

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 432 of 2011

1. Ku. Rattho Bai D/o Late Chamar Singh, aged about 20 years, R/o Village Laat, Tahsil Dharamjaigarh District Raigarh (C.G.)
2. Chamrin Bai, Wd/o Late Chamar Singh, aged about 50 years, R/o Village Laat, Tahsil Dharamjaigarh, District Raigarh (C.G.)

---- Petitioner

Versus

1. South Eastern Coalfield Limited through its Chairman-Cum-Managing Director, Seepat Road, Bilaspur, District Bilaspur (C.G.)
2. Managing Director South Eastern Coalfield Limited Raigarh Area Raigarh Distt. Raigarh (C.G.)
3. Regional Personnel Manganer South Eastern Coalfield Limited Raigarh Area, Behind Collectorate, Chhote Atarmuda, Post Box No. 27 Raigarh District Raigarh (C.G.)
4. Staff Officer (Land Revenue) South Eastern Coalfield Limited, Raigarh Area, Raigarh, District Raigarh (C.G.)

---- Respondents

For Petitioners
For Respondents

Mr. Sanjay Agarwal, Advocate
Mr. Sudhir Bajpayee, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/7/2015

Heard.

(2) The petitioners are land oustees as their entire land has been acquired by the SECL. Petitioner No.1 is the daughter of petitioner No.2; they have preferred this writ petition seeking quashment of the

communication dated 19.01.2010, whereby, her claim for employment in lieu of acquisition of land has been rejected by the respondent – SECL.

(3) Pertinent facts of the case, briefly stated, are that the land admeasuring 0.200 hectare bearing Khasra No.586 was acquired by the competent government for the benefit of South Eastern Coal Fields Limited (SECL) for carrying out mining activity, as the land was coal bearing area. For the subject acquisition, notification under Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 was issued on 24.09.2004 and the award was passed on 02.06.2005. In absence of any male member in the family, petitioner No.1 applied for employment under the extant Rehabilitation Policy of the State Government. The claim has been refused on the ground that the petitioner being a woman is not eligible for employment in terms of Clause (VIII) K (b) of the Uniform Guideline for employment to Land Looser, issued by the SECL on 8/13-8-2002.

(4) Mr. Agarwal, learned counsel for the petitioners, would submit that the rejection of petitioner No.1's application for employment is *per se* discriminatory, arbitrary and illegal, inasmuch as even if, Section 46 of the Mines Act prohibits employment of females in the mines, there being other sections in the establishment of SECL, where the petitioner's services can be utilized, the petitioner should have been appointed. He would further submit that there is no reference of Section 46 in the impugned communication.

(5) Mr. Bajpayee, learned counsel for SECL, would submit that in the policy dated 8/13-8-2002, a person to be eligible for obtaining employment in lieu of acquisition of land, a minimum 2 acres of his/her

land has to be acquired, therefore, the extent of land acquired from the petitioners being only 0.200 hectares, petitioner No.1 is not entitled for employment. He would further refer to the said policy dated 8/13-8-2002 to argue that the said policy prohibits employment of women candidates.

(6) The Rehabilitation Policy of the erstwhile State of Madhya Pradesh issued on 25.09.1991 (Annexure P/2) provides in para (3) (*ga*) that such families whose entire agricultural land and/or residential land has been acquired, one candidate of such family shall be entitled for employment as third preference category. Thus, the said provision in the Policy nowhere mentions that for seeking employment, a minimum 2 acres of land has to be acquired from the family.

(7) The policy issued by the SECL in the year 2002 makes such provision, however, a reading of the Policy would indicate that the said policy does not have any statutory force, whereas, the Rehabilitation Policy issued by the State of Madhya Pradesh has been issued for and on behalf of the Governor of Madhya Pradesh. Since there is no legislation covering the said field, the Policy has statutory backing in terms of Article 166 of the Constitution of India. Thus, the Rehabilitation Policy issued by the State Government would prevail upon the Policy of the SECL.

(8) The Supreme Court in the matter of **State of Haryana vs. Mahender Singh and others**¹ has held thus in para 39 :

39. It is now well settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are

¹ (2007) 13 SCC 606

subservient to the legislative Act and the statutory rules.

(See *Maharao Sahib Shri Bhim Singhji v. Union of India*, ²J.R.

*Raghupathy vs. State of A.P.*³ and *Narendra Kumar*

*Maheshwari v. Union of India*⁴).

(9) The issue concerning prohibition of women for employment in the Mines is no longer *res integra* in view of the law laid down by the Division Bench of this Court in the matter of **Bailadila Berozgar Sangh vs. National Mineral Development Corporation Limited** (W.P. No.2424 of 2005 decided on 11th of August 2005), wherein, the following has been held in para 7 :

(7) Coming now to the challenge to discrimination on the ground of sex, Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 16(1) of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Article 16(2) of the Constitution further provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment or office under the State. A reading of the aforesaid provisions of Articles 14 and 16 of the Constitution would show that in matters of recruitment to employment, the State will not discriminate between men and women and that a citizen will not be ineligible for employment or office under the State on the ground of sex only. It is not disputed that the Corporation is an instrumentality of the State and comes within the definition of the State under Article 12 of the Constitution and that the equality provisions in Articles 14 and 16 of the Constitution apply to employment under the Corporation. Therefore, a woman citizen cannot be made ineligible for any employment under the Corporation on the ground of sex only

2 (1981) 1 SCC 166

3 (1988) 4 SCC 364

4 1990 (Supp) SCC 440

but could be excluded from a particular employment under the Corporation if there are other compelling grounds for doing so.

(8) The notification of vacancies issued by the Directorate of Employment & Training, Chhattisgarh, however, states that women candidates are ineligible to apply for the post of Maintenance Assistants (Trainee). The justification given for excluding women candidates from applying for the post of Maintenance Assistants (Trainee) in the reply of the respondents is that under Section 46 of the Mines Act, 1952 there are some restrictions with regard to employment of women in mines. Section 46 of the Mines Act, 1952 is quoted herein below :

“46. Employment of women – (1) No woman shall, notwithstanding anything contained in any other law, be employed -

- (a) in any part of mine which is below ground;
- (b) In any mine above ground except between the hours of 6 a.m. and 7 p.m.

(2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification in the Official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any woman between the hours of 10 p.m. and 5 a.m. is permitted thereby.”

It will be clear from Section 46 quoted above that the said Section does not altogether prohibit employment of women in the mines above the ground though it prohibits employment of women in any part of the mine below the ground. The Section however puts a restriction on

employment of women above the ground saying that they can be employed only between 6 a.m. and 7 p.m. Sub-section (3) of Section 46 quoted above, however, states that the Central Government may, by notification in the Official Gazette, vary the hours of employment above the ground of women in respect of any mine or class or description of mine, so however, that no employment of any women between the hours of 10 p.m. and 5 a.m. is permitted thereby. This provision putting restrictions on the employment of women above the ground is a special provision made for women. Such a provision, in our considered opinion, cannot be relied on by the Corporation to prohibit recruitment of women altogether for the post of Maintenance Assistants (Trainee) in the Corporation to the disadvantage of the women.

(10) In a very recent case, the Supreme Court in the matter of **Charu Khurana and others vs. Union of India and others**,⁵ has held thus in para 39, 40 & 41 :

39. Before we dwell upon the relevant provisions of the Act, we may profitably delve into the concept of equality in the backdrop of gender justice. In *Neera Mathur v. LIC*, a female candidate was required to furnish information about her menstrual period, last date of menstruation, pregnancy and miscarriage. The Court declared that calling of such information are indeed embarrassing if not humiliating. The Court directed that the employer i.e. Life Insurance Corporation would do well to delete such columns in the declaration. In *Maya Devi*, the requirement that a married woman should obtain her husband's consent before applying for public employment was held invalid and unconstitutional. The Court observed that such a requirement is an anachronistic obstacle to women's equality.

40. In *Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa*, the Court was deliberating the issue of equal pay for equal work in the context of female stenographers and male stenographers. Dealing with the aspect of discrimination, the Court opined: (SCC pp. 479-80, para 9)

5 (2015) 1 SCC 192

“9. ... It may be that the management was not employing any male as a Confidential Stenographer attached to the senior executives in its establishment and that there was no transfer of Confidential Lady Stenographers to the general pool of Stenographers where males were working. It, however, ought not to make any difference for purposes of the application of the Act when once it is established that the lady Stenographers were doing practically the same kind of work which the male Stenographers were discharging. The employer is bound to pay the same remuneration to both of them irrespective of the place where they were working unless it is shown that the women are not fit to do the work of the male Stenographers. Nor can the management deliberately create such conditions of work only with the object of driving away women from a particular type of work which they can otherwise perform with the object of paying them less remuneration elsewhere in its establishment.”

41. The aforesaid pronouncement clearly spells out that there cannot be any discrimination solely on the ground of gender. It is apt to note here that reservation of seats for women in panchayats and municipalities have been provided under Articles 243(d) and 243(t) of the Constitution of India. The purpose of the constitutional amendment is that the women in India are required to participate more in a democratic set-up especially at the grass root level. This is an affirmative step in the realm of women empowerment. The 73rd and 74th Amendments of the Constitution which deal with the reservation of women has the avowed purpose, that is, the women should become parties in the decision-making process in a democracy that is governed by the rule of law. Their active participation in the decision-making process has been accentuated upon and the secondary role which was historically given to women has been sought to be metamorphosed to the primary one. The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality.

It also clips her capacity to earn her livelihood which affects her individual dignity.

(Emphasis supplied)

(11) It is also to be seen that the respondent – SECL has otherwise appointed several women candidates in its establishment as mentioned in Annexure P/7. Learned counsel for SECL would explain that the lady candidates mentioned in the said document have been appointed on compassionate ground, however, the source or manner of appointment is not a criteria for denying appointment to others. If a woman candidate can be employed on compassionate ground, a person whose entire agricultural land has been acquired is also entitled for appointment. As a matter of principle, right to get appointment in lieu of acquisition of land is not a lesser right than the right to get compassionate appointment in the event of death of a government servant. In the case of land oustee also, there is loss of means of livelihood and more so, when the entire agricultural land has been acquired.

(12) For the foregoing, the writ petition deserves to be and is hereby allowed. The Respondent – SECL is directed to reconsider the decision to provide suitable employment to the dependent- petitioner No.1 depending upon her educational qualification and other eligibility in any part of its establishment. No order as to costs.

Sd/-

Judge

(Prashant Kumar Mishra)

