
Hagra Mahali Vs Union of India (UOI) and Others

Writ Petition (L) No. 2098 of 2005

Court: Jharkhand High Court

Date of Decision: July 23, 2010

Citation: (2011) 128 FLR 254

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Ajay Kumar Singh, for the Appellant; J.C to C.G.C, for the U.O.I and A.K. Mehta, for the B.C.C.L, for the Respondent

Final Decision: Dismissed

Judgement

Narendra Nath Tiwari, J.

In this writ petition the Petitioner has prayed for quashing the order dated 30.4.03 contained in Annexure-4

issued by the Respondent No. 2 whereby the appropriate Government has refused to refer the industrial dispute to the appropriate Labour Court

for adjudication on the ground that the same is without any substance. It has been stated that the Petitioner's mother was a permanent employee of

M/s B.C.C.L in its Howrah (N) Colliery, District-Dhanbad. She died in harness on 12.5.93 leaving behind the Petitioner as her only son and

dependant According to the provisions of Clause 9.3.2 of the NCWA-IV, the Petitioner made his claim for his appointment on compassionate

ground after eight months of the death of his mother. His application was examined and he was asked to rectify the application. Thereafter, the

Petitioner took the required steps as far back as in the year 1994, but after about four years his claim form was returned on the ground that the

same was not signed and approved by the G.M of the area. Being aggrieved by the said attitude of the Management, the Petitioner sought to raise

a dispute through the Labour Union. The dispute could not be resolved by conciliation and as such the same was sent to the appropriate

Government [the Assistant Labour Commissioner (Central), Dhanbad-III] for reference to the appropriate Labour Court. The appropriate

Government instead of referring the dispute to learned Tribunal for adjudication, entered into the merit thereof and held the same without substance

on the ground that the dispute has been raised after nine years of the death of the concerned workman. It has been submitted that the delay was

caused by the Management in finalizing the Petitioner's claim for compassionate appointment and the Petitioner was not at fault. The appropriate

Government without taking into consideration this aspect of the matter, has decided the dispute on merit holding the same belated and without

substance.

2. Mr. A.K. Mehta, learned Counsel appearing on behalf of the B.C.C.L as also learned Counsel appearing on behalf of the Central Government

opposed the writ petition and submitted that the alleged dispute was regarding the claim of compassionate appointment of the Petitioner after the

death of his mother in the year 1993. Almost 17 years have passed thereafter. Getting appointment on compassionate ground is based on several

factors and considerations and the main consideration is the shock affecting the dependents after the death of an earning family member and to

mitigate the hardship resulted by sudden death of the earning family member. The said urgency and the purpose has, thus, been frustrated after

lapse of long time. The dispute regarding the same was sought to be referred after nine years of the death of the concerned workman. In view

thereof, the appropriate Government has prima facie found the dispute not referable for adjudication. There is no illegality or infirmity in the

impugned order and it cannot be said to have touched the merit of the claim of the Petitioner.

3. I have heard learned Counsel for the parties and considered the facts and the materials on record. Though from the record it appears that there

was delay in processing the application of the Petitioner also on the part of the Management, the Petitioner himself was not vigilant and serious

about his claim. He had been silently observing the delay being perpetuated by the Management for several years. Now admittedly 17 years have

passed after the death of the concerned workman and the Petitioner has been able to meet the adverse situation for a long period of time. The

urgency created by sudden demise of bread earner has faded.

4. The provision of the compassionate appointment is to mitigate the hardship of the Defendants after sudden death of the bread earner and the

same is not a facility to the dependant for getting employment by an alternative mode - by passing the prescribed procedure for selection and

appointment at any point of time.

5. Reviving claim of compassionate appointment after about 17 years is something strange to the object of the said provision. I, therefore find no

reasonable ground for interfering with the impugned order of the appropriate Government. In view thereof. I have not gone into the question as to

whether the order of the appropriate Government amounts to entering into the merit of the claim of the Petitioner.

6. For the above reasons, this writ petition is not entertainable and is, accordingly, dismissed.