

SomarIn Devi Vs. Central Coalfield Ltd. and ors.

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Court : Jharkhand

Decided On : Sep-08-2003

Reported in : [2003(4)JCR249(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : WP (S) No. 4419 of 2002

Appellant : SomarIn Devi

Respondent : Central Coalfield Ltd. and ors.

Advocate for Def. : M.M. Banerjee, Adv.

Advocate for Pet/Ap. : A.B. Mahto, Adv.

Disposition : Writ allowed

Judgement :

M.Y. Eqbal, J.

1. The petitioner who is the widow of late Biroo, has filed this writ application praying for quashing the order dated 8.8.1996 issued by the Project Officer of the respondent-CCL whereby the services of her husband has been terminated and further seeking a direction for appointment of the petitioner on compassionate

ground as her husband is missing since 31.1.1992.

2. Petitioner's husband, Biroo, was an employee on the post of driver under the respondents. It is stated that since 31.1.1992 petitioner's husband left for duty and thereafter he did not return. The petitioner then lodged FIR on 3.2.1992 at Bermo police station in respect of missing of her husband. A copy of the FIR and the station diary entry have been annexed as Annexure 1 and 1/1 to the writ application.

3. The Project Officer of the respondents issued show cause notice dated 6.3.1992 in the name of the petitioner's husband asking him to show cause for his unauthorized absence. The petitioner, in reply to the said show cause notice, submitted explanation stating that her husband was missing. She also submitted photo copy of station diary entry. However, the respondents, on the basis of an ex parte inquiry, passed the impugned order of termination of the services of the petitioner's husband. Since the petitioner was starving, she made an application for compassionate appointment which was not entertained for wanted of such provision in the Standing Order.

4. The respondents have filed counter affidavit in which it is stated that the Project Officer issued show cause notice dated 6.3.1992 and no show cause was received by the Management and, accordingly, inquiry committee was constituted and on the basis of the report of the inquiry committee the order of termination was passed against the husband of the petitioner.

5. Learned counsel appearing on behalf of the petitioner submitted that the order of termination of the services of the petitioner's husband is wholly illegal and violative of the principles of natural justice inasmuch as the husband of the petitioner was not called upon to participate in the departmental inquiry.

6. Mr. M.M. Banerjee, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the departmental inquiry and the order of termination are not violative of the principles of natural justice inasmuch as against the show cause notice the petitioner filed representation/show cause.

7. Admittedly no notice was given to the petitioner calling her to participate in the departmental inquiry. On receipt of the show cause notice the petitioner filed a representation informing the respondents about the missing of her husband which was supported by the station diary entry. The respondents proceeded in the inquiry ex parte and passed the impugned order of punishment. Even if the averments made in the counter affidavit to the effect that no show cause or representation was ever filed by the petitioner against the show cause notice is accepted to be true even then the impugned order of termination of the services of the petitioner's husband is illegal and violative of the principles of natural justice.

8. For the aforesaid reason, this writ application is allowed and the impugned order of termination of the services of the petitioner's husband is quashed. The respondents may proceed with the departmental inquiry afresh after giving opportunity of hearing to the petitioner. If the petitioner prima facie proves the fact of missing of her husband since 1992, then she will be entitled to all benefits in accordance with law.