

CASE NO.:
Appeal (civil) 4339 of 2007

PETITIONER:
Mohan Mahto

RESPONDENT:
M/s. Central Coal Field Ltd. & ors

DATE OF JUDGMENT: 18/09/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4339 OF 2007
[Arising out of SLP (Civil) No. 13935 of 2006]

S.B. SINHA, J :

1. Leave granted.

2. Appellant's father Rameshwar Mahto was employed as a Fitter, Category IV, in a coal mine belonging to the respondent known as Kuju Colliery. He died in harness on 23.02.1997. The terms and conditions of the service of the workmen working in coal mines are inter alia governed by a 'Settlement' known as National Coal Wage Agreement (N.C.W.A.) V. Indisputably, the said settlement, in terms of Sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 is binding on the parties. Clause 9.3.2 of N.C.W.A. V refers to appointment of dependants of the deceased employees working in the coal mines; sub-clause (iii) of Clause 9.5.0 thereof reads as under:

"(iii) In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 15 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (I) and (ii) above."

3. Appellant filed an application for appointment on compassionate ground on 25.10.1997. The same was denied to him inter alia on the premise that he was a minor at the relevant time. He filed an application in prescribed form upon attaining majority on 26.09.1999 which was rejected by an order dated 3.08.2000 stating:

"With reference to the letter No. GM(K)/PD-9.3.2/2000/749 dated Nil of Staff Officer (P), Kuju Area this is to inform you that the proposal has not been agreed by the competent authority since the dependent was not eligible for employment as he was under age and also his name was not kept in live roster. Also there was considerable delay in applying for employment by the dependent."

4. Respondent purported to have issued a circular letter on 12.12.1995 providing for six months' limitation for filing such an application for appointment on compassionate ground from the date of death of the concerned employees in the following terms:

"It has been observed from the details of the statements prepared and submitted by the Area for Placement Interview under para 9.4.2 of NCWA-IV, that cases pertaining to the period beyond 6 months are also entertained without any reasoning. Considering this situation also in order to streamline the activities of the manpower and to have effective control over it, it has been decided that the cases falling beyond 6 months from the date of death of the concerned employees, the dependent of the deceased employees will not be entertained, unless express permission is given by Hqtrs. after thorough scrutiny of the case. Now as action will be taken against those who fail to complete the work within stipulated time.

Therefore, all the Staff Officers (Pers.) should discuss this matter with the Personnel Executives of the Unit/Establishments and advise them accordingly."

5. It was replaced by another circular letter issued in the year 2000 stating:

"It has been observed from the case files received from areas for appointment of dependants of ex-employees under para 9.3.2 of NCWA V/VI that the cases pertaining to the period beyond six months are also entertained and sent without any reasoning. Therefore, vide circular No. PD/MP/9.4.2/95/1151 dated 12.12.95 all areas were advised that the cases falling beyond six months from the date of death of the concerned employee will not be entertained unless express permission is given by Hqtrs. after thorough scrutiny of the case.

Now in view of the persistent demands of unions relaxation was granted for one year from Feb. 2000 which was subsequently discussed and reviewed in the meeting held with unions at Corporate Level. It was decided that henceforth application submitted under clause 9.3.2. within one year after demise of an employee will not be treated as belated case. Thus the application submitted by dependant concerned after expiry of one year from the date of death of ex-employee will not be considered for employment."

6. A writ petition was filed by the appellant before the High Court of Jharkhand, Ranchi which was marked as WPS No. 471 of 2003 questioning the order declining him the grant of appointment on compassionate ground by the respondent. Before the High Court, the respondent took a stand that as the elder brother of the appellant has already been in employment, he was not entitled thereto. The said contention has since been given up. A learned Single Judge of the High Court took notice of the aforementioned circulars vis-à-vis the relevant provisions of N.C.W.A. V holding:

"From the scheme quoted herein above, it is clear that if on the date of death of the deceased employee, the male dependant is 15 years and above in age then he will be kept on a live roster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation. Admittedly, in 1997 petitioner was more than 15 years of age and an application was filed by the petitioner in 1997 but neither the petitioner was kept in live roster nor the widow of the deceased employee was paid monetary compensation. After attaining 18 years of age petitioner as per the aforesaid clause applied for compassionate appointment in 1999 which has been arbitrarily rejected by the respondents on the ground of delay. While the petitioner approached this court by filing instant writ application third case has been made out by the respondents that petitioner's appointment was refused on the ground of his elder brother, having been in employment of the subsidiary company. This fact was subsequently falsified in the manner discussed herein above.

For the aforesaid reasons, this writ application is allowed and the impugned letters are quashed. Respondents are directed to give benefit of National Coal Wage Agreement \026 VI to the petitioner by appointing him in place of his deceased father, who died in harness, as regular employee of the Company."

7. An intra-court appeal was preferred thereagainst by the respondent herein which by reason of the impugned judgment was allowed by a Division Bench stating:

"In the case of Commissioner of Public Instructions Vrs. K.R. Vishwanath, reported in 2005 (7) SCC 206, the Supreme Court held that the Court has no jurisdiction to extend the period of limitation and so was of the view of the Division Bench of this Court in the case of Sushil Kumar Vengra Vrs. Union of India reported in 2005 (1) JCR 282 (Jhr.)."

8. Mr. Rajesh Kumar, learned counsel appearing on behalf of the appellant, inter alia submitted:

- (i) the Division Bench of the High Court committed a serious error in relying upon the judgment of this Court in Commissioner of Public Instructions and Others v. K.R. Vishwanath [(2005) 7 SCC 206] as therein a statutory rule was made providing for a limitation of one year for filing an application for appointment on compassionate ground from the date of death of the employee;
- (ii) The period of six months envisaged under the circular letter dated 12.12.1995 will have no application as: (a) it is directory in nature and (b) the same was substituted by another circular of 2000.

9. Dr. A.M.Singhvi, learned senior counsel appearing on behalf of the respondents, on the other hand, urged:

- (i) Respondent as an employer is entitled to take a policy decision in regard to implementation of the settlement.
- (ii) Grant of appointment on compassionate ground, being an exception to Article 16 of the Constitution of India, should be strictly construed.
- (iii) As the circular letter issued in 2000 is prospective in nature, the same will have no application in the instant case.

10. A settlement within the meaning of Sub-section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement. No period of limitation was provided in the settlement. We would assume that the respondent had jurisdiction to issue such circular prescribing a period of limitation for filing application for grant of appointment on compassionate ground. But, such circular was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into by and between the parties. The expanding definition of workman as contained in Section 2(s) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate ground, subject, of course, to compliance of the conditions precedent contained therein.

11. The right to obtain appointment on compassionate grounds emanates from the settlement. Settlement is defined in Section 2(p) of the Industrial Disputes Act to mean 'a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer'.

12. Even in regard to prescription of a period of limitation, the respondent ought to have kept in view the spirit thereof.

13. We are not oblivious that grant of appointment on compassionate ground is an exception to Article 16(1) of the Constitution of India.

In I.G. (Karmik) and Ors. v. Prahalad Mani Tripathi [2007 (6) SCALE 370], this Court observed:

"An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the police department. See Yogender Pal Singh and Others v. Union of India and Others [A.I.R. 1987 SC 1015].

Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given

only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

In National Institute of Technology & Ors. v. Niraj Kumar Singh [2007 (2) SCALE 525], this Court has stated the law in the following terms:-

"16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder."

14. In State Bank of India and Another v. Somvir Singh [(2007) 4 SCC 778], this Court held:

"10. There is no dispute whatsoever that the appellant-Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such left with any of the authorities to make compassionate appointment de hors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be."

15. The period of six months' limitation prescribed in the circular letter dated 12.12.1995 was not statutory. It is also not imperative in character. Even for entertaining such an application beyond the period of six months, the Headquarters of the Central Coal Field Limited is entitled to consider the facts and circumstances of each case. Admittedly, Appellant filed an application for grant of appointment on compassionate ground when he was a minor. His application was rejected on that premise at the first instance but even at that point of time the respondent did not take a stand that the same had not been entertained on the ground that the same was filed after expiry of the period of six months.

16. 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 the N.C.W.A.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. Respondents did not perform their duties cast on them thereunder. It took an unilateral stand that an application has 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 an unholy stand that the elder brother of the appellant being employed, he was not entitled to appointment on the compassionate ground. 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 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 action of the respondent is neither fair nor reasonable nor bona fide.

17. We have indicated hereinbefore, that it is not necessary for us to go into the question as to whether on the teeth of the provision of N.C.W.A.V., the respondent at all had any power to fix a time limit and thereby curtailing the right of the workman concerned. We would assume that even in such a matter, it had a right. But, even for the said purpose, keeping in view the fact that a beneficial provision is made under a settlement, the 'State' was expected to act reasonably. While so acting, it must provide for a period of limitation which is reasonable. Apart from the fact that the period of limitation provided for in the circular letter with a power of relaxation can never be held to be imperative in character, the matter should also be considered from the subsequent conduct of the respondent insofar as it had issued another circular letter in the year 2000 providing for filing of an application for appointment on compassionate ground within a period of one year. It may be that the said circular letter has prospective operation but even in relation thereto we may notice that whereas the said circular letter was issued upon holding discussion with the Unions, the circular letter of the year 1995 was an unilateral one. Furthermore, in its letter dated 2/3.08.2000, it will bear repetition to state, expiry of the period of limitation was not taken as a ground for rejecting his application. Under-age and non-placement of his name in live roster are stated to be the reasons. It is, therefore, unfair on the part of the respondent to raise such a plea for the first time in its counter-affidavit to the writ petition. If he was under-age, definitely, it was obligatory on the part of the respondent to keep his name in the live roster. It was not done.

18. Reliance placed by the High Court on K.R. Vishwanath (supra), with respect, is misplaced. Therein, the terms and conditions of the parties were governed by a statute known as 'Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996'. Rule 5 of the said Rules provided for a period of limitation. The said decision, therefore, cannot be said to have any application whatsoever in the instant case.

19. In Umesh Kumar Nagpal v. State of Haryana and Others [(1994) 4 SCC 138] whereupon reliance has been placed by Dr. Singhvi, this Court held:

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after

the crisis is over."

What should be a reasonable period would depend upon the rules operating in the field.

20. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. Respondent is hereby directed to offer appointment to the appellant on a suitable post within eight weeks from date. As the appellant is not in employment for a long time, he is entitled to costs throughout. Counsel's fee assessed at Rs. 25,000/-.

JUDIS