

(2022) 10 CHH CK 0036
In the Chhattisgarh High Court
Case No : Writ Appeal No. 240 Of 2022

South Eastern Coalfields Ltd.

APPELLANT

Vs

Shobha Parida

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 15

Chhattisgarh High Court (Appeal to the Division Bench) Act, 2006 — Section 2(1)

Citation : (2022) 10 CHH CK 0036

Hon'ble Judges : Arup Kumar Goswami, CJ; Sanjay Agrawal, J

Bench : Division Bench

Advocate : Vishal Bhatnagar, Vinod Deshmukh, Lata Walia, Ishu Manaksiya, Himanshu Pandey

Final Decision : Allowed

Judgement

Sanjay Agrawal, J

1. The Respondents – South Eastern Coal Fields Limited and others (hereinafter referred to as the S.E.C.L.) preferred this appeal under Section 2 (1) of the Chhattisgarh High Court (Appeal to the Division Bench) Act, 2006, questioning the legality and propriety of the order dated 15.02.2022 passed by the Learned Single Judge in W.P.(S) No.6578 of 2021, whereby the claim of the Writ Petitioners has been allowed entitling Petitioner No.2 – Smt. Narmada Parida to be appointed as dependent employment on account of sad demise of her father, the employee of the Appellants – S.E.C.L. The parties shall be referred hereinafter as per their descriptions mentioned before the Court of learned Single Judge.

2. Briefly stated the facts of the case are that one Kampo, predecessor-in-interest of the Petitioners, who was the employee of S.E.C.L., has died in harness on 14.04.2021. On account of his sad demise, Petitioner No.1, Smt. Shobha Parida, being his widow, had applied for dependent employment for her son, namely, Krishna Chandra Parida, as per the terms provided in clause 9.3.3 of the

National Coal Wage Agreement (for short, the N.C.W.A.), on 12.05.2021. The said application was, however, rejected on 16.05.2021 holding her son to be over-aged. Immediately thereafter, i.e., on 19.05.2021, she approached the S.E.C.L. authorities for employment of her married daughter – Smt. Narmada Parida, Petitioner No.2 herein, as dependent employment. Further contention of the petitioners is that when her claim was not considered, they have been compelled to file the petition before this Court seeking issuance of direction against the authorities of S.E.C.L. for consideration of their application so made in this aspect on 19.05.2021.

3. In reply to the aforesaid claim, it was stated by the Respondents-S.E.C.L. that the alleged application of the Petitioners are under consideration and appropriate decision will be taken after examining the dependency part of Petitioner No.2 as to whether she was wholly dependent upon the earning of her deceased father or not as required under the provisions prescribed under said N.C.W.A. It is contended further that in order to consider her dependency, a request was made to Petitioner No.1 vide its letter dated 10.06.2021 requesting her for submission of the certificate of the Sub-Divisional Officer or Tahsildar, Baikunthpur, District Koriya in this regard so as to decide her claim as made.

4. The learned Single Judge, after considering the materials placed on record, based upon the principles laid down by the Coordinate Bench of this Court in the matter of Smt. Asha Pandey vs. Coal India Limited passed in W.P.(S) No.4994/2015 on 15.03.2016, which was affirmed further by the Division Bench of this Court on 03.09.2019 in Writ Appeal No.246/2016 as well as by Hon'ble the Supreme Court in S.L.P. (Civil) Diary No. 238/2020 decided on 31.01.2020, arrived at a conclusion that Petitioner No.2, being a married daughter, is also entitled for dependent employment in terms of clause 9.3.3 of N.C.W.A. and, it was held further that being a married daughter, she would come within the purview of direct dependent as specified in the said clause and no enquiry is, therefore, needed for in order to consider her dependency part as alleged by the Appellants/S.E.C.L. In consequence, the authorities of S.E.C.L. are directed to consider and decide the case of Petitioner No.2 for her appointment as a dependent employment in terms of clause 9.3.3 of N.C.W.A. within a period of 30 days from the date of receipt of a copy of the order while imposing cost of Rs.10,000/-payable to the Writ Petitioners.

5. Learned counsel appearing for the Appellants – S.E.C.L., while referring to clause 9.3.3 of N.C.W.A., submits that the finding of the learned Single Judge holding that Petitioner No.2 – Smt. Narmada Parida, being a married daughter of deceased employee, would fall within the first category, i.e., “direct dependent”, as specified in the said clause, is apparently contrary to law. According to him, though the said Petitioner, being a married daughter, is entitled to be considered for her appointment as such, but her appointment would be subject to fulfillment of other conditions as specified therein as her claim would fall within the second category, i.e., “indirect dependent”. In support, learned counsel appearing for the

Appellants – S.E.C.L. has placed his reliance upon a decision rendered by the Coordinate Bench of this Court in the matter of Chhattisgarh State Electricity Holding Company Limited and another vs. Chandrani Sinha decided on 21.11.2016 in W.A.No.525 of 2016

6. On the other hand, learned counsel appearing for the Writ Petitioners, while placing his reliance upon the decision rendered in the matter of Smt. Asha Pandey vs. Coal India Limited and others (supra), has supported the order impugned as passed by the learned Single Judge.

7. We have heard learned counsel for the parties and perused the entire record carefully.

8. The main question, which arises for determination in this appeal, is as to, whether the claim of married daughter would fall in the first category, i.e., "direct dependent" as specified in clause 9.3.3 of N.C.W.A. and / or, whether enquiry pertaining to her claim is required to be made for consideration of her employment as specified in second part , i.e., "indirect dependent" of said clause of N.C.W.A?

9. In order to determine the aforesaid question, it is necessary to examine the said clause, i.e., clause 9.3.3 of N.C.W.A., which provides as under :-

"9.3.3 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, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased."

10. The aforesaid clause appears to be in two parts, first part relates to "direct dependents" in which, "unmarried daughter, son and legally adopted son" would come, while second part relates to "indirect dependent", wherein "brother, widowed daughter/widowed daughter-in-law or son-in-law" would fall. A close scrutiny of the said clause would show that if the persons fall in second category, then the enquiry as to whether he or she was wholly dependent upon the earnings of the deceased S.E.C.L. employee or not is required to be made, whereas it is not required to be made if he or she falls in first part of the said clause.

11. Perusal of the terms and conditions stipulated in the said N.C.W.A., it appears that no clause is prescribed therein which prohibits the applicant for moving another application for appointment of other members of the family after the rejection of earlier application. It, therefore, appears that the widow of the deceased employee, after the rejection of her claim for appointment of her son on 16.05.2021, has made another application immediately thereafter, i.e., on 19.05.2021 seeking this time for the appointment of her married daughter and, by virtue of the order impugned, it was held that the case of the married

daughter would fall in first category of said clause and no enquiry pertaining to her dependency upon her father is, therefore, needed for and, while arriving at such a conclusion, the learned Single Judge has placed his reliance upon the principles laid down by the Coordinate Bench of this Court in the matter of Smt. Asha Pandey (supra).

12. However, a close scrutiny of the said judgment would show that the issue involved therein was only with regard to the fact as to whether the exclusion of married daughter for her appointment as a dependent employment under the said clause was justified or not and, upon due consideration, it was held that the exclusion of married daughter is unreasonable and in violation of the provisions prescribed under Articles 14 and 15 of the Constitution of India. While arriving at such a conclusion, it was accordingly directed that the aforesaid clause read with clause 9.4.0 of N.C.W.A-IX be read in the manner to include the married daughter as one of the eligibles, subject to fulfillment of other conditions mentioned therein.

13. What is, therefore, reflected from the principles laid down therein that the married daughter of the deceased employee would also be entitled to be taken into consideration for her appointment as such in terms of the said clause, but that would be subject to fulfillment of other conditions as prescribed therein, as reflected from para – 29, which reads as under :-

“(29) Resultantly, impugned order dated 15.10.2015 Annexure P-1 rejecting the petitioner's claim for dependent employment on the ground of her marriage is hereby quashed being unsustainable in law and it is directed that Clause 9.3.3 of NCWA-VI read with clause 9.4.0 of NCWA-IX be read in the manner to include the married daughter also as one of the eligibles subject to fulfillment of other conditions.”

14. Perusal of the aforesaid judgment would show that it nowhere said that the married daughter would fall under the category of first part of the said clause, therefore, no enquiry pertaining to her dependency upon the deceased employee is needed for.

15. However, the learned Single Judge has held that by declaration of law laid down in Smt. Asha Pandey (supra), married daughter being at par with the unmarried daughter would also be entitled to dependent employment and, thus, would be direct dependent of the deceased employee. It is to be noted here at this juncture that the “daughters,” like “unmarried daughter” and “widowed daughter” as depicted in the said clause are placed in different parts, as “unmarried daughter” falls in first part, while “widowed daughter” in the category of second part. It, thus, appears that for the consideration of an appointment of “widowed daughter” in terms of said clause, an enquiry is to be conducted as to whether she is wholly dependent upon her father or not, while no enquiry as such is required to be made in case of consideration for the said purpose for the “unmarried daughter” as she falls in first part of the said clause. It could, thus,

be visualized that for consideration of "married daughter", her claim could not be held to be preferential or better to that of the "widowed daughter" as nobody is there to look after the interest of her (widowed daughter) upon the death of her husband, but the same would not be the position for a "married daughter" as her interest could very well be safeguarded by her husband. These aspects of the matter were not considered by the learned Single Judge. We are, therefore, of the opinion that the claim of the married daughter would fall into the second part of the said clause, like the "widowed daughter". As such, before providing an appointment as a "dependent employment" to the "married daughter", an enquiry is needed for.

16. The aforesaid observation is fortified by the principles laid down by the Division Bench of this Court in the matter of Chhattisgarh State Electricity Holding Company Limited and another vs. Chandrani Sinha decided on 21.11.2016 in W.A.No.525 of 2016, wherein, while considering the case of a married daughter, it has been observed that there is no reason why a married daughter should be denied the benefit of compassionate appointment, if she is otherwise entitled to, as per the scheme.

17. In view of the above discussion, it is thus evident that an enquiry is needed for with regard to the dependency part of a married daughter as per the scheme of the employer, i.e., S.E.C.L. We are, therefore, of the considered opinion that the finding of the learned Single Judge holding the married daughter to be the category of first part of said clause deserves to be and is hereby set aside.

18. Consequently, the order impugned passed by the learned Single Judge in W.P. (S) No. 6578 of 2021 is hereby set aside and, the matter is remitted to the concerned Authorities of S.E.C.L. with a direction to decide the claim of the Writ Petitioners in terms of clause 9.3.3 of N.C.W.A. as soon as possible preferably within the period of 45 days from the date of receiving the certified copy of this judgment/order as the predecessor-in-interest of the Petitioners has passed away on 14.04.2021.

19. With the aforesaid direction, the writ appeal is allowed. No order as to costs.