

(2014) 10 JH CK 0022

Jharkhand High Court

Case No: L.P.A. No. 207 of 2014

Bhadwa Bedia

APPELLANT

Vs

Central Coalfields Limited

RESPONDENT

Date of Decision: Oct. 7, 2014

Citation: (2015) 2 AJR 131 : (2015) 1 LJLR 325

Hon'ble Judges: Dhirubhai Naranbhai Patel, Acting C.J.; Sujit Narayan Prasad, J

Bench: Division Bench

Advocate: Atanu Banerjee, Advocate for the Appellant; Anoop Kr. Mehta, Advocate for the Respondent

Judgement

1. This Letters Patent Appeal has been filed against the judgment and order dated 19th June, 2013 passed by the learned Single Judge in W.P.(S) No. 4779 of 2004 dismissing the writ petition.
2. Counsel for the appellant submitted that father of the appellant, who was an employee of the respondents, died in harness on 3rd September, 1998 and this appellant/original petitioner made an application on plain paper on 15th October, 1998 and in prescribed format on 21st July, 2000. His prayer was initially rejected vide order dated 31st January, 2003/1st February, 2003 by the respondent Management and against this rejection, W.P.(S) No. 2242 of 2003 was filed and vide Order dated 17th July, 2003 learned Single Judge, following the decision in the case of Roopna Manjhi Vrs. CCL & Others and Rinku Kumari Vrs. CC & Others regarding 1 1/2 years time limit for filing application for compassionate appointment, set aside the order dated 31st January, 2003/1st February, 2003 and remanded the matter to the respondent authority for reconsideration of the case of the petitioner. Respondent Management rejected the representation filed by this petitioner/present appellant vide order dated 30th January, 2004/4th February, 2004 citing delay in filing the application, i.e. filing the application after 1 year 10 1/2 months and not within One year 6 months after the death of the employee. Against this order of rejection W.P.(S) No. 4779 of 2004 was filed, which was dismissed by

the learned Single Judge and against this order of dismissal this Letters Patent Appeal has been preferred mainly on the ground that the time limit for preferring an application for appointment on compassionate ground is not applicable in the present case because he was a minor when his father died on 3rd September, 1998 as date of birth of the appellant is 12th August, 1982. This aspect of the matter has not been properly appreciated by the learned Single Judge, hence judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

3. It is submitted by the counsel for the respondents that as on today 16 years have elapsed after the death of father of the present appellant. The very purpose of compassionate appointment has been frustrated by now. This appellant has attained the age of more than 32 years. As per practice application for compassionate appointment should have been preferred within 18 months from the date of death of the employee of the respondent, that too in a prescribed format. The application in prescribed format was preferred by the appellant on 21st July, 2000, i.e. One year and 10 1/2 months after the death of the employee and therefore, no illegality has been committed by the respondent Management in rejecting the application of this appellant for compassionate appointment because it was preferred after 18 months of the date of death of the father of this appellant and no error has been committed by the learned Single Judge in dismissing W.P.(S) No. 4779 of 2004. Hence, this L.P.A. may not be entertained by this court.

4. Having heard both sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts.

"(I) Father of the present appellant was serving the respondents and he died in harness on 3rd September, 1998

(II) Appellant applied for compassionate appointment on 15th October, 1998 on a plain paper and in prescribed format on 21st July, 2000.

(III) As per the circular issued by respondents, application should have been preferred by this appellant within a period of 18 months from the date of death of his father. On perusal of the records, It appears that application was preferred in prescribed format on 21st July, 2000. Date of birth of the appellant is 12th August, 1982 and therefore, he has already attained the age of 32 years by now and sixteen years have lapsed since the death of his father. Therefore, in this case the very purpose of appointment on compassionate ground has been frustrated because appointment on compassionate ground is an exception to the general rule. Every appointment on compassionate ground might deny the opportunity of employment to a genuinely deserving person. Therefore, in the facts of the present case, taking into consideration the long lapse of time after the death of the father and also looking to the fact that application for appointment on compassionate ground in prescribed format was made after 18 months, no illegality is committed by the

respondents in rejecting the same and therefore, there is no illegality in the impugned order passed by the learned Single Judge. As per para 7 of the impugned order passed by the learned Single Judge, it has been held by the Hon"ble Supreme Court that courts should not fall prey to any sympathy syndrome so as to issue direction for compassionate appointments, without reference to the prescribed norms. It has been also held by the Hon"ble Supreme Court that the courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment to all those, who seek court's intervention. It is further held by the Hon"ble Supreme Court that courts and tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support. This decision is rendered by the Hon"ble Supreme Court in the case of *The Chief Commissioner, Central Excise and Customs, Lucknow & Ors. v. Prabhat Singh* reported in JT 2013 (1) SC 350.

(IV) It has been held by Hon"ble Supreme Court, in the case of [State of U.P. and Others Vs. Paras Nath,](#), especially in paragraph Nos. 4, 5 and 6, as under:--

"4. Seventeen years after the death of his father, the respondent, on 8.1.1986, made an application for being appointed to the post of a Primary School Teacher under the said Rules. His application was rejected. He, thereafter, filed a writ petition before the High Court. This writ petition was allowed by the High Court and an appeal from the decision of the Single Judge of the High Court was also dismissed by the Division Bench of the High Court. Hence the State has filed the present appeal.

5. The purpose of providing employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgment of this Court in the case of *Union of India v. Bhagwan Singh*. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed:

"The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the family."

(Emphasis supplied)

As per the aforesaid decision the purpose of compassionate appointment is to provide immediate financial assistance to the family of the deceased employee. In the facts of the present case, the appellant is around 32 years old by now and therefore, the very purpose of compassionate appointment has been frustrated.

(V) It has been held by the Hon"ble Supreme Court in the case of [Sanjay Kumar Vs. The State of Bihar and Others](#), , in paras 2 and 3 as under:

"2. Learned Senior Counsel appearing on behalf of the petitioner has placed strong reliance on the decision of a learned Single Judge of the Patna High Court in Chandra Bhushan v. State of Bihar. Learned Senior Counsel points out that it was held in that case that an applicant's right cannot be defeated on the ground of delay caused by authorities which was beyond the control of the applicant. Learned Senior Counsel further points out that instead of following the above judgment, the same learned judge has now held on 21-4-1997 that the application is time-barred. Learned counsel has placed before us a judgment of this Court in Director of Education (Secondary) v. Pushpendra Kumar. He submits that, in this case, a direction was given to create supernumerary posts.

3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1998, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes major after a number of years, unless there are specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

(Emphasis supplied)

In view of the aforesaid judgment, it appears that in case of a minor, vacancy can not be kept reserved on compassionate ground till he or she attains the age of majority as the very basis of compassionate appointment is to see that the family gets immediate relief.

5. Counsel for the appellant submitted that at the time when father of the appellant expired, he was a minor. This contention is not accepted by this court mainly on the ground that there can not be any reason for reservation for the minor with respect to appointment on compassionate ground.

6. In view of the aforesaid facts, reasons and judicial pronouncements we see no reason to entertain this Letters Patent Appeal as there is no substance in the same.

7. This Letters Patent Appeal is dismissed.