

(2012) 08 JH CK 0040

Jharkhand High Court

Case No: Writ Petition (S) No. 3828 of 2005

Jagdish Manjhi

APPELLANT

Vs

The C.M.D., Central Coalfields
Limited, Ranchi and The Project
Officer, Hendegir Colliery,
Hazaribagh

RESPONDENT

Date of Decision: Aug. 7, 2012

Acts Referred:

- Constitution of India, 1950 - Article 12, 226

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: H.K. Mahato, for the Appellant; Ananda Sen and Amit Kumar Verma, for the Respondent

Final Decision: Dismissed

Judgement

Alok Singh

1. Order dated 12.09.2002 (Annexure- 2 to the writ petition) is under challenge in the present writ petition, whereby request to grant

compassionate appointment to the petitioner was declined on the ground that application seeking compassionate appointment was moved after

period of limitation i.e. one year from the date of death of the employee. Brief facts of the present case, inter alia, are that father of the petitioner,

Shankar Manjhi was working as "Tremmer" in the Hendegir Colliery, who has died in harness on 28.05.1999. Petitioner, being son and dependent

of the employee- Shankar Manjhi, has applied for compassionate appointment on 25.08.2000.

2. Undisputedly, as per the circular dated 01.01.2002, time to apply for compassionate appointment was extended to one year with effect from February, 2000.

3. Division Bench of this Court, in the case of Sushil Kumar Vengra Vs. Union of India & Ors., reported in 2005 (1) J.C.R. 282, while placing reliance on the judgment of Apex Court in the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, , Umesh Kumar Nagpal Vs. State of Haryana and Others, , State of H.P. and Another Vs. Jafli Devi (Smt.), , has held as under:

When compassionate appointment to a dependent of a public sector undertaking or an entity which is a State within the purview of Article 12 of the Constitution of India is governed by a scheme or rule or circular issued in that behalf by that entity, appointments could be made by that entity only in terms of the Scheme, Rules or Circular and a Court exercising jurisdiction under Article 226 of the Constitution of India does not have jurisdiction to direct the Government or the authority concerned to go against its own scheme. The adage that hard facts make bad law should not be forgotten by Courts while dealing with such cases. Courts should not also be instrumental in ushering in arbitrariness in such matters when an authority has strictly followed what it has itself set out as part of the scheme. Unless the Court is in a position to strike down the very scheme, the Court cannot direct a departure from that scheme.

4. Hon"ble Apex Court in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, , in paragraph No. 20, has held as under:-

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate appointment cannot be made in the absence of rules and regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/ incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/ incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

5. This Court, in W.P.(S) No. 2131 of 2005 (Dhani Ram Manjhi Vs. Central Coalfields Limited & Ors.), decided on 16.07.2012, has held as under:-

Having perused the judgments in the case of Bhawani Prasad Sonkar (Supra), Sushil Kumar Vengra (Supra) and Satyendra Bhuinya (Supra), it is

thus clear that compassionate appointment can be sought and granted in accordance to the Rules, Regulations, Schemes made by the State or instrumentality of the State; application of compassionate appointment must be preferred without undue delay within such limitation as prescribed.

This Court, while exercising the powers under Article 226 of the Constitution of India, ordinarily should not direct to extend the period of limitation

as contained in different Circulars/Statutes, however, in the peculiar facts and circumstances of a case, the period of such limitation may be relaxed

in order to give effect to the beneficial provisions of the various schemes of the welfare legislation of the State including compassionate appointment

by the authority considering the application on showing sufficient grounds for such delay in moving the application.

As observed hereinabove, petitioner ought to have moved application seeking compassionate appointment within one year, which admittedly he

has moved after 15 months and neither any assertion is made in the petition nor any material is placed on record to justify delay in moving the

application, therefore, order impugned rejecting the application as beyond limitation period does not warrant any interference.

6. Thus, it can safely be said that this Court ordinarily shall not issue writ of Mandamus directing the authorities to extend the period of limitation as prescribed in the circular/scheme. However, authority, in the peculiar facts and circumstances of the case on showing sufficient reasons and bonafide may relax the period of limitation.

7. In the present case, there is no explanation furnished as to why application could not be moved within a year, the time to move application seeking compassionate appointment. Moreover, there is no assertion in the petition that petitioner was totally dependent on the deceased employee and was/is not gainfully employed anywhere. Financial status of the family is also not disclosed in the petition. Therefore, petitioner is not entitled for any relief. Accordingly, present petition is dismissed.