

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3179 of 2015

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Sanni Kumar, son of late Raj Kumar Paswan, resident of village + P.O. Ganga Bridge Colony, Qrs. No. 177B, P.S. Garhara, District Begusarai (Bihar)

.... Petitioner

Versus

1. The Union of India through Secretary, Ministry of Coal, New Delhi
2. The Director, PRIW, Ministry of Coal, a Wing, Shastri Bhawan, New Delhi
3. The Chairman cum Managing Director, Eastern Coalfields Ltd., Sanctoria, P.O. Dishergarh, District Burdwan 713333 (W.B.)
4. General Manager (P/M P & LR) E.C.L. Sanctoria, Dishergarh, Burdwan 713333 (W.B.)
5. The Dy. C.M.E./ Agent 3 & 4 Incline Mine, Jhanjra Area/ ECL, P.O. Jhanjra, B.O. Burdwan 713333
6. Sr. Personnel Manager/ Perconnel Manager, Jhajra Area/ ECL, P.O. Jhanjra, B.O. Burdwan 713363

.... Respondents

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Appearance :

For the Petitioner/s : Dr. Om Prakash Om, Adv.

For the Respondent/s : Mr. Ravinder Kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 26-02-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“That the present writ application has been filed by the petitioner for issuance of an appropriate writ, order or direction to the respondent concerned to redress/ relief at the earliest, the grievances of the petitioner for (i) not being provided employment on compassionate ground following the death in harness of his mother late Smt. Kanchan Paswan, P.R. Gr.I of 3 & 4 Inclive Mine, Jhan Jra Area, P.O. Jhanjra, District Burdwan 713363 (W.B.) whose husband late Raj Kumar Paswan (petitioner is father) had already died earlier and.

(ii) Having not been provided any compensation although



provisions of both the employment on compassionate ground as well as compensation have already been envisaged in the concerned National Wage Agreement merely because law made therein has wrongly been interpreted by the authorities of the E.C.L. Sanctoria, Dishergar, Burdwan 713333(W.B.).”

Learned counsel for the petitioner submits that when the mother of the petitioner had died in the year 1998 the petitioner was eligible for being appointed on compassionate ground but then the authorities did not do so and in fact have been resisting the said claim of the petitioner till date. According to him, the petitioner had a right to be considered for appointment on compassionate ground but that has not been done so and therefore, this Court should direct for considering the appointment of the petitioner on compassionate ground.

Learned counsel for the respondents, on the other hand, has firstly questioned the maintainability of the writ application by stating that no part of cause of action has arisen within the territorial jurisdiction of this Court, inasmuch as the mother of the petitioner was employed at Burdwan in the West Bengal and in fact the petitioner also had filed his application for appointment to the authorities of Eastern Coal Fields at Burdwan, whereafter rejection has also been made at Burdwan (W.B.).



Learned counsel for the respondents also explains that even if for the time being the issue of territorial jurisdiction is not taken there would be no question of issuing any direction in favour of the petitioner for appointment on compassionate ground, firstly because he was having the age of less than 15 years on the date of death of his mother and therefore, as per policy of the Company could not be appointed. He also sums up his submission by stating that in any event if the family of the petitioner has survived for a period of more than 15 years after the death of the mother of the petitioner the very purpose of compassionate appointment gets now defeated, inasmuch as such appointment has to be made immediately after the death of the bread-earner for rehabilitation of the family.

This Court is in complete agreement with the submission of the learned counsel for the respondents for more than one reason. Firstly, if the mother of the petitioner was employed in a coal field in the district of Burdwan in the State of West Bengal and the petitioner claiming to be the dependent had also filed his application for appointment on compassionate ground in the said coal field no part of cause of action is said to have been arisen only because subsequently the petitioner now is residing in the State of Bihar. That a part this Court would find from the reply



given by the Eastern Coal Field through its counsel on 27.7.2012 that when the mother of the petitioner had died on 19.8.1998 the application which was filed for appointment on compassionate ground by the petitioner in which he had declared his age as 13 years. The medical examination report of the petitioner dated 28.11.2002 had established the date of birth of the petitioner being 23.5.1984 and therefore, even as per that medical estimation of age the petitioner was not 15 years. The policy of compassionate appointment of the Company, however, was that the male dependent of the deceased employee must be at least aged 15 years. To that extent Clause 9.5 of NCW-V reads as follows:

“9.5(iii) In case of death either in mine accident or for other reason or medical unfitness under clause 9.4 if no employment has been offered and the male dependant of the concerned worker is 15 years and above in age he will be kept on a Live Roster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years. During the period the male dependants is on Live Roster, the female dependant will be paid monetary compensation as per rates at para (i) and (ii) above.”

Subsequently in NCW-VI the age was reduced from 15 years to 12 years but that was made effective with effect from 1.1.2000, whereas the date of death of the mother of the petitioner,

as noted above, was 19.9.1998. Thus, 2000 NCW-VI could not have been made applicable to the petitioner.

It, thus, becomes clear that the petitioner was not even 15 years of age on the date of death of his mother. The issue in fact with regard to minor being employed on compassionate ground was gone into by the Division Bench of this Court in the case of Anil Kumar Singh & ors. v. the State of Bihar & ors., reported in 1993(1) PLJR 414, wherein it was held that if a person does not become major within the time prescribed at the time of filing of the application under the policy of compassionate appointment, he cannot be appointed on compassionate ground by keeping a post reserved for him as and when he becomes eligible.

Thus, as the petitioner was not qualified under the policy of compassionate appointment and his case was also rejected way back in the year 1998 or even in 2002 that by itself will be good enough for this Court not to allow the petitioner now to reopen the whole thing in the year 2015, especially when the family of the petitioner has survived for a period of more than 15 years after the death of mother of the petitioner, the bread-earner. The appointment on compassionate ground is not a fundamental right or right protected by the Statute. It is governed by the policy and if a person does not fulfil the requirement under the policy, no

direction can be given by this Court to the concerned employer to make appointment on compassionate ground contrary to the scheme formulated in the policy.

That being so, this application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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