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Gopi Ram Vs. The Chief General Manager Central Coalfields Limited and Ors

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Court : Jharkhand

Decided On : Sep-20-2016

Appellant : Gopi Ram

Respondent : The Chief General Manager Central Coalfields Limited and Ors

Judgement :

1. IN THE HIGH COURT OF JHARKHAND AT RANCHI L.P.A. No. 719 of 2015 ... Gopi Ram, son of Late Dukalu B.P., resident of village-4158, Dhori Central Colony, Bermo, P.O.-Phusro Bazar, P.S.-Phusro, Dist.-Bokaro . . Appellant Versus 1.The Chief General Manager, Central Coalfields Limited, Darbhanga House, P.O.-Kutchery, P.S.-Kotwali, Dist.-Ranchi 2.Director (Personnel),Central Coalfields Limited, Darbhanga House, P.O.-Kutchery, P.S.-Kotwali, Dist.-Ranchi 3.The Deputy General Manager, Central Coalfields Limited, Darbhanga House, P.O.-Kutchery, P.S.-Kotwali, Dist.-Ranchi 4.The Deputy Manager (Personnel), Central Coalfields Limited, Darbhanga House, P.O.-Kutchery, P.S.-Kotwali, Dist.-Ranchi 5.The Project Officer, Dhori Area, Central Coalfields Limited, office of Project Officer, P.O.-Phusro Bazar, P.S.-Phusro, Dist.-Bokaro 6.Senior Manager (Mining), Central Coalfields Limited, Selected Dhori Quarry No.1, P.O.-Phusro Bazar, P.S.-Phusro, Dist.-Bokaro . Respondents . CORAM: HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR ------ For the Appellant : Mr. Atanu Banerjee, Advocate For the Respondents : Mr. A.K. Das, Advocate Miss. Pooja Kumari, Advocate ----- th 08/ 20 September, 2016 Per Virender Singh, C.J.: Aggrieved of dismissal of the

writ petition, whereunder challenge to the order of dismissal from service has failed, the appellant-writ petitioner (hereinafter referred to as petitioner) has filed the instant Letters Patent Appeal.

2. Heard.

3. The petitioner was appointed on compassionate ground under respondent-CCL on 16.09.1980. In the service records, the petitioner disclosed his father's name as Dukalu B.P. On a complaint filed by Smt. Bhukhain Bai, wife of late Dukalu B.P on 02.11.2010, a preliminary enquiry was held and the allegation that the petitioner obtained employment on compassionate grounds fraudulently was found primafacie 2. true. A charge-memo dated 17.05.2011 was issued to the petitioner on the allegation that falsely claiming and posing himself as son of late Dukalu B.P he secured employment in connivance of Smt. Bhukhain Bai. In the departmental enquiry the petitioner appeared and admitted that he was brother of late Dukalu B.P and not his son. A copy of the enquiry report was furnished to the petitioner and he was offered an opportunity to reply to the second show-cause notice dated 23.06.2012, however, the petitioner did not raise any specific objection to the findings recorded by the enquiry officer. The Project Officer, SDQ-1 accepted the findings in the enquiry report and passed the order of dismissal from service on 11.10.2012. Aggrieved, the petitioner preferred an appeal which was dismissed, holding that the objections raised by the petitioner to the enquiry proceedings are contradicted by his reply to the second show-cause notice in which he simply stated that he had nothing more to say except, what he had already stated during the enquiry proceeding.

4. Mr. Atanu Banerjee, the learned counsel for the petitioner contends that in the departmental enquiry the application seeking compassionate appointment of the petitioner was not produced and at the time when the petitioner was offered appointment on compassionate ground a brother of the deceased employee who was wholly dependent on him was entitled for appointment on compassionate ground and while so, the allegation of fraud and impersonation are not proved. The learned counsel referring to the decision of Md. Zamil Ahmed vs The State of Bihar & Ors., reported in 2016 SCC Online 416 contends that it was open to the

respondent-CCL to verify, at the time of appointment, whether the petitioner was son of the deceased employee or not and once the charge of fraud and impersonation is not proved, the order of dismissal from 3. service is not sustainable in law.

5. The materials produced during the enquiry proceeding conclusively establish that the petitioner was brother of the deceased employee, late Dukalu B.P. In the service excerpts, PAN Card, CCL ID Card, Voter ID Card, etc., the petitioner, however, gave the name of his father as Dukalu B.P. The enquiry report reveals that in his statement given on 08.12.2010, the petitioner himself admitted that he is the brother of late Dukalu B.P. The wife of the deceased employee who gave a complaint on 02.11.2010 has also affirmed that the petitioner is her younger brother-in-law and not her son and his father's name is Santhu Ram. The appointment letter dated 16.09.1980 records that, in response to the application submitted by you, and this goes to show that it was the petitioner who had submitted the application seeking compassionate appointment. The appointment letter further reveals that the petitioner was interviewed on 03.08.1980 by a committee constituted by the management of M/s CCL. The petitioner has not pleaded that at the time of interview he had revealed the true fact that he is the younger brother of the deceased employee. In fact, his subsequent conduct which is reflected in entries in service excerpts and other identify proofs clearly establishes that the petitioner secured appointment on compassionate ground by impersonating himself as the son of the deceased employee.

6. Mr. A.K. Das, the learned counsel for the respondent -CCL has contended that Smt. Bhukhain Bai, wife of late Dukalu B.P was herself employed with M/s CCL and she had opted for female VRS under which her son was appointed and thus, even the real son of the deceased employee could not have been offered compassionate appointment. The decision in Md. Zamil Ahmed is clearly distinguishable on facts, inasmuch 4. as, in the said case the brother of the deceased employee was given appointment on his undertaking that he would support the widow and minor children of the deceased employee. The Supreme Court found that the appointee did not make any false declaration nor did he suppress any material fact for securing appointment. As noticed above, the

petitioner, who was not entitled to claim compassionate appointment, had suppressed the material facts and secured appointment by impersonating himself as the son of the deceased employee. No doubt, under Clause 9.3.2 of the National Coal Wage Agreement - V younger brother of the deceased employee residing with him and almost wholly dependent on the earnings of the deceased employee may be considered to be his dependent and he may be appointed on compassionate ground, however, the fact remains that at the time of death of the deceased employee, late Dukalu B.P another member of his family was not entitled for compassionate appointment, as his wife was employed with M/s CCL, who had opted for female VRS.

7. The learned Single Judge has recorded a finding that it is not a case in which the penalty order has been passed ignoring the relevant materials on record. The contention raised on behalf of the petitioner that in view of the unblemished service record for a long period penalty of dismissal from service was disproportionate to the charges framed against him has been rejected by the learned Single Judge primarily on the ground that misrepresentation itself amounts to fraud. In Devendra Kumar v. State of Uttaranchal, reported in (2013) 9 SCC363 the Hon'ble Supreme Court has held 18.....dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances 5. the court should not perpetuate the fraud by entertaining petitions on their behalf.....

8. On admitted facts, we are of the opinion that the order of dismissal from service on the ground that the petitioner impersonated himself as son of late Dukalu B.P and fraudulently secured appointment on compassionate ground is the most appropriate penalty imposed upon the petitioner. The view taken by the Writ Court does not suffer from any infirmity in law.

9. In the result, the instant Letters Patent Appeal, devoid of any merit, is dismissed. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) sudhir/SI,

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