

(2012) 11 JH CK 0106
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5172 of 2004

Smt. Lilmuni Manjhian

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18

Citation : (2013) 1 JLJR 352

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : R. Pradhan and S. Bhattacharjee, for the Appellant; Amit Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner-widow has come before this Court for a direction upon the respondents to grant her employment in terms of Scheme under clause 9.3.2 of the National Coal Wage Agreement on account of the fact that her husband died on 31.10.2000 while in service of the respondent-BCCL. The petitioner thereafter filed her application on 14th May, 2001, vide Annexure 2. The petitioner thereafter was asked to apply in the prescribed form for compassionate appointment, vide Annexure-3 and she accordingly applied duly verified and attested alongwith identification certificate, vide Annexure-4. However, the respondents did not either reject or grant compassionate appointment. The petitioner-widow, therefore, moved this Court under Article 226 of the Constitution of India for the aforesaid relief.

2. Counsel for the petitioner has relied upon the judgment in the case of Mohan Mahto Vs. Central Coal Field Ltd. and Others, and submits that the respondents are bound by the National Coal Wage Agreement entered into with the employees and Union u/s 18 of the I.D. Act and cannot derogate from the terms

and conditions of the agreement, whereby they are bound to give compassionate appointment to the dependent of the deceased workman, who died in harness. It is further submitted that the petitioner has been given the benefits of the life coverage scheme by the respondents amounting Rs. 30,000/- which means that the employer has treated the workman to be in service. It is further submitted that the deceased workman was never terminated and has continued in service till the date of his death.

3. The respondents have appeared and filed their counter affidavit. It is the stand of the respondents that the husband of the petitioner late Ramu Manjhi was in continuous absence from duty since 23.4.1988 till his death. For the aforesaid reason charge-sheet was issued against him in the year 1994 for having habitual absented from duty without sanction of the leave. The written explanation submitted by the workman was also not found to be satisfactory and thereafter he was asked to appear before the Enquiry Officer and in spite of opportunity given, he failed to do so and neither did he report for resumption of his duty nor made any claim with regard to payment of any salary. The workman thereafter died on 31st October, 2000. It is further submitted that the widow of the deceased workman has been paid gratuity and other benefits amounting to Rs. 41,642/-.

4. Counsel for the respondents, therefore, submits that compassionate appointment is meant to provide immediate relief to the family of the deceased employee who died in harness but in the instant case, since the workman in question has remained out of duty from 1988 till the date of his death, the workman had not been paid any salary and the family therefore appears to have survive without source of salary of the deceased workman. It is therefore submitted that no case of offering compassionate appointment to the dependent of the deceased is made out in the instant case, as the petitioner and her family survived so long without the source of income of the deceased workman. It is further submitted that according to the petitioner she was aged 40 years at the time of application and as per NCW Guidelines, the employment can be given to a female dependent of the deceased till the age of 45 years and at this time the widow-petitioner is much above of the age.

5. I have heard the counsel for the parties and gone through the relevant materials on record. From the submissions of the parties the undisputed facts which came out are that the deceased workman had remained absent from duty for at least 12 long years before his death. He was charge-sheeted but did not participate in the inquiry, neither he resumed his duty till his death. He was not paid salary for the entire period during which he was absent. The widow of the deceased workman applied for appointment on compassionate ground on the death of the workman on the ground that the deceased employee died in harness. In the instant case even 12 years before the date of the death of the deceased employee the widow and his family survived without any salary of the deceased employee. As per the judgment relied upon by the petitioner it is well

settled that an agreement arrived at between the management and the employees' Union are binding upon the rival parties. However, the grant of compassionate appointment to the dependent of a deceased is to be made taking into account the settled principle of law as laid down by the Hon''ble Supreme Court in various judgments wherein it is meant to provide immediate succor or relief to the family of the deceased employee.

6. In the facts and circumstance, the action of the respondents in not granting compassionate appointment to the widow-petitioner cannot be found fault with. Therefore, I do not find any reason to issue any writ or direction in this matter. This writ petition is, accordingly, dismissed.