

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 701 of 2019**

1. Smt. Parmeshwari, Wd/o. Late Shri Nandlal Yadav, Aged About 57 Years.
2. Satya Prakash Yadav, S/o. Late Shri Nandlal Yadav, Aged About 30 Years.

Both are R/o. Quarter No. M/08, S.E.C.L. Dharam Colony, Village & Post Chandrashekharapur (Adu), Civil & Revenue District Raigarh Chhattisgarh.

At Present R/o. Village Tilai, Police Station Janjgir, Tahsil Akaltara, Civil & Revenue District Janjgir Champa Chhattisgarh.

---- Petitioners**Versus**

1. South Eastern Coal Field Limited, Through The Managing Director, Seepat Road Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh.
2. South Eastern Coal Field Limited, Through Chief General Manager Raigarh, Project Raigarh, Civil & Revenue District Raigarh Chhattisgarh.
3. The Divisional Manager (Workmen), Division Raigarh, South Eastern Coal Field Limited, Raigarh, Project Raigarh, Civil & Revenue District Raigarh Chhattisgarh.
4. The Chief General Manager (Mining) / Sub Area Manager, Chhal Sub Area, South Eastern Coal Field Limited, Raigarh Area, Civil & Revenue District Raigarh Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Parasmani Shriwas, Advocate
For Respondents	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****20.11.2019**

1. Grievance of the petitioners is that the petitioner No.1, Parmeshwari, Widow of Late Shri Nandlal Yadav and petitioner No.2, Satya Prakash Yadav, who is shown as son of Late Shri Nandlal Yadav filed this petition on the ground of rejection of the application of the petitioners by the respondent SECL by order dated 28.09.2018 (Annexure P-1) claiming appointment on compassionate ground. The rejection of the application for compassionate appointment records that since name of the petitioner No.2, Satya Prakash Yadav has not been recorded by the deceased in

the service book; consequently, compassionate appointment cannot be granted to him.

2. The admitted facts are that Nandlal Yadav who was in service of the respondents SECL died on 19.07.2017 in harness. The document Annexure P-2 fortifies the same. Subsequently, the petitioner No.1 approached to the office of the respondents that the petitioner No.2 is son, therefore, he may be provided with compassionate appointment. The petitioners pleaded that when the petitioners initially approached to the SECL then the letter dated 29.07.2017 (Annexure P-4) was given to them and they were advised to obtain order from the competent Court with declaration about his relationship. Subsequently, the petitioners and other legal heirs filed an application under Section 372 of the Indian Succession Act. It is pleaded that the finding was recorded about the relationship of deceased with the applicant, which includes the petitioner; however, the succession certificate was denied on the ground that the succession certificate could be granted only in respect of the existing debt or movable properties. Thereafter, with the said order, the said application for compassionate appointment when was processed, it was refused by the order dated 28.09.2018 on the ground that the name of the petitioner No.2 do not exist in the service book. Therefore, this petition.
3. The reply of the SECL would show while the deceased employee was working as Pump Operator, in his service book, name of the petitioner No.2 Satya Prakash Yadav was not recorded; however, the name of the petitioner No.1, wife was recorded. Since the name of petitioner No.2 was not recorded, the compassionate appointment application could not be processed and was dismissed at the threshold; however, in respect of retiral dues, Provident Fund, Mines Pension Scheme and other Gratuity were paid to the petitioner No.1, wife.

4. Perused the documents. The sole ground of rejection to consider the compassionate appointment is on the premises that the name of the petitioner No.2 was not recorded as legal heirs in the service book by the deceased Nandlal Yadav. The claim for compassionate appointment is made by Satya Prakash Yadav claiming himself to be son. Annexure P-5 is the order of the Court whereby Parmeshwari Yadav, petitioner No.1 alongwith sons and daughters had filed an application under Section 372 of the Indian Succession Act. The order was passed on 23.03.2018 wherein para 1 of the order records that the said application was filed to provide compassionate appointment to Satya Prakash Yadav in place of Nandlal Yadav under Section 372 of the Indian Succession Act. In the said petition, apart from the petitioners Parmeshwari Yadav & Satya Prakash Yadav other petitioners were Savitri Yadav, Omprakash Yadav, Durga Yadav & Jaiprakash Yadav all sons and daughters of Nandlal Yadav. The order further records that the petition was filed for succession certificate for the reason to get compassionate appointment by Satya Prakash Yadav in SECL. In such finding of the Court, after recording the statement, the Court gave a finding that after perusal of the statement of the applicants, it would show that the applicants are the legal heirs of deceased Nandlal and apart from them no legal heirs remains. However, the application under Section 372 of the Indian Succession Act was dismissed for the reason that the succession certificate can only be granted for movable property or recovery of debt etc. The fact remains this part of the finding of the Civil Judge Class-I, District Janjgir, remains un rebutted which was against the public at large.
5. The documents filed alongwith the petition would show that Annexure P-4 is an internal letter dated 29.07.2017 of the SECL wherein the problem as faced by employee is discussed and records that the service file at times do not contain the particulars of legal heirs about their relationship with

deceased. Therefore, a general direction was issued that the ex-employee be directed to obtain order from the competent Court with declaration about his relationship and succession certificate/ order may be obtained from the respective Court. Pursuant there a petition was filed by the wife of the deceased along with son for grant of such nature of declaration. The Civil Court while dismissing the application for succession certificate recorded the finding that petitioner No.2 is also legal heir of deceased Nandlal Yadav. Further, the petitioner as a mother/ wife of deceased claims that petitioner No.2 is son, therefore, by provision of Section 50 of the Indian Evidence Act, 1872, which purports that when the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact; except the opinion about the marriage and divorce.

6. Applying the presumption of the said anomaly, it would be deemed that the mother has special knowledge to express her relationship with the petitioner No.2 being the son and it would be a relevant fact to the issue. The averments of the petition, which is supported by the affidavit canvass those facts that petitioner No.1 in an unequivocal voice has stated that the petitioner No.2 is the son. Even otherwise, at times, mere failure of the declaration to show the name in service both or otherwise if the name of the legal heir is not mentioned in the service book of the SECL, it would not be the conclusive proof of fact of that a person though is son but he cannot be accepted to be so. The relations can be proved by other facts and circumstances.
7. In a result, in view of the aforesaid discussion, the petition is allowed. The order dated 28.09.2018 (Annexure P-1) is set aside. The SECL is

directed to reconsider the case of the petitioners with relevance to the existing rules for compassionate appointment.

Sd/-
(Goutam Bhaduri)
Judge

Ashok