

**(2014) 11 JH CK 0013**

**Jharkhand High Court**

**Case No:** W.P. (S) No. 4632 of 2013

Dinesh Kumar Mahto

APPELLANT

Vs

Bharat Coking Coal Limited

RESPONDENT

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**Date of Decision:** Nov. 10, 2014

**Hon'ble Judges:** Aparesh Kumar Singh, J

**Bench:** Single Bench

**Advocate:** Abdul Kalam Rashidi, Advocate for the Appellant; Indrajit Sinha and Arpan Mishra, Advocate for the Respondent

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### **Judgement**

Aparesh Kumar Singh, J.

Heard counsel for the parties.

2. Father of the petitioner No. 1 - late Madhusudan Mahto was an employee of the respondent BCCL as an Electrician in Mahuda Washery when he was declared medically unfit on the opinion of the Medical Board in the year 2004 and pursuant to the letter order dated 13/14.08.2004 (Annexure-1), he was relieved from service with effect from 16.08.2004.

3. Petitioner No. 1 admittedly is the son from the second wife - Gati Devi of the said employee. The claim for appointment of the petitioner No. 1 was rejected by the respondents through office order bearing No. 385 dated 02/03.08.2007 (Annexure-5) on the ground that he is the son from the second wife of the employee. It also indicated therein that the application could be made for seeking monetary benefits as per the company's rules Petitioner's have challenged the said order in the present writ application filed in the year 2013. Petitioners have also enclosed family certificate at annexure-2 where both first and the second wife of the said employee have been indicated along with other children i.e., two married daughters, the petitioner No. 1 being the son and three unmarried daughters. The employees is said to have died on 02.09.2010 as per annexure-6 death certificate. Annexure-7 dated 06.04.2010 and Annexure-8 dated 08.09.2011 have been enclosed by the petitioners which are inter-departmental correspondences relating to the

claim of the petitioner No. 1 for appointment. A perusal of annexure-7 however also indicates that earlier, the claim of the petitioner No. 1 has been rejected.

4. Learned counsel for the petitioner has relied upon extracts of certain judgments in the supplementary affidavit such as, in the case of Srikanta Garai versus Coal India Limited & others in WPS No. 1720/2004 by Calcutta High Court as also by Learned Division Bench of this Court in WPS No. 4461/2008 and analogous cases. It is submitted that if the claim of appointment is not being opposed by any other person, respondents should have granted appointment to the petitioner No. 1 as he fell within the category of dependents under the relevant provisions of N.C.W.A. which was in vogue at the relevant point of time.

5. Respondents have opposed the prayer of the petitioners on the ground that the petitioner No. 1 was admittedly the son from the second wife. Scheme of N.C.W.A. provides for employment to the dependent against permanent disability of the employee. The dependent under the scheme is the husband/wife/unmarried daughter/son/legally adopted son. According to the respondents, petitioner No. 1 does not come within the aforesaid category of dependents and therefore, any appointment on such grounds of disability cannot be granted de-horse the scheme. Learned counsel for the respondents has relied upon the judgment in the case of M.V.V. Prakash versus Union of India & others by the learned Division Bench of this Court in WPS No. 16/2004 dated 24.07.2014.

6. I have heard learned counsel for the parties and gone through the relevant materials on record including extracts of the judgments relied upon by the petitioners and the respondents. It is to be noted at the first place that the appointment on such grounds of medical unfitness or on compassionate grounds are provided under the scheme framed by the employer in the nature of social welfare scheme and it is an exception to the general rule of public employment whereunder equal opportunities are to be accorded to all eligible. As per the scheme, definition of dependents includes husband/wife/unmarried daughters/son/legally adopted son. The claim of the petitioner No. 1 was rejected on the ground that he is the son from the second wife during the lifetime of the employee through letter dated 2/3.08.2007 (Annexure-5). The said order has been challenged after six years by the petitioners and more so, when the employee himself had been declared medically unfit in the year 2004 i.e., nine years before filing of the present writ application. On that ground itself, the writ petition would have been barred by delay and laches. However, even otherwise, considering the claim on merits, it appears that the scheme does not provide for consideration of claim of a person born out of the second wife, so far as any employment to the dependent is concerned. This view has been reiterated by the learned Division Bench of this Court in the case of M.V.V. Prakash (Supra). From the extracts of the judgment relied upon by the petitioner as rendered by the Division Bench of this Court in WPS No. 4461/2008 (Supra), it appears that the scheme in question was

relation to the Railways. In the present case, scheme is under the respondent BCCL. On that ground also, claim of the petitioner is distinguishable on facts.

The writ petition is accordingly dismissed.