

IN THE HIGH COURT OF JHARKHAND, RANCHI
W.P.(S) No.1885 of 2018

Sanjay Bhuiyan, aged about 24 years, son of late Shankar Bhuiyan, permanent resident of Village-Sariyadh, H.No.63, Dandidih, PO-Dandidih, PS & District-Giridih, at present residing at Village-Subhash Nagar, MQ-526, PO-Amlo, PS-Bermo, District-Bokaro
 Petitioner

---Vs.---

1. Central Coalfields Ltd., through its Chairman cum Managing Director, having its office at Darbhanga House, Ranchi, PO –GPO, PS- Kotwali, District-Ranchi

2. The General Manager (P&IR), having its office at Darbhanga House, Ranchi, PO-GPO, PS-Kotwali, District-Ranchi

3. The Project Officer, Kargali OC-UG, Central Coalfields Ltd., PO & PS-Bermo, District-Bokaro
 Respondents

PRESENT

HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:	Mr. Rahul Kumar, Advocate Mr. Kumar Harsh, Advocate
For the Respondent-CCL	:	Mr. Arbind Kumar, Advocate

C.A.V. on 19th June, 2020

PRONOUNCED ON 25/06/2020

Heard Mr. Rahul Kumar, the learned counsel assisted by Mr. Kumar Harsh, the learned vice-counsel appearing for the petitioner and Mr. Arbind Kumar, the learned counsel appearing on behalf of the respondent-CCL.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their

consent this matter has been heard.

3. The petitioner has filed this writ petition for quashing the order dated 21.10.2017 whereby the claim of the petitioner for appointment on compassionate ground has been rejected by the respondent-CCL. The further prayer is made for issuance of letter of compassionate appointment in favour of the petitioner in view of clause-1 of NCWA-X.

4. Mr. Rahul Kumar, the learned counsel for the petitioner submitted that father of the petitioner namely, Shankar Bhuiyan was in the employment of respondent-CCL on the post of Ex-Short Fire Helper, CAT-II, BSI, Kargali UGP and was a workman under the definition of the certified standing order and NCWA-X. The father of the petitioner died in harness on 26.07.2013. The death certificate was issued and one of the death certificate was issued by Government of Jharkhand bearing registration no.20/14 dated 12.05.2014. The petitioner informed the company about the death of his father by his representation dated 31.12.2013 with a request to provide employment to the petitioner in terms of NCWA-X. The said representation is brought as Annexure-3 to the writ petition. The claim of the petitioner was rejected by order dated 21.10.2017 on the ground that it was submitted beyond the prescribed time limit of 1 ½ years from the date of death of the employee. The name of the petitioner did not appear in the service record of the deceased employee. The identity of the petitioner was also doubted on this ground and the prayer of the petitioner was rejected.

5. The case of the respondent-CCL is that the case of the petitioner was regretted on the ground of delay in submission of

application for appointment on compassionate ground and also as the name of the petitioner did not appear in the service record of the deceased employee and also on the ground of identity of the petitioner. It was the further case of the respondent-CCL that the employee died on 26.07.2013 and by now about 5 years' time has passed. The purpose and object of employment on compassionate ground is frustrated. The same is also not maintainable in view of NCWA-X under para-9.3.0, 9.4.0 and 9.5.0 of National Coal Wage Agreement [NCWA]-X.

6. Mr. Rahul Kumar, the learned counsel for the petitioner assailed the impugned order on the ground that the petitioner had already made application on 31.12.2013 by way of Annexure-3. He submitted that in view of the order dated 20.01.2020 of this Court, whereby it was directed to the respondent-CCL to file specific affidavit in view of the counter affidavit at Annexure-C at page-21 as the petitioner has applied on time or not. Pursuant to that, the supplementary counter affidavit has been filed by the respondent-CCL wherein Annexure-J has been annexed which suggests that the application was filed by the petitioner. He further submitted that the case of the petitioner is fully covered in view of the judgment rendered by the co-ordinate Bench in W.P.(S) No.3258 of 2014 dated 07.01.2016 wherein this aspect of the matter was considered that there was no requirement that the person whose name is inserted in the service book will only be considered for compassionate appointment. He further relied in the case of "*Chhotu Manjhi @ Chhatu Manjhi v. M/s Central Coalfields Limited & Ors.*" in L.P.A. No.339 of 2015 which was decided by the order dated 03.05.2016 wherein this aspect of the matter was considered that the application was received but

it was not placed before the concerned authority and in that view of the matter the case was remitted back to the respondent-CCL to consider.

7. The action of the respondent-CCL was supported by the learned counsel appearing for the respondent-CCL on the ground that the name of the petitioner is not indicated in the service book and it was filed belatedly. The death certificate was issued belatedly. The LTC was availed by Shankar Bhuiyan in the year 2000 wherein it has been said that he has died in harness on 26.07.2013. The learned counsel appearing for the respondent CCL further relied in the case of "*Eastern Coalfields Limited v. Anil Badyakar and Anr.*" reported in (2009) 13 SCC 112 and by way of relying upon the judgment, he submitted that the Hon'ble Supreme Court held the compassionate appointment could not be given 12 years after the death of employee. He further relied in the case of "*Central Coalfields Limited v. Ghanshyam & Ors.*" in L.P.A. No.294 of 2014 decided by the judgment dated 02.03.2020 and submitted that the stale claim was rejected by the Division Bench and the judgment rendered in WPS No. 4671 of 2009 was set-aside. He further relied in the case of "*Bharat Coking Coal Limited v. Bhim Paswan*" reported in 2018 SCC Online Jhar. 1372 and submitted that the claim of the petitioner was negated by the Division Bench on the ground of keeping it on live roster as there was no such application on behalf of the writ petitioner.

8. The Court has given thoughtful consideration to the submission of the learned counsel appearing for the parties and found that the petitioner has already applied on 31.12.2013 this is supported in view of further affidavit filed by the respondent CCL in terms of order

dated 20.01.2020 by way of Annexure-J to the supplementary counter affidavit wherein it is indicated that the application has been received. There is no criteria that ones name must be indicated in the service book. This aspect of the matter has been dealt with by a co-ordinate Bench in *WP(S) No.3258 of 2014* supra. Moreover, according to the learned counsel appearing for the petitioner, the petitioner born later and that is why, his name was not indicated in the service book. In L.P.A. No.339 of 2015 this aspect of the matter has been considered that if the application is filed and it is not placed before the authority which needs to be considered by the authority. In view of Annexure-3 it is indicated that request for compassionate appointment was made. In view of the case of rendered in the matter of "*Shreejith L. v. Deputy Director (Education)*" reported in *2012 4 PLJR SC 15*, para-20, it would not be justified in taking stand that the initial application moved by the petitioner was not in the prescribed format. The judgment relied by the learned counsel appearing for the respondent-CCL in L.P.A. No.294 of 2014 was considered about the stale claim whereas in the present case the petitioner has already approached at the right time which is admitted in the supplementary counter affidavit filed by the respondent-CCL. In the case rendered in the matter of "*Bharat Coking Coal Limited*" supra, the Court was considered the matter of keeping the name in live roster which was negated on the ground that there was no such application on behalf of the writ petitioner. The case "*Eastern Coal Fields Limited v. Anil Badyakar & Ors.*" reported in *(2009) 13 SCC 112* was on the stale claim. The cases relied by the respondent-CCL are not applicable in the facts and circumstances of the present case as in their

own admission the said application has already been there which is brought on record by way of Annexure-J to the supplementary counter affidavit.

9. In view of the above discussions and considering the documents as well as the judgment relied upon by the learned counsels appearing for the parties, the impugned order cannot sustain in the eye of law and accordingly, the impugned order dated 21.10.2017 is quashed.

10. The matter is remitted back to the respondent-CCL to consider the case of the petitioner afresh in the light of the above discussions made hereinabove and pass appropriate order in accordance with law as early as possible, but not later than 12 weeks from the date of receipt/production of a copy of this order.

11. The writ petition [W.P.(S) No.1885 of 2018] stands allowed and disposed of in the above terms.

12. I.A., if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Jharkhand High Court, Ranchi
Dated : 25/06/2020
SI/ NAFR,