

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6084 of 2016**

Jai Prakash S/o Late Jhamman Sai, Aged About 40 Years, R/o Subhash Nagar Churcha Colliery, Tahsil Baikunthpur, District Korea, Chhattisgarh

---- Petitioner**Versus**

1. South Eastern Coalfield Limited Through The Chairman-Cum-Managing Director, Seepat Raod, Bilaspur, District Bilaspur, Chhattisgarh
2. The General Manager, South Eastern Coalfield Limited, Baikunthpur, District Korea, Chhattisgarh
3. Deputy Chief Personnel Manager, South Eastern Coalfield Limited, Baikunthpur, District Korea, Chhattisgarh
4. The Personnel Manager, South Eastern Coalfield Limited, Churchacolliery, Baikunthpur, District Korea, Chhattisgarh
5. Sub Area Manager, South Eastern Coalfield Limited, Churchacolliery, Baikunthpur, District Korea, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Syed Majid Ali, Advocate
For Respondents	:	Shri R. K. Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.09.2018**

The challenge in the present writ petition is to the order Annexure P-1 dated 02.11.2015 whereby the claim for compassionate appointment of the petitioner has been rejected on the ground of the petitioner having crossed

the maximum age of employment i.e. 35 years.

2. The relevant facts for adjudication of the present dispute are that the petitioner's father Jhamman Sai was an employ under the respondents working as a Belt Operator who died in harness on 11.12.2009. The petitioner being the son of the deceased employee had applied for compassionate appointment for the first time on 17.04.2010. Since it was not in proper format, the petitioner again made a detailed application on 16.09.2015. It is the date of the subsequent application which has been taken to be the cut off date for determining the age of petitioner and while deciding the same, the respondents reached to the conclusion that since the petitioner by that time had crossed the age of 35 years, he stood over aged for employment and the claim was rejected.

3. Counsel for the petitioner submits that the petitioner in the rejoinder to the writ petition has produced the school certificate of passing middle school where the date of birth of the petitioner has been reflected as 01.10.1975. In addition, the petitioner has also produced the copy of Adhar Card which again reflects the date of birth to be 01.10.1975. Counsel for the petitioner submits that the date relevant for considering of his age should have been 17.04.2010 i.e. the first date on which the first application was filed and not the date of the subsequent application. He drew the attention of this Court to Annexure P-5 which had an endorsement of the respondents having received the application on 17.04.2010. According to the counsel for the petitioner, on 17.04.2010 the petitioner's age was 34 years and 6 months and as such on 17.04.2010 the petitioner was eligible for getting employment under the respondents. Thus, the case of the petitioner should not have been rejected by the respondents.

4. Counsel for the respondents, however, opposing the petition submits that the relevant date for consideration would be the date on which the petitioner had applied for grant of dependent employment. According to the respondents, the petitioner had filed the application only on 16.09.2015 as is reflected from Annexure P-1 as the same was passed considering the age on the date of application that was filed on 16.09.2015. That on the said date i.e. 16.09.2015 since the petitioner had already crossed the age of 35 years, he was not eligible for employment under the respondents where the maximum age for grant of employment was 35 years. Accordingly, the petitioner's claim has rightly been rejected by the respondents

5. Having heard the contentions put forth on either side and on perusal of the record, only two issues which needs to be adjudicated, that are the actual date on which the petitioner had for the first time raised his claim for compassionate appointment and what is the proof of the date of birth to ascertain his age.

6. So far as the date of birth is concerned, the petitioner has enclosed with the writ petition a school certificate wherein his date of birth has been shown as 01.10.1975 which further gets strengthened from Adhar card which also reflects the same date of birth i.e. 01.10.1975.

7. Coming to the question as to what is the first date of application by the petitioner, the document Annexure P-5 clearly bears an endorsement of the application having been received by the respondents on 17.04.2010. This contention of the petitioner has not been denied by the respondents in their return neither have they disputed the endorsement on the said

document.

8. Given the said facts, this Court has no hesitation in holding that the claim for compassionate appointment for the first time was raised by the petitioner on 17.04.2010. If that be so, the respondents were required to consider the age of the petitioner as he stood on 17.04.2010 which from the document the respondents do not appear to have undertaken, rather it appears that they have considered the age of the petitioner as on 16.09.2015 i.e. the date on which he had filed the subsequent application for compassionate appointment.

9. In view of the aforesaid factual matrix of the case, this Court is of the opinion that the impugned order Annexure P-1 to the extent of holding the petitioner to be over aged on 16.09.2015 seems to be unreasonable and the same therefore needs reconsideration to the extent that his age would be considered as it stood on 17.04.2010. It is directed that the respondents shall consider the claim of the petitioner for grant of dependent employment considering his age as it stood on 17.04.2010 i.e. the date on which he had first raised his claim for dependent employment. The respondents would be at liberty to verify the actual date of birth of the petitioner from all those documents which the petitioner intends to rely upon which would be subject to verification by the respondents.

10. The writ petition accordingly stands allowed and disposed of.

**Sd/-
P. Sam Koshy
Judge**