

Deonath Manjhi Vs. Central Coalfields Limited and ors.

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Court : Jharkhand

Decided On : Oct-22-2008

Reported in : [2008(119)FLR949]

Judge : Ajit Kumar Sinha, J.

Appellant : Deonath Manjhi

Respondent : Central Coalfields Limited and ors.

Disposition : Application allowed

Judgement :

ORDER

Ajit Kumar Sinha, J.

1. The present writ petition has been preferred for issuance of an appropriate writ, order of direction in the nature of certiorari for quashing the letter dated 6th April, 2002, as contained in Reference No. KTW/IWO/9.3.2/ 434, vide which the application of the petitioner for compassionate appointment was rejected on the ground that the application filed was delayed by few months.

2. The facts, in brief, are set out as under:

Father of the petitioner, namely, late Hopan Manjhi, working as Fitter Grade-III, died in harness on 8th September, 1999. The petitioner herein, who is the son of

deceased employee, after obtaining the death certificate and other required testimonials, filed an application along with the affidavit on 30.11.2000 before the Management of respondent-Central Coalfields Limited (in short 'C.C.L.') for appointment on compassionate ground. The respondent Management vide letter dated 6th April, 2002 informed the petitioner that his application for compassionate appointment was rejected since he had submitted the application after 6 months as required vide circular dated 12.12.95 framed under Clause 9.3.2 of the National Coal Wage Agreement. The petitioner being constrained immediately made a representation on 19th May, 2002 and justified the cause for delay, which occurred due to Parliamentary Election and, thus, he could not get the requisite testimonials and certificates from the officials of the District Administration. The petitioner has challenged the rejection letter dated 6th April, 2002 and the same is impugned herein in the present writ petition.

3. The main ground on which the petitioner challenges the order of rejection is that the same is arbitrary and malafide since no period has been prescribed in Clause 9.3.2 for submission of application. It has also been contended that he was fully eligible and entitled for compassionate appointment. He has also justified the cause for delay of about six months in making the application. It was also contended that no reason has been assigned for rejecting the application of the petitioner for compassionate appointment.

4. The issue with regard to compassionate appointment in Public Sectors/Companies in accordance with National Coal Wage Agreement has come up. for consideration time and again and in a recent judgment concerning the. respondent-C.C.L. itself the Hon'ble Supreme Court in the case of Mohan Mahto v. Central Coal Field Ltd. as reported in : (2008)ILLJ496SC held that compassionate appointment was an exception to Article 16(1) of the Constitution and while allowing the appeal of the claimant held that no period of limitation was provided under the settlement and since it was a beneficial provision, such circular providing limitation period was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into by and between the parties and, thus, the beneficial provision made under a settlement by the 'State' within the meaning of Article 12 of the Constitution was expected to be

acted reasonably and, thus, the limitation period should also be provided in a reasonable manner and it is expected by the respondent authorities, which is the State, to act reasonably and bonafide.

5. A settlement within the meaning of Section 18(3) of the ID Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement, The right to obtain appointment on compassionate grounds emanates from the settlement as defined in Section 2(p) of the Act. The expanding definition of workman as contained in Section 2(s) of the Act would confer a right upon the appellant to obtain appointment on compassionate grounds, subject, of course, to compliance with the conditions precedent contained therein. Grant of appointment on compassionate grounds is an exception to Article 16(1) of the Constitution.

6. The Hon'ble Supreme Court was of the considered view that the period of six months' limitation prescribed in the circular letter dated 12th December, 1995 was neither statutory nor imperative in character. The period of limitation provided for in the circular letter with a power of relaxation can never be held to be imperative in character and for entertaining such an application before the period of six months, the headquarters of the Central Coalfields Limited is entitled to consider the facts and circumstances of each case. Even the limitation period has been extended from time to time and the same was extended for a period of one year from February, 2000, which was subsequently enhanced to one and half year under Clause 9.3.2 of the National Coal Wage Agreement.

7. In the aforesaid facts and circumstances, Mohan Mahto's case (supra) was decided with reference to the terms of Sub-clause (iii) of Clause 9.5.0 of NONA V, wherein, it was provided that the appellant was to be kept on a live roster till he attains the age of 18 years and at para-17 the Hon'ble Supreme Court held as under:

17. It is neither in doubt nor in dispute that the case for grant of compassionate appointment of a minor was required to be considered in terms of Sub-clause (iii) of Clause 9.5.0 of NCWA V. In terms of the said provision, the name of the appellant was to be kept on a live roster. He was to remain on the live roster till he

attained the age of 18 years. The respondents did not perform their duties cast on them thereunder. It took a unilateral stand that an application had been filed in the year 1999 in the prescribed form. For complying with the provisions of a settlement which is binding on the parties, bona fide or otherwise of the respondent must be judged from the fact as to whether it had discharged his duties thereunder or not. In this case, not only it failed and or neglected to do so, but as indicated hereinbefore it took a unholy stand that the elder brother of the appellant being employed, he was not entitled to appointment on the compassionate grounds. Thus, what really impelled the respondent in denying the benefit of compassionate appointment to the appellant is, therefore, open to guess. We expect a public sector undertaking which is 'State' within the meaning of Article 12 of the Constitution of India not only to act fairly but also reasonably and bona fide. In this case, we are satisfied that the action of the respondent is neither fair nor reasonable nor bona fide.

8. A Division Bench of this Hon'ble Court in 2007(1) JLJR 226, titled as Central Coalfields Ltd. v. Rajendra Dusadh, while considering a similar issue and same circular dated 12th December, 1995 held that since the Hon'ble High Court had struck down the prescription of six months for making the application as unreasonable, that period was never a governing factor for compassionate appointment and It was in these background that the appellant introduced the period of one year for making an application for compassionate appointment and, accordingly, dismissed the appeal of the Central Coalfields Ltd.

9. Again in 2008(3) JLJR 355, titled as Laljee v. Central Coalfields Ltd., this Hon'ble Court in an identical case concerning the same circular dated 12th December, 1995, while relying upon 2003(1) JCR 324 (Roopna Manjhi v. C.C.L.) and a subsequent decision, rendered in the case of Muneshwar Ganjhu W.P.(S) No. 4006 of 2003, disposed of on 21st August, 2003 directed the respondent-C.C.L to reconsider the case of the petitioner for compassionate appointment on merits, ignoring the delay, if any, since the petitioner's application for compassionate appointment was filed within one year from the date of death of the deceased employee. In the aforesaid two cases though there was a delay of one and half year in applying for compassionate appointment, this Hon'ble Court

directed the respondents to consider the claim of the petitioner for compassionate appointment.

10. In the case of Satya Narayan Choudhary v. Central Coalfields Ltd., as reported in 2007(3) JLJR 692, in an identical issue of compassionate appointment concerning the same circular dated 12th December, 1995, a Division Bench of this Hon'ble Court considered almost all the judgments, passed by this Hon'ble Court as well as Hon'ble Supreme Court, on the issue and by a detailed speaking order held at para- 26 and 27 as under:

26. All the decisions cited by the counsel for the petitioner would clearly lay down that even though at the time of filing the application seeking for compassionate appointment, the earlier circular, prescribing six months' period as limitation, was in force, the said circular was not in force at the time of consideration of the application before rejecting the same and on the other hand, the latter circular, prescribing the period of one year, which was in force at the time of consideration, alone has to be considered for deciding the period of limitation. Therefore, the citations, referred to above by the counsel for the petitioner, squarely apply to this case. On the other hand, the decisions cited by the counsel for the respondents, referred to above, would not be of any use for the respondents as the question in issue relating to the applicability of the circular was never raised in those cases. In other words, in those cases the circular dated 1.1.2002, which was issued on a later point of time, giving retrospective effect, was not at all considered.

27. Thus, viewed from any angle, we are not able to hold that the order impugned, rejecting the application for compassionate appointment, is valid in law or justified and in our view, it has to be held that it is unjustified and unsustainable.

11. It has been further stated that the S.L.P. preferred against the aforesaid order was also dismissed. In the aforesaid background, even though the facts of the present case are distinguishable from the judgment of Mohan Mahto (supra), since that was a case of minor to be kept on live roster in accordance with Clause 9.5.0 as per the statutory settlement but still the ratio of Mohan Mahto (supra) squarely applies to the present case in which C.C.L. itself is the respondent. Further, in view of conclusive judgment in Satya Narayan Choudhary (supra), Roopna Manjhi

(supra) and the aforesaid other cases it is clear that the period of six months stands already quashed by different orders passed by this Hon'ble Court on the ground that the limitation period of six months was unreasonable.

12. Finally the respondent themselves enhanced the period of one and half years in 2002 and a circular was issued. Even otherwise the period of limitation should be computed as per the applicable circular of 2002 when the respondent actually considered and rejected the application as held in Satyanarayan Choudhary case (supra). The impugned order is illegal and unjustified and clearly against the several judgments and orders passed by this Hon'ble Court. Even otherwise the respondents themselves delayed in disposing of the application of the petitioner for compassionate appointment and as per the prescribed period on the date of rejection i.e. April, 2002 he was eligible and entitled to be considered for compassionate appointment.

13. In the aforesaid background, the impugned order dated 6th April, 2002 is on the face of it illegal and arbitrary and is, accordingly, set aside. The matter is remitted back to the respondent authorities to consider the case of the petitioner for compassionate appointment in the light of the settled law within a period of three months from the date of receipt/production of a copy of this order.

14. This writ application is, accordingly, allowed but without any order as to costs.