
(2005) 01 MP CK 0069

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1222 of 2002

Smt. Rampyaribai Vansh

APPELLANT

Vs

Western Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 12-01-2005

Acts Referred:

Citation : (2005) 3 MPHT 163

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Dinesh Upadhyay, for the Appellant; Naveen Dubey, for the Respondent

Judgement

Dipak Misra, J.

1.The petitioner who was working as an "Aaya" in Area Hospital, Pathakheda run by the Western Coalfields Limited suffered from various ailment as a consequence of which in the year 1997 she applied for retirement on medical ground. Her prayer was conceded to and she was extended the benefit of retirement on medical ground with effect from 29-8-1997. At the time of retirement she applied for compassionate appointment in the Western Coalfields Limited in respect of her son, Dwarka Prasad, who is a physically handicapped, as one of his legs has been amputated after accident. It is set forth that the said Dwarka Prasad is handicapped by 60% and he is totally dependant on the petitioner.

2. According to the writ petitioner as per the Sixth National Coal Wage Agreement that had come into effect from 1-7-1996 one of the dependants of an employee of the Company is entitled for compassionate appointment, keeping in view the conception of social security. A reference has been made to Chapter IX of the Agreement to highlight how a dependant is entitled to be put in the category. It is asserted in Clause 9.4.0 the criteria for grant of compassionate appointment have been prescribed and as per the said criteria an employee who

has been medically boarded out, would appear before the Medical Board and if there is a certificate he had lost his employment due to ailment or accident, dependant will be extended the benefit, if the employee has not crossed the age of 58 years. It is put forth that the petitioner was 55 years of age and, therefore, her dependant/son is entitled to get compassionate appointment. In view of the aforesaid, she applied on 5-9-1997 as per Annexure P-4. Her son had also applied separately as per Annexure P-5. Though the said Dwarka Prasad was entitled for appointment on compassionate ground but the respondents refused to extend the said benefit to him on the foundation that he was more than 35 years of age and was physically handicapped. A direction was given to the petitioner to apply for compassionate appointment for her second son, Santosh Kumar. At that juncture, the petitioner again submitted an application to the respondents and put forth that her two sons had already been engaged in Government service and they were living separately and they are not dependant on her but Dwarka Prasad, the handicapped son, is dependant on her and, therefore, the appointment should be given to him alone. The issue relating to the appointment of the petitioner's son was also taken up by the Union which submitted a memorandum to the employer and on the basis of which a joint meeting of the representatives of the Management and of the Union was held on 21-11-2001 in which the Management expressed its inability to reconsider the earlier decision stating that Dwarka Prasad could not be extended the benefit of compassionate appointment. It is urged in the petition that denial of benefit by the employer to Dwarka Prasad is totally illegal and unjust. It is contended that when the petitioner retired she was 55 years of age and Dwarka Prasad was more than 34 years of age but had not crossed 35 and, therefore, there was no justification to deny the benefit. In this backdrop a prayer has been made to issue a mandamus to the respondents to appoint son of the petitioner, Dwarka Prasad, on compassionate basis.

3. A return has been filed by the answering respondents contending, inter alia, that the scheme which has been formulated for compassionate appointment is Annexure P-1. It is also averred in the return that the son of the petitioner had crossed more than 35 years and he is not physically fit to perform any job in the mines. Keeping the aforesaid facet in view the prayer for compassionate appointment was refused. It is asserted that the petitioner's son can not be engaged in the mine and allowing a physically handicapped person functioning in the mine would put lives of other workers into danger. It is the stand of the respondent the requirement of manpower is only for protection purpose and hence, there is no scope for adjusting the petitioner's son on any surface job as there is already surplus job.

4. A rejoinder affidavit has been filed on behalf of the petitioner stating that handicapped persons have been given special treatment but in the present case, though it is necessary for the purpose of livelihood and rehabilitation, the same is not being done.

5. An additional return has been filed by the answering respondents stating, inter alia, that working in coal mines requires a person to be fit, being a hazardous job as a mistake of a single person can cause danger to life of another. It is also asseverated that there is no vacancy at present on surface job and there is surplus manpower. That apart, it has been put forth that two sons of the petitioner are already on job and, therefore, the present case would not be one to be covered under the concept of compassionate appointment.

6. I have heard Mr. Dinesh Upadhyay, learned Counsel for the petitioner and Mr. Naveen Dubey, learned Counsel for the respondents.

7. To appreciate the stand and stances put forth I have carefully perused the documents brought on record. Clause 9.4.0 of the Scheme provides as under:--

"9.4.0. Employment to one dependant of a worker who is permanently disabled in his place :

(i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) In case of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/she is up to the age of 58 years. A joint committee will be constituted by the JBCCI for considering as to what constitutes general physical debility referred to herein-above. This Committee will submit its report by 31-3-1996. In case of difference of opinion the matter will be referred to JBCCI which may appoint an Umpire to decide the issue. The decision of the Umpire shall be binding on the parties.

(iii) 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 younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependant on the earnings of the employee may be considered. In so far as female dependants are concerned, their employment would be governed by the provisions of Clause 9.5.0 of NCWA-V.

(iv) 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 in case of employment of female spouse would be upto 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment."

8. Submission of learned Counsel for the petitioner is that the case of the son of the petitioner was not considered while he was not more than 35 years and, therefore, the stand taken by the respondents that he was beyond the age, is not tenable. The aforesaid submission is acceptable. But the respondents have contended that he can not be given appointment in the mines and there is no

vacancy on the surface job.

9. The case of a physically handicapped person can not be totally marginalised. It has been asserted there is no vacancy in praesenti. However, keeping in view the totality of circumstances, it is directed that the respondents shall consider the case of Dwarka Prasad sympathetically as he is a physically handicapped person and has to live a life which is basically acceptable. His name should be kept in the waiting list for the surface level job and whenever there is vacancy his case be considered.

10. With the aforesaid directions the writ petition stands disposed of. There shall be no order as to costs.