioner. The petitioner has further prayed for issuance of appropriate and suitable direction or command upon the respondent authorities to consider and offer appointment to the petitioner on any suitable post on compassionate ground.

3. The factual exposition as has been delineated in this writ application is that the mother of the petitioner namely Kishori Devi was working as General Mazdoor under the respondent at Jogidih Colliery and she died while being in service due to cancer on 02.06.2014 leaving behind the petitioner and one

daughter. The father of the petitioner died long back and the widow mother of the petitioner had been the sole bread earner in the family and the petitioner who is unemployed vide his letter dated 24.07.2014 applied for appointment on compassionate ground. The petitioner is aged about 24 years and date of birth of the petitioner as recorded in his matriculation certificate is 19.10.1991 and he possesses the qualification of Bachelor of Technology in Mechanical Engineering. The petitioner vide his letter dated 23.08.2014 and again on 08.12.2014 has also represented before the respondent authorities for payment of death cum retiral dues of her mother including gratuity, provident fund, medical bill etc. Thereafter, the petitioner has moved before this Court vide W.P.(S) No.919 of 2015 for redressal of his grievance in relation to appointment on compassion ground and for payment of death cum retiral benefit of her mother but respondent authorities did not comply the order/direction of this Court and the petitioner was compelled to file contempt petition being Cont. Case Civil No.237 of 2016 for initiation of contempt proceeding as against the opposite party. After filing of contempt petition, the respondent authority in a biased manner vide order dated 26.04.2016 has rejected the claim of the petitioner for compassionate appointment and has directed the petitioner to produce succession certificate for release of pension, provident fund etc. Hence, this writ petition.

4. Mr. Rahul Kumar, learned counsel appearing for the petitioner submitted that the respondents have illegally and arbitrarily rejected the claim of the petitioner on non - est ground. Learned counsel for the petitioner further submitted that there cannot be any justification or jurisdiction in demanding for succession certificate particularly when all the service excerpts/records nominate the petitioner and as such the order dated 26.04.2016 is arbitrary, illegal and not justified in the eyes of law.

5. A counter affidavit has been filed by the respondent - BCCL. Learned counsel for the respondent - BCCL submitted that the petitioner claims himself to be the adopted son of his adoptive mother Kishori Devi wife of late Jamuna Gosai who died prior to the year 1989. Upon death of late Jamuna Gosai, his widow namely Kishori Devi was given compassionate appointment in the services of M/s BCCL. Mr. A.K. Mehta, learned counsel for the BCCL further submits that before parawise reply to the averments made in the writ application, the answering respondents crave leave of this Hon'ble Court to state the true and correct facts of the case, which are as under: -

(a) The writ petitioner, Pankaj Giri @ Pankaj Kumar Giri, claims himself to be the adopted son of his adoptive mother Kishori Devi, wife of Late Jamuna Gosai who died prior to the year 1989. Upon death of Late Jamuna Gosai, his widow namely Kishori Devi was given compassionate appointment in the services of M/s BCCL.

(b) The natural father of the petitioner, Pankaj Giri @ Pankaj Kumar Giri, is Ram Janam Giri who is still alive and was also in the employment of M/s BCCL and has since retired in the year 2012. The natural mother of the writ petitioner is Smt. Leelawati Devi, who is still alive.

(c) As per the case set out by the writ petitioner, sometime during the Holi festival in the year 1995, Pankaj Giri, son of Ram Janam Giri who is said to have been aged 4 years was adopted by Smt. Kishori Devi, wife of Late Jamuna Gosai.

(d) The writ petitioner has also set out a further case that the factum of his adoption in the year 1995 was reduced to writing by a registered deed of adoption dated 13.06.2002 mentioning the fact that Ram Janam Giri, the natural father of Pankaj Giri, was given in adoption to Smt. Kishori Devi in the year 1995.

(e) As Smt. Kishori Devi was given compassionate appointment upon death of her husband Late Jamuna Gosai, service excerpts of Smt. Kishori Devi has been prepared on 25.05.1992 containing the list of dependents and their respective age, which are as under: -

Sl.No.

Name

Dependant

Age

1

Pankaj Giri

Son

2 years in 1992

2

Vandana Kumari

Daughter

8 years

3

Kaushalya Devi

Mother - in - law

55 years

4

Ram Awtar Giri

Brother - in - law

15 years

(f) As stated herein above, it is the definite case of the petitioner that he was taken in adoption at the time of Holi festival in the year 1995 which is also

reflected from the deed of adoption. It is surprising as to how the service excerpts of Smt. Kishori Devi dated 25.05.1992 records the name of Pankaj Kumar Giri as dependent son in the year 1992.

(g) After adoption of Pankaj Giri, the writ petitioner, in the year 1995, the name of adoptive father should have been entered in all the educational certificates namely Pankaj Giri, son of Late Jamuna Gosai and not in the name of natural father Ram Janam Giri.

(h) The respondents also have the service excerpts of Sri Ram Janam Giri, the natural father of the writ petitioner, Pankaj Giri, dated 22.03.1987. In the service excerpts of Sri Ram Janam Giri, three dependent daughters have been shown including Vandana Kumari, who has also been shown as a dependent daughter of Smt. Kishori Devi. Therefore, Vandana Kumari is the daughter of both Ram Janam Giri and Kishori Devi, the adoptive mother of Pankaj Giri.

6. Mr. Mehta, learned counsel for the respondent in order to buttress his argument, draws the attention of this Court at Paragraph 5 and submits that in the present writ petition the petitioner has raised disputed question of facts which need not be decided by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India and the remedy therefore of the petitioner is to file a suit for declaration and get a declaration from a competent court of civil jurisdiction regarding his relationship with late Kishori Devi through whom the petitioner is claiming employment. Mr. Mehta further submits that as regards the payment of retiral benefit of the petitioner is concerned, the respondent no.4 in his reasoned order dated 26.04.2016 has rightly stated that the petitioner should obtain a succession certificate from a competent court of civil jurisdiction.

7. Considering the rival submissions of the parties and in view of the settled principles of law and considering the circular, guidelines of the State Government, the impugned order warrants no interference. The High Court sitting under Article 226 of the Constitution of India will not interfere in the disputed question of facts. It has to be decided by the competent court of civil jurisdiction. The remedy therefore is to file a suit for declaration and get a declaration from a competent court of civil jurisdiction regarding relationship with late Kishori Devi through whom the petitioner is claiming employment and as such the impugned order does not warrant any interference. As the name of the petitioner reflects in the Nomination Form "F" of Late Kishori Devi, the controlling authority under the Payment of Gratuity Act has released the amount. So far as other benefits are concerned, the petitioner should procure a succession certificate and submit before the respondent authorities and the respondent authorities after receiving the same will release the entire retiral benefit to the petitioner expeditiously.

8. With this observation, this writ petition is disposed of.