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**SooperKanoon Citation :** [sooperkanoon.com/110201](http://sooperkanoon.com/110201)

**Court :** Jharkhand

**Decided On :** May-11-2017

**Appellant :** Bimla Devi

**Respondent :** Ms Bharat Coking Coal Limited Through Its Chairman Cum Managing Director and Ors

**Advocate for Def. :** Mr. A.K.Das

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.1354 of 2016  
Bimla Devi wife of Ram Nath Pandey, resident of B-33, Bhimkanali, P.O. Khanudih, P.S. Baghmara, District-Dhanbad Petitioner Versus 1.M/s. Bharat Coking Coal Limited through its Chairman-cum- Managing Director, Koyla Bhawan, P.O. Saraidhela, P.S. & District-Dhanbad. 2.Chairman-cum-Managing Director, M/s. Bharat Coking Coal Limited, Koyla Bhawan, P.O. Saraidhela, P.S. & District-Dhanbad. 3. Director, Personnel, M/s. Bharat Coking Coal Limited, Koyla Bhawan, P.O. Saraidhela, P.S. & District-Dhanbad. 4. Project Officer, B.O.C.P. Mines, Dhanbad, P.O., P.S. & District-Dhanbad. Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : M/s. Jai Prakash, Sr. Advocate S. Gautam, Advocate For the Respondents : Mr. Amit Kr. Das, Advocate 04/11.05.2017 In the accompanied writ petition, the petitioner has sought for quashing the office order dated 07.07.2004 issued by the

respondent no.4 dismissing the husband of petitioner from services and for quashing the letter dated 10.08.2013 issued by the said respondent refusing the claim of compassionate appointment, the arrears of salary and death-cum-retiral benefits including full pension. The petitioner has further prayed for issuance of a writ in the nature of mandamus commanding upon the respondents to review/recall the dismissal order of husband of petitioner and to provide compassionate appointment to any of the family members along with payment of death-cum-retiral benefits and full pension.

2. The fact, as disclosed in the writ petition, in brief, is that the husband of petitioner, namely, late Ram Nath Pandey was appointed as Munshi Grade II in Keshargarh Colliery on 29.11.1972. Subsequently, his designation was changed from Munshi Grade II to Magazine Incharge Grade II in the year 1987. Thereafter, the husband of petitioner was promoted to the post of Special Grade Clerk, as is evident from Annexure-2 to the writ petition. During the year 1985-86, an occurrence of misappropriation of explosive and detonators in Damoda and Kessurgarh Magazine was detected. The matter was referred to CBI and the CBI registered a case bearing R.C. no.21 of 1986. After investigation, the CBI filed charge sheet in the year 1987-88 in which the name of husband of petitioner appeared since at the relevant time he was clerk in Kessurgarh Magazine. The husband of petitioner was put to trial and in trial, the husband of petitioner was convicted by the Special Judge, CBI and was sentenced to imprisonment for two years besides fine of Rs.1000/-. Being aggrieved by the order of conviction, the husband of petitioner preferred .2. Criminal Appeal(SJ) no.1299 of 2003 before this Court and vide order dated 17.09.2003 provisional bail was granted to husband of petitioner. In view of conviction and the criminal case, a departmental charge sheet was served on the husband of petitioner for misconduct under clause 25.1.19 of the Certified Standing Orders of the Company, which reads as under:- Conviction by a Court of law for any criminal offence involving moral turpitude(Annexure-4 to the writ petition). The only misconduct against Late Ram Nath Pandey was the conviction dated 25.08.2003 and the explanation was called for from the husband of petitioner late Ram Nath Pandey, who submitted his explanation on 16.10.2003. The enquiry officer submitted his enquiry report to disciplinary authority, namely, Project Officer/Agent Block II, O.C.P.Mines.

However, the copy of the enquiry report was never served upon the husband of petitioner nor he was ever given a second show cause notice to show any cause after the enquiry report and before imposing punishment and Late Ram Nath Pandey was dismissed from service vide order dated 07.07.2004 on account of his conviction in criminal case, as is evident from Annexure-6 to the writ petition. Against the order of conviction, the husband of petitioner preferred Criminal Appeal bearing Cr.Appeal(SJ) no.1299 of 2003 and vide judgment dated 23.11.2012, the husband of petitioner was acquitted from all charges and his conviction and sentence was set aside and the criminal appeal was allowed. Before the judgment of the criminal appeal, the husband of petitioner died on 02.08.2011. It has been submitted in the writ petition that if late Ram Nath Pandey would not have died on 02.08.2011, he would have remained in service as per his service records. Late Ram Nath Pandey has left behind the petitioner as widow and two sons. After order of acquittal, the petitioner has submitted several representations including representation dated 25.02.2013 vide Annexure- 10 to the writ petition and on the representation of petitioner, a letter was issued by respondent no.4 dated 10.08.2013 stating therein that gratuity shall be paid only up to date of dismissal from service of late Ram Nath Pandey and beside that no other claim is to be considered, as per Annexure-11 to the writ petition. Again the petitioner made a representation on 23.01.2014(Annexure-12 to the writ petition), but till date no action has been taken on the same.

3. Being aggrieved by inaction of respondents, the petitioner left with no other alternative and efficacious remedy, has approached this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of her grievance. .3.

4. Mr. Jai Prakash, learned senior counsel appearing on behalf of petitioner has strenuously urged before this Court that in view of acquittal of the husband of petitioner by Hon'ble Court, the matter needs re-consideration by the respondents for grant of post retirement benefits and for providing appointment on compassionate ground to one of the family members of late Ram Nath Pandey. Learned counsel further submitted that the respondents are under legal obligation and duty bound to pay the petitioner death-cum-retiral dues apart from providing

compassionate appointment to one of the family members of deceased husband of petitioner.

5. Controverting the averments made in this writ petition, a counter affidavit has been filed on behalf of respondents, wherein it has been, inter alia, submitted that the husband of petitioner was convicted by judgment dated 25.08.2013 passed by 1st Addl. Sessions Judge-cum- Special Judge, CBI, Dhanbad in R.C. No.21(A)/1986 for an offence under section 409 of the I.P.C. and under sections 5(2) read with 5(1)(d) and 13(2) read with 13(1)(d) of the Prevention of Corruption Act,1988. It has been further submitted that on account of such conviction, the husband of petitioner could not have been allowed to continue in service and, therefore, he was dismissed from service by an order dated 07.07.2014(Annexure-6) after issuing a show cause notice to the concerned employee. The husband of petitioner preferred an appeal being Criminal Appeal(SJ) no.1299 of 2003 and during pendency of the appeal, the husband of petitioner died on 02.08.2011. The information regarding death of husband of petitioner was not given to Hon'ble Court, as will be apparent from the said judgment. Therefore, the petitioner cannot be permitted to claim any benefit of such acquittal. Apart from aforesaid, it has been submitted that the said acquittal is not a clean acquittal, rather the husband of petitioner was given benefit of doubts. It has been further submitted that so far as claim of release of death-cum-retiral dues is concerned, since the husband of petitioner was dismissed from service in the year 2004, she is not entitled to any death-cum-retiral dues. However, she is entitled to get service termination dues for which the petitioner has been informed by the Project Officer vide letter dated 15.05.2016 informing as under:- (i) The dues towards gratuity have already been submitted before the Regional Labour Commissioner, Dhanbad. (ii) The deceased-employee has already received provident fund and pension. .4. (iii) If any amount is still due, for the same, 'No Dues Certificate' is required to be obtained from the concerned office. (iv) After termination from service, the deceased-employee had been occupying the quarter which has not been vacated till date, against which a dues towards penal rent to the tune of Rs.3,28,800/- has accrued. It has been further submitted that the claim of compassionate appointment is not tenable at this stage because on the date of death of the employee, he was not in the roll of the company and, as such, the claim of

compassionate appointment is not maintainable.

6. Mr. A.K.Das, learned counsel for the respondents, apart from reiterating the averments made in the counter affidavit, has vehemently submitted that the relief, sought for, by the petitioner cannot be acceded to in view of the fact that on the date of acquittal in the criminal case i.e. on 23.11.2012, the husband of petitioner was no more in the world and, therefore, the name of husband of petitioner was struck off from the roll after dismissal from service in the year 2004 and, therefore, the claim of compassionate appointment cannot be acceded to and whatever post retirement benefits of husband of petitioner are admissible till the date of dismissal from service i.e. 07.07.2014, that would be permissible to the petitioner.

7. After hearing learned counsel for the respective parties and on perusal of records, I am of the considered view that the case of petitioner deserves re-consideration in view of order of acquittal passed on 23.11.2012 in Cr.Appeal(SJ) no.1299 of 2003. There is no gainsaying of the fact that the acquittal in criminal case does not *ipso facto* entail the reinstatement in service, but in this particular case, the dismissal of the husband of petitioner was solely based on conviction in the criminal case as per certified Standing Order of the Company. Since the order of conviction has been set aside by the appellate Court, the case of petitioner for re-consideration is allowable in view of changed circumstance looking to the plight of the family of ex-worker of the Company. It would be apposite to refer the decision of the Apex Court in the case of 'Deputy Inspector General of Police and another Vrs. S. Samuthiram', reported in (2013)1SCC598 8. In view of peculiar facts and circumstances, the case of petitioner deserves re-consideration to meet the ends of justice. Accordingly, the impugned orders dated 07.07.2014(Annexure-6) and dated 10.08.2013(Annexure-11) are set aside and the respondents- .5. authorities are directed to re-consider the case of petitioner afresh in accordance with law within a period of two months from the date of receipt/production of a copy of this order.

9. With the aforesaid observation, this writ petition stands disposed of. (Pramath Patnaik, J.) s.b.