

(2018) 09 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3950 of 2005

Vinay Kumar Chauhan

APPELLANT

Vs

Steel Authority of India Ltd

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Citation : (2018) 09 JH CK 0021

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Naresh Pd. Singh, Arvind Kr. Singh, Ajit Kumar, Vijay Kant Dubey

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.

1. In the accompanied writ application, the petitioner being aggrieved by the impugned order dated 11.03.2005, vide Annexure-6 to the writ application,

has sought for quashing of the said order and further prayed for issuance of writ of mandamus to respondents to appoint the petitioner on

compassionate ground due to the demise of his father late Satya Narayan Chauhan, who died in harness being a permanent employee of SAIL while

working as Horticulture Supervisor, Bhawnathpur in the district of Garhwa, Jharkhand.

2. The case of the petitioner, in brief, is that the late father of the petitioner was a permanent employee of the respondents and while continuing as

Horticulture Supervisor, Bhawnathpur in the district of Garhwa, he died in harness on 19.12.1997 due to Cancer. The father of the petitioner died

leaving behind the widow mother, minor daughter and three sons including the petitioner. After death of his father the petitioner being the eldest

member, with the consent of mother submitted an application before the respondent no.5 for his appointment on compassionate ground. The said representation was followed by series of representation which failed to evoke any response. Being aggrieved by the lackadaisical and indifferent attitude, the petitioner approached this Court in CWJC No.4389 of 2000 and the said writ application was disposed of by this Court on 08.01.2003, in which the decision reported in (2002) 3 JCR 524 (Jhr.) was referred to with direction to the respondents to consider the case of the petitioner and pass reasoned order within a period of two months from the date of receipt/production of a copy of the order.

After receipt of the aforesaid order, the petitioner submitted representation before the respondents along with the copy of the order. Since no heed was paid, the petitioner filed another reminder vide Annexure-3 to the writ application. The respondents authorities without passing any order on the representation filed a Letters Patent Appeal being L.P.A. No.192 of 2003 before this Court which was dismissed vide order dated 09.11.2004 vide Annexure-4 to the writ application. Again after dismissal of the LPA no.192 of 2003 the petitioner submitted representation vide Annexure-5 to the writ application and the respondents in order dated 11.03.2005 (Annexure-6) passed reasoned order with reference to CWJC no.4389 of 2000 which is impugned in this writ application. Since the claim of the petitioner has been negated by the respondents vide the impugned order in Annexure-6, the petitioner has been constrained to approach this Court in the instant writ application for redressal of his grievances.

3. Controverting the averments made in the writ application, a counter affidavit has been filed by the respondents, wherein it has been submitted that

the purpose of compassionate appointment is to overcome the immediate hardships which is faced by the family of the deceased who dies in harness.

It is well settled that compassionate appointment is not a source of recruitment in a Public Sector Undertaking and in this particular case the petitioner

has not faced any financial hardships, as such, is not entitled to get the benefit of any compassionate appointment. It has further been submitted that

Bhawanathpur Lime Stone Mines is facing huge monetary losses and the requirement of lime stone from Bhawanathpur Mines has reduced due to

technological changes in the Steel Authority of India Limited. It has further been submitted that regular employees of Bhawnathpur would be asked to

opt for Voluntary Retirement Scheme or be transferred. In order to survive, Steel Authority of India Limited has been offering voluntary retirement

scheme and consequently a large number of employees have already been separated. In fact there is also no vacancy against which the petitioner can

be offered appointment. It has further been submitted that very existence of Bhawanathpur Lime Stone is at stake due to the reasons aforementioned

and as such, it has become impossible to give any employment on compassionate grounds to the petitioner. It has further been submitted that there are

more than 200 employees who are in excess of actual work force and since 1993 onwards no regular appointment has been made by the

Bhawanathpur Lime Stone Mines. It has further been submitted that petitioner is getting Rs.8,814/-per month and it will be paid up to which date the

deceased father of the petitioner would have superannuated, if he would have been alive. In view of the aforesaid fact it is said that there is no

immediate financial crunch in the family and, as such, there is no question of giving compassionate appointment.

4. Learned counsel for the petitioner vehemently submits that the impugned order has been passed in the teeth of judgment reported in (2000) 6 SCC

493 (Para-13, 15 and 16). Learned counsel further by referring to the rejoinder dated 13.01.2010 (Annexure-8 to the rejoinder) submits that the

similarly situated dependant namely, Ram Kumar Singh has been now appointed on compassionate ground in July 2018, filed as Annexure-17 in

rejoinder dated 20.08.2018. Learned counsel for the petitioner has also referred to the number of persons appointed under the SAIL/RMD between

the years 1996 to 2006. Learned counsel for the petitioner has also referred to the supplementary affidavit dated 01.08.2017 which indicates that the

final process of appointment of similarly situated persons namely Ram Kumar Singh and Ranjeet Kumar Thakur in W.P.(S) Nos.4169 of 2008 and

4170 of 2008 appointments have been initiated by the respondents as evident from Annexures-14 and 14/1. Learned counsel for the petitioner further

submits by referring to the second supplementary affidavit dated 13.11.2017 (Annexure- 15 to the said affidavit) that petitioner has submitted written

undertaking before the concerned respondent authority that he is accepting the condition imposed by the SAIL of two similarly situated persons

namely Ram Kumar Singh and Ranjeet Kumar Thakur and he is willing to refund

the amount paid towards the Employees Family Benefit Scheme and

further requested to initiate the final process of his appointment for the needful.

5. During course of hearing, learned counsel for the petitioner has referred to the decision reported in (2015) 7 SCC 412 (Canara Bank and Anr. vs.

M. Mahesh Kumar) (para-10 to 17), (2009) 7 SCC 295 (Maharani Devi and Anr. vs. Union of India and Ors.), (2018) 3 JBCJ 343 (Latika Devi vs.

Central Coal Field Ltd. & Ors.). By referring to the aforesaid decisions, the learned counsel for the petitioner submits that the action of the

respondents being fraught with arbitrary exercise of power and in the teeth of the aforesaid judgments, the petitioner is entitled to appointment on

compassionate ground due to the death of his father in harness.

6. Learned counsel for the petitioner has also referred to the rejoinder to the supplementary counter affidavit dated 20.08.2018, wherein decision

reported in the case of Balbir Kaur and Anr. vs. Steel Authority of India and Ors. reported in (2000) 6 SCC 493, the Honâ??ble Apex Court has

clarified that the claim on account of Employees Family Benefit Scheme is not a substitute for employment on compassionate ground, therefore, the

respondent authority cannot make any discrimination in making appointments on compassionate ground by adopting pick and choose method. In the

list, all persons who have been appointed on compassionate ground, has been given in a tabular form in page 5 of the said rejoinder.

7. Mr. Ajit Kumar, learned senior counsel being assisted by Mr. Vijay Kant Dubey on behalf of respondent-SAIL has canvassed his argument basing

on the counter affidavit as well as the impugned order. Learned senior counsel has assiduously submitted that after death of the father of the

petitioner, all the monetary benefits have been provided to the family of the deceased employee and the case of the petitioner is squarely covered by

the decisions of this Court passed in W.P.(S) No.1734 of 2004 and W.P.(S) No.1735 of 2004 and is liable to be dismissed. Learned senior counsel

further referring to the decisions rendered by this Court in the case of Ram Kumar Singh vs. Steel Authority of India Ltd. & Ors. (in W.P.(S) no.4169

of 2008) and Ranjeet Kumar Thakur vs. Steel Authority of India Ltd. & Ors. (in W.P.(S) no.4170 of 2008) distinguishes that the aforesaid decisions

have been rendered with specific direction not to treat the said case as a precedent.

8. Learned senior counsel has also referred to the decision reported in (2006) 7 SCC 350, (2008) 15 SCC 560 (para-15) and (2011) 13 SCC 42 (para-11, 12 and 13).

9. During course of hearing, learned senior counsel on behalf of respondent-SAIL has referred to the supplementary counter affidavit dated

02.04.2018, wherein it has been submitted that the dependant of late Satya Narayan Chauhan, have availed benefits under EFBS from the company

and the detailed payments to the family members has been mentioned therein. Apart from that the family members of the ex-employee has availed

benefit under the Employees Family Benefit Scheme (EFBS) by depositing the equivalent amount of provident fund & gratuity with the company.

They were paid an amount of Rs.8,814/ per month from the company up to 30.06.2006 (the date of natural superannuation of the ex-employee).

Subsequently, the deposited amount was refunded to the family members of the ex-employee. Apart from that the learned senior counsel has referred

to the circular dated 02.05.2001, which inter alia envisages that the dependants of those employees who have availed benefits under EFBS should not

be eligible for compassionate employment. Apart from that the date of normal superannuation of late father of the petitioner was 30.06.2006,

therefore, there cannot be claim for compassionate appointment at this stage after passing of more than a decade after availing the terminal benefits.

Learned senior counsel further submits that each case for providing employment on compassionate grounds in SAIL should be dealt with its own merit

and not compared with any other case and the case of the petitioner is quite dissimilar to the different cases quoted by the petitioner. Since the

dependants of the deceased employee has availed benefits under the EFBS, they cannot be eligible for employment on compassionate ground in the

company. Learned senior counsel for the respondents further submits that in several judgments the Honâ??ble Apex Court have laid down the

principles that the very purpose of the compassionate appointment is to overcome the immediate financial distress and after lapse of more than one

decade after having received the terminal benefits as per the employment benefit scheme, the grievance of the petitioner for compassionate

appointment at this belated stage would defeat the very purpose of appointment on compassionate ground.

10. After hearing learned counsel for the respective parties at length and on perusal of the record there is no denying of the fact that the petitioner had earlier approached this Court for appointment on compassionate ground due to the death of his father in harness. In pursuance to the earlier writ petition in CWJC No.4389 of 2000 a reasoned order has been passed by the respondents on 11.03.2005, at Annexure-6, wherein the case of the petitioner has been discussed threadbare. As per the provisions of Employees Family Benefit Scheme, the family of the deceased employee has been getting Rs.8,814/- per month and apart from that an amount of Rs.4,70,407/- has been paid under provident fund, gratuity, life cover scheme, leave encashment and SESBF. Moreover, as disclosed from the supplementary counter affidavit, the family of the deceased employee has received the employees family benefit scheme till 30.06.2006 (the date of natural superannuation of the ex-employee had he been alive) and also the deposited amount was refunded to the family members of the ex-employee. Apart from that it has been disclosed in the counter affidavit that due to recurring loss sustained by the respondents-company ousting measure downsizing the employment has been initiated like voluntary retirement scheme/separation scheme.

11. The purpose of giving employment under the provision of compassionate employment is always subject to availability of post and is to give immediate assistance to the deceased family being the bread earner of the family and the decision to provide employment would always be subject to the financial status of the company. In the meantime, more than two decades have elapsed from the date of death of the deceased employee in harness in the year 1997 and the family of the deceased employee have availed all the possible terminal benefits from the respondent company, therefore, the claim of the petitioner for appointment on compassionate ground at this distance of time cannot be acceded to in view of the reasons stated in the foregoing paragraphs.

12. This Court is of the considered view that there is absolutely no infirmity or illegality in the impugned order dated 11.03.2005, at Annexure-6 to the writ application, which warrants no interference by this Court.

13. Accordingly, the writ petition sans merit is dismissed.