

(2012) 01 JH CK 0044

Jharkhand High Court

Case No: Writ Petition (S) No. 5046 of 2009

Rekha Kumari

APPELLANT

Vs

Bharat Coking Coal Ltd. and
Others

RESPONDENT

Date of Decision: Jan. 2, 2012

Acts Referred:

- Constitution of India, 1950 - Article 12, 16

Citation: (2012) 3 JCR 367

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Advocate: Rahul Kumar, for the Appellant; Anoop Kumar Mehta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.N. Patel, J.

Counsel for the petitioner submitted that the father of the petitioner died in harness in the year 2002. Petitioner applied for compassionate appointment within the time limit, but the claim of the petitioner has been brushed aside, vide order dated 5th March, 2009 (Annexure-12 to the memo of this petition) de-hors the provisions of Clause 9.5.0 of the National Coal Wage Agreement and the claim of the petitioner has been rejected only for the reason that she is female legal heir of her father and therefore, she can not be given compassionate appointment nor her name can be entered into Live Roster as only the name of male candidates can be entered into Live Roster and therefore, claim of the petitioner has been rejected. It has further been submitted by counsel for the petitioner that as per the decision rendered by the Hon"ble Supreme Court in [Mohan Mahto Vs. Central Coal Field Ltd. and Others](#), , name of even a female underage legal heir can be entered into Live Roster and she can be given compassionate appointment if she was minor at the time of death of

the deceased employee. In the present case, petitioner's age was below 18 years at the time of death of the employee and therefore, she may be given compassionate appointment when she attains the age of majority and till then, her name may be entered into the Live Roster maintained by the respondents and therefore, impugned order dated 5th March, 2009 be quashed and the matter may be remanded to the respondents for a fresh decision.

2. Counsel for the petitioner has also relied upon the decision rendered by this Court in W.P.(S) No. 1048 of 2011 decided on 9th August, 2011.

3. I have asked Learned Counsel for the respondents as to whether they have followed the National Coal Wage Agreement and as submitted by counsel for the respondents, under Clause 9.5.0 of the National Coal Wage Agreement, the name of the petitioner can not be entered into the Live Roster because as provided in Clause 9.5.0, only the underage male legal heirs of the deceased employee are entitled to have their name entered into the Live Roster for compassionate appointment.

4. Having heard counsel for both sides and looking to the facts and circumstances of the case, I, hereby, quash and set aside the order, dated 5th March, 2009 (Annexure-12 to the memo of the present petition) passed by the respondents, for the following facts and reasons :

(i) It appears that the father of the present petitioner was employed by the respondents and died in harness in the year 2002.

(ii) It further appears that in pursuance of the National Coal Wage Agreement, the petitioner is entitled to compassionate appointment provided she is major. As per the procedure, respondents are maintaining Live Roster, i.e. If any legal heir is a minor at the time of death of the employee, name of that legal heir is entered into that Live Roster. It further appears from the facts of the case that the respondents have brushed aside the claim of the petitioner only on the ground that the name of only male legal heirs can be entered into Live Roster as per Clause 9.5.0 of National Coal Wage Agreement, which reads as under :

Provision of employment/monetary compensation to female dependants of Workmen who died while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under :

(i) In case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0, if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment.

In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment.

(iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0, if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.

(iv) The aforesaid clause has already been interpreted by the Hon"ble Supreme Court in [Mohan Mahto Vs. Central Coal Field Ltd. and Others](#), and para 18 of the said judgment reads as under : (See JCR at Page 151 para 17)

18. We have indicated herein before, that it is not necessary for us to go into the question as to whether in the teeth of the provision of NCWA V, the respondent at all had any power to fix a time-limit and thereby curtailing the right of the workman concerned. We would assume that even in such a matter, it had a right. But, even for the said purpose, keeping in view the fact that a beneficial provision is made under a settlement, the "State" was expected to act reasonably. While so acting, it must provide for a period of limitation which is reasonable. Apart from the fact that the period of limitation provided for in the circular letter with a power of relaxation can never be held to be imperative in character, the matter should also be considered from the subsequent conduct of the respondent insofar as it had issued another circular letter in the year 2000 providing for filing of an application for appointment on compassionate grounds within a period of one year. It may be that the said circular letter has prospective operation but even in relation thereto we may notice that whereas the said circular letter was issued upon holding discussion with the unions, the circular letter of the year 1995 was a unilateral one. Furthermore, in its letter dated 2-8-2003/3-8-2000, it will bear repetition to state that expiry of the period of limitation was not taken as a ground for rejecting his application. Underage and non-placement of his name in live roster are stated to be the reasons. It is, therefore, unfair on the part of the respondent to raise such a plea for the first time in its counter-affidavit to the writ petition. If he was underage, definitely, it was obligatory on the part of the respondent to keep his name in the live roster. It was not done.

(iv) It is contended by the counsel for the respondent that as per Clause 9.5.0 (iii) of the N.C.W.A., if there is a male legal heir of deceased employee, below age of 12 years, his name will be entered in "Live Roster" who will be offered employment later on, after he attains age of majority, but petitioner is female, therefore, her name can not be entered into "Live Roster". This argument is not accepted by the Court mainly for the reason that respondent being "State" within the meaning of Article 12 of the Constitution of India, cannot discriminate petitioner on the ground

of sex. If the male legal heir is entitled to employment, upon attaining age of majority, equally, female legal heir is entitled to compassionate appointment, upon attaining the age of majority. As per Article 16 of the Constitution of India, discrimination on the ground of race, religion, sex, caste, place of birth is not permissible.

5. Taking into consideration the above facts and in view of the aforesaid decision, I, hereby, quash and set aside the order, dated 5th March, 2009 (at Annexure-12 to the memo of the present petition), passed by the respondents and I, hereby, direct the respondents to take a fresh decision in the light of the aforesaid observations, within a period of eight weeks from the date of receipt of a copy of an order of this Court. This writ petition is allowed.