

Sanju Devi Vs. Managing Director Central Coalfields Limited and Ors

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Court : Jharkhand

Decided On : Apr-01-2015

Appellant : Sanju Devi

Respondent : Managing Director Central Coalfields Limited and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 6470 of 2013
--- Sanju Devi Wife of Late Tulsi Das resident of village Kaladwar, PO Ratnapur, PS Ichak, District Hazaribagh, Jharkhand Petitioner Versus 1.Managing Director, Central Coalfields Limited, Office at Darbhanga House, PO & PS Ranchi, District Ranchi 2.General Manager, Central Coalfields Limited, Charhi Colliery, Office at Hazaribagh Area, Charhi, PO & PS Charhi, District Hazaribagh 3.Project Officer, Central Coalfields Limited, Office at Kedla, PO Kedla, PS Charhi, District Hazaribagh Respondents --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner : M/s. Anil Kumar Sinha, Senior Advocate & Krishna Murari, Advocate For the Respondents : Mr. Arbind Kumar, Advocate --- 4/01.04.2015 In this application the petitioner has prayed for quashing the impugned order as contained in letter bearing Reference No. GM(H)/PS/2013/1049-53 dated 06.08.2013 passed by the respondent no. 2 whereby and whereunder the claim of the petitioner for compassionate appointment beside grant of LCS and CMPF amount on account of the death of the petitioner's husband in harness has been rejected. It has further been prayed therein that the respondents be directed to forthwith provide compassionate

appointment to the petitioner in place of her husband late Tulsi Das who died in harness on 17.12.2011.

2. The husband of the petitioner namely, Tulsi Das was appointed on 18.08.1995 in Liyo U. G. Project. The marriage of the petitioner was solemnised with Tulsi Das in the year 1997 and her name was entered in the final record that is, Statutory Nomination Form PS - 3 and PS - 4 on 06.09.1998 relating to payment of pension, provident fund as well as gratuity etc. The petitioner having faced a turbulent married life was constrained to file a matrimonial title suit being M.(T) S. No. 155 of 2007 for seeking a decree of divorce on the ground of cruelty. On being noticed, the husband of the petitioner appeared, and thereafter, the learned Family Court was pleased to award a monthly maintenance of Rs. 3,500/- for maintenance of the petitioner and their daughter. The awarded amount was being deducted from the salary of -2- late Tulsi Das and was being remitted to the petitioner. Unfortunately, the husband of the petitioner died on 17.12.2011 and since the Matrimonial Title Suit which was pending had become infructuous, accordingly on the prayer of the petitioner the said suit was permitted to be withdrawn vide order dated 15.06.2012. In terms of the Clause 9.3.3 of National Coal Wage Agreement - VI, an application was made by the petitioner for compassionate appointment as well as for payment of the entire death cum retiral benefits. Since no decision was taken by the respondents, a writ application was preferred by the petitioner being W.P.(S) No. 3479 of 2012 which was disposed of on 06.02.2013 directing the General Manager, Charhi Colliery, C.C.L. to decide the petitioner's claim and pass appropriate reasoned order in accordance with law. In terms of the order passed in W.P.(S) No. 3479, the impugned order dated 06.08.2013 was passed in which the the claims of the petitioner were rejected.

3. Heard Mr. Anil Kumar Sinha, learned senior counsel assisted by Mr. Krishna Murari, learned counsel appearing on behalf of the petitioner and Mr. Arbind Kumar, learned counsel appearing on behalf of the respondents - Central Coalfields Limited.

4. Mr. Sinha, learned senior counsel for the petitioner has submitted that the impugned order has been passed by the General Manager (H), Charhi

(respondent no.

2) without considering the provisions of the National Coal Wage Agreement - VI and without considering the fact that the petitioner at the time of death of her husband was the legally married wife and merely because a suit for divorce was instituted by the petitioner, the same cannot be a ground for rejecting the application for compassionate appointment. It has further been submitted that the Rules and Regulations which are in vogue in the respondent - company were never taken into consideration by the respondent no. 2 while passing the impugned order. It has further been submitted by the learned senior counsel for the petitioner that the findings given by the respondent no. 2 in the impugned order is contrary to the records and in such circumstances, the impugned order is liable to be quashed.

5. Controverting the arguments of the learned senior counsel for the petitioner, Mr. Arbind Kumar, learned counsel appearing on behalf of the respondents has submitted that on remand by this Court in W.P. -3- (S) No. 3479 of 2012, the entire facts of the case were taken into consideration by the respondent no. 2 while passing the impugned order. It has further been submitted that the petitioner cannot be permitted to claim compassionate appointment since the petitioner was not dependent upon her husband and that she had a very estranged relationship with her husband resulting in her instituting a divorce case on the ground of cruelty and on death of her husband, the petitioner is trying to grab employment in his place which contradicts the stand which had been earlier taken by the petitioner. The learned counsel for the respondents therefore submits that there is no infirmity in the impugned order dated 06.08.2013 and since the same was passed after considering the entire aspects of the case as well as the status of the petitioner, in such circumstances, the present writ application is liable to be dismissed.

6. On consideration of the arguments, both factual and legal advanced on behalf of both the parties, it appears that the impugned order dated 06.08.2013 was passed on the facts which are enumerated below: a. The petitioner was living separately from her late husband with her parents' family prior to the death of her husband; b. The petitioner had filed a divorce suit against her late husband which

was pending on the date of death of her husband; c. The petitioner was not fully dependent upon the earnings of her late husband. d. The petitioner had withdrawn the divorce suit after the death of her husband.

7. The four grounds enumerated above led the respondent no. 2 to conclude that the petitioner does not deserve any sympathy and hence her claim for compassionate appointment was accordingly rejected. The findings which have been categorised above is itself contradictory in nature, inasmuch as, the petitioner was granted Rs. 3,500/- as maintenance for maintaining herself and her daughter from a competent court of law and which amount was being deducted from the salary of husband of the petitioner and therefore, in such circumstances, it cannot be said that the petitioner was not fully -4- dependent upon the earnings of her late husband. Although, the petitioner may have been sharing an estranged relationship with her husband leading to filing of a divorce suit, but as on date the husband of the petitioner died, her status was that of the wife of late Tulsi Das as the marriage of the petitioner with her husband was still subsisting. Withdrawal of a divorce case does not mean that the petitioner in order to avail the opportunity of getting compassionate appointment had acted so. Even assuming that the suit for divorce was not withdrawn, in such circumstances since the husband of the petitioner against whom a decree of divorce had been sought for by the petitioner was no more, the said suit had automatically become infructuous. The respondent no. 2 except in dealing with the status of the petitioner as that of an estranged wife has not considered the fact as to whether under the Rules and Regulations or under the provisions of the National Coal Wage Agreement - VI, the petitioner was entitled to be considered for compassionate appointment.

8. In the case of Kari Devi Vs. M/s. BCCL and Ors. reported in (2006) 3 JCR1(Jhr.), it was held that if an employee dies leaving behind widow/husband, son and/or daughter, then their case may be considered for compassionate appointment or for payment of monetary benefits.

9. In the case of Manju Devi Vs. Jharkhand State Electricity Board through its Chairman HEC Engineering Bhawan, Ranchi & Ors. reported in 2014 (2) JCR570(Jhr.), while considering the estranged relationship between the husband

and the wife, it was held as follows:

8. In G.L Bhatia Vs. Union of India and Anr., reported in(1999) 5 SCC237 though the nomination by the wife, a Central Government servant, was not in favour of the husband, as the relationship between the two was estranged and both were staying separately, the Hon'ble Supreme Court rejected the contention that since the nomination was not in favour of the husband he was not entitled for family pension. The Hon'ble Supreme Court held that though, there was no divorce between the husband and wife and even though they were staying separately, the husband would be entitled to the family pension in terms of the rules and the authorities therefore, committed error in not granting family pension to the husband relying upon the nomination made by the deceased wife. -5- 10. The learned counsel for the respondent has referred to the case of Somaru Vs. CCL and Ors. (W.P.S. No. 1170 of 2011) wherein this Court considering the fact that a long time has lapsed after the death of the deceased employee, there was no provision for grant of compassionate appointment to the petitioner. But, in the present case, the husband of the petitioner had died on 17.12.2011 and immediately thereafter necessary application was made before the authority by the petitioner for grant of compassionate appointment and since no response was forthcoming the petitioner was constrained to prefer a writ application which was disposed of on 06.02.2013 resulting in passing of the reasoned order dated 06.08.2013 and immediately thereafter, the petitioner had approached this Court challenging the order dated 06.08.2013. In such circumstances, it cannot be said that there has been a delay on the part of the petitioner which would frustrate the basic criteria for grant of compassionate appointment.

11. In view of the fact that in the reasoned order dated 06.08.2013 respondent no. 2 has not considered the claim of the petitioner on its own merits and without taking into consideration the provisions for grant of compassionate appointment and whether the petitioner comes within the purview of the Rules and Regulations and Policies formulated by the respondent - company, the reasoned order dated 06.08.2013 cannot be sustained in the eye of law.

12. Accordingly, the reasoned order dated 06.08.2013 passed by the respondent no. 2 is hereby quashed. The matter is remitted back to the respondent no. 2 to take a fresh decision in accordance with law and in accordance with the Rules, Regulations, Policies and Circular relating to compassionate appointment which is in vogue. The said decision should be taken by the respondent no. 2 within a period of 6 weeks from the date of production/receipt of a copy of this order.

13. This writ application is allowed. (Rongon Mukhopadhyay, J) R. Shekhar Cp 2

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