

Central Coalfields Limited vs Parden Oraon on 9 April, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1876, AIRONLINE 2021 SC 190, 2021 (2) AJR 238

Author: L. Nageswara Rao

Bench: S. Ravindra Bhat, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.897 of 2021
(Arising out of Special Leave Petition (C) No. 10514 of 2020)

Central Coalfields Limited
Through its Chairman and
Managing Director & Ors.

.... Appellant(s)

Versus

Smt. Parden Oraon

... Respondent (s)

JUDGMENT

L. NAGESWARA RAO, J.

1. The respondent requested the appellants to appoint her son in the place of his father who was missing since 2002 which was rejected. Aggrieved thereby, the Respondent filed a writ petition in the High Court of Jharkhand. The writ petition was allowed and the appeal filed by the appellant was dismissed by the Division Bench of the High Court. Hence this appeal.

2. The husband of the respondent was an Operator, Helper Category (Category II) at Gidi Washery. The Respondent informed the officer in-charge of Bhurkunda Thana, Hazaribagh that her husband was missing since 03.10.2002. A copy of the 1 | Page said information was communicated to the Regional Officer of the Gidi Washery. A charge-sheet was issued by Appellant No. 1 to the Respondent's husband for desertion of duty since 01.10.2002 and an inquiry was conducted in which the Respondent participated on behalf of her husband. On the basis of Inquiry Officer's report, the Appellant No. 1 terminated the services of the Respondent's husband with effect from 21.09.2004.

3. The Respondent filed a suit in the Court of the Additional Munsif, Hazaribagh seeking a declaration of civil death of her missing husband. The said suit was decreed with effect from the date of filing of the suit i.e. 23.12.2009 by a judgment dated 13.07.2012. The Respondent made a representation on 17.01.2013 seeking compassionate appointment for her son which was rejected on 03.05.2013. The request for compassionate appointment was rejected by Appellant No. 1 on the ground that the Respondent's husband was already dismissed from service and therefore, the request for compassionate appointment could not be entertained.

4. Challenging the rejection of the request for compassionate appointment of her son, the Respondent filed a writ petition before the High Court which was allowed by a judgment dated 03.08.2015. The High Court held that the proceedings leading to 2 | Page the termination of the Respondent's husband from service cannot be sustained in the eye of law. On the said basis, the order of termination of Respondent's husband from service was quashed. The rejection of the claim of compassionate appointment of her son was also quashed and the first appellant was directed to consider the claim of compassionate appointment of the Respondent's son in accordance with law. By an order dated 03.08.2016 the first Appellant decided that there was no merit in the request for appointment of Respondent's son. It was observed in the order of rejection dated 03.08.2016 that the Respondent was in employment and both her sons were shown as her dependents. It was further noted that the Respondent's husband was missing since 03.10.2002 and the Respondent's son was not entitled to seek compassionate appointment which is normally provided as a succour to the family of a deceased employee in harness. Another reason given for rejecting the request for compassionate appointment was that a decision was taken in the meeting of Directors (Personnel) on 19.10.2013 that compassionate appointment cannot be provided to the dependents of missing employees (Deemed death).

5. The High Court through its judgment dated 16.08.2018 set aside the order dated 03.08.2016 by holding that the note of 3 | Page discussions of the Directors meet held at Jaipur cannot be considered as policy decision and it cannot be the basis for rejection of the claim for compassionate appointment. The High Court was of the view that the parties are bound by the National Coal Wage Agreement. In respect of the Respondent's employment being the reason for rejection of request for compassionate appointment, the High Court observed that there is no policy decision of the appellant company not to offer compassionate appointment in cases of double employment. As the order of termination of services of Respondent's husband was quashed by the High Court, Respondent's son was held to be entitled for appointment. The Division Bench of the High Court dismissed the appeal filed by the appellants. The National Coal Wage Agreement was examined in detail by the Division Bench to come to a conclusion that civil death of employee cannot be a disqualification for compassionate appointment of the member of his family. The contention of the Appellant that the decision was taken by the Directors (Personnel) not to provide employment to the children of employees who have suffered civil death was not accepted by the Division Bench as it could not be termed as a policy decision. The High Court observed that there is no delay in seeking compassionate appointment after having obtained a decree from the Civil Court declaring the 4 | Page Respondent's husband to have suffered civil death. The Division Bench upheld the finding of the Single Judge of the High Court that there is no clause in the National Coal Wage Agreement which prevents a claim for compassionate appointment on the ground that another member of the

family is in service.

6. The contention of the Appellant is that there is no right for compassionate appointment available to the surviving family members of the deceased employee in harness and one must seek appointment on compassionate basis in accordance with the relevant rules, regulations and schemes. It was submitted on behalf of the Appellants that the Respondent's husband was missing since 2002. The suit filed by the Respondent seeking for declaration of civil death of her husband was in 2009. The request for compassionate appointment was made much later in 2013. In view of the delay in making a claim for compassionate appointment, the very purpose of providing compassionate appointment owing to the death of the breadwinner is not served. In addition, the Respondent was in service of the Appellant. It was also argued that though the National Coal Wage Agreement does not contain any clause relating to the dependents of the employee who suffered civil death to be ineligible for compassionate appointment, the decision taken by 5 | Page the Directors (Personnel) in 2013 should be treated as a policy decision governing compassionate appointment.

7. On behalf of the Respondent, it was submitted that there is no provision in the National Coal Wage Agreement that a family member of an employee who suffered civil death is not eligible for compassionate appointment. There is also no provision that the Respondent's son cannot be given compassionate appointment on the ground that she is working in the company. The Respondent submitted that she was diligent in participating in the departmental inquiry initiated against her husband and in filing the civil suit for declaration of civil death of her husband immediately on completion of 7 years from 2002. According to the Respondent, the order of termination of services of her husband was set aside by the High Court which has become final. In any event, the respondent has retired from service in 2018 and her son needs the employment to take care of his family.

8. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is 6 | Page satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family 1. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.

9. We are in agreement with the High Court that the reasons given by the employer for denying compassionate appointment to the Respondent's son are not justified. There is no bar in the National Coal Wage Agreement for appointment of the son of an employee who has suffered civil death. In addition, merely because the respondent is working, her son cannot be denied compassionate appointment as per the relevant clauses of the National Coal Wage Agreement. However, the Respondent's husband is missing since 2002. Two sons of the Respondent who are the

dependents of her husband as per the records, are also shown as dependents of the Respondent. It cannot be said that 1 Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138 7 | Page there was any financial crisis created immediately after Respondent's husband went missing in view of the employment of the Respondent. Though the reasons given by the employer to deny the relief sought by the Respondent are not sustainable, we are convinced that the Respondent's son cannot be given compassionate appointment at this point of time. The application for compassionate appointment of the son was filed by the Respondent in the year 2013 which is more than 10 years after the Respondent's husband had gone missing. As the object of compassionate appointment is for providing immediate succour to the family of a deceased employee, the Respondent's son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.

10. For the aforementioned reasons, we allow the appeal and set aside the judgment of the High Court.

.....J. [L. NAGESWARA RAO]J. [S. RAVINDRA BHAT]
New Delhi, April 9, 2021.

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