

(2012) 10 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 3815 of 2005

Suresh Prasad Singh

APPELLANT

Vs

The Chairman, Bharat Wagon and Engineering Company Ltd.
and Others

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Citation : (2012) 4 PLJR 1048

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Manoj Kumar Singh, for the Appellant; Udayan Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for directing the authorities to appoint Shri Shailesh Kumar Singh son of the petitioner in his place as had been done in the case of other employees of the respondent-Company, who had been retired on the ground of their prolonged illness like the petitioner. The claim of the petitioner is that he was appointed as a Marker in Bharat Wagon and Engineering Company Limited (hereinafter referred to as "the Company" for the sake of brevity) a Government of India Undertaking and much subsequently he fell seriously ill as he was suffering from heart disease and other diseases and he got himself treated by different medical officers and ultimately finding his ailment not curable, the Medical Officer of the Insurance Corporation advised him to leave his service and take rest for betterment. Hence, the petitioner filed his application dated 2.6.1994 to the General Manager of the Company alongwith medical certificate dated 11.5.1994 requesting to retire him due to his ailment and appoint his aforesaid son in his place.

2. Learned counsel for the petitioner submits that much thereafter on 22.4.1998, the respondents sent letter to the petitioner to get himself medically re-examined and hence the petitioner got himself re-examined on 21.5.1998 and

submitted the report. Thereafter, the respondent-authority sent letter dated 29.5.1998 stating that his retirement letter has been sent for approval and if he had to say anything in that regard he may get himself re-examined. In response to the said letter, the petitioner sent his reply on 2.6.1998 stating about his medical re-examination dated 21.05.1998.

3. Learned counsel for the petitioner avers that thereafter the petitioner had sent reminder after reminder (Annexure-6 series) to the authority concerned who turned deaf ear to the repeated requests of the petitioner although in case of other ailing employees they being found medically unfit retired them and their sons were appointed in the exactly same circumstances.

4. On the other hand, learned counsel for the respondents states that Mohan Prasad Sharma, who is the son of the petitioner is already working in the respondent company having been appointed on 14.6.1993 as Grade-III (Skilled) Assistant at Mokama Unit of the respondent-Company and the said fact had been suppressed by the petitioner. He further submitted that the said fact is quite apparent from the declaration form of Mohan Prasad Sharma (Annexure-D), nomination form of the petitioner and information about his said son (Annexure-E series). Hence, he submits that the petitioner is not coming with clean hands and on this score alone his writ petition is fit to be dismissed.

5. Learned counsel for the respondents avers that Government of India, Ministry of Industry, Department of Heavy Industry issued letter dated 30.8.1978 to all the Chief Executives of Public Sector Undertakings regarding employment to the dependents of the employees on compassionate ground and in the said letter it has been specifically stated that concession in the matter of employment to the dependent son/daughter/wife of the employee should be given in the following circumstances, namely (i) fatal accident on duty; (ii) death while in service; (iii) permanent total disablement while in service, and (iv) retirement.

6. From a perusal of the said letter and due to certain difficulties mentioned in paragraph 2 of the said letter, it was decided by the Ministry to withdraw the concession to the dependents of the retiring person as contained in paragraph 3 of letter dated 22.12.1975, whereafter the dependents of the employees who met with fatal accident on duty; death while in service and permanent total disablement while in service could be considered for employment at the discretion of the management if the family conditions so warrant and the dependents do have requisite qualifications.

7. It is also averred by learned counsel for the respondents that for want of fund, the respondents had taken recourse to Voluntary Retirement Scheme for its employees vide reference no. BWH/2553/ 3438 dated 6/8.11.2000 and in fact the Board of Directors of the Management in their 113th meeting held on 16.3.2000 had resolved as follows in the matter of compassionate appointment:--

That it would not be feasible for the company to appoint new personnel on compassionate ground in view, of the expected losses during the current year

and while the company has already taken effective steps to set right the surplus manpower through VRS.

It was further resolved that only those cases of appointments on compassionate grounds arising out of fatal accidents if any, within the factory premises be placed before the Board for its consideration.

8. In this regard, learned counsel for the respondents also relies upon a decision of this Court in case of Urmila Devi and Others Vs. Union of India (UOI) and Others, .

9. Learned counsel for the respondents argues that respondent is a sick company as is clear from letter dated 6.6.2003 sent by the Finance Ministry, Govt. of India as well as order dated 6.6.2003 passed by the Board for Industrial and Financial Reconstruction and hence no appointment has been made by the Company since 15.1.1999 on compassionate ground.

10. Considering the averments made by learned counsel for the parties and the materials on record, it is quite apparent that one of the sons of the petitioner was already in service of the respondent-company which fact the petitioner had concealed for reasons best known to him and learned counsel for the respondents has rightly pointed out that he has not come to this Court with clean hands.

11. Furthermore, such appointments are made on the basis of compassion when sole bread earner of the family had stopped earning and there is no one else to look after the needs of the family, but in the instant case not only the petitioner is alive, but one of his sons is well placed in service in the same company and hence there is no occasion for taking his other son also in the same service.

12. Furthermore, the documents clearly show that the respondent-company has become sick and is not in a position to make appointments, rather since 15.1.1999 no appointment even on compassionate ground has been made. Hence, there is no occasion for the company to appoint the other son of the petitioner also in the same company. In the aforesaid facts and circumstances, this Court does not find any merit in this writ petition which is accordingly dismissed.