Steel Authority Of India Ltd vs Madhusudan Das & Ors on 20 October, 2008

Equivalent citations: AIR 2009 SUPREME COURT 1153, 2009 AIR SCW 390, 2009 LAB. I. C. 854, 2009 (2) AIR JHAR R 867, 2009 (2) SERVLJ 243 SC, (2009) 2 ALLMR 977 (SC), (2009) 2 SERVLJ 243, (2009) 1 JCR 171 (SC), 2008 (15) SCALE 39, 2008 (15) SCC 560, (2008) 15 SCALE 39, (2009) 3 LAB LN 591, (2009) 122 FACLR 677, (2009) 2 MAD LW 233, (2009) 2 RAJ LW 1623, (2009) 1 SCT 449, (2009) 2 CURLR 665

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Bench: Cyriac Joseph, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6159 OF 2008
[Arising out of SLP (Civil) No. 4725 of 2007]

Steel Authority of India Ltd. ...Appellant

Versus

Madhusudan Das & Ors. ...Respondents

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Interpretation of terms of a tripartite settlement providing for appointment on compassionate ground is in question in this appeal which arises out of a judgment and order dated 20.09.2006 passed by a Division Bench of the High Court of Jharkhand at Ranchi in LPA No. 373 of 2006 allowing an appeal preferred by respondent No. 1 from the judgment and order dated 4.07.2006 passed by a learned Single Judge of the said High Court in W.P. (S) No. 507 of 2002.

3. Bhagirathi Das (deceased) was an employee of Gua Ores Mines, Gua, District - Singhbhum West belonging to appellant. On 10.02.1996, he was on C-3 Shift duty. He was asked to continue in the morning duty on 11.02.1996. While working, he suddenly collapsed and declared dead at the spot. He left behind his two wives, two married daughters, one unmarried daughter and three sons. Respondent No. 1 herein is son through his second wife, Mulgi Devi and one Goverdan Dass is the son through his first wife Savitri Devi.

4. A representation was made by respondent No. 1 for his appointment on compassionate ground. The same was rejected. He filed a writ petition marked as Writ Petition (S) No. 507 of 2002 praying inter alia for the following relief:

"It is, therefore, humbly prayed that your lordships may graciously be pleased to issue Rule NISI calling upon the Respondents to show cause as to why the petitioner be not appointed on compassionate ground and on return of the rule and after hearing the parties further be pleased to make the rule absolute against the Respondents."

5. A learned Single Judge of the Jharkhand High Court dismissed the said writ petition on the ground that it involved disputed questions of fact. Aggrieved by and dissatisfied therewith, a Letters Patent Appeal was preferred by him which has been allowed by reason of the impugned judgment.

6. Mr. Ranjit Kumar, learned Senior Counsel appearing on behalf of appellant, would submit that the Division Bench of the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that appointment on compassionate ground was to be made strictly only in terms of Para 8.9.4 of the settlement providing that the death of the bread earner should have occurred `due to an accident arising out of and in course of employment', as in this case, the employee had not died due to an accident.

7. Indisputably, the provision for appointment on compassionate ground is provided in Para 8.9.4 of the Memorandum of Settlement of Wages and Benefits, 1989, which is in the following terms:

"8.9.4 In case of death due to accident arising out of and in course of employment, employment to one of his/ her direct dependants will be provided."

8. The post mortem report of the deceased did not suggest that he died out of the ordinary sense of the term `accident'. The viscera report reads as under:

"No metallic, alkaloidal, glycosidal, pesticidal or volative poison could be detected in the dark- brown fluid described above."

9. Indisputably, the settlement was arrived at by and between the Management and the Workmen on 8.08.1995 in terms of Section 12(3) of the Industrial Disputes Act, 1947, para 9.2(f) whereof reads as under:

> "9.2 The employees covered by this settlement shall continue to be entitled to the benefits admissible under the Workmen's Compensation Act, 1923 and the previous settlement as below:
>
> (f) In case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of his/ her direct dependants will be provided."

10. The core question, which arises for our consideration, is as to whether Bhagirathi Das died in an accident arising out of and in course of employment.

11. For the aforementioned purpose, we may notice the following extracts from the writ petition and the Letters Patent Appeal filed by respondent No. 1 respectively:

> Writ petition "5. That admittedly Bhagirathi Das father of the petitioner was shift Incharge in Water Treatment Department and subsequently he became Foreman in the said Department. As per schedule he joined in C-3 Shift duty on 10.2.1996. After completion of the aforesaid C-3 Shift he was ordered to continue the morning duty i.e. `A' shift on 11.2.1996 and as such he continued his `A' Shift duty but at about 8.30 A.M. he suddenly fell down on the ground. Consequently thereto he was declared dead at the spot during the working hours in course of employment. He died in harness leaving behind his widow, two sons including petitioner and one major unmarried daughter.
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> 13. That from the perusal of Annexure - 5 it transpires that the Respondents have not denied about the death of Bhagirathi Das, father of the petitioner in course of employment though the death was alleged natural. It also transpires that the Respondents have not stated about the payment of the amount of Group Insurance to the Petitioner or his mother."

Letters Patent Appeal "32...It was never submitted that the death of employee took place due to accident while working in the mines rather submission was that the appellant's father was ordered to continue the morning duty i.e. "A" shift on 11.2.1996 and as such he continued his "A" shift duty which was neither refuted in counter affidavit of the respondents nor it was refuted at the time of argument nor postmortem report was produced at the time of argument by the respondents counsel nor any chemical analysis report was produced, but the Hon'ble Single Judge has erred in recording submission which is contrary to the pleading of the petitioner and respondents and as such finding is erroneous.

35. That the Hon'ble Single Judge failed to consider the simple fact that whether the appellant's /petitioner's father died in course of discharging duty in the mines even if normal death the dependent of the deceased employee should be provided employment by the respondents."

[Emphasis supplied]

12. The averments made in the writ petition, therefore, did not suggest that any accident had taken place resulting in death of the said Bhagirathi Das. It was also not suggested that he died as a result of stress of work. It has also not been pointed out that he was employed in a hazardous job which resulted in his death.

It is true that he was asked to work in continuous shift. We are informed at the bar that the rule covering the subject is that it was upto the employee concerned to accept the offer of the management or not to accept. The management, thus, could not force him to continue to perform his duties in the morning shift. It was, therefore, necessary for the respondent No. 1 to plead in the writ petition that the death of Bhagirathi Das occurred because of stress in the work or his work was otherwise hazardous in nature.

Even before the Division Bench, such a contention had not been raised. The Division Bench, despite the same, however, in its impugned judgment held:

> "The learned Single Judge has not come to a conclusion that the death was due to the accident, while the deceased was working in mines.
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> In our view, there is no dispute of the fact that the deceased died while he was working in the mines and initially the department had sent a letter to the doctor asking for cause of death. So, at that stage, it was not known as to how he died. But the fact remains that during the course of employment when he was working in the mines he died. Therefore, the petitioner/ appellant, who is the elder son of the deceased, in our view, is entitled for the compassionate appointment. The impugned order dated 4.7.2006 passed in W.P. (S) No. 507 of 2002 is set aside and the appeal is accordingly, allowed."

13. It was, thus, not held that the death occurred due to an accident. It was not even the case of respondent. What would constitute `an accident arising out of and in the course of employment' has not been defined. Evidently, the said phraseology has been borrowed from the provisions of the Workmen's Compensation Act. We would, however, advert to the said question a little later.

14. Appellant being a State within the meaning of Article 12 of the Constitution of India, while making recruitments, it is bound to follow the rules framed by it. Appointment of a dependant of a deceased employee on compassionate ground is a matter involving policy decision. It may be a part of the service rules. In this case it would be a part of the settlement having the force of law. A Memorandum of Settlement entered into by and between the Management and the employees having regard to the provisions contained in Section 12(3) of the Industrial Disputes Act is binding both on the employer and the employee. In the event, any party thereto commits a breach of any of the provisions thereof, ordinarily, an industrial dispute is to be raised. We would, however, assume that a writ petition therefor was maintainable. It is in that sense of the term, the learned Single Judge opined that the question as to whether there has been a breach of the Memorandum of Settlement on the part of the employer or not involves a disputed question of fact. The Division Bench of the High Court, however, proceeded on the premise that the employer was bound to

provide appointment on compassionate appointment in all cases involving death of an employee. The Division Bench, in our opinion, was not correct in its view. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. [See General Manager, State Bank of India and Others v. Anju Jain (2008) 8 SCC 475, para 33]

15. Mr. Braj K. Mishra, learned counsel appearing on behalf of the respondent No. 1, however, placed strong reliance on a decision of this Court in Balbir Kaur and Another v. Steel Authority of India Ltd. and Others [(2000) 6 SCC 493], wherein it was opined:

> "19. Mr Bhasme further contended that family members of a large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the employee concerned. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

16. It may be that such a provision was made as a measure of social benefit but it does not lay down a legal principle that the court shall pass an order to that effect despite the fact that the conditions precedent therefor have not been satisfied.

This aspect of the matter has been considered by this Court in Umesh Kumar Nagpal v. State of Haryana and Others [(1994) 4 SCC 138] in the following terms:

> "As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any

> means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased."

Yet again in General Manager (D&PB) v. Kunti Tiwary and Another [(2004) 7 SCC 271], this Court noticed:

> "6. The policy in question was framed by the appellant Bank pursuant to the decision of this Court in Umesh Kumar Nagpal v. State of Haryana 1 where this Court has said that appointment by way of compassionate appointment is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. This exception was to be resorted to in cases of penury where the dependants of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet."

[See also Punjab National Bank and Others v. Ashwini Kumar Taneja (2004) 7 SCC 265] In Mohan Mahto v. Central Coal Field Ltd. [(2007) 8 SCC 549], this Court observed:

> "14. In I.G. (Karmik) v. Prahalad Mani Tripathi this Court observed: (SCC p. 165, paras 6-8) "6. 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 v. Union of India4.
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> 7. 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 breadearner. 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.
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> 8. In National Institute of Technology v. Niraj Kumar Singh this Court has stated the law in the following terms: (SCC p. 487, para 16) `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.' "

15. In State Bank of India v. Somvir Singh this Court held: (SCC p. 783, para 10) "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 is left with any of the authorities to make compassionate appointment dehors 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."

17. Reverting back to the question as to whether in a case of this nature, it was required to be pleaded and proved that the death occurred in an accident, we must advert to the meaning of the term accident.

This Court in Mackinnon Mackenzie and Co. (P) Ltd. v. Ibrahim Mahmmed Issak [(1969) 2 SCC 607], held:

> "5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such -- to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises `out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act..."

It was furthermore held:

> "6. In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to Court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it."

The said principle was followed by this Court in Shakuntala Ghandrakant Shreshti v. Prabhakar Maruti Garvali and Another [(2007) 4 SCC 668], (wherein one of us was a member), stating:

> "20. This Court in ESI Corpn. referred to, with approval, the decision of Lord Wright in Dover Navigation Co. Ltd. v. Isabella Craig wherein it was held: (All ER p. 563 G-H) "Nothing could be simpler than the words `arising out of and in the course of the employment'. It is clear that there are two conditions to be fulfilled. What arises `in the course' of the employment is to be distinguished from what arises `out of the employment'. The former words relate to time conditioned by reference to the man's service, the latter to causality. Not every accident which occurs to a man during the time when he is on his employment--that is, directly or indirectly engaged on what he is employed to do--gives a claim to compensation, unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified."
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> *** *** ***
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> 22. There are a large number of English and American decisions, some of which have been taken note of in ESI Corpn. in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are:
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> (1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment. (2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury. (3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case."

Yet again, recently in Oriental Insurance Company Limited v. Sorumai Gogoi and Others [(2008) 4 SCC 572], this Court observed:

"21. In Jyothi Ademma v. Plant Engineer also this Court held: (SCC pp. 514-15, paras 6-7) "6. Under Section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

7. The expression `accident' means an untoward mishap which is not expected or designed. `Injury' means physiological injury. In Fenton v. Thorley & Co. Ltd.3 it was observed that the expression `accident' is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, A.C. in Trim Joint District School Board of Management v. Kelly as follows:

`I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer.' "

22. Furthermore, the rights of the parties were required to be determined as on the date of the incident, namely, 9-10-1996. It is, therefore, difficult to hold that a subsequent event and that too by raising a presumption in terms of Section 108 of the Evidence Act can give rise to fructification of claim, save and except in very exceptional cases."

18. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly.

19. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J. [S.B. Sinha] .....J. [Cyriac Joseph] New Delhi;

October 20, 2008