

Bamri Paharin Vs. Eastern Coalfield Limited Through Its Chief General Manager and Ors

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Court : Jharkhand

Decided On : May-05-2017

Appellant : Bamri Paharin

Respondent : Eastern Coalfield Limited Through Its Chief General Manager and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S)No. 850 of 2015
Bamri Paharin. ...Petitioner -Versus- 1. Eastern Coalfield Limited through its Chief General Manager, Rajmahal Group of Mines, P.O. and P.S. Rajmahal, Dist. Rajmahal, Jharkhand.

2. Chief Manager (Personnel) ECL, Rajmahal Group of Mines, P.O. and P.S.- Rajmahal, Dist. Rajmahal, Jharkhand.

3. Personnel Manager, ECL, Rajmahal Area, P.O. and P.S. Rajmahal, District- Rajmahal, Jharkhand.

4. The Sr. Manager (M), ECL, Simlong Colliery, P.O. Simlong, P.S. Litipara, District Pakur, Jharkhand. Respondents ----- CORAM: THE HON'BLE MR. JUSTICE DR. S.N.PATHAK For the Petitioner: Mr. Pradeep Kumar Verma, Advocate. For the Respondents: Mr. Rajesh Lala, Advocate. ----- C.A.V. on

03.03.2017 : Pronounced on 05.05.2017 ----- Dr. S.N.Pathak,J.

The petitioner has approached this Hon'ble Court with the following prayers:- i. For issuance of appropriate writ or writs, direction or directions, order or orders to grant compassionate appointment to the petitioner in place of her deceased husband i.e. late Baga Paharia, who died in harness on 26.02.2006. ii. For issuance of appropriate writ or writs, direction or directions, order or orders to set aside the letter dated 12.05.2013 issued by the Chief Manager (Personnel), ECL, Rajmahal Group of Mines, P.O. and P.S.-Rajmahal by which he has informed the petitioner that Competent Authority of the ECL has rejected her claim for compassionate appointment on the ground that 3 rd wife of deceased employee has no right, without considering the fact that all death cum retirement benefits have been paid to the petitioner being legal wife of the deceased employee.

FACTUAL MATRIX2 The deceased-husband of petitioner Baga Paharia was working as Excv. Operator U.Man No. 903123 at Simlong Colliery of Eastern Coalfields Limited at Simlong and he was a permanent employee of the ECL. His date of birth is 10.10.1964 and he had joined in the service on 28.09.1985. During life time husband of the petitioner Baga Paharia has solemnized 1 st Customary Marriage with one Darmi Paharin who died issueless on 18.07.1986. In this regard a Death Certificate has been issued on 18.07.2007 (Annexure-1). After 2. death of 1st wife husband of the petitioner has performed solemnized 2nd time marriage with one Surji Paharin as per the Paharia Custom but due to no issue from her, husband of the petitioner has given divorce to her as per the Paharia custom and said Surji Paharin thereafter has solemnized 2nd time marriage with another person and at present living as wife of that person. In this regard Gram Pradhan has given Divorce Certificate (Annexure-2). Thereafter husband of the petitioner has solemnized legal 3 rd marriage with present petitioner as per the Paharia customary law and they have 4 sons and 3 daughters from their wedlock. The petitioner is the only wife of late Baga Paharia who is alive because his first wife is dead, he has taken divorce from 2nd wife and his 2nd wife is now wife of another person. The husband of the petitioner Baga Paharia died in harness on 26.02.2006 when he was posted as Excv. Operator U. Man No.903123 at Simlong, leaving behind petitioner (sole widow), 4 sons and 3 daughters.

3. Learned Counsel for the petitioner submits that the petitioner vide representation dated 12.06.2006 has requested the concerned respondent of the Simlong Colliery of ECL to give her entire death cum retirement benefits of her deceased husband and also provide compassionate appointment to her in place of her deceased husband (Annexure-3). On receiving the aforesaid claim of the petitioner competent authority of the ECL have thoroughly enquired the claim and right of the petitioner and thereafter recommended for payment of entire death cum retirement benefits of petitioner's husband to petitioner and also recommended for giving compassionate appointment to her being legal wife of the deceased employee vide Noting Sheet dated 13.05.2009 (Annexure-4). The voter card issued in favour of the petitioner also shows that she is legally wedded wife of her deceased husband (Annexure-5). Thereafter ECL Authorities have released entire death cum retirement benefits of her deceased husband to her and even CMPF has paid Provident Fund amount of her deceased husband to her vide letter dated 01.07.2011 on the basis of recommendation of the ECL Authorities CMPF has also released pension to the petitioner as a wife of deceased employee vide letter dated 23.08.2011 (Annexure-6 series). Thereafter, petitioner has got letter dated 12.05.2013 issued by the Chief Manager (Personnel), ECL, Rajmahal Group of Mines P.O. and P.S. Rajmahal by which he has informed the petitioner that 3. Competent Authority of the ECL has rejected her claim for Compassionate Appointment on the ground that 3 rd wife of deceased employee has no right, without considering the fact that all death cum retirement benefits have been paid to the petitioner being legal wife of the deceased employee hence the present writ application has been preferred challenging the rejection order dated 12.05.2013.

4. Per contra counter-affidavit has been filed.

5. Learned Counsel for the respondents submitted that so- called third wife of deceased employee has got no legal right under the provisions of Hindu Marriage Act, 1955 to claim for the relief. Since as per law there is no legal recognition of dissolution of marriage/divorce under any local law i.e. Paharia Law and its customs. Accordingly, the third marriage solemnized by Baga Paharia with the petitioner is not a valid marriage under the provision of Hindu Marriage Act, 1955.

6. Learned Counsel for the respondents argued that the contention of the petitioner about the so-called divorce rendered by the Ex-employee-Baga Paharia to his 2nd wife Surji Paharin under Paharia Customary Law for which no valid proof has been produced by the petitioner before the ECL Authorities or any supportive document before this Court, is not acceptable and is also not sustainable in the eyes of law. Thus the alleged divorce of Baga Paharia to his 2nd wife cannot be recognized under any customary law or under Hindu Marriage Act.

7. Learned Counsel for the respondents further submits that as the petitioner has received the entire death cum retiral benefits of the deceased husband and is getting pension, she is not entitled for compassionate appointment.

8. Learned Counsel for the respondents strenuously argued that though she has received the entire benefits, the same has been paid to her illegally for that enquiry has been set up by the Deputy General Manager [P] (In-charge, Rajmahal Area, ECL) to find out under what circumstances death-cum-retiral benefits have been paid to Smt. Bamri Paharin.

9. Learned Counsel for the respondents draws the attention of the Court towards paragraph No.12 of the counter-affidavit which reads as under:- That however the custom in the tribes mandates monogamy as a rule. It is submitted that the petitioner has failed to produce any document or 4. evidences to suggest dissolution of marriage of ECL Employee-Baga Paharia from his 2nd wife namely Surji Paharin and further the Annexure-2 attached to this Writ Petition is a created document for the purpose of the present writ petition and is a forged and fabricated document. No document with respect to divorce has been produced by the petitioner of the said relevant period. Thus for the sake of argument even it is admitted that Baga Paharia solemnized 3rd marriage with the petitioner Bamri Paharin but the same was solemnized during the subsistence of 2nd marriage and as such the 3rd marriage with the petitioner is void.

10. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that no interference is required in the impugned order as there is no error committed by the respondents. It is settled principle of law that any divorce certificate is taken as a valid certificate only if it is issued by

the competent court. In the instant case no supportive documents have been produced before this Court regarding divorce. The respondents have found that even the retiral benefits have been paid to the petitioner illegally for which an enquiry has already been conducted as to how and under what circumstances the said amounts have been withdrawn and paid to the petitioner illegally and against the provision of law. Since the husband of the petitioner died in harness on 26.02.2006 itself and the petitioner has approached this Court after 10 years for redressal of her grievance which itself speaks that the petitioner was not conscious of her right and arose from deep slumber only after 10 years. The instant case is barred by limitation as the petitioner has approached this Court after a period of 10 years for redressal of her grievance.

11. The Hon'ble Apex Court in the case of Punjab National Bank v. Ashwini Kumar Taneja, reported in (2004) 7 SCC265 para 4 observed: It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis.

12. For merely 11 years the family has survived without any difficulty and in view of the fact that they are enjoying the monetary benefits. In this background, I am of the view that the respondents 5. have not committed any error in rejecting the case of the petitioner for appointment on compassionate ground.

13. As a cumulative effect of the aforeasid rules, guidelines, legal propositions and judicial pronouncements, I find no error in the impugned order and as such the writ petition is devoid of any merit and resultantly stands dismissed. [Dr.S.N.Pathak,J.] P.K.S.

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