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Court : Jharkhand

Decided On : Aug-29-2017

Appellant : Abdul Sattar

Respondent : Central Coal Fields Limited Through Its Chariman Cum Managing Director and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.2049 of 2016
Abdul Sattar, S/o Late Abdul Rajak Ansari, R/o village & P.O. Kutte, P.S. Ormanjhi, District-Ranchi, Jharkhand. Petitioner Versus 1.Central Coal Fields Limited through its Chairman-cum-Managing Director, at Darbhanga House, P.O. G.P.O., P.S.Kotwali, District-Ranchi. 2.Director(Personnel),Central Coal Fields Limited, at Darbhanga House, P.O. G.P.O., P.S.Kotwali, District-Ranchi. 3.General Manager (P & IR), Central Coalfields Limited, at Darbhanga House, P.O. & P.S. Kotwali, District-Ranchi. 4.The General Manager, Central Coalfields Limited, Hazaribagh Area, at & P.O. Charahi, P.S. Charahi, District-Hazaribagh, Jharkhand. 5.The Project Officer, Kedla Under Ground Project, Central Coal Fields Limited, at & P.O. Kedla, P.S.Kedla, District-Ramgarh, Jharkhand. Respondents -----
CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK -----
For the Petitioner : Mr. Ratnesh Kumar, Advocate For the Respondents : Mr. H.P.Singh, Advocate
05/29.08.2017 In the instant writ petition, prayer has been made for

quashing the order dated 18.05.2015 (Annexure-11) issued by respondent no.3 pertaining to rejection of application of petitioner for appointment on compassionate ground under the provisions of Clause-9.3.0 of the National Coal Wages Agreement (NCWA for short). The petitioner has further prayed for a direction on the respondents to consider and grant him employment in the light of provisions contained in para-9.3.2 of the NCWA.

2. The brief fact, as disclosed in the writ petition, is that the petitioner's father, namely, Abdul Rajak Ansari, who was appointed on 18.12.1979 as Trammer in Kedla Underground Project of M/s. Central Coalfields Limited, died in harness on 06.09.2008. In the service excerpts of M/s. CCL, the name of petitioner has been incorporated as one of the dependents, being son of late Abdul Rajak Ansari, duly signed by the official of the CCL in the year 1987, as is evident from Annexure-1 to the writ petition. Apart from service sheet excerpts, the petitioner's name has also been mentioned in the official records, such as, Form PS-3 (particulars of Family) and Form PS-4 (Nomination Form), as is evident from Annexure-6 to the writ petition. Even in the educational certificates, the petitioner's name has been shown as the son of the deceased employee, as is evident from Annexure-7 to the writ petition. At the time and date of death of deceased employee, the petitioner was a major and, as such, he was eligible for employment, but the respondents vide letter dated 24.08.2011 rejected the claim of petitioner for employment on the .2. ground that the adoption of petitioner cannot be said to be a legal adoption under Mohammedan Law, as is evident from Annexure-8 to the writ petition and the said letter was challenged by the petitioner in W.P.(S) no.4203 of 2012, which was dismissed vide order dated 09.10.2012 on the ground that there is no provision of adoption among the Muslims and, therefore, the petitioner cannot be treated as a dependent of the deceased employee and consequently, cannot be treated as a dependent of the deceased employee (Annexure-9 to the writ petition).

3. Being aggrieved by the order dated 09.10.2012, the petitioner preferred L.P.A.no.154 of 2013 and this Court vide order dated 22.12.2014 has been pleased to remit the matter back to CCL for reconsideration in terms of judgment of Hon'ble Apex Court in the case of 'Shabnam Hashmi Vrs. Union of India & Ors', reported in AIR 2014 SC1281 In pursuance of order passed by this Court, the

respondents passed a reasoned order dated 18.05.2015 whereby the claim of petitioner has again been rejected, which is impugned in this writ petition.

4. Being aggrieved by and dissatisfied with the impugned order dated 18.05.2015, 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 his grievances.

5. Learned counsel for the petitioner has strenuously urged that the impugned order dated 18.05.2015 is nothing but repetition of earlier order dated 24.08.2011 and, therefore, the same suffers from non- application of mind. Learned counsel further submits that the compassionate appointment under social security provision of NCWA is a beneficial provision and the same has been entered in a tripartite agreement. Learned counsel further submits that under the social security provision of NCWA, a dependent is given employment with the whole objective that the dependent may take care of the surviving members of the family. Just because the legally is prefixed before adopted son, the petitioner cannot be debarred from his status as dependent. The objective of this provision is to provide employment to a dependent and this entire objective will be frustrated if such a water tight interpretation is given to the word dependent. Learned counsel further submits that the respondents cannot deny employment on compassionate ground under the provision of NCWA, which is statutory in nature and having binding force. Therefore, the impugned order dated 18.05.2015 cannot be sustained in the teeth of relevant provision of NCWA, being violative of Articles 14 and 16 of the .3. Constitution of India.

6. Controverting the averments made in the writ petition, a counter affidavit has been filed on behalf of respondent-M/s.CCL, wherein it has been submitted that in pursuance of order passed by this Court, a reasoned order dated 18.05.2015 has been passed by G.M.(P & IR), CCL rejecting the claim of the petitioner, as because there is no provision in the Mohammedan Law for adoption. It has been further submitted that since the petitioner is not a legally adopted son, he is not eligible to be considered for compassionate appointment and, therefore, he is not entitled for compassionate employment as per the provisions of NCWA. Learned

counsel for the respondents has assiduously tried to defend the impugned order passed by the respondents.

7. After giving my anxious consideration to the submission made by the parties and on perusal of the records, I am of the considered view that the claim of the petitioner for appointment on compassionate ground requires re-consideration in view of the following facts and reasons: Admittedly, the name of petitioner has been incorporated in the service excerpts as son of late Abdul Rajak Ansari and also in the matriculation certificate, much prior to the death of deceased employee i.e. on 15.09.2008. Even, there is no objection from the family of the deceased employee against the petitioner for appointment on compassionate ground. Therefore, being the son of the deceased employee, the petitioner has submitted his application for appointment on compassionate ground under the relevant provisions of NCWA. The purpose of compassionate appointment is to tide over the distress condition of the family, after the death of the earning member and in the instant case, the petitioner after the death of his father, has been taking care for surviving the members of the family. The respondents very pedantically and technically have passed the impugned order, rejecting the claim of the petitioner, who has claimed himself to be the adopted son of deceased employee, on the ground that there is no provision for adoption under Mohammedan Law. The seminal point, which hinges for consideration is as to whether the claim of the petitioner for appointment on compassionate ground can be rejected solely on the ground that there is no provision of adoption under Mohammedan Law. In the case in hand, the petitioner is not claiming any property on the ground of inheritance, but is claiming appointment on compassionate ground, supported by clinching documentary evidences i.e. service excerpts and matriculation certificate. .4. If very narrow interpretation to the description of 'family' is taken, then the very purpose and objective of NCWA would be defeated. Therefore, the case of the petitioner requires reconsideration by the respondents in view of documentary evidences to subserve the ends of justice and equity.

8. Accordingly, the impugned order dated 18.05.2015 (Annexure-11) is quashed and set aside. The matter is remitted to the respondents to re-consider petitioner's case for appointment on compassionate ground in view of death of the deceased

employee, namely, Abdul Rajak Ansari under the provisions of NCWA and to pass appropriate order in accordance with law within a period of eight weeks from the date of receipt/production of a copy of this order, copy of which shall also be communicated to the petitioner.

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

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