

(2023) 08 CHH CK 0017
In the Chhattisgarh High Court
Case No : Writ Appeal No. 183 Of 2023

South Eastern Coalfield Limited	Vs	APPELLANT
Sahodri Gond		RESPONDENT

Date of Decision : 10-08-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (2023) 08 CHH CK 0017

Hon'ble Judges : Ramesh Sinha, CJ; N. K. Chandravanshi , J

Bench : Division Bench

Advocate : Vishal Bhatnagar, Sudhir Kumar Bajpai, Lata Walia, Chandresh Shrivastava

Final Decision : Dismissed

Judgement

1. Heard Mr. Vishal Bhatnagar, learned counsel for the appellants/ SECL and Mr. Chandresh Shrivastava, learned counsel, appearing for the respondents.
2. The present appeal has been preferred by the appellants with delay of 133 days along with an application, I.A. No. 01 of 2023, for condonation of delay in filing the instant appeal. Though the respondents have filed reply to the said application for condonation of delay on 06.08.2023, opposing the same, no rejoinder has been filed by the appellants.
3. However, on due consideration and for the reasons mentioned in I.A. No. 01 of 2023, the same is allowed. Delay in filing the instant appeal is condoned.
4. With the consent of learned counsel for the parties, the appeal is heard finally.
5. The present intra Court appeal has been filed against the order dated 09.09.2022 passed by the learned Single Judge in WP(S) No. 591 of 2021 (Smtl Sahodri Gond & Anr. Vs. South Eastern Coalfields Limited & others), whereby, the writ petition filed by the respondents herein has been allowed and directions were issued to the appellants to consider the the respondents' claim for grant of

dependent employment in the light of order dated 13.07.2017 passed in case of Nutan Khushbu Singh Vs. S.E.C.L. & Others in WP(S) No. 3899 of 2016.

6. The brief facts of the case, as per the case of respondents in the writ petition, are that :-

(i) The son of respondent no.1 and brother of respondent no.2 late Lal Bahadur Singh was working as General Mazdoor Category-I in Churha Mine, Baikunthpur, S.E.C.L. and expired on 26.10.2019. Thereafter, they approached the office of appellants for providing dependent employment to respondent no.2 Durga Singh, who is sister of the deceased employee. It is alleged that, vide office order dated 14.07.2020 (Annexure P/1 of the Writ Petition), the office of appellants rejected her claim on the ground that there is no provision in the Social Security Scheme of NCWA to provide dependent employment in favour of sister of the workman.

(ii) Being aggrieved by the above, the respondents has filed a writ petition before the this Court bearing W.P.S. No. 591/2021 Smt. Sahodri Gond & Another Vs. S.E.C.L. & Others. In the said writ petition, the appellants have filed their reply and contradict the averments of petition and explained the entire facts of the case in which specifically stated that, as per the service record of the deceased employee, the said Durga Singh is not the dependent upon the late Lal Bahadur Singh, therefore, she is not entitled for employment on compassionate ground, only on being a sister of the deceased employee.

(iii) The above case came up for hearing on 09.09.2022 before the learned Single Judge and the learned Single Judge has passed the impugned order dated 09.09.2022 directing the respondent/ SECL to examine the case of the petitioner in the light of the judgment passed by the coordinate bench & Division Bench of this Hon'ble Court and affirmed by the Supreme Court as mentioned in aforesaid paragraphs" (i.e. case of Nutan Khushbu Singh Vs. SECL passed in W.P.S. No. 3899/2016 decided on 13.07.2017).

7. Mr. Vishal Bhatnagar, learned counsel for the appellants/ SECL submitted that the deceased employee Late Shri Lal Bahadur Singh was working on the post of General Mazdoor in Churha Mine RO of Baikunthpur Area S.E.C.L. and died in harness on 26.10.2019. He was appointed in service on compassionate grounds on 19.08.2011. As per the service record and Form-F ie, Gratuity Nomination Form of the deceased employee, he had a dependent only Smt. Sahodri as mother. In the Attestation Form the name of his mother Smt. Sahodri, brother Bhanu Pratap Singh, Sister Ku. Kavita Singh and Ku. Durga Singh, was mentioned as a family member.

8. He further submitted that the learned Single Judge has lost sight of the fact that in the case of Nutan Khushbu Singh (supra), the petitioner therein was a dependent sister of the deceased employee. The said fact has not even remotely apply in the instant case for respondent no.2 herein, as she was not dependent upon deceased employee i.e., Sh. Lal Bahadur Singh. He also submitted that

learned Single judge has erred to see that in Coal India Limited and Ors. Vs. Hamshikha Mallick (WA No. 562 of 2016 decided on 06.12.2016) the respondent was an adopted daughter dependent on the deceased employee, whereas the respondent No.2 herein is kin of the deceased employee and not at all dependent upon Late Sh. Lal Bahadur Singh. Hence, holding these both analogies wouldn't be short of imprudence; absolutely anomalous and inconsistent.

9. It is also submitted that the question for determination herein is completely different than that in the cases so held coequal. The learned Single judge has patently failed to discern among the cases averred in the judgment and the matter at hand. The learned Single judge has palpably misapplied Nutan Khushbu (supra) and Himshikha Mallick (supra) to the facts of present case, as the claimants therein were dependent and adopted dependent respectively, upon the deceased employee, whereas, in the present case, the claimant is not at all dependent, nor an adopted dependent of the deceased employee. He contended that the learned Single bench has failed to catch sight of the fact that the deceased employee, Shri Lal Bahadur Singh at whose behest the respondent no.2 is claiming the compassionate employment, had himself never named her in the Form-F i.e. Gratuity Nomination Form, Attestation Form and Form of Dependents, which only stated his mother's name i.e., Smt. Sahodri Gond (Respondent no.1 herein), which is a depiction of the fact that Respondent no.2 Durga Singh was never dependent on Late Sh. Lal Bahadur Singh. So much so, that the deceased employee himself never considered her name to be spelled in the dependents form.

10. He also contended that after the death of Lal Bahadur Singh, the respondents had submitted an application on 03.06.2020 for grant of dependent employment to the respondent no.2 Durga Singh. After verification of records and examination of the case, the office of appellants(herein), found that the respondent no.2, Durga Singh was sister of the deceased employee. She is/was not dependent upon the deceased employee at the time of his death. This fact was duly proved from the service record of the deceased employee. In his lifetime, the deceased employee filled up the Form-F i.e., Gratuity Nomination Form and made nominee, only the Mother Smt. Sahodri. Apart from that, at the time of preparation of the service register, the deceased employee declared the name of only mother Smt. Sahodri as her dependent family member. At that time the deceased employee has not disclosed the name of respondent no.2 Durga Singh as his dependent family member. This fact clearly reveals that the respondent no.2, Durga Singh was not a dependent family member of the deceased employee.

11. It has been also contended that it is not a question of not extending employment to a sister and that it violates their Fundamental Rights under Article 14 and 15 of the Constitution of India. The purpose of chapter IX of the NCWA is to provide succour to the bereaved family from penurious condition, whose bread earner has expired, as such it is homogenous to compassionate

employment and therefore cannot be compared with a case of general public employment which is offered against open invitation of application. He submitted that upto the NCWA-IX, the clauses 9.3.0, 9.4.0 & 9.5.0 of NCWA-IX, provided the employment/payment of monthly monetary compensation to the dependent of the deceased employee. But as per the case of respondents his son/brother i.e., deceased employee, late Lal Bahadur Singh died on 26.10.2019. At the time of his death, the NCWA-X was in operation, between the period of 01.07.2016 to 30.06.2021. He also submitted that prior to the NCWA-X, the provision for dependent employment was governed by the clauses 9.3.0, 9.4.0 & 9.5.0 of the NCWA-VI. The clause 9.3.3 of the NCWA-VI defines the "dependent of the employee" and says as under-

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

12. Learned counsel for the appellants, thus submitted that in view of the aforesaid provisions of the NCWA, it is ample clear that the sister does not come under the definition of the direct linear dependent. The appellants has rightly found that respondent No.2 Durga Singh being a sister and is not covered under the definition of the direct dependent and also that the deceased employee in his lifetime did not declare the name of Durga Singh as dependent family member in the service record, therefore, she is not eligible for grant of dependent employment.

13. In support of the aforesaid contentions, the learned counsel for the appellants placed reliance on the following judgments passed by the Hon'ble Supreme Court :

(a) The State of Maharashtra and Anr. Vs. Ms. Madhuri Maruti Vidhate, reported in AIR 2022 SC 5176

(b) The Secretary to Govt. Department of Education (Primary) & Ors. Vs. Bheemesh alias Bheemappa, reported in AIR 2022 SC 402

(c) The Director of Treasuries in Karnataka & Anr. Vs. Somyashree, reported in AIR 2021 SC 5620

(d) N.C. Santosh Vs. State of Karnataka & Others, reported in (2020) 7 SCC 617

(e) Khoday Distilleries Ltd. Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. (decided on 01.03.2019 in Civil Appeal No. 2432 of 2019)

14. He also placed reliance on the judgment passed by the Division Bench of Calcutta High Court in Putul Rabidas Vs. Eastern Coalfields Ltd. & Ors. (decided on 13.09.2017 in F.M.A. No. 4401 of 2016) and judgment passed by the Single

Bench of Madhya Pradesh High Court in Shakila Begum (Siddiqui) & Anr. Vs. Northern Coal Field Ltd. & Ors. (decided on 14.02.2022 in Writ Petition No. 15841/2021).

15. On the other hand, learned counsel for the respondent supports the impugned order passed by the learned Single Judge and submitted that the learned Single Judge has rightly allowed the petition of the respondents duly considering the merits of the case. The order dated 14.07.2020 (Annexure P-1) by which the appellants had rejected the claim of respondents itself negates the submissions raised by the appellants, wherein the operative part of the same clearly states the reason that there is no provision for dependent employment in favour of dependent sister as such no action can be taken on their application. It has also been pointed out that in the order of rejection also it has been clearly mentioned that in the Attestation Form of the deceased employee the name of the respondent no.2 is mentioned as sister. The sole issue in the present case is, as to whether the Sister is entitled for dependent employment as per National Coal Wage Agreement has already been considered and allowed in favour of sister by this Hon'ble Court in the case of Nutan Khusbu Singh v. South Eastern Coalfields Limited and others (WPS No. 3899/2016) which was affirmed by the Division Bench in WA No. 393 of 2017 South Eastern Coalfields Limited and others v. Nutan Khusbu Singh and further the SLP (Civil) Diary No. 16369 of 2018 preferred by the appellants before the Hon'ble Supreme Court has also been rejected. It has been further argued that not only the High Court of Chhattisgarh but also the Division Bench of High Court of Jharkhand in LPA No. 475/2017 Smt. Gendia Debi v. The Central Coalfields Limited and others vide order dated 16.09.2019, High Court of Madhya Pradesh in WP No. 15841/2021 Shakila Begum (Siddiqui) and another v. Northern Coalfields Limited and others, order dated 14.02.2022 affirmed by Division Bench in WA No. 616 /2022 Northern Coalfields Limited and others v. Shakila Begum (Siddiqui) and another and also recently the Division Bench of Bombay High Court (Nagpur Bench) in WP No. 4074/2018 Ku. Shimla and another v. Western Coalfields Limited and others vide order dated 20.01.2023 have held the Sister to be entitled for dependent employment. Against the judgments passed by the High Court of Jharkhand and Madhya Pradesh also the appeals were preferred which were also dismissed by the Hon'ble Supreme Court in Spl.Leave to Appeal (C) 29678/19 Central Coalfields Limited and others v. Gendia Debi and another order dated 12.11.2021 and Spl.Leave to Appeal (C) 16264/2022 Northern Coalfields Limited and others v. Shakila Begum (Siddiqui) and another order dated 14.10.2022.

16. We have heard learned counsel for the parties, perused the impugned order and materials available on record.

17. The learned Single Judge after hearing learned counsel for the parties and on the basis of materials available on record and also relying on the judgment passed in WPS No. 3899 of 2016 (Nutan Khusbhu Singh Vs. SECL and Others) decided on 13.07.2017, against which, writ appeal was filed by the SECL before

this court being WA No. 393 of 2017 which has also been dismissed by the Division Bench of this Court vide judgment dated 09.11.2017, thereafter, SLP preferred by the SECL before the Hon'ble Supreme Court registered as Special Leave Petition (Civil) Diary No. 16369 of 2018 has also been dismissed vide impugned order dated 09.11.2017, has rightly dismissed the writ petition observing as follows :

"10. It is a case of compassionate appointment and the ground assigned by the SECL in their rejection order has already been authentically concluded by the co-ordinate Bench of this Court, Division Bench of this court and affirmed by the Hon'ble Supreme Court, therefore, the other ground on which claim can be refuted, cannot be examined by this court at this juncture as it was not subject matter of the order. Therefore, the submission made by learned counsel for the respondents for giving further opportunity to substantiate more view, cannot be considered.

11. The respondent/ SECL is directed to examine the case of the petitioner in the light of the judgment passed by the co-ordinate Bench & Division Bench of this Court affirmed by the Supreme Court as mentioned in aforesaid paragraphs.

12. With the aforesaid observation the instant writ petition is allowed."

18. The contention raised by the appellants regarding the respondent No.2 not being dependent of the deceased employee merely for the reason that her name does not appear in service record is misplaced. The provisions of NCWA relied by the appellants nowhere prescribes that only the family members whose name is mentioned in the service record can be considered as dependent on the contrary the same only lays down the category of dependents. The absence of inclusion of Sister in the said category as dependent have already been considered by this court in Writ Appeal No. 562 of 2016 (Coal India Limited and Others Vs. Miss Himshikha Mallick) decided on 06.12.2016, holding that if dependency employment is confined to the brother of the deceased employee to the exclusion of sister it will amount to hostile discrimination only on the ground of gender. The classification purely on the ground of gender is wholly unjust and unfair without any rational basis. The impugned order by which the claim of the respondents was rejected by the appellants clearly shows the gender bias contrary to the spirit of Constitution of India where the only reason is the respondent no.2 happens to be sister of deceased employee. There is no appealing reason with this Bench to take any contrary view from the decision rendered earlier by this Court more so when the said issue with respect to the same provision has also been considered by various High Courts of which even the appeals have been dismissed by the Hon'ble Supreme Court. In view of the totality of the circumstances of the case we do not find any reason to interfere with the order dated 09.09.2022 passed by learned Single Judge. The same appears to be just and proper.

19. The appeal has no substance and is devoid of merit. The same is accordingly

dismissed.