

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 459 of 2018**

1. South Eastern Coalfields Limited Through Chairman-Cum-Managing Director, South Eastern Coalfields Limited, Seepat Road Bilaspur Chhattisgarh.
2. Chief General Manager, South Eastern Coalfields Limited, Bhatgaon Area, Bhatgaon, District Surguja Chhattisgarh
3. Area Personnel Manager, South Eastern Coalfields Limited, Bhatgaon Area, District Surguja Chhattisgarh.
4. Deputy Chief Personnel Manager, Sub Area, Bhatgaon Area, District Surguja Chhattisgarh.

---- Appellants**Versus**

Shraddheya Bhagat S/o Late Shri Jairam Bhagat, Aged About 32 Years R/o Bhatgaon Colliery, Quarter No. B-94, Behind Hospital, Bhatgaon, District Surguja Chhattisgarh.

---- Respondents

For Appellants	: Shri H.B. Agrawal, Senior Advocate with Ms. Deepali Dubey, Advocate.
For Respondent	: Shri Chandresh Shrivastava, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**24/09/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the Appellants, who is South Eastern Coalfields Limited ('SECL') and the private Respondent.
2. The present appeal has been preferred by the Appellants/SECL against the order dated 08.01.2018 passed by the learned Single Judge who allowed writ application, gave a direction upon the Appellants/SECL to provide employment to the dependent within a period of 45 days of the application being made and even a cost of Rs.10,000/- was awarded.
3. The writ application was filed by the private Respondent who claims himself

to be the son of late employee Jairam Bhagat, he died in harness on 29/07/2008. Application was made for providing employment to the dependent. Certain clarifications and inputs were demanded and when no decision was taken, the writ application was filed seeking a direction.

4. In the writ application, the validity of the death certificate of the mother issued by the competent authority became a matter of debate, because serious doubt was raised by the Appellants/SECL as to its authenticity or correctness. The authority of Executive Magistrate to issue a death certificate in relation to the mother seemed to be the primary reason for not taking a decision.
5. Not only this, it is the stand of the Appellants/SECL that in the writ application, a statement was made that the mother of the private Respondent was not heard of since last fifteen years, but the certificate of death recording the day of death as 05.12.1991 has been issued by the Registrar of Births and Deaths. In view of above assertion, death should have taken place sometime in 1996.
6. Since the certificate of death has been issued by the statutory authority, exercising statutory powers under the Registration of Births and Deaths Act, 1989 which is also on the record in addition to the certification by the Executive Magistrate, the validity of the same cannot be shaken of by the Appellants/SECL. A duty performed or a decision so taken by a Government Servant, in the course of business or while exercising statutory powers, there has to be a presumption as to its correctness unless otherwise established.
7. In addition to that, if Section 108 of the Indian Evidence Act, 1872 is taken into consideration, there is presumption of death of a person who has not been heard of in the last seven years by those who would naturally have heard of him if he had been alive. The burden of proving that the person is alive is shifted to the person who affirms so. The submission of learned Senior counsel that the private Respondent should have gone to a Civil Court for a declaration is a misplaced

submission fit to be rejected.

8. If this is the position in law in relation to the death of the mother, who was no longer a dependent who could claim benefit of appointment, then the learned Single Judge committed no error by giving a direction upon the Appellants/SECL, which is a Public Sector Undertaking to consider the case of the son of the deceased employee for appointment under them.

9. The submission of the learned Senior Counsel representing the Appellants/SECL is that there seems to be something amiss about the death of the mother for two reasons one that LTC was claimed by the employee in the year 2006, which is a circumstance to show that the mother was alive and two that fifteen years is counted from the date of statement about missing mother, it does not coincide with the year 1991 shown in the death certificate.

10. These arguments do not take away the legal presumption, which is attached to the certification issued by Registrar of Births and Deaths as well as the presumption under Section 108 of the Indian Evidence Act, 1872.

11. In the above circumstances, therefore, the appeal has no merit. No interference is warranted with the order dated 08.01.2018 passed by the learned Single Judge. However, the cost of Rs.10,000/- which was imposed upon the Appellants/SECL is hereby set aside but the direction to provide appointment within 45 days of the application made by private Respondent stands. The Appellants/SECL are directed to expedite the decision making on the application of the private Respondent within 30 days from today, since all the objection on behalf of the Appellants/SECL was to avoid giving benefit of employment to the dependent of the employee, who died in harness.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE