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Court : Jharkhand

Decided On : Apr-23-2004

Reported in : [2004(3)JCR1(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Service Law; [Constitution of India](#) - Article 226; [Industrial Disputes Act, 1947](#) - Sections 2 and 18

Appeal No. : WP(S) Nos. 1652 of 2003 and 1696, 1721, 1767 and 1955 of 2004

Appellant : Hulas Ram, ;binu Singh Munda, ;baban Ram and Maheshwar Manjhi;somi Devi

Respondent : Central Coal Fields Ltd. Through Its Cmd and ors.;chairman-cum-managing Director Ccl and ors.

Advocate for Def. : A.K. Mehta and; Ananda Sen, Adv.

Advocate for Pet/Ap. : Rajiv Ranjan,; Abhay Kumar Mishra,; Rajesh Kumar,;

Disposition : Petition allowed

Judgement :

M.Y. Eqbal, J.

1. In all these writ petitions since common question of law and facts are involved the same have been heard together and are disposed of by this common order.
2. IN WPS No. 1721 of 2004 the petitioner's father while in service of the respondent died in harness on 6.11.1999. As per the provision of National Coal Wage Agreement -V (NCWA-V) the petitioner filed application on 17.2.2000 for compassionate appointment. The said application was forwarded by respondent Nos. 6 and 7 namely, the Project Officer and the Chief General Manager of CCL. While recommending the case, the Deputy Chief Personnel Manager informed his higher authority that the petitioner is 17 years old and, therefore, mother should get compensation of Rs. 3000/- per month and the name of the petitioner be kept in live roster. A copy of the said representation has been annexed as Annexure-4 to the writ petition. Curiously enough in 2002 the petitioner was informed by the impugned letter dated 29/30.4.02 that the Committee decided not to consider the case of the petitioner on the ground that the deceased employee died on 6.11.1999 and the application was submitted on 27.6.2000.
3. In WPS No. 1955 of 2004 the petitioner's father died on 22.1.1999 while in the service of the respondent. The petitioner submitted application on 22.9.1999. Only after about three years the petitioner was informed by letter dated 13.9.2002 that his application was considered and rejected on the ground that the application was submitted beyond the period of six months.
4. Similarly in WPS No. 1696 of 2004 the petitioner's father while in the service of the respondent as Pump Khalasi died in harness on 14.1.1998 and on 14.8.1998 application was filed for compassionate appointment. After about six years application was rejected on the ground that it was filed after the lapse of seven months instead of six months.
5. In WPS No. 1767 of 2004 the petitioner is the widow of Late Raman Manjhi who died in harness on 2.11.1999 while working in Kuju Colliery. The petitioner submitted her application on 9.8.2000 for compassionate appointment and for payment of compensation as per NCWA-V. The said application was rejected after about four years and communicated vide letter dated 10.2.2003 on the ground that it was filed after the lapse of six months.

6. Similar is the case of writ petitioner in WPS No. 1652 of 2003. In this case the petitioner's father died in harness on 23.11.1999 while working in Sayal-D colliery. The petitioner submitted application on 7.6.2000. The petitioner also submitted relevant documents including death certificate. The respondents vide letter dated 8.8.2000 called upon the petitioner to appear in the office of General Manager on 18.8.2000 and submit identity card, pay slip etc. The petitioner submitted all the papers. Curiously enough after about three years the petitioner was informed vide letter dated 8.2.2002 that his application was rejected on the same ground that application was filed after a lapse of six months.

7. A common defence has been taken by the respondents by filing counter affidavit in WPS No. 1721 of 2004. It is stated that the Chairman-cum-Managing Director of the respondent-CCL appeared before this Court on 3.3.2004 in WPC No. 1052 of 2004 and assured this Court to take appropriate steps in the matter so that applications for compassionate appointment are disposed of with utmost expedition. The CMD thereafter reviewed the entire matter and by his letter dated 5.3.2004 addressed to all Area Chief General Managers and Head of Departments directed to dispose of such applications within three months time. The respondents further case is that by circular dated 12.12.1995 the time limit prescribed for filing application for compassionate appointment was six months from the date of death of deceased employee. By another circular dated 1.1.2002 the period for filing application of six months was relaxed by twelve months giving retrospective effect from February 2000. By another circular dated 19.6.2003 the period for filing application by the dependant of the deceased was further extended from twelve months to eighteen months and the circular was given retrospective effect i.e. from 27.11.2002. Further case of the respondents is that such applications which were filed beyond the time prescribed under the circular have been rightly rejected by the respondents.

8. I have heard learned counsel appearing for the petitioners and Mr. A.K. Mehta, learned counsel appearing for the respondents-CCL.

9. So far WPS No. 1721 of 2004 is concerned Mr. Mehta submitted that the application of the petitioner has been reconsidered and processed and decision

shall be taken for giving employment to the petitioner at an earliest. So far other writ petitions are concerned Mr. Mehta submitted that since applications were filed for compassionate appointment beyond the period prescribed by the circular the same have been rightly rejected by the respondents.

10. It is not in dispute that the workmen of CCL are entitled to get benefits under the settlement (award) time to time arrived at by and between the Management of CCL and the Union representing the workmen. These settlements are called National Coal Wage Agreement. Clause 9.3.2 of the NCWA lays down the provision with regard to employment to the dependent of the worker who dies while in service. Clause 9.5.0 is worth to be quoted hereinbelow :

'(i) In case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs. 3000/-per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under Clause 9.4.0 if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 2000/-per month or employment.

(iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0, if no employment has been offered and the male dependant of the concerned worker is 15 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above.'

11. From the aforesaid clause it is manifest that if on the date of death of the deceased employee the male dependent is fifteen years old or above in age then he will be kept on a live roster and would be provided employment commensurate with his skill and qualification when he attains the age of eighteen years. During the period the male dependent will be on live roster, the female dependent will be paid monetary compensation.

12. I am fully conscious of the law that the object of compassionate appointment is to give immediate relief to the dependents and save them from starvation on account of death of a bread earner. I am equally conscious of the law that the very object of compassionate appointment is frustrated by the lapse of time and after a long gap, if applications for compassionate appointment is made, the same cannot be entertained. But the moot question which falls for consideration in these writ petitions is whether an employer can deprive the dependents from their legitimate right to get compassionate appointment by keeping such applications pending without being processed and without taking any decision and then rejecting the same on the ground of limitation. In other words, whether the action of the respondents in rejecting the applications for compassionate appointment after the lapse of more than three years on the ground that such applications were not filed within the time prescribed by the management, is sustainable in law?

13. This Court came across several cases where the respondents- CCL, because of the laches and negligence of their officers, kept all such applications pending even for more than five years. Taking notice of the serious lapses from the side of the officers of the respondents the Chairman-cum-Managing Director was called in Court in one of the writ petitions being WPS No. 1052 of 2004 and in response thereto the Chairman-cum- Managing Director appeared in Court and assured that all applications pending for a long time shall be disposed of. For better appreciation the order dated 3.3.2004 passed in WPS No. 1052 of 2004 is quoted here in below :--

'Pursuant to order dated 25.2.2004 the Chairman-cum- Managing Director and the Director (Personnel) has appeared in person. This Court again apprised them about the serious laches and negligence of their officers specially in disposing of application filed by the dependent for compassionate appointment. It is unfortunate that the widow or the dependent file their application immediately after the death of the employee but those applications are considered and disposed of after 3-4 years and appointment is refused merely on the ground of delay. In series of cases this Court deprecated such an action of the officers but for the reasons best known to them they are repeating the same thing.

The CMD assures this Court that he will issue instructions to those officers to immediately take up all those applications and dispose of the same at an earliest. The CMD has also assured to take appropriate action, against those officers for whose negligence applications are kept pending for a long time. I hope and trust that the CMD will take appropriate action against the erring officers.'

14. It appears that the CMD issued instructions to the concerned authorities and after receiving the instructions the concerned authorities disposed of all those applications by passing a mechanical order that the applications were barred by one month or two months and without, considering that, the applications were processed and the dependents were called for interview and for production of certificates. In similar facts of the case this Court in the case of Mohan Mahto v. Central Coalfields Ltd. and Ors., 2003 (4) JCR 612 : 2003 (4) JLJR 658 observed (JCR page 614 para 12) :--

'From the scheme quoted herein above, it is clear that if on the date of death of the deceased employee, the male dependant is 15 years and above in age then he will be kept on a live roster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation. Admittedly, in 1997 petitioner was more than 15 years of age and an application was filed by the petitioner in 1997 but neither the petitioner was kept in live roster nor the widow of the deceased employee was paid monetary compensation. After attaining 18 years of age petitioner as per the aforesaid clause applied for compassionate appointment in 1999 which has been arbitrarily rejected by the respondents on the ground of delay. While the petitioner approached this Court by filing instant writ application third case has been made out by the respondents that petitioner's appointment was refused on the ground of his elder brother, having been in employment of the subsidiary company. This fact was subsequently falsified in the manner discussed herein above.'

15. Admittedly therefore, so far these writ petitions are concerned, the time limit for filing applications for compassionate appointment was six months from the date of the death of the employees and on the date when these applications were rejected

by the Management the time limit prescribed for filing applications was eighteen months. In my considered opinion therefore, when admittedly because of the serious laches and negligence on the part of the officers of the management those applications were considered after more than three years then those applications could not have been rejected on the ground that at the time when the applications were filed the period prescribed was six months. If this Court holds otherwise then this will amount to giving premium to the respondents for their laches and negligence and depriving the dependents of their legitimate claim for compassionate appointments. The arbitrary and whimsical action and attitude of the respondents is evident from the fact that even such cases where the dependent was minor the widow was not even provided monetary compensation as per the aforesaid clause of 'NCWA' quoted hereinabove.

16. It is well settled that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. The very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

17. In the case of Umesh Kumar Nagpal v. State of Haryana and Ors., reported in 1994 (4) SCC 138 the Apex Court laying down the provisions of compassionate appointment observed as follows :--

'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.'

18. In the case of Haryana State Electricity Board v. Naresh Tanwar and Anr., reported in 1996 (8) SCC 23 a similar question arose for consideration before the Supreme Court. In that case the ex-employee of Haryana State Electricity Board died in 1980. It is only after 12 years in 1992 a representation was made by the widow for employment of her son who attained majority by the time the representation was rejected by the Board. In that very case another ex-employee died in 1975 and after 13 years an application was made in 1988 for appointment of the son on the same ground. That application was also rejected by the Board. On these facts their Lordships following the earlier decision in Umesh Kumar Nagpal's case (supra) held :

'It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case, it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.'

19. In the case of Jagdish Prasad v. State of Bihar, reported in 1996 (1) SCC 301, the ex-employee in the service of the State died in harness when his son was four years old. On attaining majority an application was filed for appointment on compassionate ground contending that the compassionate circumstances having continued till the date he made an application for appointment, he was entitled to be appointed on compassionate ground. The Apex Court upholding the rejection of the claim for such appointment observed :

'The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it

cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged de hors the recruitment rules.'

20. In the cases in hand the legal as well as factual position is quite different. The deceased employees were doing hazardous nature of work in the coal mines, Because of hazardous nature of work a settlement was arrived at by and between the workmen and the Management wherein provision has been made for giving employment to the dependants of the workmen who die due to mine accident or permanent disablement or medical unfitness etc. It has been categorically provided in the settlement that in case of death either in mine accident or for other reasons or medical unfitness, if the male dependant of the concerned worker is 15 years or above in age he may be kept on a live roster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years and during that period the female dependant will be paid monetary compensation. In order to consider the demand of the employees working in the coal mining industry, time to time. Bipartite Committee of the coal industry was constituted under the recommendations of the Central Wage Board and accepted by the Government of India. The settlement arrived at is called as 'National Coal Wage Agreement' (in short NCWA). The said NCWA, I, II, III, IV and V came into effect from 1974. 1979, 1983. 1989 and 1996 respectively. After 1996 NCWA VI was arrived at and came into effect from 1.7.1996. The scope of the agreement covers the wage structure including dearness allowance, fitment in the revised scale of pay, pension, fringe benefit service condition and allied matters including welfare/safety measures. These settlements were arrived at under the provisions of Section 18 of the Industrial Disputes Act.

21. Section 2(p) of the [Industrial Disputes Act, 1947](#) defines a settlement as a settlement arrived at in course of conciliation proceedings and includes a written agreement between the employer and the workmen arrived at otherwise than in course of conciliation proceeding. Where such agreement has been signed by the parties thereto then the same is binding on both the parties and has the sanctity of law as provided under Section 18 of the I.D. Act.

22. In the case of *Barauni Refinery Pragatisheel Shramik Parishad v. General Secretary, Barauni Telshodhak Mazdoor Union*, reported in AIR 1990 SC 1801, the Supreme Court observed :

'It may be seen on a plain reading of Sub-sections (1) and (3) of Section 18 that settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings, A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter.

Therefore, a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority. The High Court was, therefore, right in coming to the conclusion that the settlement dated 4th August, 1983 was binding on all the workmen of the Barauni Refinery including the members of Petroleum and Chemical Mazdoor Union.'

23. Similar view has been taken in the case of *National Engineering Industries Ltd. v. State of Rajasthan and Ors.*, reported in AIR 2000 SC 469.

24. For all these reasons I have no option but to hold that the action of the respondents in rejecting applications for compassionate appointment is illegal, arbitrary and mala fide and is liable to be quashed.

25. These writ petitions are, there fore, allowed and the impugned orders are quashed. All these matters are remitted back to the concerned authority of the respondents for passing fresh order in accordance with law within a period of two months from the date of production of copy of this order.

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