

(2012) 04 CHH CK 0063
In the Chhattisgarh High Court
Case No : Writ Appeal No. 131 of 2010

Pitambar Das Manikpuri

APPELLANT

Vs

National Thermal Power Corporation Ltd and others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 — Section 2(1)

Citation : (2012) 04 CHH CK 0063

Hon'ble Judges : Manindra Mohan Shrivastava, J; Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Anshuman Shrivastava, for the Appellant; B.D. Guru, for the Respondent

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, J.—Heard. This is an appeal filed by the son of late Shri Puni Das Manik Puri (writ petitioner of W.P.(S) No. 6657 of 2007) u/s 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act 2006, against the respondents seeking quashing of their (respondent's) decision dt 6.10.2007 (Annexure-P/5) whereby, the writ petitioner's application for grant of compassionate appointment in respondents' employment either for himself or for any member of his family after the untimely death of his father, has been rejected.

2. In order to appreciate the controversy, which lies in a narrow compass, few relevant undisputed facts need mention.

3. Shri Puni Das Manik Puri was in the employment of Respondents - a Government of India Company registered as such under the provisions of the Companies Act, by and under the name National Thermal Power Corporation Limited (for short called -the NTPC). The NTPC is engaged in the business of production and sale of electricity and has its plant at Korba. Shri Puni Das Puri - a technical skilled worker was working as Operator Grade III (W-5) in the

department called - O & M -CHP in the plant.

4. On 7.7.2007 Mr Puri as usual came on duty and while on duty died. The post mortem was accordingly performed with a view to find out the cause of death. The report concluded that Mr Puri died due to "asphyxia "

5. The writ petitioner is the son of Mr Puri. He then through his mother applied for grant of any suitable employment pursuant to the NTPC policy enacted for providing compassionate appointment either for himself or for any dependent member of his family. According to the writ petitioner, since their bread earner - Mr Puri died while on duty leaving them breadless all of a sudden and hence, in terms of compassionate appointment policy of the NTPC, he or any dependent member of his family was eligible for securing employment in NTPC. A request was accordingly made that he or any other member of his family should be given the appointment in the NTPC to enable the surviving members to maintain their family.

6. The respondent (NTPC) found no merit in the petitioner's application and accordingly rejected it essentially on the ground that since the death of Mr Puri did not occur due to any accident, but it occurred due to ailment called " asphyxia " and hence no member of his family was entitled to claim the benefit of such death for seeking compassionate appointment in their employment as per the scheme. In other words, the main reason that led to rejection of petitioner's application was that the death of Mr Puri though occurred while on duty but since it did not arise out of any accident nor it had anything to do with his employment activities and hence in the absence of any nexus between the cause of death and the duties and further it being not an accidental death, the application of the writ petitioner was not entertainable. It is against this rejection, the son felt aggrieved and filed the writ petition, out of which, this appeal arises.

7. The learned Single Judge dismissed the writ petition. He was of the view that cause of death i.e " asphyxia " could not be said to be in the nature of an "accident" and hence the writ petitioner was not entitled to claim any benefit of such death for claiming employment under the Compassionate Scheme. It was held that the policy of the NTPC interalia provided to give an employment only to such dependents, whose bread earner suffered death on account of any accident occurred while on duty, or when the death had some nexus with his duties. It was held that in this case, since the writ petitioner was not able to prove this criteria and hence, he was not entitled to claim any employment pursuant to policy enacted for giving compassionate appointment. In other words, it was held that the death of Mr Puri was neither accidental in nature nor it had anything to do with his duties. After recording such finding, the writ Court dismissed the writ petition, which has now given rise to filing of this intra Court appeal by the writ petitioner (son).

8. Submission of the learned counsel for the appellant (writ petitioner) was that

the writ Court committed an error in dismissing the appellant's writ petition. According to him, it should have been held and there was enough material for holding in appellant's favour that death occurred to Mr Puri due to accident while he was on duty i.e. it was accidental in nature and hence such event entitled the writ petitioner or any member of his family to secure employment in the NTPC pursuant to their policy made in that behalf. The learned counsel contended that the expression "accident" has been consistently interpreted both by the English Courts and the Supreme Court liberally and also with very wide amplitude so as to include within its sweep any kind of mishap or untoward happening while on duty causing injury or death to person by any external force not within the knowledge of the victim. The learned counsel further contended that the very fact that death was caused due to "asphyxia" will go to show that it was not caused in normal circumstances but was caused due to un-natural circumstances and perhaps due to some kind of external forces prevailing in the factory premises and for which deceased (victim) was not responsible. The learned counsel urged that it was due to this external unforeseen impact caused on his body he was not properly able to breathe and died either due to some kind of suffocation, or choking which disturbed his inhaling system due to which, less oxygen was supplied to his respiratory system resulting in his instant death on the spot. The learned counsel thus contended that such death should have been held as an accidental one having occurred during the course of employment thereby entitling the writ petitioner to avail of its benefit for securing an employment in terms of policy condition. The learned counsel maintained that this being a welfare scheme meant for giving solace to the survivors of the deceased family members and to relieve them of monetary hardship caused because of untimely demise of their bread earner, the application made by the appellant should have been liberally considered and allowed. The learned counsel for the appellant cited some authorities and dictionary meaning of the expression asphyxia in support of his contentions.

9. The learned counsel for the respondent, however, supported the reasoning and the conclusion of the writ Court and prayed for it's upholding.

10. At the outset, we may consider it apposite to state that the issue which is subject matter of this case viz- what is the meaning of expression " accident " and " injury " occurred to any employee while on duty and second when such accident /injury can be said to arise out of his employment and during the course of his employment so as to entitle him to claim compensation from his employer for causing death/injury under the Workman Compensation Act came up for consideration before the Division Bench of Madhya Pradesh High Court in the case reported in Sundarbai Vs. General Manager, Ordnance Factory, Jabalpur 1976 MPLJ 356. In that case, the worker who was suffering from the ailment called aneurisms of aorta died while doing his ordinary work due to rupture of aneurisms. The post mortem report revealed that he died due to rupture of aneurisms. The Commissioner of Workman Compensation dismissed the application saying that neither the death occurred due to any injury nor any

accident occurred during the course of employment and nor it had anything to do with his employment. In an appeal filed by his wife (legal representative), the High Court allowed the appeal and granted compensation to the appellant for his death. The learned Judge - Hon"ble G.P.Singh J (as his Lordship then was and later became Chief Justice) speaking for the Bench examined the issue in question thread bear in the light of several leading English decisions and also of the Supreme Court on the subject and after reviewing the entire case law on the subject and taking note of the consistent approach of the Courts in dealing with such issues with his distinctive style of writing and lucid power of expression culled out following principle of law for the courts guidance.

10. On a review of the authorities, the principles in so far as relevant for our purposes may be stated as follows:-

(A) "Accident" means an untoward mishap which is not expected or designed by the workman. "Injury" means physiological injury.

(B) "Accident" and "injury" are distinct in cases where accident is an event happening externally to a man; e.g. when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases "accident" and "injury" coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.

(C) Physiological injury suffered by a workman due mainly to the progress of a disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

(D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.

(E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable conclusion is that there was a connection.

11. The Supreme Court then also had the occasion to consider the meaning of the expression " accident " subsequent to aforesaid case in the case of Regional director, E.S.I. Corporation and Another vs Francis De Costa and Another (1993 Supp (4) SCC 100) and while approving the meaning to the expression as to what Singh J had laid down in *Sunderbai* (supra) held as follows.

4... The popular and ordinary sense of the word `accident' means the mishap or an untoward happening not expected and designed to have an occurrence is an accident. It must be regarded as an accident, from the point of view of the workman who suffers from it, that occurrence is unexpected and without design on his part, although either intentionally caused by the author of the act or

otherwise.

12. Now keeping in view the law laid down in the cases relied upon by Singh J in Sunderbai's case (supra) which were approved by the Supreme Court in later years in several decisions including the one referred above and applying the same to the facts of the instant case, we are of the considered opinion, that death did occur to Mr Puri due to accident which arose during the course of employment. In other words, in our view, it was an accidental death. Indeed, the very fact that death of Mr Puri caused due to " asphyxia " lead us to take a view that he died due to some external force/agency which reacted adversely on the internal organs of his body causing him death. In such death, the deceased had no role to play. We may profitably refer to the dictionary meaning of the expression " asphyxia " which in clear terms suggests that a morbid condition of swooning, suffocation, or suspended animation, resulting in death if not relieved, produced by any serious interference with normal respiration (as the obstruction of the air passages, inhalation of poisonous gases or too verified air, choking or drowning, with a consequent deficiency of oxygen in the blood. (see in Advanced Law Lexicon, Page 362).

13. In our opinion, any death occurring as a result of operating some outside agency adversely on the internal organs of the body causing damage to such organ or obstruction on which deceased (victim) had no control would amount to occurrence of an untoward happening or/and event thereby attracting the attributes of the expression "accident " in popular sense as held by the Supreme Court.

14. In this case, the NTPC did not dispute the cause of death and further relied upon the same post mortem report on which, the writ petitioner had placed reliance. In the light of this admitted fact, one could easily conclude that the death was not natural nor it occurred due to deceased's own fault, but it occurred due to intervention of some external agency hitting the internal organs of the deceased while he was on duty and which made him in an uncomfortable condition to breath or which resulted in choking of his respiratory system thereby disturbing his normal supply and inhaling of oxygen in body to such an extent that he died on the spot due to suffocation / choking or less supply of oxygen.

15. It is in our opinion, a clear case of unnatural death of Mr Puri caused due to accident while on duty and since no explanation was offered by the NTPC to prove otherwise by adducing any kind of evidence, we are inclined to hold that it was an accidental death occurred to Mr Puri, while he was on duty.

16. It is a settled rule of interpretation that while interpreting any beneficial scheme meant for providing benefit to survivors of victims of any unforeseen event, its laudable object must always be kept in forefront and all efforts should be made to give liberal and wide interpretation to the words used therein, so as to bring benefit to the one for whose benefit such scheme is enacted. We prefer

to apply this principle in letter and spirit to the facts of this case in favour of the writ petitioner while interpreting the provisions of scheme and the relevant expressions, because, in our opinion, it is in accord with law laid down by the Supreme Court and the High Court referred (supra).

17. In the light of our aforesaid finding, we are of the view that the writ petitioner was able to prove on undisputed facts the requirement of policy that Mr Puri (his father) died due to accident occurred while he was on duty and hence he was entitled to take benefit of beneficial Scheme/policy made by NTPC for giving employment to one dependent of the family of the deceased

18. In view of foregoing discussion, we are not inclined to concur with the reasoning and the conclusion arrived at by the writ Court.

19. As a result thereof, the appeal succeeds and is allowed. The impugned order is set aside and instead, the appellant's writ appeal is allowed. As a consequence, the order/communication dt 06.10.2007 (Annexure-P/5) issued by the respondents is quashed by issuance of writ of certiorari.

20. The respondents are directed by issuance of writ of mandamus to examine the case of the writ petitioner with a view to find out as to which, out of several dependent members of Mr Puri's family (if there are more than one) should be offered employment in the NTPC as per their scheme and accordingly after making necessary verification of his/her credentials, give appointment to most suitable dependent member, within three months from the date of this order. Cost of the appeal/writ petition Rs, 5000/- payable by the respondent to the appellant.