

**Employer in Relation to the Ma Vs. Their Workman Being Represente**

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**SooperKanoon Citation :** [sooperkanoon.com/110645](http://sooperkanoon.com/110645)

**Court :** Jharkhand

**Decided On :** Jul-27-2017

**Appellant :** Employer in Relation to the Ma

**Respondent :** Their Workman Being Represente

**Judgement :**

W.P.(L) No. 7226 of 2011 ( In the matter of an application under Article 226 of the Constitution of India) ----- Employer in relation to the Management of Bhowra Coke Plant of M/s. Bharat Coking Coal Limited, At and P.O.- Bhowra, P.S.- Jorapokhar, district- Dhanbad, through Sri Subir Ghosh, Son of Late Sujat Kumar Ghosh, General Manager, Eastern Jharia Area of M/s. BCCL, Resident of G.M.Bunglow, Bhowra, P.O.- Bhowra, PS- Jorapokhar, District- Dhanbad . . Petitioner --Versus Their Workman being represented by Sri Raghunandan Rai, Working President, Bihar Mines Lal Jhanda Mazdoor Union, AT+P.O.- Bhowra, P.S.- Jorapokhar, District- Dhanbad . . Respondent For the petitioner : - Mr. Amit Kumar Sinha, Advocate For the Respondent : - Mrs. M.M.Pal, Sr.Advocate & Mrs. Ruby Pandey, Advocate PRESENT HONBLE MR. JUSTICE RAJESH SHANKAR ----- By Court : Heard learned counsel for the parties.

2. The present writ petition has been filed for quashing of the Award 31.01.2011 passed by the Central Government Industrial Tribunal No.-1, Dhanbad in Reference Case no. 16 of 2003 whereby the reference was answered in favour of the respondent by holding inter alia that the petitioner-Management is not justified in not providing the benefit of Voluntary Retirement Scheme (F) (in short to be

referred as VRS(F) Scheme) to the concerned workman Smt. Pan Muni Manjhian and hence her dependent son is entitled for employment in Bharat Coking Coal Limited (in short to be referred as BCCL).

3. The factual matrix of the case is that a special voluntary retirement scheme for female employees of M/s. BCCL was floated vide circular dated 12.04.1995. Under 2 the said circular, the female workman except nurse and essential staff below the age of 50 years could make an application for her voluntary retirement and in her place, employment could be provided to her dependent son aged between 18 to 35 years. Subsequently, the scheme was modified vide circular dated 05.06.2001 to the extent that the upper age limit of female workman was extended from 50 to 55 years. Smt. Pan Muni Manjhian (the concerned workman) submitted her application for voluntary retirement under the said special VRS(F) scheme on 20.06.2001, which was forwarded to the E.J.

Area and then to the headquarter and in the meantime, the workman crossed the age of 55 years and thereafter her application was rejected by the Chief Engineer (Chemical), Bhowra Coke Plant, Dhanbad on 15.09.2001 on the ground that she has already crossed the age of 55 years. The respondent thereafter raised an industrial dispute, which was referred by the appropriate government to the Central Government Industrial Tribunal-1, Dhanbad and registered as Reference Case no. 16 of 2003. Thereafter, the female workman continued to work and draw her salary, subsequently she was served with superannuation notice dated 01.02.2006 informing that she would attain age of 60 years as on 16.07.2006 and as such, she would superannuate from service on 31.07.2006. In the meantime, the industrial adjudication continued and an award was passed by the learned Central Government Industrial Tribunal-1, Dhanbad on 31.01.2011 whereby the reference was answered in favour of the workman and it was held that the Management of BCCL, Bhowra Coke Plant, Dhanbad was not justified in not providing the benefit of VRS(F) Scheme to Smt. Pan Muni Manjhian. It was also held inter alia that her son is entitled for employment in BCCL and the Management was directed to give employment to the son of the workman Smt. 3 Pan Muni Manjhian within 30 days from the publication of the award. The petitioner has put challenge to the said award passed by learned Central

Government Industrial Tribunal-1, Dhanbad in the present writ petition.

4. Learned counsel for the petitioner submits that the workman namely Smt. Pan Muni Manjhian applied for VRS(F) Scheme on 20.06.2001 i.e. the last date for submission of the application under the VRS (F) Scheme. On 15.09.2001, her application was rejected by the Chief Engineer(Chemical), Bhowra Coke Plant, Dhanbad, as on the said date, she had crossed the age limit of 55 years prescribed in the said scheme. Thereafter, though the workman raised an industrial dispute, yet she continued to remain in service and subsequently retired on 31.07.2006 as she had attained the age of 60 years on 16.07.2006.

5. Learned counsel for the petitioner invites the attention of the Court towards Clause-14(ii) of General Condition of VRS(F) Scheme dated 12.04.1995, which stipulates that from the date, a nominee of the retired employee gets employment, the retired employee shall automatically cease to work, however, in the present case, she continued to work even after rejection of her application for VRS(F) Scheme, as such there has been no loss of employment to her. Moreover, after her retirement, she has already been paid all retiral monetary benefits. Under such circumstance, the son of the workman cannot be given employment under the VRS (F) Scheme. As such the impugned award directing the petitioner-Management to give employment to the son of the female workman is liable to be set aside.

6. Learned counsel for the petitioner relying upon a judgment rendered by a Division Bench of this Court in the case of The Secretary, Mazdoor Sanghtan Samiti of M/s. Bhart 4 Coking Coal Ltd. Vs. Employer in relation to the Management of Katras Project Area of M/s. Bharat Coking Coal Ltd. & Anr. reported in 2004(1) JCR317(Jhr.), submits that the Honble Division Bench while considering the similar case of voluntary retirement scheme for female employee of BCCL has held that since the female employees received full wages till the date of their respective superannuation and also received their entire retiral benefits, their dependents, after their superannuation, are not entitled to employment under the said scheme. Therefore, the impugned award passed by the learned Industrial Tribunal, is liable to be set aside.

7. Per contra, learned senior counsel for the respondent workman submits that the fact of the case namely The Secretary, Mazdoor Sanghtan Samiti of M/s. Bhart Coking Coal Ltd. (supra) is different from the present case. In that case, two female employees, after submitting the application for voluntary retirement, continued to work till they attained the age of superannuation. After their retirement, they raised industrial disputes and thereafter the reference was made for industrial adjudication. However in the present case, the concerned workman submitted her application on time i.e. 20.06.2001 but her application for VRS(F) Scheme was rejected by the Chief Engineer (Chemical) of Bhowra Coke Plant, Dhanbad on 15.09.2001 and thereafter on being aggrieved by the said order, she raised industrial dispute, which was ultimately referred through reference issued by the Appropriate Government on 24.01.2003. During the pendency of the industrial adjudication before the learned Tribunal, she continued in service and retired on 31st July, 2006 as she attained the age of 60 years on 16.07.2006. Therefore, there has been no fault or laches on the part of the workman rather it is inaction on the part of the petitioner-Management in rejecting the application on flimsy ground that the workman crossed the upper age limit of 55 years, her entitlement would not be considered under the VRS (F) Scheme on the date of rejection of her application i.e. 15.09.2001. Even otherwise, by giving employment to the workman's son under the VRS(F) Scheme, the petitioner- Management has no loss as she superannuated in a regular course and after superannuation, she only received the retiral benefits, which was admissible to her as an employee of BCCL. The monetary benefits were also admissible to the workman if she had taken voluntary retirement.

8. Learned senior counsel while putting reliance on the judgment of Honble Supreme Court in the case of Kushehwar Prasad Singh Vs. State of Bihar and Others reported in (2007) 11 SCC447 submits that the petitioner- Management failed to discharge its legal duties on time for which workman cannot be put to any prejudice. It is settled principle of law that no party can take undue advantage out of his own wrong. No wrong doer ought to be permitted to take any profit out of his own wrong.

9. Learned senior counsel also submits that on previous occasion under the VRS(F) Scheme of 1995, the application of the workman was rejected vide letter dated 16.05.2000 on an illegal ground that the VRS(F) Scheme, 1995 was not in operation at that time.

10. Having heard the learned counsel for the parties and on going through the relevant documents placed on record, it appears that the concerned female workman (Smt. Pan Muni Manjhian) made an application for her voluntary retirement under the VRS(F) Scheme on 20.06.2001. However, her application was rejected on 15.09.2001 by the Chief Engineer(Chemical), Bhowra Coke Plant, Dhanbad on the ground that she had already crossed the upper age limit of 55 6 years as prescribed in the Scheme. Thereafter, though Smt. Pan Muni Manjhian raised an industrial dispute through the Union but she continued to work under BCCL and subsequently superannuated on 31.07.2006 on attaining age of 60 years. It is not in dispute that after her superannuation, she received all admissible retiral benefits from the Management. A Division Bench of this Court in the case of The Secretary, Mazdoor Sanghtan Samiti of M/s. Bhart Coking Coal Ltd. (supra), while considering a similar issue has held as under: 7. There was no provision for appointment of any dependent of an employee; whether male or female on his/her retirement and only in the scheme of Voluntary Retirement for the female employees in BCCL, it was provided that a female employee may retire either in favour of her husband or son or son-in-law. In case of spouse, the age limit was 35 years or below; whereas in case of son and son-in-law, the age limit was 30 years or below. The candidate in whose favour a female employee applied for retirement was to be medically examined and only when he/she was found medically fit, retirement of the female employee was to be accepted. In the present case, the two female employees received full wages till the date of their respective superannuation and also received their entire retiral benefits. They were, therefore, not entitled to get the benefit of the aforesaid scheme after their retirement and their dependents could also not be considered for employment in their place.

9. In the said Appeal, submission on behalf of concerned female worker, who had opted for voluntary retirement under the scheme, was made that she could not

have been allowed to suffer due to inaction on the part of M/s. BCCL, in not accepting her option for retirement. The Division Bench observed: it was not possible to accept this submission for the reason that in spite of her option for voluntary retirement given in May, 1985 she continued to work upto the age of 60 years, which is the age for retirement. The question of voluntary retirement thereafter does not arise. Consequently, she was not entitled to any benefit under the voluntary retirement scheme. 10. In the present case also two female workers opted for voluntary retirement scheme in the year 1985 and thereafter both of them continued to work upto the age of 60 years, when they retired in the year 1990. 11. On perusal of the judgment rendered by the Division Bench of this Court in the case of The Secretary, 7 Mazdoor Sanghtan Samiti of M/s. Bhart Coking Coal Ltd. (supra), it appears that the only factual difference is that both the concerned female workmen in the said case raised the industrial dispute after superannuation, but in the present case, the concerned female workman raised the industrial dispute while she was in service before attaining the age of superannuation but retired during the pendency of the industrial adjudication before the Central Government Industrial Tribunal-1, Dhanbad. However in both the cases, the female workmen after giving application for voluntary retirement continued to work and retired from service in regular course on attaining the age of superannuation. The Division Bench of this Court in the case of The Secretary, Mazdoor Sanghtan Samiti of M/s. Bhart Coking Coal Ltd. (supra) has held that since the female workmen received full wages till the date of their superannuation and also received their entire retiral benefits, they would not be entitled to get benefit of VRS(F) Scheme and their dependents would also not be considered for the appointment in their place. In the present case also, Smt. Pan Muni Manjhian (female workman) continued to work after the rejection of her application on 15.09.2001 and she subsequently superannuated on 31.07.2006. It is also not disputed that she received all retiral/monetary benefits after superannuation. Since the female workman completed her full tenure of service, now there is no question of taking benefit of a scheme, which was meant for voluntary retirement. Learned senior counsel for the respondent put much emphasis on the fact that since there was no fault or laches on the part of the workman, her son should not be deprived of employment under the said scheme. So far as the said argument is concerned, I

am of the considered view that it is not relevant as to whether there had been any fault or laches 8 on the part of the concerned workman, rather the relevant issue is whether the benefit of voluntary retirement scheme can be extended to the female workman if she herself continued to work after rejection of the application for voluntary retirement and completed her full tenure of service. In my considered view, the petitioner cannot take advantage from both the sides, firstly by completing her full tenure of service and receiving all admissible retiral/monetary benefits and, secondly by claiming the benefit of VRS (F) Scheme and thereby seeking employment of her son.

12. The Division Bench of Patna High Court (during the period of unified State of Bihar) in L.P.A. No. 53 of 1999 (R) (Kaili Kamin Vs. The Coal India Limited & Ors.), vide judgment dated 20.07.1999, considering similar scheme, has held that since in spite of the option given by the employee for voluntary retirement, she continued to work up to the age of 60 years, which is the age of retirement, the question of voluntary retirement thereafter does not arise and consequently she is not entitled to any benefit under the voluntary retirement scheme. The judgment of Kushehwar Prasad Singh (supra) relied upon by the learned senior counsel for the respondent has been passed on a complete different factual context and thus, the same would not apply in the facts situation of the present case. The VRS(F) Scheme itself suggests that it is floated by the BCCL in the nature of giving compassionate appointment to a major son of the female employee of BCCL, if she quits the service before attaining the age of 55 years. The concept of compassionate appointment has been discussed by the Honble Supreme Court in catena of judgments and the same is no more res integra. However, just for the purpose of refreshing the well established principle that the compassionate appointment is an 9 exception to the rule of public employment, some judgments are reproduced hereinafter.

13. The Honble Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana reported in (1994) 4 SCC138 has held as follows:

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The

consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. 14. Considering the similar issue, the Honble Supreme Court in the case of MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC583 at paragraph-6, held as follows;

6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years. 15. Coming back to the facts of the present case, since Smt. Pan Muni Manjhian (female workman) after rejection of her application for voluntary retirement on 15.09.2001, continued to work under BCCL and superannuated on 10 31.07.2006 on attaining the age of 60 years and also received all admissible retiral/monetary benefits, she cannot claim that the benefit of VRS (F) Scheme would still be admissible to her. Thus, I am of the considered view that the learned Tribunal committed an error in answering the reference in favour of the workman and holding that Managmeent of BCCL was not justified in not providing the benefit of VRS(F) Scheme to Smt. Pan Muni Manjhian. Consequently, the impugned award dated 31.01.2011 passed by Central Government Industrial Tribunal-1, Dhanbad in Reference Case no. 16 of 2003

cannot be sustained in law and as such the same is quashed and set aside.

16. The writ petition is accordingly allowed. (Rajesh Shankar, J.) Jharkhand High Court, Ranchi Dated:

27. 07.2017 Ritesh/A.F.R.

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