

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR C.G.

In the Matter of W.P.No.2834/2002

PETITIONER

Mahettar lal Shrivasa, son of Shri Badri Prasad Shrivasa, aged about 43 years, E.P.G.H. Grade E, General Mazdoor, Manikpur Colliery, Tah. Manikpur, Distt. Korba, Chhattisgarh, resident of quarter No. C/H-44, Manikpur, Tah. Distt. Korba Chhattisgarh.

Versus

RESPONDENTS

- 1) M/S. South Eastern Coalfields Limited, through : Its Chairman Cum Managing Director, Head Office at Seepat Road, Bilaspur (Chhattisgarh)
- 2) Chief General Manager, South Eastern Coalfields Limited, Korba Area, District Korba, C.G.
- 3) Dy. General Manager, S.E.C.L., colliery, Distt. Korba, C.G.
- 4) Personnel Manager, S.E.C.L., Manikpur Colliery, Korba, Distt. Korba, Chhattisgarh.

P. R. No. 2834/02
Presented by Shri. R.D.P. Maek
d. 12.12.02

PETITION UNDER ARTICLE 226/227 of THE CONSTITUTION OF
INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF
MANDAMUS, CERTIORARI AND /OR ANY OTHER COMMAND
OF LIKE NATURE

P. R.
Prer
d.

*Amended incorporated
as per Court order
dated 4.1.06.*

1/11/06

Respondent No. 6

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UNION OF INDIA, THROUGH : THE
SECRETARY, DEPARTMENT OF
PERSONAL PUBLIC GRIEVANCE AND
PERSONNEL, THIRD FLOOR LOKMAYAN
BHAWAN, KANUN MARKET, NEW DELHI.
STATE OF MADHYA PRADESH,
THROUGH :-- THE SECRETARY,
DEPARTMENT OF TRIBAL WELFARE,
VALLABH BHAWAN, MADHYA PRADESH,
BHOVAL.

*next
1/11/06*



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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 2734 of 2002

Mahettar Lal Shrivastava

---- Petitioner

Versus

S.E.C.L. & Ors.

---- Respondents

For Petitioner : Shri Pawan Kesharwani, Advocate
For respondents -SECL : Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/08/2016

Heard.

1. The petitioner by this petition has prayed for a direction to consider employment of his son in place of the petitioner on the ground that the petitioner suffers from disability of permanent nature, he being a paralytic patient, therefore, entitled to consideration for employment of his son in his place.
2. Relevant factual matrix necessary for decision of the petition are that the petitioner was initially appointed as General Majdoor on 11.12.1981 in the services of respondent-Coal India Limited (CIL). He met with an unfortunate accident on 18.2.1997, in which, it is said, he suffered certain injuries. According to the petitioner, he became paralytic. After recovery from injury, the petitioner submitted his joining. As he was not being allowed to work and salary was also not being paid, it led to filing of petition in the High Court of

Madhya Pradesh. Vide order dated 18.2.1998, the petition was disposed off with a direction to the employer to examine the grievance of the petitioner by disposing off his representation. A contempt petition also followed. However, in the meantime, the petitioner was allowed to join duty on 11.9.1999. Therefore, the contempt petition was disposed off recording this fact.

The petitioner thereafter submitted an application on 15.10.2001 claiming that as he is suffering from disability of permanent nature, his son may be granted employment. When the relief claimed by the petitioner was not granted, this petition was filed.

3. Learned counsel for the petitioner submits that the certificate (Annexure P-5) issued by the Medical Officer itself shows that the petitioner was suffering from paralysis and was also getting paralytic allowance. Therefore, there was no reason not to provide the benefit of employment to his son in terms of provision contained in clause 9.4.0 Chapter-IX of the NCWA-VI. The Union of the petitioner requested the Management to send the petitioner for his medical examination for issuance of certificate of permanent disability, but that was also not done.
4. On the other hand, learned counsel for the respondents submits that though the petitioner had suffered certain injury, it is not correct to say that the injury was sustained during his employment. According to him, the administrative enquiry was conducted and a report (Annexure R-3) was prepared which shows that the injury was not during the period the petitioner was working. It is next contended that the petitioner's son is not entitled to employment only on the ground of any injury unless the effect and impact of the injury or disablement is of permanent in nature so much so that the employee is disabled from discharging his duty. Learned counsel for the respondents submits that a certificate to that effect is required to be issued and unless there is a certificate to that effect, no employment for employee's son may be claimed as of right.
5. I have considered the rival submissions made by learned counsel for the parties and perused the records.

6. None of the parties have filed the relevant provision. A perusal of the letter dated 7th July, 1992 (Annexure P-6) issued by the CIL shows that the CIL had issued guidelines in the matter of implementation of provision contained in the clause 9.4.3 (i) and 9.4.3 (ii) of NCWA -IV. However, none of the parties have placed on record NCWA-IV. Therefore, the petitioner is not entitled to claim of any benefit on the basis of this circular dated 7th July, 1992.

Learned counsel for the petitioner, during the course of hearing, placed for perusal of the Court, the relevant provision contained in clause 9.4.0 of Chapter-IX of NCWA-VI.

Learned counsel for the respondent did not dispute the document. He, however, submits even if it were to be assumed that this policy was in force on the date when application was filed by the petitioner, the benefit would flow only when a certificate is issued by the employer that the employee is permanently disabled to continue in service which shall necessarily result in termination of service and grant of employment.

7. The petitioner has made averments in the writ petition that the petitioner suffered paralysis. He has also placed on record a certificate (Annexure P-5) which shows that he was suffering from paralysis. However, nature, degree and extent and the part of the body affected by paralysis has neither been stated in the petition nor in any of the certificate placed before this Court.
8. It is relevant to note that in the return, the respondents have stated that the petitioner was allowed to join in the year 1999 after submission of fitness certificate. Then certificate (Annexure R-4) is the same document filed by the petitioner as Annexure P-5). From this, it would appear that initially when the petitioner sustained certain injury, he underwent treatment and he was suffering from some kind of paralytic effect yet he was keen to join duty but he was not allowed to join. He filed a petition before the High Court of Madhya Pradesh. Moreover, he was allowed to join on 11.9.1999. The petitioner came out with a claim for grant of employment to his son only vide his letter dated 15.10.2001 followed by legal notice dated 7.8.2002

(Annexure P-4).

9. The benefit of employment to one of the dependent of a worker would flow only in accordance with the provision contained in clause 9.4.0 of Chapter IX of NCWA-VI which admittedly was in force on the date on which the petitioner moved application. Sub-clause (i) of clause 9.4.0 provides that disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by Coal Company concerned.
10. It is found that the Union had submitted an application to the Management on 3.7.2007 that the petitioner should be sent to medical examination. But there is no material on record to show that he was ever sent for medical examination.

In the return also, no material has been placed before the Court to show that the petitioner was sent for medical examination and he was examined.
11. The proper course of action required to be followed was to get the petitioner sent for medical examination. He was required to be examined by an appropriate medical board as to whether his claim of he having suffered permanent disablement is proper or not. Unless there is a certificate issued by the competent authority in the matter prescribed under the provision contained in sub-clause (i) of clause 9.4.0 of NCWA-VI, his claim could not be allowed.
12. In the petition also, there are no material placed before this Court as to what was the nature and extent of disability or paralysis which the petitioner was suffering from.
13. The petitioner had submitted his claim way back in the year 2001 i.e. 14 years before. Therefore, in order to decide whether on the date the petitioner had submitted application, he was permanently disabled, could not be decided by directing the petitioner to appear before the Medical Board today after 14 years.

14. The only course open in these circumstances is to direct the respondents to refer to the Medical Board all the material, documents including medical treatment papers, certificates of the petitioner available in the record to be assessed by the medical experts whether those documents, reports, make out a case of permanent disablement or not. If on the basis of such assessment, it is found that the petitioner was permanently disabled and was actually entitled to issuance of a certificate to that effect in terms of sub-clause (i) of the clause 9.4.0 of NCWA-VI, the claim of the petitioner shall be considered according to the policy.
15. Learned counsel for the respondents also indicated that during the pendency of this petition, some disciplinary action was initiated against the petitioner. However, no material has been placed on record to show that the petitioner was actually dismissed on any charges of misconduct. Therefore, I am not commenting upon those matters. In case any disciplinary action has been taken, the effect and impact of the same shall also be taken into consideration by the employer in accordance with its own policy of dealing with such kind of employees in the matter of their claim for employment to one of his dependent son.
16. With the aforesaid direction and observations, the petition is finally disposed off.

Sd/-
Manindra Mohan Shrivastava
Judge