



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7361/2023

Sau. Asha wd/o Haridas Katwale and others

Vs.

The Manager (Mines), New Majri OC-II (A), Ex-Mines, M/s Wester Coalfields Ltd.
Bhadrawati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Sohoni, Advocate for petitioners
Shri N.G. Moharir, Advocate for respondent No.3

**CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ..**

DATED : 29/04/2024

Heard Shri S.S. Sohoni, learned Counsel for petitioners.

2. The petition questions the termination of the services of one Shri Haridas T. Katwale, pump operator with the Establishment of the respondents on 18/10/2014 (page 32) on the ground of absenteeism.

3. Shri Sohoni, learned Counsel for the petitioners, submits that said person, who was the father of petitioner Nos.2 and 3, was missing since 2012 and, therefore was not appearing for his services, which fact was informed to the respondents time and again, inspite of which, after holding an enquiry, the termination has been effected. He submits, that as on account of he being not traceable for more than period of 7 years, a suit for a civil death came to be filed bearing Special Civil Suit No.20/2022, which came to be

decided on 06/12/2022 declaring the civil death of Haridas Katwale, the order of termination as indicated above, was without merits. He therefore submits, that on this count, the consequent application filed by the present petitioners in pursuance to the declaration dated 06/12/2022 regarding the civil death of the said Haridas Katwale, having been made to the petitioners was entitled to be considered for compassionate appointment. In support of his contention, he relies upon the determination by the Central Government Industrial Tribunal-cum-Labour Courts (CGIT) in the Reference case No. 211/2000 in which on similar facts, employment was granted.

4. Shri N.G. Moharir, learned Counsel for respondent No.3 opposes the contention of the learned Counsel for the petitioners by submitting that the order of termination, which is consequent to an enquiry, cannot now be questioned by the petitioners on the basis of the declaration of civil death. That apart, he submits that there is no policy, which permits the legal heirs of the terminated employee to seek employment on compassionate basis. He, therefore, submits that petition needs to be dismissed.

5. The termination by the order dated 18/10/2024 of Shri Haridas Katwale, was on account of absenteeism, he having been absent from duty from 10/09/2012 continuously. Thus, the termination of the said person, is clearly on the basis of not being available for duty, which is a ground on which it is so permissible in law. The same, therefore, cannot now be questioned by the petitioners as it

has attained finality, that too on the basis of the judgment of the Civil Court declaring the civil death of the said person.

6. That apart, the policy dated 09/12/2013, which was extant at that point of time, does not indicate that the legal heirs of a terminated employee, are entitled to be considered for compassionate appointment. In fact, the policy goes a step further and holds that employment to the dependents of missing employee is also not be considered. It is a settled position of law that compassionate appointment, can only be claimed in terms of the policy and not as a matter of right. The award in Reference No. 22/2000 does not indicate that it is based upon any such policy, in view of which, we are not impressed by the same. We also do not wish to comment on it, considering that is not the subject matter of challenge in the present writ petition. We, therefore, do not see any merit in the petition. The same is dismissed. No order as to costs.

(SMT. M.S. JAWALKAR, J.) (AVINASH G. GHAROTE, J.)

R.S. Sahare