

**Court No. - 17**

**Case :-** WRIT - A No. - 10740 of 2017

**Petitioner :-** Santosh Kumar Awasthi

**Respondent :-** U.O.I. Thru Secy. Ministry Of Coal India New Delhi And Ors.

**Counsel for Petitioner :-** Anil Kumar Mishra, Atul Kumar Singh, Ranvijay Singh, Ravindra Shukla

**Counsel for Respondent :-** A.S.G., Anurag K. Singh, Anurag Kumar Singh, Atul Kumar Singh

**Hon'ble Manish Mathur, J.**

1. Heard Mr. Ran Vijay Singh, learned counsel for petitioner and Mr. Anurag Kumar Singh, learned counsel for opposite parties 2 to 4 being the Coal India Limited. Despite revision of list, no-one has appeared on behalf of Union of India.

2. Petition has been filed challenging orders dated 20.09.2016 and 29.03.2017 whereby petitioner's application for compassionate appointment in lieu of services rendered by his mother Late Kalawati Awasthi who passed away in harness, has been rejected.

3. It has been submitted that earlier petitioner's candidature had been rejected vide order dated 20.09.2016 which was challenged in Writ Petition No.28925 (S/S) of 2016. The said petition was disposed of vide judgment and order dated 07.12.2016 directing authority concerned to take a final decision with regard to petitioner's application. It is in pursuance of such directions that the impugned order dated 29.03.2017 has been passed again rejecting petitioner's application for compassionate appointment.

4. It has been submitted that provisions of compassionate appointment have been implemented in opposite party-Corporation in terms of National Coal Wage Agreement-VI

Implementation Instruction No.8 which in paragraph 4.0 entails provision for employment to dependents. It is submitted that while paragraphs 4.0 to 4.2 indicate conditions for consideration of compassionate appointment, paragraph 4.2.3 indicates that only those dependents are to be considered for employment who are physically fit and suitable for employment and are not aged more than 35 years provided that the age limit in case of employment of a female spouse would be 45 years as given in clause 9.5.0.

5. It has been submitted that petitioner's father late Ram Sunder Awasthi was also an employee of the Company who died in harness on 20.12.1991 whereafter his mother was provided compassionate appointment on 24.07.1992. She also passed away on 07.10.2015 while in harness whereafter petitioner submitted application for compassionate appointment.

6. It is submitted that along with application for compassionate appointment, petitioner also submitted a School Leaving Certificate dated 15.07.2000 issued by Head Master of the School concerned which was duly verified by the Block Education Officer and the District Education Officer and clearly indicated petitioner's date of birth as 02.03.1982. It is therefore submitted that petitioner was fully eligible for being considered for compassionate appointment which however has been rejected only on ground that he is overage by taking his year of birth as 1974.

7. It is submitted that the year of birth of petitioner has been taken by opposite parties to be 1974 instead of 1982 only on the basis of some declarations made by petitioner's father and mother ignoring aforesaid School Leaving Certificate. It is submitted that aforesaid Certificate having been duly verified by different authorities therefore comes within the realm of a

public document, the genuineness of which is to be presumed subject to rebuttal. It is submitted that since no-one rebutted the aforesaid School Leaving Certificate, the opposite parties were under a bounden duty to have considered the same and issued compassionate appointment to petitioner in lieu thereof.

8. Learned counsel for petitioner has placed reliance on following decisions:-

**(1) Management Committee, CFH Scheme, Paradip Port v. Paradip Port Workers Union and another** [a Division Bench decision of Orissa High Court];

**(2) Rina Barman Kalita v. State of Assam and others** reported in 2021 SCC OnLine Gau 1747 - a Single Judge decision of High Court of Gauhati; and

**(3) Neelam Nigam @ Nagma Parveen and another v. State of U.P. and others** (Writ Petition No.26264(Habeas Corpus) of 2017) decided on 5.9.2017 [a Division Bench Judgment of this Court].

9. Learned counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with submission that as would be evident from the material on record as well as impugned order that petitioner's year of birth has been considered to be 1974 on the basis of declarations made during service by petitioner's father as well as subsequently by his mother. It is submitted that it is only the parents of a child who are in a position to indicate the correct date of birth of their child.

10. It is also submitted that petitioner also filed subsequent application dated 03.03.2017. It is submitted that for the purposes of providing employment to petitioner's mother, he had submitted an affidavit on 02.03.92 in which also he has indicated his age as 19 years.

11. Learned counsel has also submitted that in view of these irrefutable evidences, a presumption has been rightly drawn by authority concerned for adjudicating petitioner's year of birth as

1974. Learned counsel has also adverted to submissions made in counter affidavit to submit that petitioner had also been provided an amount of Rs.21,00,132.44 at the time of demise of his mother and therefore also cannot be said to be a destitute requiring compassionate appointment.

12. Learned counsel for opposite parties has placed reliance on following decisions:-

(1) **Umesh Kumar Nagpal v. State of Haryana and others** reported in (1994) 4 SCC 138 [Hon'ble the Supreme Court];

(2) **Managing Director, MMTC Ltd. and another v. Pamoda Dei alias Nayak** reported in (1997) 11 SCC 390 [Hon'ble the Supreme Court];

(3) **I. G. (Karmik) and others v. Prahlad Mani Tripathi** reported in (2007) 6 SCC 162 [Hon'ble the Supreme Court];

(4) **State Bank of India and others v. Jaspal Kaur** reported in (2007) 9 SCC 571 [Hon'ble the Supreme Court];

(5) **Union of India and another v. B. Kishore** reported in (2011) 13 SCC 131 [Hon'ble the Supreme Court];

(6) **Madan Mohan Singh and others v. Rajni Kant and another** reported in (2010) 9 SCC 209 [Hon'ble the Supreme Court]; and

(7) **Seema v. Union of India and others**, (Writ Petition No.7324(S/B) of 2016) decided on 5.9.2017 [a Division Bench Judgment of this Court].

13. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is quite evident that impugned order dated 29.03.2017 has been passed in pursuance of directions issued by this Court earlier. Petitioner's application for compassionate appointment has been rejected primarily on ground that he is over age and therefore cannot be granted compassionate appointment. For the said purpose, the impugned order has relied heavily on declarations made by petitioner's parents at different times and has therefore drawn a conclusion that petitioner in fact was born in year 1974 and not 1982. The competent authority has thought it prudent

to place more reliance on records with the Company rather than School Leaving Certificate produced by petitioner.

14. With regard to aforesaid controversy, although certain documents have subsequently been placed on record but the same do not appear to have engaged attention of competent authority while passing impugned order. However since the said documents have been placed on record, this Court is taking cognizance thereof.

15. Although it is an admitted fact that petitioner has placed reliance on School Leaving Certificate dated 15.07.2000 but opposite parties in their counter affidavit has brought on record an Application dated 03.03.2017 and an affidavit purportedly filed by petitioner on 02.03.1992. So far as application dated 03.03.2017 is concerned, it is evident that a declaration has been made allegedly by petitioner that he has been married on 01.03.1997 whereafter he has also children to look after. Similarly an affidavit dated 02.03.1992 has also been placed on record purportedly having been submitted by petitioner at the time of consideration of his mother for compassionate appointment. The said affidavit is in the nature of a No-objection Certificate in which he has indicated his age as 19 years.

16. It is relevant that submissions with regard to aforesaid two documents have been clearly indicated in paragraph 13 of counter affidavit but aforesaid documents brought on record have not been denied by petitioner in paragraph 17 of rejoinder affidavit with only a bland denial having been issued.

17. In view of fact that petitioner has not denied aforesaid documents brought on record through counter affidavit, this Court is taking cognizance thereof.

18. With regard to discrepancy of documentary evidence as in

the present case where on one hand the School Leaving Certificate indicates petitioner's year of birth as 1982 while declarations of his parents and himself indicate his year of birth as 1974, it would be expedient to consider the judgment rendered by Hon'ble the Supreme Court in **Madan Mohan Singh**(supra) in which the following has been held:-

**"17. In State of Bihar v. Radha Krishna Singh [(1983) 3 SCC 118] this Court dealt with a similar contention and held as under : (SCC pp. 138, 143 & 171, paras 40, 53 & 145)**

**"40. ... Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.**

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**53. ... where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has a statutory flavour in that it is given not merely by an administrative officer but under the authority of a statute, its probative value would indeed be very high so as to be entitled to great weight.**

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**145. (4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little."**

**18. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in Ram Prasad Sharma v. State of Bihar [(1969) 2 SCC 359 : AIR 1970 SC 326] , Ram Murti v. State of Haryana [(1970) 3 SCC 21 : 1970 SCC (Cri) 371 : AIR 1970 SC 1029] , Dayaram v. Dawalatshah [(1971) 1 SCC 358 : AIR 1971 SC 681] , Harpal Singh v. State of H.P. [(1981) 1 SCC 560 : 1981 SCC (Cri) 208 : AIR 1981 SC 361] , Ravinder Singh Gorkhi v. State of U.P. [(2006) 5 SCC 584 : (2006) 2 SCC (Cri) 632] , Babloo Pasi v. State of Jharkhand [(2008) 13 SCC 133 : (2009) 3 SCC (Cri) 266] , Desh Raj v. Bodh Raj [(2008) 2 SCC 186 : AIR 2008 SC 632] and Ram Suresh Singh v. Prabhat Singh [(2009) 6 SCC 681 : (2010) 2 SCC (Cri) 1194] . In these cases, it has been held that even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.**

**19. Such entries may be in any public document i.e. school register, voters' list or family register prepared under the Rules and Regulations, etc. in force, and may be admissible under Section 35 of the Evidence Act as held in Mohd. Ikram Hussain v. State of U.P. [AIR 1964 SC 1625 : (1964) 2 Cri LJ 590] and Santenu Mitra v. State of W.B. [(1998) 5 SCC 697 : 1998 SCC (Cri) 1381 : AIR 1999 SC 1587]**

**20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.**

**21 [Ed. : Paras 21 and 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./111/2010 dated 4-10-2010.] . For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded. (Vide Brij Mohan Singh v. Priya**

*Brat Narain Sinha [AIR 1965 SC 282] , Birad Mal Singhvi v. Anand Purohit [1988 Supp SCC 604 : AIR 1988 SC 1796] , Vishnu v. State of Maharashtra [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] and Satpal Singh v. State of Haryana [(2010) 8 SCC 714 : JT (2010) 7 SC 500] .)*

**22 [Ed. : Paras 21 and 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./111/2010 dated 4-10-2010.] .** *If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 and 61, etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time, etc. mentioned therein. (Vide Updesh Kumar v. Prithvi Singh [(2001) 2 SCC 524 : 2001 SCC (Cri) 1300 : 2001 SCC (L&S) 1063] and State of Punjab v. Mohinder Singh [(2005) 3 SCC 702 : AIR 2005 SC 1868] .)"*

19. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is evident that a public document is admissible in terms of Section 35 of Indian Evidence Act and may also come within the realm of a public document in terms of Section 74 read with Section 79 of Indian Evidence Act but at the same time such presumption of genuineness is rebuttable and the authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information.

20. No doubt, the parents of child are the best persons to indicate the date of birth of their child and therefore it is evident that petitioner's parents have given separate declarations at separate times with regard to age of petitioner from where it is discernible that his year of birth is in fact 1974 and not 1982. The application dated 03.03.2017 as well as the affidavit filed by petitioner before opposite parties earlier also corroborates the same. Once petitioner's application and affidavit corroborate the declarations made by his parents, definitely principle of estoppel would come into play.

21. In view of aforesaid facts, it is quite evident that reliance has been correctly placed by opposite parties on declarations made by petitioner's parents and School Leaving Certificate was rightly discarded as a presumptive evidence of petitioner's year of birth.

22. So far as judgments relied upon by learned counsel for

petitioner are concerned, judgment in **Management Committee, CFH Scheme, Paradip Port**(supra) clearly appears to be in variance with the judgment rendered by Hon'ble the Supreme Court in **Madan Mohan Singh**(supra).

23. The judgment in **Neelam Nigam @ Nagma Parveen**(supra) is also inapplicable in the facts and circumstances of the case since in that case, the Court was concerned with the aspect of juvenility of petitioner in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015, which is inapplicable in the present facts.

24. Learned counsel for petitioner has also placed reliance on judgment rendered in **Rina Barman Kalita**(supra) to submit that there cannot be any upper age limit with regard to provisions of Compassionate Appointment.

25. However, in view of fact that petitioner has not challenged the specific provision whereby upper age limit has been prescribed, there is no occasion for this Court to go into the said aspect.

26. Another submission of opposite parties worth considering is as indicated in paragraph 5 of counter affidavit wherein it has been stated that upon demise of his mother, petitioner was granted compensation amounting to Rs.21 lakh and odd. The said assertion has not been denied by petitioner.

27. In **Umesh Kumar Nagpal**(supra) Hon'ble the Supreme Court has held as follows:-

*"2. .... However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The*

*Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family..... It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."*

*"3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible."*

*"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."*

28. In such circumstances also, the aspect that object of compassionate appointment is not to provide employment to a member of family of the deceased employee but only to tideover destitution is an aspect which is relevant.

29. In the present case once it is admitted that petitioner was in receipt of an amount of Rs.21 lakh and odd, the aspect of destitution is no longer relevant. Although such an aspect has not been considered in the impugned order but this Court has to take cognizance of such an aspect once it has been specifically stated and brought on record.

30. In view of aforesaid factors, it is quite evident that petitioner was clearly overage at the time of application for compassionate appointment and even otherwise was ineligible in view of judgment rendered in **Umesh Kumar Nagpal**(supra).

31. Considering aforesaid factors, the petition being devoid of merit is hereby **dismissed**. There shall be no order as to costs.

**Order Date :- 7.2.2024**

kvg/-