

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 1800 of 2018

Rita Giri

..... Petitioner

Versus

1. The Jharkhand Urja Vikash Nigam Limited through its Chief Managing Director, Ranchi
2. The Managing Director, Jharkhand Urja Vikash Nigam Limited, Ranchi.
3. General Manager-cum-Chief Engineer, Electric Supply Division, Dhanbad.
4. Deputy General Manager-cum-Electrical Superintending Engineer, Electric Supply Division, Dhanbad.
5. Electrical Superintending Engineer, Electrical Supply Circle, Dhanbad.
6. Administrative Officer, Electrical Supply Division, Dhanbad.

..... Respondents.

CORAM : HON'BLE MR. JUSTICE DR. S.N. PATHAK

For the Petitioner : Mr. P.K. Mukhopadhyay, Advocate

For the Respondents : Mr. Sanjay Kumar Tiwari, Advocate

9/ 08.08.2022 Heard learned counsel appearing on behalf of the petitioner and learned counsel for the respondent-JUVNL.

2. The petitioner has prayed for quashing the order dated 11.7.2017 (Annexure-9), whereby the respondent-JUVNL has rejected the application of the petitioner for compassionate appointment on the ground of her being a married daughter of the deceased employee. Further, prayer has been sought for a direction upon the respondents to provide compassionate appointment to the petitioner on account of death of her mother, who died in harness on 23.07.2011.

3. As per factual matrix, the mother of the petitioner, namely, Munni Devi, who was a permanent employee, died on 23.7.2011 while working as Peon in the office of Electric Supply Division, Dhanbad. Thereafter, the petitioner being wholly dependent upon her mother, applied for compassionate appointment on 22.10.2013 in the prescribed form, which was duly received in the office of the respondents. Upon receipt of such application, the General Manager-cum-Chief Engineer, Dhanbad wrote a letter to the Block Development Officer, Dhanbad for verification of the family details of the petitioner. The petitioner sworn an affidavit to the effect that she is unmarried and her two brothers and one sister have no objection, if compassionate appointment is given to her. The matter for compassionate appointment of the petitioner was placed before the Compassionate Appointment Committee after a delay of four years.

However, during this period, the petitioner got married. Finally, the Regional Compassionate Appointment Committee of respondent JUVNL rejected the claim of the petitioner on the ground of her being married daughter of the deceased employee. The rejection order of the Compassionate Appointment Committee was circulated vide memo no. 2987 dated 19.7.2017. Having no option left, the petitioner has approached this Court for redressal of her grievance.

4. Mr. P.K. Mukhopadhyay, learned counsel appearing for the petitioner submits that the action of the respondent JUVNL in denying the compassionate appointment to the petitioner, who is the daughter of the deceased employee is not sustainable in the eyes of law. Learned counsel further submits that the impugned order rejecting the claim of the petitioner for compassionate appointment suffers from gender bias, inasmuch as, if the son of the deceased employee comes within the zone of consideration for employment on compassionate ground, there is no reason as to why, the daughter, whether married or unmarried, should be excluded from the zone, if such daughter is fully dependent upon the deceased employee. Learned counsel adds that the claim of the petitioner was rejected after more than four years from the date of submission of the application by the petitioner that too only on the ground of her being married daughter. Learned counsel further submits that though the petitioner is presently married, but at the time of submission of her application for compassionate appointment, she was unmarried, fully dependent upon the income of her mother. Learned counsel further submits that it is for the fault of respondents, the matter was decided after a long delay of more than four years, and for this act of arbitrariness on the part of the respondents, the petitioner cannot be victimized. Learned counsel further submits that depriving the petitioner for providing compassionate appointment is in teeth of Articles 14 and 16 of the Constitution of India.

5. To buttress his arguments, learned counsel places heavy reliance upon the decision of the Division Bench of this Court in **L.P.A. No. 196 of 2017 (Central Coalfields Ltd. Vs. Hemanti Devi & Ors.)** wherein, the Central Coalfields Limited has turned down the case of the applicant only on the ground that she was married and hence, she was dependent on her husband. The Division Bench of this Court not only directed the Central Coalfields Limited to consider the case of the applicant after giving opportunity that she was

dependent on her mother's income at the time of mother's death, but directed to include the married dependent daughter also in the list of dependent.

Placing reliance upon the judgment rendered in L.P.A. No. 196 of 2017, learned counsel submits that the impugned order dated 11.7.2017, denying the appointment on compassionate ground to the petitioner, who is daughter of the deceased employee, is fit to be quashed and set aside.

6. Per contra, counter affidavit has been filed. Learned counsel appearing on behalf of the respondents vehemently opposes the contention of learned counsel for the petitioner and submits that admittedly, the married daughter do not come under the definition of dependent of the deceased employee and hence, no case is made out in favour of the petitioner, who is married daughter of deceased employee. Learned counsel demonstrates the fact that own sister of the petitioner has filed an objection on 26.6.2014 before the respondent authority stating inter alia that the petitioner got married with one Chandan Sinha and the petitioner by suppressing the real facts, submitted the application for getting the death-cum-retiral benefits on account of death of their mother. She has also stated in her objection petition that she has never given consent for giving the petitioner appointment on compassionate ground. Learned counsel submits that after considering the objection filed by the sister of the petitioner, the Regional Compassionate Appointment Committee has rightly rejected the application of the petitioner for compassionate appointment of her being married daughter of the deceased employee. Learned counsel submits that in a catena of judgments, law has been well settled that appointments on compassionate ground cannot be claimed as a matter of right and it must be provided as per the rules, regulations, and schemes. In the case in hand, since the Rule do not permit the respondents to offer employment to the petitioner, being the married daughter of deceased employee, rightly the impugned order has been passed declining appointment on compassionate ground.

7. Be that as it may, having gone through the rival submissions of the parties across the Bar and on perusal of the documents brought on records, this Court is of the considered view that the case of the petitioner needs consideration. This case is yet another example where the applicant for compassionate appointment has been discriminated on the ground of gender. The issue of gender discrimination in compassionate appointment fell for consideration before this Court and other High Courts, as also before the

Hon'ble Supreme Court. In the case of **Smt. Asha Pandey Vs. Coal India Ltd**, the High Court of Chhattisgarh in **W.P.(S) No. 4994 of 2015** vide its order dated 15.3.2016, has been pleased to quash the clause to the extent the same excludes from the benefits a married daughter. It has been held in said judgment that:-

“(29). As a fallout and consequence of aforesaid discussion, the writ petition is allowed and consequently clause 9.3.3 of NCWA-VI, which has been made applicable to clause 9.4.0(I) of NCWA-IX, regarding dependent employment only to the married daughter is held to be violative and discriminatory and the said clause to the extent of impliedly excluding married daughter from consideration for dependent employment is hereby declared void and inoperative. Resultantly, impugned order dated 15.10.2015 Annexure P-1 rejecting the petitioner's claim for dependent employment on the ground of her marriage is hereby quashed being unsustainable in law and it is directed that Clause 9.3.3 of NCWA-VI read with clause 9.4.0 of NCWA-IX be read in the manner to include the married daughter also as one of the eligible subject to fulfilment of other conditions. As a consequence, the respondents are directed to consider the claim of the petitioner for dependent employment afresh in accordance with law keeping in view that her father died way back on 08.02.2014 and her application for dependent employment was rejected on 15.10.2015, preferably within a period of 45 days from the date of receipt of certified copy of this order. No order as to costs.”

8. In the case of **Putul Rabidas Vs. Eastern Coalfields Ltd. & Ors.**, reported in **2017 SCC OnLine Cal 13128**, and also in the case **the State of West Bengal & Ors. Vs. Purnima Das & Ors.**, reported in **2017 SCC OnLine Cal 13121**, the Full Bench of the Calcutta High Court opined that exclusion of a daughter solely on the basis of her marital status would not be reasonable.

9. In the aforesaid backdrop of the facts and situation, the Division Bench of this Court in the case of **Central Coalfields Limited Vs. Hemanti Devi**, decided on 16.8.2018 (**2018 SCC OnLine Jhar 918**) hold that clause 9.3.3 has to be construed to include married dependent daughter also. The issue is dealt with in detailed and it was observed that such discrimination is not based on any reasonable or rational criteria and it was accordingly, directed that authority upon giving the writ petitioner an opportunity of hearing, that she was dependent on her mother's income at the time of her mother's death and at present does not have sufficient means to run her household irrespective of the fact as to whether she was married or not.

10. Similar issue yet again fell for consideration before the Division Bench of this Court, in the case of **Madhubala Sinha Vs. M/s Central Coalfields Ltd & Ors** and other analogous cases, in L.P.A. No. 617 of 2017 and

others, decided on 16.9.2019, wherein, the applicant, being the mother of the deceased employee, gave application for appointment of her unmarried daughter, on account of death of his son, but she was denied appointment, only on the ground that the sister is not included in the list of dependents for being appointed on compassionate ground in Clause 9.3.3 of the NCWA. The Division Bench after considering every aspects of the matter and after discussing the various judgments relied upon by the respective parties, as also after quoting Clause 9.3.3 of the NCWA, held that when the brother of the deceased workman dying unmarried, if fully dependent upon the deceased employee, is entitled to be considered for appointment on compassionate ground, there is no reason as to why sister, whether married or unmarried, should be deprived of such benefits. If a sister is denied the benefit of compassionate appointment only on the ground that she is not included under Clause 9.3.3 of the NCWA, this is a clear case of gender bias and the same cannot be sustained in the eyes of law, also on the touchstone of Articles 14 and 15 of the Constitution of India. Relevant paragraph-27 is quoted herein below:-

“27. For the forgoing reasons, the respondent Central Coalfields Ltd., is directed not only to consider the claims of the appellants for being appointed on compassionate ground in accordance with law, but also to take steps for inclusion of the parents and sister of the workman dying in harness, in the definition of dependents under Clause 9.3.3 of the NCWA. We would like to make it clear that consideration of the appellants for appointment on the compassionate ground, shall be subject to fulfillment of the other conditions necessary for such appointment, by the appellants.”

11. At this stage, the submission of learned counsel appearing for the respondents that married daughter do not come with the definition of dependent of the deceased employee, is not tenable in view of law laid down by catena of judicial pronouncements of this Court as well as of the Hon’ble Supreme Court, inasmuch as, the Division Bench of this Court in the case of ***Madhubala Sinha and other analogues matters*** (supra) not only held that sister is entitled to be appointed on compassionate ground, but also directed the respondents to include sister within the definition of dependent, which has also been affirmed by the Hon’ble Supreme Court by rejecting the special leave petition preferred by the Central Coalfields Ltd & Ors, in **Special Leave to Appeal No. 29678 of 2019**.

12. As a sequitur to the aforesaid observations, rules, guidelines and

legal propositions, I hereby direct the respondent-JUVNL to consider the case of the petitioner for compassionate appointment in place of her deceased mother and pass appropriate orders for appointing her on compassionate ground, so that she could meet the situation of sudden death of sole bread-earner, who had left the family in penury and without means of livelihood.

13. Let the entire exercise be completed within a period of eight weeks and if there is no other legal impediments, offer of appointment shall be issued within a further period of two weeks.

14. With these observations and directions, the writ petition stands allowed.

(Dr. S. N. Pathak, J.)

R.Kr.