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In the Jharkhand High Court

Case No : Writ Petition (S) No. 4001 of 2008

Radha Munda — APPELLANT

Vs

Director Personnel, Central Coalfield Ltd. and Others — RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:
Constitution of India, 1950 — Article 12, 16

Citation : (2015) 4 AJR 167 : (2015) 3 JLJR 319 : (2015) LabIC 4001

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : S.N. Pathak, Senior Advocate, Rakesh Kr. Roy and Birju Thakur, for the Appellant; Ananda Sen, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—In this application the petitioner has prayed for quashing the letter dated 6.12.2004 issued by the Personnel Manager, Central Coalfield Ltd. (respondent No. 3), whereby and whereunder, the claim of the petitioner for compassionate appointment has been rejected. It has further been prayed for a direction upon the respondents to consider the case of the petitioner for compassionate appointment in M/s. Central Coalfield Ltd. (C.C.L.)

2. The father of the petitioner, late Mangra Munda was employed as a Pay Load Operator/Crusher Operator in K.D.H. Project of M/s. C.C.L. and in course of his employment he died on 28.11.2001. The petitioner being the daughter of the deceased Mangra Munda applied for compassionate appointment on 14.5.2002, but ultimately it was not considered as the petitioner was aged about 17 years and therefore recommendation was made for monetary compensation under Clause 9.5.0 of the National Coal Wage Agreement (NCWA). The mother of the petitioner, namely, Ghunaria Devi again submitted an application with respect to appointment of her daughter (petitioner) on compassionate ground, but subsequently after movement of the files through various department her claim was rejected on the ground that when the petitioner had attained the age of 18

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years, the time limit of one year for making an application for compassionate appointment had already lapsed and in such circumstances, the claim for compassionate appointment of the petitioner was rejected.

3. Heard Dr. S.N. Pathak, learned senior counsel for the petitioner and Mr. Ananda Sen, learned counsel for the respondents.

4. It has been submitted by Dr. S.N. Pathak, learned senior counsel for the petitioner that the claim of the petitioner was rejected belatedly without properly considering the facts of the case. It has been submitted that after death of the father of the petitioner on 29.11.2011, an application for appointment on compassionate ground was submitted by the petitioner on 14.5.2002 which was well within the time limit prescribed for making such application but the same was not considered treating the petitioner to be a minor. It has been submitted that on attaining majority, the mother of the petitioner immediately submitted an application but the same was also rejected as it was made beyond the prescribed period of one year. Learned senior counsel for the petitioner further submits that in terms of the NCWA, a male dependant who has not attained the age of 18 years is kept in a live roster till he attains majority but there has been apparent discrimination in the case of female Dependant as would be evident from the case at hand.

5. Mr. Ananda Sen, learned counsel appearing for the respondents has submitted that the respondents have rightly rejected the claim of the petitioner as the same was submitted after expiry of more than one year from the date of death of the deceased father of the petitioner. It has further been submitted that the respondent authorities have acted in terms of the scheme as envisaged in NCWA and they were not permitted to stretch the provisions under the scheme for appointment on compassionate ground beyond the permissible limits to accommodate the petitioner. In response to the contention of the learned counsel for the petitioner with respect to discrimination in the case of female dependant it has been submitted by Mr. Ananda Sen, learned counsel for the respondents that since there is no provision prescribed in the NCWA of keeping a female dependant in live roster as in the case of a male dependant, there was no question of extending the scope of the provisions under the NCWA. It has thus been submitted that since the claim for compassionate appointment was itself belated, the authorities had rightly rejected such claim.

6. Unfortunate part of the entire case is that on account of close proximate of time, the petitioner was debarred from seeking compassionate appointment. The father of the petitioner, late Mangra Munda had died in harness on 29.11.2001. The application submitted by the petitioner for compassionate appointment was within a period of six months from the date of death of her father i.e. 14.5.2002. The claim of the petitioner for compassionate appointment was not considered as on the date of application, the petitioner was aged about 17 years. As it appears from the application submitted by the mother of the petitioner in terms of the date of birth entered in the service book of late Mangra Munda, the petitioner

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attained the age of majority on 30.4.2003 and immediately thereafter the application was submitted by the mother of the petitioner claiming compassionate appointment of the petitioner. The entire chronology of event would suggest that the claim for compassionate appointment on both occasions fell short by a few months without there being any laches on the part of the petitioner in submission/resubmission of the claim for compassionate appointment.

7. During course of hearing of this application Mr. Ananda Sen learned counsel for the respondents was directed to produce the excerpts of NCWA which related to compassionate appointment. On being produced the same was perused from which it appears that Clause 9.5.0 provides for employment/monetary compensation to a female dependant. Sub Para-I of Para 9.5..0 deals with cases of death due to mines accident wherein a female dependant would have the option either to accept monetary compensation of Rs. 4,000/- per month or employment irrespective of her age. Similarly Sub Para-2 of Clause 9.5.0 deals with case of death/total permanent disablement due to cause other than mines accident and medical unfitness under clause 9.4.0 and if the female dependant is below the age of 45 years she will have the option either to accept monetary compensation of Rs. 3,000/- per month or employment. In case of a male dependant if he is 12 years and above in age he shall be kept on a live roster and would be provided employment commensurate with his skills and qualifications when he attains the age of 18 years as envisaged in Sub Para-3 of Para 9.5.0. In any case under the provisions of the NCWA a female dependant shall not be kept on a live roster and will only have the option either to accept monetary compensation or employment. Although the impugned letter dated 6.12.2004 rejects the case of the petitioner on the ground that the time limit of one year has already crossed, but in the counter affidavit additions have been made to the effect that there is no provision in the NCWA for entering the name of a female dependant who has not attained the age of 18 years in the live roster as the same is meant only for male dependants. The issue with respect to non entitlement of a female dependant to be kept in a live roster is no more res integra in view of several orders which have been passed by this Court.

8. In W.P. (S) 1048 of 2011 (Urmila Marandi v. Central Coalfield Limited and others), this Court while considering the provision of Clause 9.5.0 of the NCWA has held thus:-

(V) It is contended by the counsel for the respondent that as per clause 9.5.0 (iii) of the N.C.W.A., if there is a male legal heir of deceased employee, below age of 12 years, his name will be entered in "Live Roster" who will be offered employment later on, after he attains age of majority, but petitioner is female, therefore, her name cannot be entered into "Live Roaster". This argument is not accepted by the court mainly for the reasons that respondent being "State" within the meaning of Article 12 of the Constitution of India, cannot discriminate petitioner on the ground of sex. If the male legal heir is entitled to employment,

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upon attaining age of majority, equally, female legal heir is entitled to compassionate appointment, upon attaining the age of majority. As per Article 16 of the Constitution of India, discrimination on the ground of race, religion, sex, caste, place of birth is not permissible.

9. Similar orders have been passed in W.P. (S) No. 6603 of 2011 (Jamuni Kumari v. CCL and others) and W.P. (S) No. 3386 of 2014 (Geeta Kumari v. CCL and others), following the decision rendered by this Court in W.P. (S) No. 1048 of 2011.

10. At this stage Mr. Ananda Sen, learned counsel for the respondents has referred to the judgment rendered by the Hon''ble Supreme Court in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, (2011) 3 JT 293 : (2011) 3 SCALE 513 : (2011) 4 SCC 209 : (2011) 1 SCC(L&S) 667 : (2011) AIRSCW 2039 . The Hon''ble Supreme Court had categorically laid down the criteria through which one can claim compassionate appointment. The said criteria have been enumerated in Paragraph-20 of the Judgment and which reads thus:-

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government of or a public authority The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death of medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee''s family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

11. Mr. Sen while relying on the aforesaid judgment has submitted that the provisions of compassionate appointment enumerated in the NCWA has to be strictly interpreted and to be implemented to what has been laid down. It has been submitted that there is no scope of elasticity by stretching the said provisions beyond what was intended by the parties while formulating the NCWA.

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12. The claim of the petitioner for compassionate appointment is based on the provisions enumerated in NCWA under which applications were duly submitted. The applications so submitted were without undue delay in order to enable the petitioner to be granted compassionate appointment and be the bread earner of the family on account of the death of her father who was a Govt. employee. Criteria/Provisions enumerated by the Hon''ble Supreme Court in the Judgment under reference has been clearly fulfilled by the petitioner, but since there was an apparent discrimination in excluding female dependants from the purview of being kept in live roster denial of appointment to the petitioner was made by the respondents.

13. As has been discussed above, the apparent discrimination on the ground of sex has been considered in details in the case of Urmila Marandi v. CCL (Supra) as well as the subsequent orders on the subject and in such circumstances, therefore the petitioner cannot be deprived and discriminated against only because of the fact that she is a female dependant.

14. Taking into consideration the factual as well as the legal aspects as depicted above, I have no hesitation to hold that the impugned order dated 6.12.2004 passed by Personnel Manager (M), CCL, Ranchi is against the settled principles of law and therefore the same is quashed and set aside. The matter is remitted back to the respondent No. 2 who shall take a fresh decision in the light of the above observations within a period of 8 weeks from the date of receipt/ production of a copy of this order by passing a reasoned order after giving an opportunity of hearing to the petitioner.

15. This application is allowed with the aforesaid observations and directions.

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