



Judgment

wp8164.23

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

WRIT PETITION No. 8164 OF 2023.

Ku. Bhagyashree d/o Pandhari Amane,
Aged about 26 years, Occupation
Nil, resident of P.O. Bhatali-Payali,
Tahsil and District Chandrapur.

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PETITIONER.

VERSUS

1. Western Coalfields Limited,
through its Chairman-cum-Managing
Director, Coal Estate, Civil Lines,
Nagpur.

2. Area General Manager,
Western Coalfields Limited,
Ballarpur Area, Ballarpur,
District Chandrapur.

3. Mine Manager,
Ballarpur Open Cast Mine,
Western Coalfields Limited,
Ballarpur, District Chandrapur.

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RESPONDENTS.

Mr. M.S. Sharma, Advocate for the Petitioner.
Mr. P.V. Ghare, Advocate for Respondents.

Rgd.

CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.

DATE : JULY 25, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. Petitioner is unmarried sister of Vinod, who was appointed as a Security Guard on 10.11.2016 with the respondent Western Coalfields Limited (WCL). Vinod unfortunately expired on 20.06.2022, while in service. The petitioner has applied for grant of compassionate employment, however, the same has been declined vide communications dated 03.03.2023 and 04.09.2023 on the premise that the petitioner being sister of the deceased, does not find place in the term 'dependent', as per the policy of WCL.

Rgd.

3. After the death of petitioner's brother, the respondent WCL vide communication dated 19.09.2022 urged to make a claim for compassionate employment or in the alternative for monetary compensation. In response, mother of petitioner vide communication dated 20.09.2022 has informed the respondent WCL to provide employment to petitioner i.e. unmarried sister of the deceased, on compassionate ground. However, vide impugned communications, the respondent WCL has denied to appoint the petitioner on compassionate ground only for the reason that she is sister of the deceased, and the policy does not provide for the same.

4. The learned Counsel appearing for the petitioner would submit that Clause 9.3.3 of the National Coal Wage Agreement (Chapter-9), specifies the eligibility for grant of employment on compassionate ground. Relying on the decision of this Court in case of **Ku. Shimla Satiram Rajbhar and others .vrs. Western Coalfields Limited and others – 2023 [3] Bom.C.R. 612**, the petitioner would submit that the same issue fell for consideration before this Court,

Rgd.

wherein this Court has held that the sister is eligible in the capacity of dependent.

5. In said decision this Court has considered various decisions in the field, including the Full Bench decision of Madhya Pradesh High Court, wherein it has been expressed that exclusion of a married daughter/sister from being considered for appointment on compassionate basis is unreasonable and suffers from gender discrimination being violative of Articles 14 and 15 of the Constitution of India. By adopting the said view of Madhya Pradesh High Court, this Court has equally expressed that the said interpretation is appropriate, and thus held that sister is eligible for compassionate employment.

6. The learned Counsel for the respondents would submit that the decision rendered by this Court in case of Shimla [supra], has been challenged by the respondent WCL in Special Leave Petition No.6766/2023, wherein notice has been issued. In our view, issuance

Rgd.

of notice in Special Leave Petition would not preclude us from adopting the view already taken by the various High Courts and particularly by this Court in this regard.

7. In the circumstances, it is clear the issue is no longer res integra. The Writ Petition is allowed. The impugned communications dated 03.03.2023 and 04.07.2023 issued by the respondent WCL, is hereby quashed and set aside. The respondent WCL shall reconsider the candidature of petitioner for compassionate employment on its own merit, however, it shall not reject the same on the ground that the petitioner is sister of the deceased employee. Necessary exercise shall be completed within a period of 8 weeks from the date of uploading of this order.

8. Rule is made absolute in aforesaid terms, with no order as to costs.

JUDGE

JUDGE

Rgd.