

Gopal Vs. Central Coalfield Ltd.

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Court : Jharkhand

Decided On : Mar-21-2006

Reported in : [2006(3)JCR507(Jhr)]

Judge : M.Y. Eqbal, J.

Appeal No. : W.P.S. No. 6169 of 2005

Appellant : Gopal

Respondent : Central Coalfield Ltd.

Advocate for Def. : Ananda Sen, Adv.

Advocate for Pet/Ap. : A.K. Sahani, Adv.

Disposition : Appeal allowed

Judgement :

M.Y. Eqbal, J.

1. In the instant writ application, the petitioner seeks a direction upon the respondents to consider the case of the petitioner for appointment on compassionate ground and provide him employment as per National Coal Wages Agreement (in short N.C.W.A.).

2. This Court, on 2.3.2006, passed the following order :

Petitioner's father died on 1.8.1999 and after his death an application for compassionate appointment was filed on 7.2.2000. In 1999-2000, according to the circular of the respondents, the time limit for filing application was six months from the date of the death. Admittedly, therefore, the application was delayed by six days but the most surprising and shocking thing is that after 2 and 1/2 years the application was rejected by the respondents saying that it was barred by six days. The petitioner then approached the authorities, who issued a letter dated 25.9.2003, under the signature of Personnel Manager, Sawang Colliery, vide Annexure 7, asking the petitioner to give the real reason of delayed submission of application. The petitioner is said to have submitted the reason for delay of six days. According to the petitioner, thereafter, no reply was given by the respondents till date.

In the aforesaid facts, this Court by order dated 19.12.2005 directed the respondents to file counter affidavit. More than two months have passed, no counter affidavit has been filed.

Let respondents 4 and 5, Project Officer and Personnel Manager of Swang Colliery, Central Coalfields Ltd.- appear in person on 10.3.2006 to show cause why a proceeding for contempt be not initiated against them.

Put up this case on 10.3.2006.

3. It was only, thereafter, the officers of the respondents appeared and filed counter affidavit stating, inter alia, that the time limit for submission of application for compassionate appointment was six months from the date of death of the deceased employee vide, circular dated 12.12.1995. The petitioner submitted application, but the same was delayed by six days. Hence, the claim of the petitioner for compassionate appointment was rejected on the ground of limitation vide order as contained in the letter dated 19.7.2002. It is further stated that the deceased employee died on 1.8.1999 and by now, more than six years have elapsed. Hence, the very purpose of compassionate appointment has been defeated.

4. Clause 9.3.2. of N.C.W.A. mandates the respondent-company to provide employment in case of death of a workman in course of his employment. By Circular dated 12.12.1995, issued by the respondents period of six months was prescribed for submission of application from the date of death of the deceased employee. The said circular dated 12.12.1995 was later on revised and the period was extended by one year vide circular dated 1.1.2002. The said circular came into effect from February, 2000. By another circular dated 19.6.2003, the period was further extended upto 1-1/2 years for submission of application from the date of death of the deceased employee.

5. In the instant case, as noticed above, the petitioner's father died on 1.8.1999 and the petitioner submitted his application on 7.2.2000, i.e., within six months and six days. The said application of the petitioner was kept pending by the respondents for more than two years and it was rejected on 29.8.2002, although the period of submission of application was extended by one year with effect from 7.2.2000. The petitioner, thereafter, made representation to the higher authorities of the respondents-company who after realizing the hardship that was caused to the petitioner, issued a letter to the petitioner- asking him to give reasons of delayed submission of the application. A copy of the said letter dated 25.9.2003 has been annexed as Annexure-7 to this writ application, which is quoted hereinbelow:

Central Coalfields Limited

Office of the Project Officer, Swang Colliery/P.O. Sawang District Bokaro/ No. PO/SWG/9.3.2./3/2592 dated 25.9.2003

To,

Shri Goplal

S/o Lt. Rameshwar Nonia,

Ex. Timber Helper,

Sawang Colliery

In pursuance of letter No. GM(KTA)/ PD/9.3.2./2003/1453 dated 8/6.8.2003, of Dy. CPM (KTA), Kathara, you are directed to give the real reason of delayed submission of application under scheme 9.3.2. i.e., after lapse of six months scheduled time.

Your reply should reach to the undersigned within 7 (seven) days of receipt of this letter.

Personnel Manager,

Sawang Colliery

6. The petitioner is said to have submitted his application disclosing the reason of six days delay in submission of the application. The respondents thereafter, did not take any decision and kept the matter pending. Curiously enough, these facts have not been controverted by the respondents in their counter affidavit. In the entire counter affidavit, the respondents company have tried to convince the Court that the object and purpose of compassionate appointment has been defeated and frustrated by reason of delay of about six years.

7. The question that falls for consideration is as to whether the claim for compassionate appointment can be thrown out in such cases, where delay is caused because of in-action and negligence on the part of the respondents.

8. As noticed above, the petitioner submitted his application within six months six days, i.e. on 7.2.2000. The delay was only of six days. The respondents/company could have refused to give appointment to the petitioner or they could have rejected his application, but instead of doing that the respondents kept the application of the petitioner pending for more than 2-1/2 years and rejected the same only on 29.8.2002. The petitioner thereafter approached the higher authorities by filling representation which was considered by the respondents asking the petitioner to explain the reason of delay of six days. The petitioner did submit his application giving reason of delay of six days. The respondents thereafter did not take any decision and kept the matter pending. The petitioner having no alternative filed the instant writ application.

9. In the light of these facts, in my considered opinion the respondents/company cannot be allowed to say that the claim of compassionate appointment has been defeated on account of expiry of six years from the death of the deceased employee. I have no hesitation in holding that if the delay in taking decision is caused because of in-action and negligence on the part of the respondents/company, then such claim cannot and shall not be thrown out on the ground of lapse of time. In the instant case, it is the respondents/company, for whose fault and negligence, the application of the petitioner for compassionate appointment remained pending for such a long period. In that view of the matter, the respondents/company is bound to consider the application and take decision in accordance with law.

10. For the aforesaid reasons, this writ application is allowed and the respondents are directed to consider the application for compassionate appointment of the petitioner and take decision within two months by passing a reasoned order from the date of receipt of a copy of this order.

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