

Durga Kumari Vs. Central Coalfields Limited and ors.

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SooperKanoon Citation : sooperkanoon.com/520802

Court : Jharkhand

Decided On : Jul-07-2008

Reported in : [2008(118)FLR932]; [2008(3)JCR629(Jhr)]

Judge : R.K. Merathia, J.

Appellant : Durga Kumari

Respondent : Central Coalfields Limited and ors.

Judgement :

ORDER

R.K. Merathia, J.

1. Heard the parties finally. Counsel for the petitioner is permitted to delete the name of Kesho Devi (petitioner No. 2) as it is said that she is now dead.

2. Mrs. Nivedita, learned Counsel appearing for the petitioner submitted that father of the petitioner-Ram Lakhan died in harness on 12.8.1999 leaving behind his widow-Kesho Devi; two major sons and one married daughter. Mother of the petitioner, namely, Kesho Devi applied for appointment of petitioner on compassionate ground on 10.1.2000. Though, the brothers of petitioner filed suits against such claim of employment, but ultimately, the said suits were dismissed for non-prosecution. She further submitted that the claim of petitioner for compassionate appointment has been wrongly rejected on 19.9.2005 on the

ground that she crossed the age of 35 years. The respondents have relied on Clause 9.3.4 of NCWA-VI, whereas, as per Clause 9.5.0. (ii), the female dependant up to the age of 45 years can be employed.

3. On the other hand, Mr. Ananda Sen, counsel appearing for the respondents, submitted that Clause 9.5.0 (ii) is to be read along with Clause 9.3.4. He further submitted that the relaxation of age up to 45 years was only for 'female spouse' and not for all female dependants. He has further submitted that as per Clause 9.3.3, the wife and unmarried daughter both are dependants, but as per Clause 9.3.4, the upper age limit fixed for employment of the dependants is 35 years, and if it is a case of employment of female spouse', the relaxation was given up to 45 years. Therefore, he submitted that petitioner's claim was rightly rejected. He further submitted that petitioner survived all these nine years and, therefore, at this stage the respondents may not be directed to consider her case for appointment on compassionate ground.

4. It appears that the father of petitioner died on 12.8.1999. Petitioner's mother filed an application for employment of the petitioner on 10.1.2000. Petitioner's date of birth was recorded as 1.1.1969. One of the petitioner's brothers filed a suit being T.S. No. 12 of 2000, claiming employment in place of his father which was dismissed on 25.5.2001 for non-prosecution. Another brother also filed a suit with similar claim being T.S. No. 32 of 2001 which was also dismissed for non-prosecution on 29.7.2005. Thereafter, petitioner filed an application on 11.8.2005 for her appointment which was rejected by the impugned letter dated 19.9.2005.

5. The relevant clauses of NCWA-VI read as follows:

9.3.2. Employment to one dependant of the worker who dies while in service.--In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.

9.3.4. The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit

regarding provision of employment.

9.5.0. Employment/Monetary compensation to female dependant.--

(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. 3000/- per month or employment. In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment....

6. From the joint reading of the said clauses, in my opinion, the relaxation in age up to 45 years is only for 'female spouse'. As per Clause 9.3.3, the dependants include 'female spouse' and unmarried daughter. Clause 9.3.4 is specific with regard to the upper age limit of the dependants. Clause 9.5.0 (ii) is a general clause with regard to the female dependants. Accordingly, Clause 9.5.0 (ii) will apply to 'female spouse' only. It appears that due to the pendency of the aforesaid suits (in which respondents were parties defendants), petitioner's claim could not be considered up to 2005 by which time, she crossed the upper age limit of 35 years. In such circumstances, the rejection of petitioner's claim cannot be held to be unjustified. Moreover, the petitioner has survived for about nine years by now. (Mrs. Kundu fairly admitted that petitioner is doing tuitions).

7. Moreover it has been held in : [1994]3SCR893 , Umesh Kumar Nagpal that the consideration for such employment is not a vested right which can be exercised at any time in future; and that such appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. Paragraph 11 of : AIR 2006 SC2743 , State of J&K; and Ors. v. Sajad Ahmed Mir, reads as follows:

We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with

Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule. should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

8. On taking into consideration the circumstances and the legal position as noticed above, I am not inclined to interfere with the letter dated 19.9.2005 by which petitioner's claim was rejected. However, in peculiar facts and circumstances of this case, the respondents are directed to make ex-gratia payment of Rs. 15.000/- to the petitioner within four weeks from today, by way of a local cheque or bank draft, which the petitioner may accept, if she so desire.

With these observations and directions, this writ petition is disposed of. However, no costs.