

(2000) 11 SC CK 0014

In the Supreme Court Of India

Case No : Civil Appeal No's. 6455-59 of 1998 and C.A. No. 3797-3800 of 1999
(Arising out of SLP (C) No's. 6580-81 of 1999)

Sail and Another

APPELLANT

Vs

Awadhesh Singh and Others

RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 89 FLR 547 : (2001) 4 JT 73 : (2001) 1 LLJ 163 : (2001) 10 SCC 621

Hon'ble Judges : G. B. Pattanaik, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted in SLP Nos. 6580-6581 of 1999.
2. The respondents in C.A. Nos. 3797-3800/99 have been set ex parte as they chose not to appear notwithstanding due service of notice. An I.A. has been filed on their behalf which is taken on board. The order treating them ex parte is set aside and they are brought on record.
3. In this batch of appeals the short question that arises for our consideration is whether the Memorandum of Agreement with the National Joint Committee for the Steel Industry (for short "Memorandum of Agreement") for compassionate appointment evolved by the Steel Authority of India Ltd. (for short "SAIL") permits for an appointment on the death of an employee to one of the dependents of the deceased employee if some other dependent of the deceased employee is already in service.
4. Under the Memorandum of Agreement it appears that language used is "in case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of his/her direct dependents will be provided. The SAIL, on the basis of some agreement, issued a letter on 14th of

August, 1984, clarifying the position that if any of the dependents (wife/husband or children) of the employee is already employed, no other dependent would be employed in case of death of the employee under such Memorandum of Agreement. The High Court appears to have taken the view that the language used in Clause 3.4.5.1. of the Memorandum of Agreement is not susceptible of that construction and therefore even if the dependent of the deceased may be in service that would not debar any other dependent from claiming such compassionate appointment and would require the employer to give such appointment. SAIL, therefore, assails the aforesaid view of the High Court in this batch of appeals.

5. It is contended by the Counsel appearing for the SAIL that the provision referred to in the Memorandum of Agreement read with the circular letter of the SAIL dated 14th August, 1984 makes it explicitly clear that the question of compassionate appointment would arise if none of the dependent of the deceased is already in service. The learned Counsel appearing for the respondents, on the other hand, contended that if any of the dependents is already in service on his own merit, that should not be a bar for seeking relief by other dependents of the deceased under the compassionate employment scheme and as such the impugned decision of the High Court would remain unassailable.

6. Having regard to the submissions made by the learned Counsel for both parties, the only question that comes up for our consideration is whether under the Memorandum of Agreement it is permissible for a dependent of the deceased to claim an appointment on compassionate ground even when no other dependent of the deceased is already in service. Be it stated that the Memorandum of Agreement in question is not a statutory scheme and therefore would be unenforceable in an application under Article 226 of the Constitution of India. The Memorandum of Agreement for appointment on compassionate ground had been evolved by the employer so that on the sudden death of an employee his dependents would not be on the roads as destitutes and can maintain themselves if an appointment is given to any one of the dependents of the deceased. Such a scheme cannot at all be conceived if some other dependent of the deceased is already in service. The very purpose for which such scheme had been evolved would get frustrated if a claim on priority basis is made by a dependent of the deceased notwithstanding the fact that other dependent of the deceased is already in service. In this view of the matter we are unable to sustain the decision of the Patna High Court in the impugned judgments. It may be stated that a Bench of this Court has already taken a similar view in the case of *S. Mohan Vs. Government of T.N. and Another*, with which we have our respectful concurrence.

7. In the aforesaid premises, the impugned judgments of the Patna High Court stand set aside and these appeals are allowed.

8. In course of hearing, an apprehension was pointed out by the Counsel appearing for the respondents that if some such compassionate appointments

have already been made, the Authority may take recourse to getting recovery of the salary that has been paid to such compassionate appointees. We make it clear that the employer would not be entitled to take resort to that course of action and no recovery would be made in such event.