

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 302 of 2008

Puran S/o Late Jhanglu, R/o Ledri Badidafai, Manendragarh, Distt. Koriya (C.G.)

---- Petitioner

Versus

1. C.M.D.South Eastern Coal Fields Ltd. Seepat Road, Bilaspur (CG)
2. The Deputy Manager (Personnel), South Eastern Coal Fields Ltd. Hasdeo Area, Distt. Korba (CG)
3. The Area Manager, South Jhagrakhand Colliery, Distt. - Koriya

---- Respondents

Shri Akash Pandey, counsel for the petitioner/s.
Shri Ravi Ranjan Sinha, counsel for the respondents.

Order On Board

29/09/2015

This petition is directed against order dated 22/06/98 by which, the father of the petitioner was dismissed from service in a departmental enquiry. The petitioner has prayed for a direction to respondents to provide him employment under the scheme of providing employment to the dependents of the deceased employee under the provisions of National Coal Wage Agreement (NCWA).

2. Jhanglu (the deceased), father of the petitioner, was employed as Loader with respondent / SECL. During service, departmental enquiry was initiated against him by issuing charge sheet which eventually resulted in issuance of impunged order dated 22/06/98 by the authority by which, Jhanglu was terminated from service by way of penalty. Jhanglu died on 30/06/98. However, the petitioner, who is the son of the deceased employee, raised claim that he is entitled to employment under the Social Security Scheme of NCWA.

3. Learned counsel for the petitioner submits that once the worker has died while in service, one of his dependent is entitled to employment in terms of provisions contained in Clause 9.6.2 of Social Security (Chapter IX of NCWA). It is also

contended that in so far as the order of dismissal from service is concerned, the order itself was bad as proper opportunity was not afforded to the deceased – Jhanglu. It is also argued that denial of employment on the ground of dismissal of Late Jhanglu is misconceived because even though the order of dismissal was passed on 22/06/98, finally name of Jhanglu was struck off from the roll of employees only on 27/07/98 i.e. subsequent to his death. Therefore, for all legal purposes, Jhanglu continued to be employee of respondent till his death and therefore, it has to be treated to be a case of worker dying during employment.

4. On the other hand, learned counsel for the respondent opposes prayer and submits that the petitioner claims employment only on the basis that name of Jhanglu was struck off from the roll of employees only on 27/07/98 whereas the order of termination from service by way of penalty has taken effect immediately upon passing of the order by the competent disciplinary authority on 22/06/98. He next contends that the allegation that Jhanglu was not afforded proper opportunity of hearing, is contrary to the records because Jhanglu not only appeared during enquiry but also afforded opportunity to cross examine the prosecution witnesses.

5. Order dated 22/06/98 passed by the disciplinary authority shows that Jhanglu had participated in the enquiry and he was given notice also before issuing the order of dismissal as to why penalty be not imposed, relying upon the finding recorded by the enquiry officer. During the course of hearing, learned counsel for the respondent placed before the Court, enquiry proceedings which indicate that prosecution witnesses were actually cross examined by late Jhanglu during departmental enquiry. The pleadings made in the petition with regard to Jhanglu being medically unfit are vague and there is no material to show that Jhanglu was denied opportunity of hearing before issuing impugned order on 22/06/98. In the absence of clinching evidence on record supported by specific pleadings, I am unable to accept the submission of learned counsel for the petitioner that the order of dismissal of Jhanglu from service is unsustainable in law.

6. Next question which requires consideration is whether the father of the petitioner continued in employment on the date of his death.

7. The order of dismissal from service by way of penalty was passed by the disciplinary authority on 22/06/98 duly signed by him. The order contained recital that Jhanglu is terminated from service of South Jhagrakhand Colliery of SECL with

immediate effect. It further records that the services stand terminated. This order passed by the disciplinary authority was sent to subordinate authority in the concerned colliery where Jhanglu was posted and worked as Loader. In compliance of the order of the disciplinary authority, name of Jhanglu was struck off from the roll of employees maintained by concerned Manager of the mines on 27/07/98. In the eye of law, the relationship of the master and servant had come to an end after issuance of order dated 22/06/98. The order of dismissal traveled down to lower office only for completing other ministerial functions like striking off name of the employee from the roll of other employees. But that would not mean that dismissal came into effect only on 27/07/98 and not on 22/06/98. Irrespective of whether the name is struck off from the roll in the register maintained in the mines, relationship of master and servant came to an end, on the date when order of dismissal was passed by the disciplinary authority. Therefore, the argument that on 30/06/98, Jhanglu continued in employment has to be rejected.

8. Once it is held that Jhanglu was dismissed from service by way of penalty order dated 22/06/98, petitioner's claim for employment under Clause 9.3.2 of the NCWA falls to the ground for the simple reason that it is not a case of worker dying while in service. Death of Jhanglu was subsequent to dismissal from service and on 30/06/98, Jhanglu was not in service.

9. In view of above, no relief can be granted to the petitioner.
The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge