

(1996) 02 AP CK 0035
In the Andhra Pradesh High Court
Case No : W.A. No. 107 of 1996

Singareni Collieries Co. Ltd. and Another	APPELLANT
Vs	
M. Ramu	RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Citation : (1996) 4 ALD 519 : (1996) 2 ALD 190 : (1996) 2 ALT 662 : (1997) 1 LLJ 128

Hon'ble Judges : Prabha Shankar Mishra, C.J;Mahemmad Habeeb Shams Ansari, J

Bench : Division Bench

Judgement

P.S. Mishra, C.J.—A son, dependant upon his father and the step-mother who were the breadwinners of the family, lost the latter and sought accordingly compassionate appointment. The appellants, however, did not accept his claim on the ground that since his father was still working, he was not a dependant of the step-mother and under the scheme of such compassionate appointment, if the bread winner father was still alive, his dependant son, even though the step-mother had died, could not claim compassionate appointment. Learned single Judge has, however, taken notice of the fact that the father of the writ petitioner and the step-mother were together earning for the family. He has also accepted that for the purposes of the earning of the family there could be no division between the dependants upon the income of the father and dependants upon the income of the mother, a step-mother included. One can legitimately, however, subscribe to the above upon which the appellants have placed reliance that if father continued to be the breadwinner of the family, there was no occasion for extending any compassion to appoint his son. But the learned single Judge has, in this behalf, taken notice of the following :

"Under the scheme of compassionate appointments, employment would be provided to one of the dependants of workers disabled permanently and those who met with death while in service. The relevant provision of the agreement is

extracted below : "9.4.0. Provision of Employment to Dependants :

9.4. 1. Employment would be provided to one dependant of workers disabled permanently and those who met with death while in service. This provision will be implemented as follows :

9.4.2. Employment of one dependant of the worker who dies while in service.

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

(ii) The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit shall not apply in the case of spouse."

Interpreting the said provision of agreement, the learned Senior Counsel for the respondents Sri K. Srinivasa Murthy submits that the petitioner cannot get the advantage of the said agreement as he is the son of Sri M. Appanna and not the son of the deceased employee Smt. M. Jayamma though he maybe the son of the first wife of Mr. M. Appanna. On the other hand, the learned Counsel for the petitioner submits that the petitioner is the son of the first wife of Mr. M. Appanna and therefore he is the dependent of the family and thus he falls under the definition of dependant. Therefore, his case has to be considered in the light of the agreement entered into between the Management and the Union. He also submits that in a similar case where the father and mother were working in the company and when the father died, son was given employment under compassionate appointment scheme though the mother is working. The learned Counsel for the petitioner submitted an office order dated June 11, 1989 before this Court. In view of this, it is not open for the company to contend that the father is still working and therefore the petitioner cannot get employment."

Learned single Judge has, however, taken notice of the meaning of "dependant" and held as follows :

"Under the said agreement, the dependant has been defined to mean the wife/husband, as the case may be, unmarried daughter, son and legally adopted son". If no such direct dependant is available for appointment, the younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the deceased shall be considered for appointment. In the instant case, admittedly, the petitioner is the son depending on the family of both Mr. Appanna and Smt. Jayamma and therefore he has to be treated as a dependant of the family though he is a son of the first wife of M. Appanna. Though the management contends that the petitioner is also not dependant of the family, the same cannot be accepted in as much as the claim of

the petitioner has been rejected on the ground that he is a step son. It is also not brought out in the counter that in case the mother and father are employed in the company and if one employee out of them expires, whether compassionate scheme to be complied with or not to the dependant in the family, but yet as per the proceedings dated June 11, 1989 the learned Counsel for the petitioner submits that such a procedure is there."

Learned single Judge has accordingly issued the following directions :

"1. The Management shall consider the case of the petitioner treating the petitioner as dependant of the family consisted of Sri Appanna and Jayamma and if he falls in the parameter fixed under the agreement, his case shall be considered and necessary orders shall be issued within two months from the date of receipt of a copy of this order; and

2. The Management shall also keep in view the subsequent office orders issued in Office Order No. P. RG(P)/5A/974 dated June 11, 1989 wherein the appointment to a dependant employee was provided even though the mother of the employee is still working, in the company.

With above directions, the writ petition is disposed of. No costs".

2. There has been some attempt before us on behalf of the appellant to suggest that it does not follow from the agreement aforequoted on the death of the step-mother, when father of the writ petitioner-respondent was still working, the son could be extended any compassionate appointment as the dependent of the family. A plain reading of the agreement goes in support of the contention. Learned single Judge has, however noticed the interpretation of the agreement by the appellants to extend the benefit of compassionate appointment, when one of the two working parents dies, as the office order extends similar compassionate appointment to other persons. He has, however, taken care not to issue a direction to give appointment to the writ petitioner-respondent. He has asked the appellants, to consider the case of the writ petitioner-respondent in the light of the office order aforequoted and the orders issued from time to time in this behalf. Learned counsel for the appellants, however, tried to persuade us to take the view that if any such appointment has been given in the past, the same is contrary to the agreement and thus may be a wrong doing on the part of he appellants, but the court should not issue a mandamus or direction to repeat the wrong which the appellants have committed. The principle as stated by the learned counsel for the appellant is sound and correct. It is universally acknowledged by the courts that no mandamus or direction be issued to do a wrong thing only because in the past certain wrong, things have been done. It is, however, not possible, on the materials as placed before us, to hold that the management has not genuinely interpreted the agreement and issued compassionate appointment orders in similar cases. One who issues an order and interprets it or one who is a party to the agreement and has already interpreted it, will not change the interpretation from case to case. It may not be wrong in

such a situation to hold against the appellants that its *Contemporanea Exposito* will bind it and shall be obliged to extend the same privilege to the writ petitioner-respondent as it has extended in other cases. Learned Single Judge has left it to the wisdom of the appellants and has given a direction to decide the case of the writ petitioner-respondent in the light of the various orders issued by it. We do not think any case, for interference in the appeal, has been made out. The appeal is accordingly dismissed.