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(2009) 07 JH CK 0013

Jharkhand High Court

Case No: Writ Petition (S) No. 1711 of 2005

Baby Kumari	APPELLANT
Vs	
Bharat Coking Coal Ltd. and Others	RESPONDENT

Date of Decision: July 22, 2009

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2P
- Limitation Act, 1963 - Section 6

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Advocate: S.K. Laik, for the Appellant; Anoop Kumar Mehta, for the Respondent

Judgement

D.G.R. Patnaik, J.
Heard Sri S.K. Laik, learned Counsel for the petitioner and Sri Anoop Kumar Mehta, learned Counsel for the respondent B.C.C.L.

2. The petitioner in this writ application has prayed for quashing the order dated 27.12.2004 (Annexure-7) passed by the Respondent No. 2, whereby the petitioner''s application for granting her dependent/compassionate appointment, has been rejected. A further prayer has been made to direct the respondents to provide employment to the petitioner on the ground of her father''s service.

3. The petitioner''s father Late Ram Sanehi Beldar was employed under the respondent B.C.C.L. and he died in harness on 11.07.2000. On the date of his death, the petitioner was a minor aged about 15 years. After attaining the age of majority, she submitted her application before the concerned authorities of the respondents praying for grant of dependent/compassionate appointment. The application was abruptly rejected on the ground that it was belatedly filed.

4. Sri S.K. Laik, learned Counsel for the petitioner would submit that the ground for rejecting the petitioner''s claim is totally erroneous and arbitrary. The respondents ought to have considered the fact that the petitioner''s claim for dependent/compassionate appointment is on the basis of the terms and conditions of the N.C.W. Agreement which lays down terms and conditions of service of the employees and is binding upon the employer also. Under the terms of the N.C.W. Agreement, the respondent employer is bound to provide employment to the dependent of the deceased employee who dies in harness. Learned Counsel argues further that the Management of the respondent company cannot curtail the rights accrued under the terms of the N.C.W. Agreement by way of circulars and prescribing periods of limitation for filing applications.

5. Sri Anoop Kumar Mehta, learned Counsel for the respondents, on the other hand, would argue that the terms and conditions of the N.C.W. Agreement, no doubt confer certain rights upon the employees and by issuing circulars prescribing a time limit within which application for compassionate appointment are to be filed, no such right as granted under the N.C.W. Agreement, is sought to be curtailed.

Learned Counsel submits that the period of limitation has been prescribed only to ensure proper implementation of the terms of the N.C.W. Agreement in the matter of grant of employment on compassionate grounds and such regulations have to be necessarily followed or else, claims for compassionate appointment would continue to be submitted even after 10 years.

6. From the perusal of the impugned order (Annexure-7), it appears that the petitioner''s claim was out-rightly rejected only on the ground that it was filed belatedly.

From the copy of the application, which the petitioner claims to have filed on affidavit (Annexures 3 and 4), it appears that the petitioner had specifically stated that on the date of the death of her father, she was a minor of the age of 15 years and on account of such disability she could not possibly file her application or dependent/compassionate appointment and she could file her application only after attaining the age of majority.

7. From the impugned order, as passed by the respondents, it appears that these facts and circumstances which have been explained as reason for the delay in filing the application, have not been considered at all by the respondents.

8. A Division Bench of this Court, in the case of Pradip Kumar Mehta v. C.C.L. 2006 (4) JLJR 267 had occasion to consider a similar issue in which the facts were almost identical as the facts of the present case. Considering the facts of the case and the controversy raised by the employer on the ground of limitation and explaining the provisions of Section 6 of the Limitation Act, 1963, the Division Bench had recorded its observations as follows:

The right of compassionate appointment flows from the settlement time to time arrived at between the Management and the Worker''s-Union as contemplated u/s 2(p) of the

Industrial Disputes Act. Such settlement is called National Coal Wage Agreement (in short N.C.W.A.) which is an award within the meaning of the Act and it has got the statutory force. There is provision under the N.C.W.A. for giving compassionate appointment to the deceased employee who dies in harness. By Circular issued in the year 1999 a time limit of six months has been prescribed from date of death of the employee for the purpose of filing application for compassionate appointment. Such circular issued by the Management also has got force of law. Now the question arises as to whether the limitation prescribed for submission of application for compassionate appointment will equally be applicable to the dependants who are minor at the time of the death of his father. In my considered opinion the limitation prescribed in the Circular cannot and shall not be inconsistent with the provisions of the Limitation Act.

...Where the prescribed period of limitation expires before the cessation of disability, for instance, before attainment of majority, minor will, no doubt, be entitled to fresh starting point of limitation from the attainment of his majority....

9. The same ratio would apply to the facts of the present case. Accordingly, this writ application is allowed. The impugned order (Annexure-7) is hereby set aside. The respondent authorities shall consider the petitioner''s representation, a copy of which shall be filed by the petitioner within ten days from the date of this order and within two month from the date of receipt of the copy of the representation, the respondents shall take an appropriate decision on the petitioner''s claim by passing a reasoned and speaking order and intimate their decision to the petitioner effectively.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent B.C.C.L.