

(2008) 11 CAL CK 0045

Calcutta High Court

Case No: Writ Petition No. 2235 of 2005

Bablu Singh

APPELLANT

Vs

Coal India Ltd. and Others

RESPONDENT

Date of Decision: Nov. 21, 2008

Acts Referred:

- Constitution of India, 1950 - Article 12, 16(1), 226
- Industrial Disputes Act, 1947 - Section 2

Citation: (2009) 2 CALLT 168 : (2008) 119 FLR 1160

Hon'ble Judges: S.P. Talukdar, J

Bench: Single Bench

Advocate: Subrata Ganguly, for the Appellant; Raja Basu Chowdhury and Sanchita Barman Roy, for the Respondent

Judgement

S.P. Talukdar, J.

Grievance of the petitioner, as ventilated in the instant application, relates to alleged indifference and inaction on the part of the respondents-authority in providing the petitioner with employment.

2. The factual backdrop of the present case is:

With the death of the petitioner's mother, Boti Singh, on 26th August, 1993, the petitioner, Bablu Singh approached the respondents-authority for employment under die-in-harness scheme under Clause 9:4:2 of the National Coal Wage Agreement. The petitioner appeared in the interview on 27th September, 1994 and was declared selected. He had undergone the medical test, as asked for. He was assured that appointment letter would be issued in his favour. There had been strange silence for quite some time. The petitioner made several representations. On 5th March, 1997, he was informed by the Personnel Manager of Gopinathpur Colliery that since he was a minor being 15 years 10 months 11 days of age, at the time of his mother's death, the authority-concerned was not in a position to offer

employment. The petitioner and others whom his mother left behind continued to suffer from terrible financial distress. Being so advised, the petitioner followed this up by submitting further representation. After few years, the Chairman-cum-Managing Director and Director (Personnel), Eastern Coalfields Ltd, decided to reconsider the matter. By letter dated 29th August, 2000 the Manager of the Colliery asked for detailed particulars and relevant documents. After processing; the matter, by letter dated 16th February, 2001; the General Manager of the area was asked to consider the grievances of the petitioner. The authority went on assuring the petitioner but nothing concrete was done. The petitioner then approached the higher authorities by letter dated 14th October, 2005 for such employment. As per provisions prevailing during 1985-1995 the dependent of the deceased employee, in the age group of 18 to 25 years, was to apply for employment. The petitioner had no option but to wait for some time and then, approached for such employment immediately after attaining majority. His claim was duly considered and he successfully cleared the selection process. The respondents-authority was not justified in refusing the employment in such circumstances on flimsy ground that he was a minor at the time of death of his mother.

3. Respondent Nos. 2, 3 and 4 contested the case by filing affidavit-in-opposition, wherein all the material allegations made by the petitioner had been denied. It was claimed that National Coal Wage Agreement is a non-statutory agreement and it cannot be specifically enforced by invoking the extraordinary writ jurisdiction. The petitioner can seek such enforcement of his right, if any, before the Industrial Tribunal. It was also claimed that the controversy involves the disputed questions of fact and the writ Court should not go into the same. From the service excerpts of the mother of the petitioner it could be gathered that he was only 15 years 10 months 11 days on 26th August, 1993 when his mother died. The respondents alleged that the petitioner was duly informed that he could not be accommodated as would appear from letter dated 5th March, 1997.

4. The stand of the respondents-authority as revealed from the said document being Annexure R-2 may be reproduced as follows:

The age of the dependent as per Form-Q and service excerpts it is seen that the age of the son comes 15 years 10 months 11 days at the time of death of his mother i.e., 26.8.1993. So the case cannot be considered at that stage due to minority. Please confirm the dependent accordingly.

5. It is not in controversy that the mother of the petitioner was an employee under respondent No. 4, which is a "State" within the meaning of Article 12 of the Constitution. She died-in-harness on 26th August, 1993. It is claimed that the petitioner approached for compassionate appointment in terms of National Coal Wage Agreement. He was interviewed on 27th September, 1994, This was followed by a medical test. The respondents-authority continued to assure him. It was on

5.3.1997, he was informed that since he was only 1b years 10 months 11 days at the time of his mother's death, he could not be selected.

6. Learned Counsel for the respondents-authority first raised dispute regarding maintainability of the present application. It was submitted that in view of availability of an efficacious alternative remedy, the writ Court must not entertain the present" application. According to learned Counsel for the respondents-authority, the petitioner could very well approach the Industrial Tribunal. In this context, reference was made to the unreported judgment of learned Single Bench of this Court in W.P. No. 300 of 2006. The learned Court in the said case referred to the decision in the case of SAIL and Anr. v. Awadhesh Singh and Ors. 2001 (89) FLR 546 (SC). It was contended in connection with the said case that the observation made by the Apex Court in the said case that the memorandum of agreement in question, not being a statutory scheme, was unenforceable in an application under Article 226 of the Constitution of India was made by Their Lordships in passing, and not while deciding a question whether the memorandum of agreement could be enforced by filing a writ petition.

7. The learned Single Bench of this Court observed that seeking enforcement of terms and conditions of a non-statutory agreement or settlement within the meaning of Section 2(p) of the Industrial Disputes Act, 1947, one is not entitled to approach the Writ Court. The non-statutory agreement casts a statutory obligation on the company and on its failure to discharge its obligation, the person entitled to complain is not entitled to ventilate his grievances before the Writ Court. The learned Court while dismissing the case took into consideration the assurance on the part of the authorities about monetary compensation.

8. In response to this the learned Counsel for the petitioner referred to the decision of the Apex Court in the case of Mohan Mahto Vs. Central Coal Field Ltd. and Others . Their Lordships in the said case observed that "we expect a public sector undertaking which is a "State" within the meaning of Article 12 of the Constitution of India not only to act fairly but also reasonably and bona fide. In this case, we are satisfied, that the fiction of the respondent is neither fair nor reasonable nor bona fide."

9. On behalf of the petitioner reference was made to the decision in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others), in support of the claim that denial of compassionate appointment in deserving cases amounts to denial of social and economic justice as enshrined in the Constitution. The Apex Court in the said case observed that the Law Courts cannot be mute spectators where relief is denied to the horrendous sufferings of a family which has lost its breadwinner. It was held that the greatest virtue of law is in its adaptability and flexibility. Law is made for the society and therefore it has to be applied, depending upon a situation, for the benefit of society.

10. Reference was further made to the decision in the case of Syed Khadim Hussain v. State of Bihar and Ors. AIR (2006) SC 195. In the said case the Apex Court held that it would not be just and proper to reject an application for such employment on the ground of not attaining the age of 18 years if on the date of rejection the applicant is above the said age of 18 years.

11. It was further argued on behalf of the writ petitioner that the decision of the learned Single Bench of this Court in the case of Smt. Chhaya Singh Sardar as referred to earlier, is under challenge before the learned Division Bench and the appeal is pending.

12. Lord Halsbury in his judgment in Quiim v. Leathem said:

Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but govern and are qualified by the particular facts of the case in which such expressions are to be found.

13. It is not in dispute that the decisions of the Apex Court, as referred to earlier, were not taken into consideration by the learned Single Bench. The doctrine of precedent hits the golden mean between too much flexibility and too much rigidity; for it gives to the legal system the rigidity which it must have if it is to possess a definite body of principles, and the flexibility which it must have if it is to adapt itself to the needs of a changing society.

14. It is well settled that mere availability of an efficacious alternative remedy cannot by itself and in all situations be a ground for not entertaining a writ application. When there is violation of the principle of natural justice a writ Court cannot afford to remain a passive onlooker or a silent spectator. This Court cannot also afford to ignore the legitimate expectation of the petitioner who for years was made to move from pillar to post relying upon the assurance, which ultimately proved to be empty.

15. W. Friedmann in his book "Law in a Changing Society" said:

"No contemporary analysis of the rule of law can ignore the vast expansion of government functions which has occurred as a result both of the growing complexity of modern life, and of the minimum postulates of social justice which are now part of the established public philosophy in all civilized countries." He further observed:

Five different state functions call for analysis. They result from the activities of the state: first, as Protector; secondly, as Provider; thirdly, as Entrepreneur; fourthly, as Economic Controller; fifthly, as Arbitrator.

W. Friedmann also observed:

That the content of the rule of law cannot be determined-for all time and all circumstances is a matter not for lament but for rejoicing. It would be tragic if the law were so petrified as to be unable to respond to the unending challenge of evolutionary or revolutionary changes in society. To the lawyer, this challenge means that he cannot be content to be a craftsman. His technical knowledge will supply the tools but it is his sense of responsibility for the society in which he lives that must inspire him to be jurist as well as lawyer.

16. It is true that grant of appointment of compassionate ground is an exception to Article 16(1) of the Constitution of India as held by the Apex Court in the case of Umesh Kumar Naqpal Vs. State of Haryana and Others . Consideration for such employment is not a vested right, which can be exercised at any time in future. But in the backdrop of the present case where the petitioner approached the authority concerned at the right time and met with some sort of response, he cannot be blamed for the reason that quite a few years have passed since the death of his mother. Moreover, the petitioner approached the authority on the basis of a right accrued in his favour in view of the Wage Agreement. Now at this belated stage, the authority concerned is not expected to shut the doors on the ground that the obligation, if any, is non-statutory.

17. Considering all such facts and circumstances, this Court is of the opinion that the grievances of the petitioner do not deserve to be brushed aside. The present application being W.P. No. 2235 of 2005 succeeds and be allowed. The respondents-authority are directed to provide the writ petitioner with employment within four months from the date of communication of this order.

18. There is no order as to costs.

19. Xerox certified copy of this judgment, if applied for, be supplied to the parties expeditiously upon due compliance of the legal formalities.