

(2015) 08 JH CK 0035
In the Jharkhand High Court
Case No : WP(S) No. 2869 of 2009

Samola Devi

APPELLANT

Vs

Central Coalfields Limited and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Citation : (2015) 4 JLJR 34

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Bishwambhar Shastri, for the Appellant; Ananda Sen, for the Respondent

Final Decision : Disposed Off

Judgement

Rongon Mukhopadhyay, J.—In this writ application, the petitioner has prayed for quashing the letter dated 30.11.2004 wherein it was intimated that after medical examination the petitioner has been found to be unfit for service. It is the case of the petitioner that on 19.1.2002 the husband of the petitioner namely Chintamani Singh who was an employee in Central Coalfields Limited died-in-harness. Upon such death the petitioner filed an application for compassionate appointment and subsequent thereto an appointment letter was issued on 8.10.2004 and pursuant to which she joined on 16.11.2004. However, the petitioner was subjected to medical test and on medical examination she was found to be unfit on account of congenital shortening of right leg.

2. Heard Mr. Bishwambhar Shastri, learned counsel for the petitioner and Mr. Ananda Sen, learned counsel for the respondents.

3. Mr. Shastri, learned counsel appearing for the petitioner has submitted that the petitioner had a disability in her leg which made her limp but in spite of the obvious disability in the physical features of the petitioner she was provided with compassionate appointment as a trainee but subsequently she was declared unfit. It has further been stated that the petitioner could have been adjusted in

any other job in the surface area if she was found medically unfit for working in mines but this fact has not been considered by the authorities.

4. Mr. Ananda Sen, learned counsel for the respondents, on the other hand, has submitted that on the death of the husband of the petitioner namely Chintamani Singh the petitioner was provided with compassionate appointment which was subject to medical examination and having found the petitioner unfit for service, her services were accordingly dispensed with and the entire action on the part of the Management was in accordance with the provisions of law as well as with the provisions of National Coal Wage Agreement (N.C.W.A.).

5. Earlier, since the application of the petitioner for compassionate appointment was not considered by the authorities the petitioner had preferred a writ application being W.P.(S) No. 4300 of 2004 which was disposed of on 9.9.2004 directing the General Manager (P & IR) Central Coalfields Limited to determine the question of compassionate appointment of the petitioner. Subsequent, thereto the petitioner was provided with employment. However, on medical examination the petitioner was found to be unfit due to limping. Nowhere in the documents submitted either by the petitioner or by the respondents is suggestive of the fact that the question of providing employment to the petitioner in the surface was ever considered. Moreover, as would appear from Clause 9.5.0(H) in case of death due to cause other than mine accident and medical unfitness if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment. It further reads that in case the female dependent is above 45 years of age she will be entitled to only monetary compensation and not to employment. The petitioner under the Clause referred to had claimed compassionate appointment and only after a month of being provided with such employment she was declared medically unfit. On being questioned the learned counsel for the petitioner has submitted that the petitioner had never received any monetary compensation also. The respondents, it seems, have declined to extend monetary compensation to the petitioner on the ground that the petitioner - was provided with employment. The entire action has led to a precarious situation in which the petitioner has been deprived both from the monetary compensation as well as for employment on compassionate basis. Moreover, it has nowhere been stated by the respondents that they had taken into consideration the adjustment of the petitioner in some other workplace other than the mines.

6. From the report of the medical examination the age of the petitioner has been recorded as 36 years as on 25.11.2004. It would thus mean that as on date the petitioner has crossed the age of 45 years and, therefore, the petitioner is entitled only to the monetary compensation.

7. Accordingly, this writ application is disposed of with a direction to the respondent No. 3 to calculate and make the payment of monetary compensation to the petitioner from the date of her entitlement till the date the payment is made after deducting the amount which was paid to her during the limited period

she was in service. The respondents shall also ensure that the monetary compensation is made regularly available to the petitioner till the period of entitlement in terms of the provisions of National Coal Wage Agreement.