

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P. No. 294 of 2004**

Rambai D/o Mohar Sai, R/o Sarkari Dafai Chirimiri Colliery,
District Korea (C.G.)

---- Petitioner**Versus**

1. South Eastern Coalfields Limited through its Chairman cum Managing Director, Seepat Road, Bilaspur (CG)
2. Sub Area Manager, Chirimiri Colliery, PO Chirimiri, District Korea (C.G.)

---- Respondents

For Petitioner	:	Shri Garry Mukhopadhyay, Advocate
For Respondents	:	Shri H. B. Agrawal, Sr. Advocate along with Ms. Iturani Mukherjee, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/02/2016**

Grievance of the petitioner is that her father namely Mohar Sai was an employee of respondent S.E.C.L and died on 05.09.2002 while in service. The petitioner being a divorced daughter moved an application for compassionate appointment under the provision of National Coal Wage Agreement (in short 'NCWA') but the same was refused on the ground that the petitioner being a divorced daughter does not fall within the ambit of dependant as per Chapter 9 of NCWA.

2. The respondents in their return submitted that the petitioner's claim could not be considered of her not falling within the definition of dependant as defined under the provisions of NCWA. On the contrary, wife of the deceased employee was offered monetary compensation of Rs.3,000/- per month till she attains the age of 60 years. Thereafter, the wife of the deceased employee has not preferred any petition before any Court regarding not being granted monetary compensation.

They submitted that now, the present writ petition has been filed by a divorced daughter of the deceased employee who is not eligible for dependent employment under the scheme framed by the respondents.

3. Chapter 9 of NCWA (Annexure P-2) clearly shows the person who would be eligible for dependant employment. Clause 9.3.3 reads as under:

“the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.”

4. A plain perusal of Clause 9.3.3 clearly stipulates that there was a deliberate exclusion of divorced daughter from the claim being made applicable. More so, for the reason that if she is a divorced lady, she has every right to seek maintenance from her husband with which she could sustain herself.

5. It is settled position of law that the compassionate appointment to the dependant of a deceased employee can only be granted if he/she falls within the ambit of the scheme framed by the employer. If the scheme is not applicable for a particular category, the same cannot be invoked by a person who does not fall within the definition under the scheme.

6. A perusal of the relief sought by the petitioner also reveals that she has not challenged the provisions of NCWA whereby she has been excluded from its ambit and that she would not travel beyond the scheme framed by the employer.

7. It is also an settled position of law that grant of compassionate appointment is always an exception to the general rule of appointment and it has been strictly considered under the scheme framed by the employer. Further, the petitioner has not been able to show any good reason for the divorced daughter being excluded from the ambit of NCWA nor has she alleged any mala fides against the respondents for not considering her case.

8. In 2009 (11) SCC 453 (State of Jharkhand and Others Vs. Shiv Karampal Sahu), the Supreme Court has held as under:

“11. The scheme for grant of monetary compensation to the dependents of the deceased or injured who are affected in any kind of terrorist/virulent/communal attack must be considered in terms of the stipulations made in the circular letters containing policy decisions. Appointment on compassionate ground, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate ground must, therefore, receive a strict construction.”

13. A circular letter providing for appointment on compassionate ground in case of death of a government servant cannot be extended in case of the dependents of the deceased who was not a government servant. A public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the rules framed under the proviso appended to Article 309 of the Constitution of India. A circular letter issued by the State cannot be issued de hors the constitutional scheme of making offer of public appointment. [See Official Liquidator vs. Dayanand & ors. [(2008) 10 SCC 1 para 52]; State of Bihar vs. Upendra Narayan Singh & Ors. [(2009) 4 SCALE 282 para 19]; and Man Singh v. Commissioner, Garhwal Mandal, Pauri & Ors. [2009 (11) SCC 448].

9. Further in the case of State of Gujarat and Others Vs. Arvindkumar T.Tiwari & Another reported in (2012) 9 SCC 545 the Supreme Court held as under :

“8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. As claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased.however, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria.”

10. Considering the total facts and circumstances of the case and also relying upon the decisions of the Supreme Court cited above, this Court is of the opinion that no good case is made out for interfering with the petition for grant of compassionate appointment to the petitioner.

11. For the aforesaid reasons, the present writ petition being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**