

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 696 of 2015**

1. Smt. Kamlesh Shukla Wd/o late Sukhendra Prasad Shukla, aged about 54 years, occupation-Housewife.
2. Ajay Shukla, S/o late Sukhendra Prasad Shukla, aged about 26 years (Student),

Both are R/o Aamakherwa, behind Central Hospital, Mines Colony, Qtr. No.3, PS Post and Tehsil Manendragarh, District Koriya (CG).

---- Petitioners

Versus

1. South Eastern Coal Fields Ltd. Through the Chairman-cum-Managing Director, Basant Vihar, Seepat Road, Bilaspur (CG).
2. The Deputy General Manager (Personnel), SECL Hasdev Area, Tahsil Manendragarh, District Koriya (CG).
3. The Chief General Manager, SECL Hasdev Area, Post South Jhagrakhand, District Koriya (CG) PIN-497448
4. The Chief Medical Officer, Central Hospital (SECL) Manendragarh, District Koriya (CG).

---- Respondents

For Petitioners	Shri Ashok Shukla, Advocate.
For Respondents	Shri Rahul Mishra, Advocate, under instructions of Shri KK Shrivastava.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

22/01/2016

1. The present petition has been filed challenging the orders dated

27.11.2010 and 16.05.2014 whereby the respondents have firstly dismissed the employee/Sukhendra Pratap Shukla from service and secondly the claim of the petitioner for compassionate appointment has been rejected by the Respondents.

2. A perusal of record would show that admittedly the Husband of petitioner No.1 and father of petitioner No.2 was employed with the respondents and he (Sukhendra Pratap Shukla) died on 06.08.2011. However, prior to his death, the deceased employee, on account of misconduct of unauthorized absence from the duty for a considerable long period was proceeded departmentally and finally vide order dated 27.11.2010 dismissed from service.
3. Though the order of dismissal was passed on 27.11.2010, the petitioner during his life time till 06.08.2011 has not challenged his dismissal order. The dismissal order is now being challenged for the first time by the legal heirs of the deceased by filing the petition after a period of more than four years from the date of passing of dismissal order.
4. The respondents have entered into appearance and in their return they have emphatically given the details of the number of opportunities which were granted to the deceased employee to defend himself. The delinquent employee after getting the opportunity appeared before the enquiry officer, however, did not submit any sort of satisfactory explanation so far as unauthorized absence from duty is concerned. Second show cause notice was also served to the delinquent employee prior to passing of dismissal order.

5. In the instant case the petitioner has not been able to show that sufficient opportunity had not been afforded to the deceased employee before the order of dismissal was passed. In the absence of any strong ground for interference with the order of punishment is made out in the petition, the writ court should refrain itself under Article 226 of the Constitution of India to go into the veracity and merits of the departmental enquiry and proceedings initiated by the department. Therefore, the petitioners have failed to make out a case to interfere with the order of dismissal passed against the deceased employee.

6. The Supreme Court in 2008 (8) SCC 475 (General Manager, State Bank of India & Others Vs. Anju Jain) has held as under :

“.....If disciplinary proceedings have been initiated against an employee and charges levelled against such employee are proved and he is punished, it is indeed a relevant consideration for not extending the benefit to a dependent of such employee on the ground that he was punished. It cannot be said that it is a case of double jeopardy or duel punishment. Compassionate appointment is really a *concession* in favour of dependents of a deceased employee. If during his career, he had committed illegalities and misconduct is proved and he is punished, his dependents cannot claim *right* to the employment. Such an action is not violative of the principle of natural justice. Past conduct of an employee is undoubtedly an important consideration.....”

7. In view of the fact that since the dismissal order itself has not been interfered by this court, the claim for compassionate appointment cannot be considered and the same has rightly been rejected.

8. The writ petition is dismissed.

Sd/-
(P.Sam Koshy)
JUDGE