

(2020) 08 MP CK 0108

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14155 Of 2018

Smt. Savita Vishwakarma

APPELLANT

Vs

Coal India Limited And Others

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 18
Constitution Of India, 1950 — Article 226
Mines Act, 1952 — Section 46

Citation : (2020) 08 MP CK 0108

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K. C. Ghildiyal, Anoop Nair

Final Decision : Allowed

Judgement

This petition under Article 226 of the Constitution of India, takes exception to the order dated 30.12.2017 (Annexure P-8) whereby the application for grant of compassionate appointment preferred by the petitioner was rejected in the teeth of relevant Clause of National Coal Wage Agreement (NCWA) for the singular reason that as per the said agreement, the married daughter of a deceased employee is not entitled to get compassionate appointment.

The arguments of Shri K. C. Ghildiyal, is of two folds:- (i) the relevant clause no.9.3.3 of NCWA-VI was subject matter of challenge before the Chattisgarh High Court in W.P No.4994/2015 (Asha Pandey vs. Coal India and others). The employer unsuccessfully challenged it by preferring an appeal before the Division Bench of the High Court and before the Supreme Court. The writ appeal of employer, W.A No.246/2016 was dismissed by the Division Bench of Chattisgarh High Court. The SLP filed against it was not entertained. Thus, the Clause 9.3.3 is no more available in NCWA-VI. (ii) As per recent Full Bench decision of this Court in W.A No.756/2019 reported in (2020) 1 MPLJ 657 (FB) Meenakshi Dubey vs. M. P. Poorva Kshetra Vidyut Vitran Co. Ltd. and others] the married daughter

also has a right of consideration for compassionate appointment. Faced with this, Shri Nair, submits that (i) as per Section 18 of the Industrial Disputes Act, 1947, the agreement entered into between the parties is binding and final. Apart from this, (ii) as per Section 46 of the Mines Act, 1952, there are impediment for employing women in underground mines. It is not clear whether Chattisgarh High Court has taken note of these aspects. If given an opportunity, the employer can distinguish the judgment of Chattisgarh High Court.

No other point is pressed by the learned counsel for the parties.

I have heard the learned counsel for the parties at length and perused the record.

A Co-ordinate Bench of this High Court in W.P No.16532/2014 (Smt. Shakuntla Bai vs. South Eastern Coal Fields Ltd. and others) has taken note of the aforesaid judgment of Chattisgarh High Court which was not interfered with by the Division Bench of the said Court and by the Supreme Court. After taking note of the recent Full Bench judgment in Meenakshi Dubey (supra) this Court directed for considering the case of a married daughter for compassionate appointment.

So far the argument of Shri Nair, based on Section 18 of the Industrial Disputes Act, 1947 and Section 46 of the Mines Act, are concerned, whether or not these provisions were considered by the Chattisgarh High Court while setting aside Clause 9.3.3 of NCWA-VI, the fact remains that the said clause is declared as unconstitutional and, therefore, cannot be pressed into service against the petitioner.

Putting it differently, if relevant Clauses aforesaid is set aside by the Chattisgarh High Court, it no more survives in the agreement book and, therefore, same cannot be an impediment for the present petitioner. Thus, it does not make any difference whether Section 18 and 46 aforesaid were taken into account or not by the Chattisgarh High Court. Moreso, when orders of Chattisgarh High Court were not interfered with by the Supreme Court. Apart from this, in the recent Full Bench decision in Meenakshi Dubey (supra), this Court has considered the relevant judgments of various High Courts and Supreme Court and came to hold that a married daughter of deceased Government servant has a right of consideration for compassionate appointment.

In the light of aforesaid, the order dated 30.12.2017 (Annexure P-8) is set aside. The respondents are directed to consider the claim of the petitioner for compassionate appointment and take a decision within sixty days from the date of communication of this order.

Needless to emphasis, the petitioner's claim cannot be declined on the ground that she is a married daughter.

The present petition is allowed.