

HIGH COURT OF CHHATTISGARH, BILASPUR
WP No.3052 of 2004

1. Smt. Jeera Devi, W/o Late Shri Najrang Lal, Aged about 55 years, R/o Parsabhata Bazar, P.O. Balco Nagar, Korba, District Korba, Chhattisgarh
2. Kumar Singh @ Daini, S/o Late Shri Najrang Lal, Aged about 35 years, R/o Parsabhata Bazar, P.O. Balco Nagar, Korba, District-Korba, Chhattisgarh

---- Petitioners

Versus

1. Union of India, Through Secretary, Ministry of Coal & Mines, Department of Coal, Shastri Bhawan, New Delhi, New Delhi
2. Coal India Limited, Through-its Chairman Cum Managing Director, Garden Reach Kolkata, West Bengal
3. South Eastern Coal Fields Ltd., Through its CMD, Seepat Road Bilaspur, Bilaspur (CG)
4. General Manager, SECL Surakachhar Colliery Korba, Distt.Korba (CG)
5. Chief Personnel Manager, SECL Surakachhar Colliery Korba, Distt. Korba, Chhattisgarh
6. Collector/Deputy Collector, Korba, Distt. Korba, Chhattisgarh
7. Branch Manager, State Bank of India, Banki Mongra, District-Korba, Chhattisgarh

---- Respondents

For Petitioners	:	Mr.Pushkar Sinha, Advocate
For Res.No.2 to 5	:	Mr.K.K.Shrivastava, Advocate
For Respondent No.6	:	Mr.Ashish Surana, P.L.
For Respondent No.7	:	Mr.Sudhir Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

27/02/2018

1. Shri Najrang Lal, husband of petitioner No.1-Smt.Jeera Devi and father of petitioner No.2-Kumar Singh @ Daini was declared medically unfit during the course of employment on 18.6.1981 by the respondent-SECL, thereafter he was retired compulsorily on 26.11.1981 and later on, died on 27.2.1982. At that time, National Coal Wage Agreement (II) (hereinafter called as "NCWA-II") was

applicable and according to clause 10.4.3, one of the dependant was entitled to be considered for dependant employment if he/she is physically fit and aged below 35 years, but neither the said employment was extended to petitioner No.1 nor her son-petitioner No.2 was kept in live roster in absence of the provisions contained in the NCWA-II. Finding difficulty in getting dependant employment either for her or for her son the petitioners approached this Court on 2.9.2004 seeking appropriate writ for granting dependant employment to petitioner No.2 and also claimed that they be granted compensation for harassment, family pension and amount of C.M.P.F.

2. Return has been filed by the respondent-SECL stating inter-alia that the petitioners have approached this Court after lapse of 18 years for dependant employment for petitioner No.2, which is not permissible in terms of the NCWA-II. It is further stated that they have already paid amount of gratuity to the petitioners. The petitioners are not entitled for family pension and amount of C.M.P.F. and the deceased employee had already accepted his compulsory retirement on 26.6.1981 and received the amount of gratuity on 27.11.1981, therefore, the petitioners are not entitled for any relief.
3. Mr.Pushkar Sinha, learned counsel for the petitioners would submit that action of the respondents-SECL in not extending the right of dependant employment is absolutely arbitrary. Petitioner No.1 was never informed of her right to get dependant employment in terms

of clause 10.4.3 of the NCWA-II and was not granted dependant employment, which she was otherwise entitled and when the writ petition was filed, technical plea of delay in filing the writ petition has been taken, which is wholly unsustainable as dependant employment is right of petitioner No.1/petitioner No.2. Therefore, appropriate relief be granted to the petitioners.

4. Mr.K.K.Shrivastava, learned counsel for respondents No.2 to 5 would submit that the writ petition suffers from delay and laches as petitioner No.1 never applied for dependant employment as per clause 10.4.3 of the NCWA-II and in the writ petition also, there is no claim for dependant employment of petitioner No.1, therefore, the writ petition deserves to be dismissed on the ground of delay and laches as there is delay of 18 years in approaching the writ Court.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

6. Admittedly and undisputedly, the date on which Shri Najrang Lal was declared medically unfit on 28.6.1981, Joint Bipartite Committee for the Coal Industry National Coal Wage Agreement (II) memorandum of agreement dated 11th August, 1979 was in force and clause 10.4.3 of the said agreement provides for dependant employment to one dependant of a worker who is permanent disabled which reads as under:-

“10.4.3 Employment to one dependant of a worker who is

permanently disabled in his place.

i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

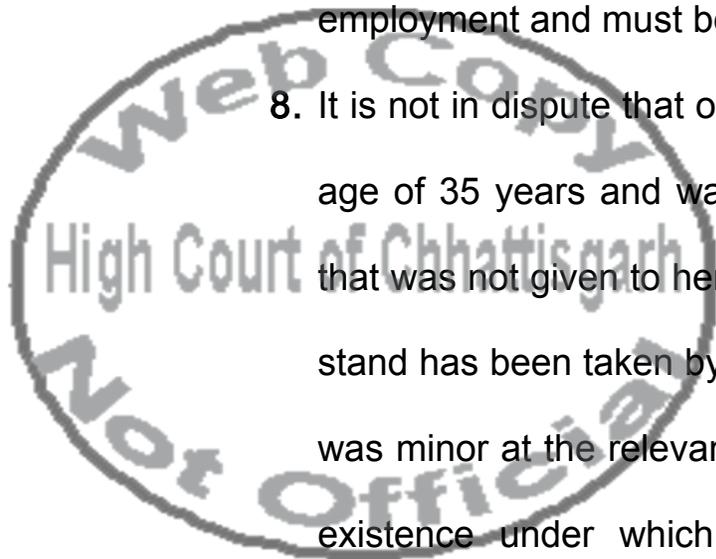
ii) The dependant to be considered for employment should be physically fit and suitable for employment and aged below 35 years.”

7. A focused glance of the aforesaid provision would show that one of the dependant was entitled to be considered for employment if the worker has suffered permanent disability resulting into loss of employment, but dependant should be physically fit for employment and must be aged about 35 years.

8. It is not in dispute that on 18.6.1981 petitioner No.1 was below the age of 35 years and was entitled for dependant employment, but that was not given to her and in affidavit filed before this Court, the stand has been taken by the respondent-SECL that petitioner No.2 was minor at the relevant time and there has been no provision in existence under which appointment can be made even after making an application for appointment after lapse of 18 years and application for employment on compassionate basis cannot be made after considerable delay.

9. At this stage, it would be necessary to notice the distinction between dependant employment flowing from clause 10.4.3 of the NCWA-II and discretionary compassionate appointment under any executive instructions.

10. In the matter of Steel Authority of India Limited v.



Madhusudan Das and others¹, Their Lordships of the Supreme Court have held in no uncertain terms that memorandum of settlement entered into by and between the management and employee is binding to both of them and it has “force of law” by holding as under:-

“14. The appellant being State within the meaning of Article 12 of the Constitution of India, while making recruitments, is bound to follow the rules framed by it. Appointment of a dependant of a deceased employee on compassionate ground is a matter involving policy decision. It may be a part of the service rules. In this case it would be a part of the settlement having the force of law. A memorandum of settlement entered into by and between the management and the employees having regard to the provisions contained in Section 12(3) of the Industrial Disputes Act is binding both on the employer and the employee....”

11. The aforesaid judgment (supra) has been followed by this Court in **Avinash Saloman v. South Eastern Coalfields Limited and others**, decided on 30.11.2015.

12. On the other hand, the object of granting compassionate appointment is not to give a member of such family a post much less a post held by the deceased and mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority is required to examine the financial condition of the family of the deceased and only upon satisfaction that the family will not be able to meet the crisis, a job is to be offered to the eligible member of the family as per prevalent policy.

1 (2008) 15 SCC 560

13. In the matter of Umesh Kumar Nagpal v. State of Haryana and others² Their Lordships of the Supreme Court

have have held as under: -

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision

² (1994) 4 SCC 138

of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

14. Likewise, it has also been held that appointment on compassionate grounds in deviation from the normal rule of recruitment was conceived with the object of providing immediate financial relief to the dependents of a person who dies during his employment. It was intended to be a beneficial measure and not a means of obtaining employment as a matter of course by avoiding the rules of recruitment applicable to others. (See Food Corporation of India and others v. Raja Ram³.)

15. On the other hand, dependant employment is governed by applicable National Coal Wage Agreement entered into between the parties and is part of Joint Bipartite Committee for the Coal Industry and is binding to the parties.

16. Recently, in the matter of Smt. Subhadra v. Ministry of Coal and another⁴ the Supreme Court pointed out the difference

³ (2010) 15 SCC 366

⁴ AIR 2018 SC 783

between discretionary compassionate appointment and dependant employment in terms of National Coal Wage Agreement. It was observed as under:-

“6...but the instant case is not a case of discretionary compassionate appointment governed by any statutory guidelines. It is governed by a Scheme, as agreed to by the parties and which has become part of the Bipartite Agreement. The terms of the Agreement are very specific and give no room for any discretion.”

17. Thus, from the aforesaid judgment (supra), it is quite apparent that the respondent-SECL has no discretion in terms of Bipartite Agreement to grant dependant employment which are specific and has to grant dependant employment to one of dependant in terms of clause 10.4.3 of the NCWA-II. It is not in dispute that petitioner No.1 is an illiterate lady who at the time of declaring her husband to be medically unfit was unaware of her legal right of dependant employment and remedy to enforce her right and it ought to have informed by the SECL/employer to petitioner No.1 (See S.K. Mastan Bee v. General Manager, South Central Railway and another⁵). The respondent-SECL is subsidiary company of the Coal India, a public sector undertaking and undoubtedly, a State within the meaning of Article 12 of the Constitution of India and is obliged to act fairly, reasonably and bonafidely.

18. The Supreme Court in the matter of Mohan Mahto v. Central Coal Field Ltd. And Others⁶ which relates to Central Coalfields Ltd., which is also subsidiary company of the Coal India

5 (2003) 1 SCC 184

6 (2007) 8 SCC 549

like the respondent-SECL frowned upon the Central Coalfields Limited and held that public sector undertaking is the State within the meaning of Article 12 of the Constitution of the India and therefore, it must act fairly and reasonably. It was observed 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 the N.C.W.A.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. Respondents did not perform their duties cast on them thereunder. It took an unilateral stand that an application has 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 an unholy stand that the elder brother of the appellant being employed, he was not entitled to appointment on the compassionate ground. 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 a '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.”

19. Apart from this, there are long line decisions of the Supreme Court which clearly mandates that the State, as a model employer, is expected to show fairness in action and as a model employer, the Government must conduct itself with high probity and candour with its employees. (See Balram Gupta v. Union of India and another⁷, Gurmail Singh and others v. State of Punjab and

⁷ 1987 (Supp) SCC 228

others⁸, Union of India and another v. Hemraj Singh Chauha and others⁹ and State of Jharkhand and another v. Harihar Yadav and others¹⁰).

20. In the instant case, respondent-SECL as model employer was obliged to clearly inform to petitioner No.1 who was entitled to be considered for dependant employment as a matter of right by virtue of the provisions contained in clause 10.4.3 of the NCWA-II and it ought to have extended to petitioner No.1, but the respondent-SECL failed to inform her right and also did not offer any such appointment right in time and when the writ petition was filed claiming appointment to petitioner No.2, the respondent-SECL has come with defence that petitioner No.2 at that time was minor and with a huge delay, such an appointment cannot be granted. Undoubtedly, the respondent-SECL has acted in unfair manner and has taken defence just to deny a valid claim of the petitioners.

21. Way back, in the matter of Indian Bank v. K. Usha and Another¹¹, Their Lordships of the Supreme Court relying upon the decision of Supreme Court in the matter of Workmen of Messrs Binny Ltd. v. Management of Binny Ltd. And Another¹² have held that in the matter of welfare legislation involving labour, the terms of contract and provision of Law should be liberally construed in favour of weak and it was pertinently held as under:-

“14. In this connection we must also have to keep in

8 (1991) 1 SCC 189
 9 (2010) 4 SCC 290
 10 (2014) 2 SCC 114
 11 (1998) 2 SCC 663
 12 (1985) 4 SCC 325

view the settled legal position that while construing any scheme in connection with the question of providing compassionate appointments to the heirs of deceased employee who was the breadwinner and whose exit had left his heirs in the lurch and in precarious and vulnerable economic position a construction which fructifies such a welfare measure has to be preferred as compared to another construction which stultifies such a benevolent welfare measure.....”

22. Very recently, in the matter of Rajendra Shankar Shukla & others, etc. v. State of Chhattisgarh and others, etc.¹³ Their Lordships of the Supreme Court have deprecated the practice on the part of the Government and other authorities who are the State under Article 12 of the Constitution of India to raise the technical pleas to defeat the rights. Paragraph 22 of the report states as under:

“22. Further, this Court has frowned upon the practice of the Government to raise technical pleas to defeat the rights of the citizens in Madras Port Trust v. Hymanshu International wherein it was opined that it is about time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens.....”

23. Reverting to the facts of the present case, it is quite vivid that though petitioner No.1 was entitled for dependant employment as a matter of right flowing from clause 10.4.3 of the NCWA-II, but neither she was informed of her right to get dependant employment nor she was offered employment by which she was denied and deprived of her right which she was otherwise entitled. From perusal of clause 10.4.3 of the NCWA-II, it is clear that that petitioner No.1 was entitled for dependant employment as a matter

of right on 18.6.1981. Not a single word has been averred in the return filed by the respondent-SECL that she was offered dependant employment and she declined to accept the same. On the other hand, some stray lines mentioned in the representation made by petitioner No.1 who is an illiterate lady has been relied upon to demonstrate that she wanted her son to be employed and she declined to accept dependant employment, which cannot be accepted in view of the finding recorded hereinabove.

24. Since, petitioner No.1 has already crossed the age of 35 years and petitioner No.2 was minor on 18.6.1981 the date on which her husband was declared medically unfit and petitioner No.1 was entitled for dependant employment as per clause 10.4.3 of the NCWA-II on that day and it was not given to her, it would be expedient to grant relief in the shape of lumpsum monetary compensation of ₹5 lacs (five lacs) to petitioner No.1. The said amount shall be paid by the respondent-SECL to petitioner No.1 within 6 weeks from the date of presentation of a copy of this order.

25. So far as the amount of family pension and amount of C.M.PF. are concerned, the petitioners are not entitled as husband of petitioner No.1 was not a member of C.M.P.F.

26. The writ petition is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB: Hon'ble Shri Justice Sanjay K. Agrawal)

WP No.3052 of 2004

Petitioners

Smt. Jeera Devi and another

Versus

Respondents

Union of India and others

(English)

Distinction between discretionary compassionate appointment and right of dependant employment pointed out.

(हिन्दी)

वैवेकिक अनुकम्पा नियुक्ति तथा आश्रित नियोजन का अधिकार के मध्य भिन्नता बताई गई।

