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SooperKanoon Citation : sooperkanoon.com/521069

Court : Jharkhand

Decided On : Aug-25-2005

Reported in : [2006(2)JCR67(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : [Persons with Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#) - Sections 2, 32 and 33

Appeal No. : W.P. (S) No. 4050 of 2004

Appellant : Md. Alam Ansari

Respondent : Bharat Coking Coal Ltd. and ors.

Advocate for Def. : A.K. Mehta, Adv.

Advocate for Pet/Ap. : Shekhar Prasad Sinha, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.J. Mukhopadhaya, J.

1. This writ petition related to compassionate appointment of the petitioner, whose claim has been rejected on the ground that a disabled person cannot be appointed

on compassionate ground. The petitioner has challenged the order contained in letter No. 723, dated 12/13th July, 2004, issued by the Area Personnel Manager, Katras Area, Bharat Coking Coal Limited (hereinafter to be referred as 'BCCL' in short). The said decision having been communicated to the petitioner vide letter No. 739, dated 24/26th July, 2004 issued by Project Officer, Ram Kanali Colliery, Katrsagarh, Dist.-Dhanbad, he has also challenged in the same.

2. Father of the petitioner, late Gayasuddin Mian who was in the services of BCCL, died in harness on 16th December, 2003, while posted as foreman in Ram Kanali Colliery, Dhanbad. The petitioner, thereafter, applied for compassionate appointment, but his claim was rejected on the ground that he is a disabled person.

3. Petitioner has not disputed the fact that he is a disabled person and is suffering from locomotor disability, more than 40% According to him, a disabled person is also entitled for compassionate appointment.

4. On the other hand, according to the counsel for the BCCL, in terms of Paragraph 9:4:O: of N.C.W. Agreement-VI, such employment can only be given to a dependent, who is otherwise physically fit.

5. The petitioner has pleaded that though other physically handicapped person, such as, Ganga Bhandari, who was physically handicapped upto 50%, has been appointed on compassionate ground, he has been discriminated. This fact has not been disputed by the respondents,

6. The Central Government enacted an Act for disabled persons known as '[The Persons with Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#)' with an object to give protection to the disabled persons and to enable them for full participation with the others. The preamble of the 'Act reads as follows :

An Act to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region.

7. The word 'establishment' has been defined under Section 2(i) of 1995 Act, which includes corporation etc., such as, M/s. BCCL Disability has been defined under Section 2(t) of the 1995 Act, which includes a person, suffering from not less than 40% of any disability as certified by a medical authority. Chapter-VI deals with 'employment.' Under Section 32, appropriate Government is required to identify posts in the establishments, which can be reserved for disabled persons. Section 33 mandates employer to reserve the posts and to appoint disabled persons in every establishment, not less than 3% of the posts. Out of them 1% of the posts is required to be reserved for disabled persons, suffering from locomotor disability. Therefore, provision being Central Act, N.C.W. Agreement-VI cannot override the same. On the other hand, if any contrary agreement has been made, one may doubt validity of such agreement.

8. In the circumstances, as respondents, under the law, are required to fill up 3% of the posts in every establishment from amongst the disabled person, they cannot refuse the claim of the petitioner for consideration of his case for appointment on compassionate ground, on the ground that he is a disabled person. The impugned letter No. 723, dated 12/13th July, 2004 and order contained in letter No. 739, dated 24/26th July, 2004, being against the provisions of the 1995 Act, are hereby set aside. The case is remitted to the respondents to consider the case of the petitioner for appointment on compassionate ground, taking into consideration the provisions of 1995 Act, within a period of six weeks from the date of receipt/production of a copy of this order.

9. The writ petition is allowed with aforesaid observations and directions. However, there shall be no order as to costs.