

**(2013) 11 JH CK 0078**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 301 of 2013**

Ravi Shankar Prasad

APPELLANT

Vs

Bharat Coking Coal Limited and Others

RESPONDENT

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**Date of Decision :** 11-11-2013

**Acts Referred:**

**Citation :** (2013) 4 JLJR 598

**Hon'ble Judges :** Aparesh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** A.K. Das, for the Appellant; Ananda Sen, Advocate for the BCCL, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The claim for compassionate appointment of the petitioner has been rejected by the impugned order contained in letter dated 25th May 2010 issued by the Dy. Chief Personnel Manager, Bharat Coking Coal Limited, Bastakola area, on the sole ground that the petitioner does not fall in the category of dependent of the deceased employee and is not covered by the Social Security Scheme whereunder, employment to a dependent of a worker/employee who dies in harness, is given.

2. Counsel for the petitioner submits that under Claus 9.3.2., provisions have been made for employment to one dependent of the worker who dies while in service. Clause 9.3.3 defines "dependent". The definition of dependent is not exhaustive, therefore expansive meaning of the "dependent" could be given as the petitioner was fully dependent upon the deceased employee being his nephew after the death of his natural father. It is further submitted that the petitioner was also nominated by the deceased as his nominee for the purpose of availing the benefits of gratuity of the deceased employee. He submits that the Controlling Authority under the Payment of Gratuity Act, 1972 in his order dated 21st February 2012 (Annexure-4) has therefore directed the respondents to make payment of the total gratuity amount due to the deceased employee in

favour of the petitioner. In such circumstances, respondents should have considered the case of the petitioner and grant him compassionate appointment as he was facing undue hardship and starvation after the death of the sole bread earner of the family.

3. Respondents have however contested the claim of the petitioner. Learned counsel for the respondents, by harping upon the definition contained in Clause-9.3.3 of NCWA Chapter-IX "Social Security", has submitted that the definition of dependent does not extend to the nephew which the petitioner is. It is submitted that the claim for compassionate appointment is a departure from the normal rules of public employment under Article 14 and 16 of the Constitution of India after consideration of all similarly placed eligible persons. Appointment of dependent of the deceased employee is made in order to enable him to ward off the immediate loss of the bread earner of the family and to prevent them from destitution. In such circumstances, it is submitted that the scheme which has been laid down by the employer has to be conformed to in the matter of consideration of claim for compassionate appointment. No departure thereof is warranted and neither is it advisable in view of several judgments rendered by the Hon"ble Supreme Court such as, in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, Kandarpa Sarma versus Rajeswar Das and Others [ (2011) 14 SCC 752 and Dwarika Bhuian v. Bharat Coking Coal Ltd. Through Its Chairman [2004 (4) JCR 685.

4. I have heard learned counsel for the parties and gone through the relevant materials brought on record including the impugned order. Definition of dependent as contained in Clause 9.3.3 is quoted hereunder for better appreciation.

9.3.3. the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

5. The first sentence of the definition provides that a dependent means the wife/husband or the unmarried daughter, son and legally adopted son. Such definition however is further qualified in circumstances if no such direct dependent is available for employment, then the case of compassionate appointment of a brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost dependent on the earnings of the deceased may be considered to be the dependent of the deceased. Though, the definition may not be an exhaustive definition in the strict terms, but the meaning of the word "dependent" has further been qualified in the said clause 9.3.3. itself to indicate such beneficiaries like brother, widowed daughter/widowed daughter-in-law or son-in-law in case no such direct dependent is available. Such definition does not find mention of any other person like nephew or other relatives of the deceased.

In the background of the aforesaid provisions made for grant of compassionate appointment to the dependent of the deceased based upon a scheme framed by the employer, it is also well settled by the judgments rendered by the Hon''ble Supreme Court that in exercise of powers under the writ jurisdiction, the Court should not derogate from or expand the provisions of scheme so as to include new categories of person who might be claiming to be the dependent of the deceased employee. Since the claim for compassionate appointment is in the nature of departure from normal rule for public employment, as conceived under Article 14 and 16 of the Constitution of India, it should be read in terms thereof and in consonance with the scheme for such employment. This view has been expressed by the Hon''ble Supreme Court in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, thereof and in the case of State of U.P. & Ors v. Pankaj Kumar Bishnoy [JT 2013 (11) SC 408]. In the aforesaid facts and circumstances, the petitioner does not come within the definition of the dependent under the scheme for compassionate appointment and the respondent cannot be blamed for refusing his claim for compassionate appointment on such grounds. In the aforesaid facts and circumstances therefore, no interference is required in the writ application. Accordingly, it is dismissed.