

(2014) 08 BOM CK 0170

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 1847/2013

Western Coalfields Ltd.

APPELLANT

Vs

G.N. Shah, Chief
General Secretary

RESPONDENT

Date of Decision: Aug. 12, 2014

Acts Referred:

Constitution of India, 1950 " Article 12#Industrial Disputes Act, 1947 " Section 18(3), 2(s), 2A

Citation: (2014) 08 BOM CK 0170

Hon'ble Judges: Z.A. Haq, J

Bench: Single Bench

Advocate: A.S. Mehadia, Advocate for the Appellant; Shaikh Ayyub, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Z.A. Haq, J.

1. Heard Shri A.S. Mehadia, the learned Advocate for the petitioner-Management and Shri Shaikh Ayyub, the learned Advocate for the

respondent.

2. Rule. Rule made returnable forthwith.

3. The petitioner-Management has challenged the order passed by the Central Government, Industrial cum Labour Court, Nagpur holding that the

action of the petitioner-Management in not accepting the demand of compassionate appointment of Shri Ravi Kumar s/o deceased workman Shri

Puranlal is unjustified and illegal and directing the petitioner-Management to give employment to Shri Ravi Kumar commensurate to his skill and

qualifications within one month from the date of award.

4. Shri Puranlal, who was in the employment of the petitioner-Management, expired on 26th November, 1997 while in service. On 12th June,

1998 Smt. Draupadabai widow of Shri Puranlal submitted an application requesting the petitioner to provide employment to her son Ravi Kumar

on compassionate grounds. On 26th April, 2001 the petitioner-Management rejected the application. The respondent-Union raised the industrial

dispute on behalf of Smt. Draupadabai and Shri Ravi Kumar and the conciliation proceedings having failed, the matter was referred to the Tribunal.

The Tribunal by the impugned order concluded that the action of the petitioner-Management is unjustified and issued directions as stated above.

The petitioner-Management being aggrieved by the award has filed this writ petition.

5. The learned Advocate for the petitioner has submitted that the reference is made by the Union and the Statement of Claim is submitted by the

beneficiary and this is not permissible in law. It is submitted that Shri Ravi Kumar cannot be the member of the Union as he is not ""Workman"" as

defined u/s 2(s) of the Industrial Disputes Act, 1947. and therefore, he cannot seek redressal of his grievance in the proceedings before the

Tribunal. It is submitted that the Tribunal had no jurisdiction to consider the claim as made by Shri Ravi Kumar and the order passed by the

Tribunal is without jurisdiction.

6. Shri A.S. Mehadia, the learned Advocate has submitted that the claim as made by Shri Ravi Kumar for appointment on compassionate grounds

cannot be said to be an industrial dispute as contemplated by Section 2A of the Industrial Disputes Act, 1947 and the Tribunal had no jurisdiction

to entertain and adjudicate the grievance as made by Shri Ravi Kumar.

7. It is submitted on behalf of the petitioner that Shri Puranlal while claiming under LTC on 14th April, 1986 had shown the age of Ravi Kumar as

20 years, however, in the service record submitted by Shri Puranlal on 26th July, 1987 the age of Shri Ravi Kumar was shown as five years and

because of these variations regarding the age of Shri Ravi Kumar and the failure on the part of Shri Ravi Kumar and his mother to give necessary

materials in the application seeking appointment on compassionate grounds, the claim is rejected. The contention on behalf of the petitioner is that

the claim of Shri Ravi Kumar for appointment on compassionate grounds could not have been considered immediately after the death of Shri

Puranlal as he was below 18 years and as per the provisions of Mines Act 1952 he could not have been given the employment. It is submitted that

the Tribunal has not considered these aspects and therefore, the order passed by it is unsustainable.

8. Shri Shaikh Ayyub, the learned Advocate for the respondent has submitted that as per clause 9.3.0 of the National Coal Wage Agreement-VI,

the petitioner/Management is under an obligation to give employment to one dependent of the deceased employee. It is submitted that as per

Clause 9.3.3 of the National Coal Wage Agreement-VI, the son of the deceased employee is included in the term ""dependent"" and therefore, the

respondent is entitled for the appointment on compassionate grounds.

It is submitted that as per clause 9.5.0 of the National Coal Wage Agreement-VI, the petitioner-Management is under an obligation to pay

monetary compensation to the female dependents of the deceased employee. It is submitted that as per clause 9.5.0. (ii) of the National Coal

Wage Agreement-VI in case of death of employee, if no employment has been offered and the male dependent of the concerned employee is 12

years and above in age, he has to be kept in a live roster and has to be provided employment commensurate with his skill and qualifications when

he attains the age of 18 years. The learned Advocate has submitted that as per clause 9.5.0 (ii) of the National Coal Wage Agreement-VI, in case

of death of employee if the female dependent is below the age of 40 years. She has option either to accept the monetary compensation of Rs.

3000/- per month or employment and in case the female dependent is above 45 years of age, she is entitled for monetary compensation.

It is submitted that in the present case, the mother of the respondent had requested for appointment on compassionate grounds for the respondent

and because of this, the petitioner-Management did not pay the monetary compensation as required by clause 9.5.0 (ii) of the National Coal Wage

Agreement-VI.

The learned Advocate has pointed out that the mother of the respondent had given letter dated 18th July, 1998 and requested that she may be

given employment on compassionate grounds. It is submitted that the action of the petitioner-Management is illegal and contrary to the provisions

of the National Coal Wage Agreement-VI.

The learned Advocate for the respondent has submitted that in view of the provisions of the National Coal Wage Agreement-VI it is the right of

the respondent to get the appointment on compassionate grounds and the petitioner-Management being State within the meaning of Article 12 of

the Constitution of India, it cannot deprive the respondent of his legitimate claim. In respect of this submission, the learned Advocate has relied on

the judgment given by the Hon"ble Supreme Court in the case of Mohan Mahto Vs. Central Coal Field Ltd. and Others,

The learned Advocate for the respondent has submitted that the claim of the respondent for getting employment on compassionate grounds flows

from the provisions of National Coal Wage Agreement-VI which has to be treated as settlement between the petitioner-Management and

deceased Puranlal and, therefore, the respondent is entitled to make the claim before the Tribunal. In support of this submission, reliance is placed

on the judgment given by the Hon"ble Supreme Court in the case of Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs.

Managemenmt of Sangramgarh Colliery and others,

9. I have considered the submissions made by the learned Advocates for the respective parties and examined the grievance of the respondent. I

find that the conduct of the petitioner-Management in the present case is completely unjustified.

10. The petitioner-Management has not given any explanation and justification for not providing employment to the widow of Shri Puranlal. There

is no justification for the petitioner-Management for not making available monetary compensation to the widow of Shri Puranlal. The explanation

given by the petitioner-Management for not considering the claim of the respondent for appointment on compassionate grounds that there was

variation in the date of his birth, is nothing but an attempt to justify its illegal conduct.

The Hon"ble Supreme Court in the case of Mohan Mahta Vs. Central Coal Field Ltd. and others (supra) has recorded as follows:-

It is neither in doubt nor in dispute that the case for grant of compassionate appointment of a minor was required to be considered in terms of sub-

clause (iii) of Clause 9.5.0 of NCWA V. In terms of the said provision, the name of the appellant was to be kept on a live roster. He was to

remain on the live roster till he attained the age of 18 years. The respondents did not perform their duties cast on them thereunder. It took a

unilateral stand that an application had been filed in the year 1999 in the prescribed form. For complying with the provisions of a settlement which

is binding on the parties, bona fide or otherwise of the respondent must be judged from the fact as to whether it had discharged his duties

thereunder or not. In this case, not only it failed and/or neglected to do so, but as indicated hereinbefore it took a unholy stand that the elder

brother of the appellant being employed, he was not entitled to appointment on the compassionate grounds. Thus, what really impelled the

respondent in denying the benefit of compassionate appointment to the appellant is, therefore, open to guess. We expect a public sector

undertaking which is ""State"" within the meaning of Article 12 of the Constitution of India not to act fairly but also reasonably and bona fide. In this

case, we are satisfied that the action of the respondent is neither fair nor reasonable nor bona fide.

In view of the highly unjustified conduct of the petitioner-Management and attempt on its part to overlook the mandate of the Hon"ble Supreme

Court, the petition filed by the petitioner-Management has to be dismissed. However, I feel it appropriate to deal with the points raised on behalf

of the petitioner-Management.

11. The learned Advocate for the petitioner-Management has submitted that the respondent has no locus to submit the statement of claim before

the Tribunal. The Tribunal has considered the challenge as raised by the petitioner-Management and has recorded its findings in paragraph no.8 of

the impugned order are as follows:-

So far the submission made by the learned advocate for party no.1 regarding non maintainability of the reference due to filing of the statement of

claim by Ravi Kumar and not by the union is concerned, it is found that the union had raised the dispute before the ALC on behalf of Ravi Kumar.

Ravi Kumar himself is the disputant. So, there is no illegality in filing the statement of claim by himself. This type of cases is of exceptional in nature.

When the dispute was raised by the union at the beginning and reference was made by the Government, filing of the statement of claim by the

disputant would by no means extinguish the industrial dispute within the meaning of section 2A, of the Act, which would still continue to persist.

Hence, I find no force in the contention raised by the learned advocate for the party no.1"".

In addition to this, the foundation of the claim made by the respondent is relevant. The respondent has made the claim for the appointment on

compassionate grounds in terms of the provisions of the National Coal Wage Agreement-VI. The Hon"ble Supreme Court in the judgment given in

the case of Mohan Mahto Vs. Central Coal Field Ltd. and others (supra) has held that the National Coal Wage Agreement-V is the settlement

within the meaning of Section 18(3) of the Industrial Disputes Act and is binding on both parties. In my view, the same analogy has to be applied to

the National Coal Wage Agreement-VI. In paragraph no. 10 of the above mentioned judgment, the Hon"ble Supreme Court has laid down that

expanding the definition of ""Workman"" as per the provisions of Section 2(s) of the Industrial Disputes Act would confer the right on the legal heir

of the deceased employee to obtain appointment on compassionate grounds subject to the fulfillment of the conditions prescribed for that. In view

of this proposition of law, it has to be held that the respondent had the right to submit the Statement of the Claim before the Tribunal.

12. In the judgment given by the Hon"ble Supreme Court given in the case of Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi

Vs. Management of Sangramgarh Colliery and Ors. (supra) the Hon"ble Supreme Court has considered the issue as to whether the legal heir of

the employee, who dies during the pendency of the proceedings before the Tribunal, has right to pursue the cause of action. In paragraph 13 of this

judgment, the Hon"ble Supreme Court has recorded as follows:-

It is thus obvious that the applicability of the maxim ""actio personalis moritur cum persona"" depends upon the "relief claimed" and the facts of

each case. By and large the industrial disputes u/s 2A of the Act relate to the termination of services of the concerned workman. In the event of

death of the workman during pendency of the proceedings, the relief of re-instatement, obviously, cannot be granted. But the final determination of

the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of

the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is,

therefore, in the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman.

Even otherwise there may be a claim for back-wages or for monetary relief in any other form. The death of the workman during pendency of the

proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to

the deceased workman.

The present case has to be considered in the light of the proposition of law laid down by the Hon"ble Supreme Court in the above mentioned case.

Clause 9.3.1, Clause 9.4.1. and Clause 9.5.0 (ii) of the National Coal Wage Agreement-VI provide for giving employment/monetary

compensation to the dependents of the employee who is permanently disabled. In such case, the permanently disabled employee perhaps may file

appropriate proceedings staking the claim on the basis of the provisions of National Coal Wage Agreement-VI for employment for his dependent.

There is no reason to deny locus to the dependent of the deceased employee on the basis of National Coal Wage Agreement-VI in case of death

of the employee.

13. Thus, considering the law laid down by the Hon"ble Supreme Court in the judgment given in the case of Mohan Mahto Vs Central Coal Field

Ltd. and another (supra) and in the case of Rameshwar Manjihi (Deceased) through his son Lakhiram Manjihi Vs. Management of Sangramgarh

Colliery and Ors. (supra), the objection as raised on behalf of the petitioner/Management that the respondent had no locus to file the statement of

claim before the Tribunal cannot be accepted.

14. The facts on record show that the petitioner/Management has denied the claim of the respondent without any justifiable reason. The writ

petition is dismissed with costs quantified at Rs. 5000/- to be paid by the petitioner-Management to Shri Ravi Kumar s/o Puranlal. The costs shall

be paid by the petitioner-Management to Shri Ravi Kumar s/o Puranlal till 30th November, 2014.