

(2010) 07 JH CK 0040

Jharkhand High Court

Case No: Writ Petition (S) No. 6062 of 2008

Most. Lilawati Devi

APPELLANT

Vs

Central Coalfield Limited and
Others

RESPONDENT

Date of Decision: July 11, 2010

Citation: (2010) 4 JLJR 155

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad, J.

This writ application has been filed for quashing the letter dated 26.4.2009 as contained in Annexure 10 issued by respondent No. 6 whereby it has been communicated that the claim of the petitioner for her appointment on compassionate ground has been rejected.

2. The case of the petitioner is that late Birwa Munda, father-in-law of the petitioner while was in service at Rajrappa Project of M/s. Central Coalfield Limited, died in harness on 27.1.2005, leaving behind his widow Most. Saidma Devi, married daughters, Dukhni Devi and Phulo Devi, daughter-in-law (petitioner) and a grandson (minor) Ajay Kumar Munda. After his death, Most Saidma Devi submitted an application before the authority stating therein to provide employment to her daughter-in-law (petitioner). Subsequently, the petitioner, the only eligible member in the family, applied on 26.7.2005 for her employment on compassionate ground in terms of Clause 9.3.3 of the National Coal Wage Agreement VI/VII as after the death of her father-in-law, the family had lost all source of livelihood. On her application, she was called for interview in the year 2006 before the Area Screening Committee but no order in this respect was passed until 26.4.2008, when claim of the petitioner was rejected on the ground that the daughter-in-law cannot be considered for employment under the provision of National Coal Wage Agreement VI/VII. The said

order as contained in Annexure 10 has been challenged to be bad on the ground that in terms of the stipulation as made in paragraph 9.3.3 of the National Coal Wage Agreement VI/VII read with Implementation Instruction No. 8, indirect dependant such as, daughter-in-law is quite eligible to be appointed if direct dependant is not available. Since the mother-in-law being aged more than 45 years and the daughters being married, the only dependant, who is entitled to be appointed, is the daughter-in-law and as such, she was entitled to be appointed in terms of the aforesaid clause of National Coal Wage Agreement and the instruction issued thereunder, when the mother-in-law has informed in writing that she does not wish to get monetary compensation and that employment be given to her daughter-in-law.

3. A counter affidavit has been filed wherein it has been stated that on the death of late Birwa Munda, an application for employment on compassionate ground was filed by the petitioner, being daughter-in-law of the deceased but she was not found fit to be appointed as her name does not find mentioned in any of the prescribed service record of the deceased employee and therefore, an offer was given to the widow of late Birwa Munda for making application for payment of monetary compensation. At the same time, it has been also pleaded that so long direct dependant i.e. wife of the deceased employee is alive, she is entitled to be eligible for appointment, in case she is below 45 years of age and if more than 45 years of age, then she is entitled to monetary compensation and as such, the petitioner is not an eligible member of the family entitled for employment.

4. Having heard learned counsel appearing for the parties and on perusal of the record, it does appear that when the petitioner, being daughter-in-law of the deceased employee submitted an application for her employment in terms of the relevant provision of the National Coal Wage Agreement, it was communicated vide letter dated 26.4.2008 (Annexure 10) not to the petitioner but to the mother-in-law of the petitioner that the matter relating to employment of her daughter-in-law was not considered by the competent authority and hence, she (mother-in-law) may apply for payment of monetary compensation. However, in the counter affidavit, it has been clarified that case of the petitioner being daughter-in-law of the deceased was not considered as her name was not found mentioned in any of the service record of the deceased employee and that widow being a direct dependant so long survives, she is entitled to monetary compensation as she had exceeded age of 45 years. Thus, the second ground appears to be the main ground for rejection of the claim of the petitioner as it does appear from Annexure 10 that the petitioner has been recognized as daughter-in-law of the deceased and in that view of the matter, it does not stand to reason in rejecting the claim on the ground that her name does not find mentioned in the service record.

5. Now the point for consideration is as to whether the petitioner being daughter-in-law is entitled to employment in terms of Clause 9.3.2/9.3.3 of the

National Coal Wage Agreement or not. The said provision reads as follows:

9.3.2 - Employment to one dependant of the worker who dies while in service.

In so far as female dependents are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.

9.3.3. The dependant for this purpose means the wife/husband, as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependents of the deceased.

6. The contention of the respondents is that so long widow being direct dependant is alive, she is entitled either to monetary compensation or to employment if she is below the age of 45 years but as the widow is above 45 years, she is entitled to only monetary compensation but this contention does not appear to be consonance with the Clause 9.3.3 of the National Coal Wage Agreement which defines the dependant as widow/husband, as the case maybe, unmarried daughter, son and legally adopted son. But at the same time, it also does stipulate that if no such direct dependant is available for employment, then Brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependents of the deceased. "The clause available for employment" does indicate that even if direct dependant is there in the family but if he/she is not fit or available for employment, then employment can be given to indirect dependant such as, widowed daughter and widowed daughter-in-law. The said provision has rightly been made in order to provide social security to the members of the deceased employee who died in harness.

7. Here, in the instant case, none of the family of the deceased employee except the petitioner is available for employment as the mother-in-law has already attained the age of more than 45 years and daughters being married and one grandson is minor, it is only the petitioner, widowed daughter-in-law is available for employment and as such, decision rejecting the claim of the petitioner for giving her employment under the provision of National Coal Wage Agreement is quite erroneous.

8. Accordingly, the order as contained in Annexure 10 refusing to give employment to the petitioner is hereby quashed. Consequently, the respondent Nos. 2 and 3, the Director (Personnel), Central Coalfield Limited, Darbhanga House and the General Manager (P and IR), Central Coalfield Limited, Darbhanga House are hereby directed to take decision In the matter of employment of the petitioner within a period of two months from the date of receipt/production of a copy of this order.

9. Accordingly, this application is allowed.