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**Kamaldeo Kumar Vs. Ms Bharat Coking Coal Ltd and Ors**

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**SooperKanoon Citation** : sooperkanoon.com/65998

**Court** : Jharkhand

**Decided On :** Sep-21-2015

**Appellant** : Kamaldeo Kumar

**Respondent** : Ms Bharat Coking Coal Ltd and Ors

**Judgement** :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 1794 of 2014 .. Kamaldeo Kumar Petitioner -V e r s u s- 1. M/s BCCL, Dhanbad 2. Chairman-cum- Managing Director, M/s BCCL, Dhanbad 3. Director Personnel of M/s BCCL, Dhanbad 4. General Manager of Sijua Area, M/s BCCL, Dhanbad 5. Project Officer of Sijua Area, M/s BCCL, Dhanbad...Respondents CORAM: - HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : - M/s Binod Kumar Jha, Adv. For the Respondents : - M/s Ananda Sen & Kaustav Panda, Advs. .... 04/21.09.2015 Heard learned counsel for the parties. Petitioner is son of late Dasrath Barhi, who went missing from 03.12.2002 while working on the post of Surface Trammer in Jogta Pit No. 3 under Mudidih Colliery under BCCL. A Sanha of his missing was also lodged in East Basuria outpost bearing Station Diary No. 277 of 2002 on 20.12.2002. Factum of his missing was also published in the local newspaper on 22.12.2002. Petitioner also made a written complaint in Deori Police Station at Giridih district, permanent residence of petitioner and his father. After petitioner's father did not return for over a period of 7 years, petitioner's mother Bhagwatia Devi instituted a Title Suit No. 216 of 2009 before the Court of Civil Judge (Junior Division) No. II, Dhanbad seeking a declaration of civil death of her

husband under Section 108 of the Indian Evidence Act, 1872. Suit was contested by the respondent-BCCL and also by General Manger and Project Officer, Sijua Area. General Public of Nichitpur Township, Dhanbad were also noticed, but none appeared to contest the case. Learned Civil Judge (Junior Division) No. II, Dhanbad allowed the suit on contest in favour of the plaintiff and held that husband of the petitioner Dasrath Barhi has been missing since 03.12.2002 till now and is declared as civil death under Section 108 of the Indian Evidence Act, 1872. Petitioner's claim for compassionate appointment has not been considered by the respondents on the ground that his father had been dismissed from service on 05.01.2004 itself on ground of unauthorized absence as communicated to the petitioner vide Annexure-7 dated 25/26.02.2014 issued by the Project Officer, Mudidih Colliery, BCCL. Petitioner has, therefore, approached this Court seeking consideration of his case for compassionate appointment and also quashing of order of dismissal of his father. Learned counsel for the respondent-BCCL submits that petitioner's father was absent from 02.12.2012 while working as Surface Trammer in the Mudidih Colliery. A departmental proceeding was initiated against him for such unauthorized absence in which despite several reminder, no one appeared. Disciplinary authority proceeded to dismiss the father of the petitioner through letter no. 30 dated 05.01.2004. Petitioner had made application only on 06.02.2014 stating that his father has died and he deserves compassionate appointment. It is submitted that since father of the petitioner had already been dismissed from service, no case for compassionate appointment can be made out on his part. He has submitted that learned Civil Court has nowhere observed on the legality of the dismissal of the father of the petitioner while making declaration of his civil death. Therefore, petitioner is not entitled for any compassionate appointment. I have considered the submissions of the parties and the material facts pleaded. As would appear from the chronology of facts narrated hereinabove, on missing of the petitioner's father, petitioner lodged a Sanha in East Basuria outpost bearing Station Diary No. 277 of 2002 on 20.12.2002 and also published in the newspaper on 22.12.2002. These material facts were proved on behalf of the plaintiff witness before the learned Civil Court after petitioner's father remained missing for more than 7 years leading to institution of Title Suit No. 216 of 2009 for declaration of civil death. The respondent-company and its

authorities were also impleaded as defendants and duly contested the suit. After due consideration issued were framed including issue nos. IV and V, which is quoted hereinunder:- IV) Whether the husband of plaintiff namely Dashrath Barhai is missing since 03.12.2002? V) Whether the suit is bad for non-joinder for necessary parties? Learned Court below decreed the suit on contest and declared the civil death of Dasrath Barhi, husband of the plaintiff Bhagwatia Devi and father of the present petitioner. As the sequence of facts also discloses, it was on same ground of continued unauthorized absence from 02.12.2012 that the father of the petitioner was proceeded against by the respondent and dismissed from service. On declaration of civil death of the employee, such a proceeding in the eye of law is not tenable. Proceeding was also ex-parte on the face of it and the respondents have chosen to deny consideration of the claim for compassionate appointment on that ground to the petitioner. As has been held in the judgment relied upon by the learned counsel for the petitioner such as in the case of Bijay Kumar Pradhan Vs. State of Jharkhand and Ors. reported in 2014(1)JLJR33and in the case of Podin Devi Vs. Central Coalfields Ltd. and Ors. in W. P. (S) No. 4946 of 2011 vide judgment dated 01.05.2013, there is no distinction between civil death and natural death of a person after such a declaration is made by the competent Court under Section 108 of the Indian Evidence Act, 1872. On similar facts, this Court in the case of Smt. Parden Oraon Vs. Central Coalfields Ltd. and Ors. in W. P. (S) No. 330 of 2014 vide judgment dated 03.08.2015 has quashed the dismissal of the said employee after the date of his missing on ground of unauthorized absence, on declaration of his civil death by the competent civil court. Directions have also been issued for consideration of the claim for compassionate appointment of the dependent of the said employee, if application for compassionate appointment has been made within the time limit prescribed after such declaration by the competent Civil Court. In the present case, as per the respondent also, the petitioner has made an application for compassionate appointment on 06.02.2014 i.e. within one month of the judgment rendered by the learned Civil Court on 20.01.2014, Annexure-5 declaring civil death of his father. Therefore, the order of dismissal conveyed to the petitioner through impugned office order dated 25/26.02.2014 by the Project Officer, Mudidih Colliery(Annexure-7) cannot be sustained in the eye of law and on facts and is, accordingly, quashed. Consequently, the respondents are

required to take a decision on the claim of compassionate appointment of the petitioner in accordance with law. The writ petition is allowed in the aforesaid terms. (Aparesh Kumar Singh, J.) Kamlesh/

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