



Judgment

135 wp2076.22

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.2076 OF 2022

1. Smt.Kusum Devi m/o Late Shri Kanhaiya Singh,
aged about 67 years, occupation housewife.

2. Smt.Gudiya Sharma, sister/o Late Shri
Kanhaiya Singh and w/o Amrit Ranjan Sharma,
aged about 30 years, occupation housewife,
both are r/o behind Bank of India, ward No.2, Ghugus,
Mhatardevi, Chandrapur-442 505. **Petitioners.**

:: V E R S U S ::

1. The Sub Area Manager,
Western Coal Field Ltd.,
Kumbharkhaini Underground Mines,
Ghonsa Sub Area, Wani North Area,
Post-Rasa, tahsil Wani,
district Yavatmal-445 304.

2. The Chairman Cum Managing Director,
Western Coal Field Ltd.,
Coal Estate, Civil Lines, Nagpur-440001. **Respondents.**

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Ms.Neelam Ram, Counsel for Petitioners.
Shri A.M.Ghare, Counsel for Respondent No.1.
None for Respondent No.2.

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CORAM : **AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.**
DATE : **7/11/2023**

ORAL JUDGMENT : (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Ms.Neelam Ram for
petitioners and learned counsel Shri A.M.Ghare for respondent
No.1. None appears for respondent No.2.

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2. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for parties.

3. Facts in the writ petition are, petitioner No.1 is mother and petitioner No.2 is sister of late Shri Kanhaiya Singh who died on 24.12.2012 during and in the course of employment at Kumbharkhaini Underground Mines, district Yavatmal. As per contentions of petitioners, late Shri Kanhaiya Singh was appointed as "General Mazdoor" (Mining) on 30.11.2008. He died on 24.12.2012 leaving behind him his wife, mother, and a married sister as dependents. The wife of the deceased stated that she is not interested in getting job on compensatory ground and waived her right for employment. Petitioner No.1 claimed that, she being mother and petitioner No.2 married sister, they are entitled for employment on compensatory ground. The petitioners also claimed maintenance allowance from respondents. The petitioners have applied, vide letter dated 26.4.2016, for compensation and compassionate appointment which were not considered by respondents.

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4. The petitioners, being aggrieved with the quantum of the amount paid by respondents and as respondents have not considered the claim of compassionate appointment, made an application before the Labour Commissioner, Nagpur. The Labour Commissioner, Chandrapur passed an order in favour of petitioners on 7.10.2014 and directed respondents to pay gratuity amount to petitioners. As the claim of petitioners on compassionate ground is not considered, they approached this court by filing this petition.

5. The respondents raised an issue regarding maintainability of the petition on ground that prayer of petitioners is for quashing and setting aside order passed by the Regional Labour Commissioner, Nagpur. As per contentions of respondents, orders dated 13.1.2016 and 7.10.2014 which are challenged they are in favour of petitioners and, therefore, there is no reason for petitioners to challenge the said orders. As far as compassionate appointment is concerned, petitioners are not eligible as per policy and prays for dismissal of the petition.

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6. Having heard, learned counsel Ms. Neelam Ram for petitioners could not satisfy us on the issue of maintainability of the petition. The orders dated 13.1.2016 and 7.10.2014 challenged by her are passed in favour of petitioners. By order dated 7.10.2014, the Assistant Labour Commissioner, Chandrapur directed respondents to pay refund bill of Rs.52,043/- to petitioners and order dated 13.1.2016 is also in favour of petitioners as the Labour Commissioner communicated respondents by forwarding representation and called reply of respondents. As such, both the orders nowhere show that the same are affecting rights of petitioners. As far as claims of petitioners for compensation and compassionate appointment are concerned, learned counsel for petitioners could not satisfy us by placing on record policy showing that petitioners are entitled either for additional compensation amount or compassionate appointment.

7. According to learned counsel Shri A.M. Ghare for respondent No.1, the compassionate appointment could not be claimed as of right since it was exception to the mode of

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recruitment as contemplated under Article 16 of the Constitution of India.

8. As observed earlier, that petitioners could not satisfy us on the issue of compassionate appointment, learned counsel Shri A.M.Ghare for respondent No.1 rightly pointed out that the present petition is not tenable as both the orders passed by the Labour Commissioner are in their favour. As per the directions of the Labour Commissioner, Chandrapur the gratuity amount is already transferred in the account of petitioners.

9. The petitioners have sought reconsideration of appointment on compassionate ground. There is no nexus between prayers sought by petitioners in the petition and the submissions before the Court. Moreover, the petition is filed after a considerable delay. Late Shri Kanhaiya Singh died on 24.12.2012 and the petition is filed after ten years without giving any satisfactory reasons.

10. It is well settled that an appointment on compassionate ground is not a right but it is a concession.

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11. There is no policy to accommodate petitioners on the basis of compassionate appointment as they are not the persons eligible for the said appointment. The petitioners do not fall within criteria of dependents specified in the policy for appointment on compassionate ground.

12. In the light of the above, the writ petition deserves to be dismissed and the same stands dismissed. No costs.

Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G.GHAROTE, J.)

!! BrWankhede !!

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