

**IN THE HIGH COURT OF JHARKHAND AT RANCHI  
S.A. No.114 of 2002**

(Against the Judgment and decree dated 24.06.2002 passed by the learned Additional District Judge-IV, Dhanbad in Title Appeal No. 5 of 1999)

- 1. Tata Iron & Steel Company Limited, having its registered office at Jamadoba, P.S.-Jorapokhar, Dist.-Dhanbad  
2. General Manager, M/s. TISCO, Jamadoba, P.S.-Jorapokhar, Dist.-Dhanbad

.... .... .... Appellants

***Versus***

1. Smt. Bugi Mahatain, widow of late Bhukal Mahato  
2. Gopal Mahato, son of late Bhukal Mahato  
3. Nepal Mahato, son of late Bhukal Mahato  
4. Mansu Mahato, son of late Bhukal Mahato  
All are resident of Jamadoba, P.O.-Jealgora, P.S.-Jorapokhar, Dist.-Dhanbad

... .... .... Respondents

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For the Appellants : Mr. P.A.S. Pati, Advocate  
For the Respondents : Mr. Sunil Singh, Advocate

**PRESENT**

**HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**

***By the Court:- Heard the parties.***

2 This second appeal has been preferred under Section 100 of Code of Civil Procedure against the judgment and decree dated 24.06.2002 passed by the learned Additional District Judge-IV, Dhanbad in Title Appeal No. 5 of 1999 whereby and where under, the learned first appellate court has dismissed the appeal with costs.

3 The brief fact of the case is that the plaintiffs filed Title Suit No. 31 of 1996 for a decree for declaration that one of the plaintiffs is entitled to be employed in Defendant Company as per NCWA or the service rules for employment of plaintiffs, on compassionate ground. Further prayer for mandatory injunction directing the defendants to

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provide the service benefit *in lieu* of appointment to at least one of the plaintiffs, retrospectively with effect from 13.10.1977- the date of death of Bhukhal Mahato and costs of the suit.

4        The case of the plaintiffs in brief is that the plaintiff no.1 is the widow of late Bhukhal Mahato and the petitioner nos.2, 3 and 4 are sons of Bhukhal Mahato. Bhukhal Mahato was employee of defendant- TISCO and he died in harness on 15.10.1977. The plaintiffs contended that no compassionate appointment, gratuity or any family pension was paid by the employer even though Bhukhal Mahato was a permanent employee under the defendant company. Hence, one among of the plaintiffs is entitled for compassionate employment. The plaintiffs further pleaded that several representations and requests were made to the defendants for providing employment and service benefit and finally on 28.08.1995 the defendant company refused to provide employment either to the plaintiff no.1 or any of her sons. Hence, the suit was filed.

5        In their written statement, the defendants challenged the maintainability of the suit on various technical grounds including that the suit is barred by limitation. The defendants further pleaded that the plaintiffs are not entitled to get any benefit of payment of compensation as Bhukhal Mahato died a natural death. Bhukhal Mahato worked only for two years and ten months and retiral gratuity benefit was paid under the scheme. It is next pleaded that none of the plaintiffs are entitled to get employment as per the company rule; as only when an employee completes 15 years of service, such employee is entitled to enroll one of his dependents in

the dependent register for the purpose of employment. The plaintiff no.1 for the first time applied on 07.07.1995 for employment of her son on the strength of service her deceased husband.

6 On the basis of the rival pleadings of the parties, the learned trial court framed the following seven issues:-

- (I) *Is the suit is maintainable?*
- (II) *Is there any cause of action for the present suit?*
- (III) *Is the suit barred by limitation?*
- (IV) *Is the suit barred under the Industrial Dispute Act?*
- (V) *Is the heir of the late Bhuklal Mahto entitled to any benefit as claimed who worked only for 2 years 11 months?*
- (VI) *Has the heirs been paid the due payable for the deceased?*
- (VII) *To what relief if any plaintiffs are entitled?*

7 The learned trial court first took up the issue nos. III, IV, V and VI together and after considering the evidence in the record came to the conclusion that the limitation will be considered from the date when the plaintiffs filed the representation for employment and the suit is not barred by limitation and decided the said issues in favour of the plaintiffs. The learned trial court next took up issue no. I and II together and held that since the plaintiffs are dependent of Bhukhal Mahato who was an employee of Defendant Company, one of the plaintiffs is entitled to get the service. Lastly, the learned trial court decided the issue no. VII and answered the same in the affirmative and decreed the suit.

8 Being aggrieved by the judgment and decree passed by the learned trial court, the defendants filed Title Appeal No.5 of 1999 in the court of District Judge, Dhanbad which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment and decree.

9 The learned first appellate court made independent

appreciation of the evidence in the record and firstly took up issue no. IV and came to the conclusion that the suit is not barred by the Industrial Disputes Act. The learned first appellate court then took up issue no. V and came to the conclusion that as per the National Coal Wage Agreement, the dependent of Bhukhal Mahato was entitled for employment hence, the plaintiffs are entitled for employment. The learned first appellate court next took up issue no. III and came to the conclusion that the limitation is to be counted from the date of making an application for compassionate employment hence, the suit is not barred by limitation. The learned first appellate court lastly took up issue nos. I, II and VI and held that the plaintiffs are entitled for compassionate employment and dismissed the appeal.

10 At the time of Admission of this appeal, the following substantial questions of law were framed vide order dated 18.06.2003 :-

- (1.) *Whether the suit was hopelessly barred by time ?*
- (2.) *Whether after lapse of fifteen years from the death of Bhukhlu Mahto an application for compassionate appointment, in his place, of one of his dependents could have been entertained?*
- (3.) *Whether the period of limitation for the suit was to be counted from the date when the application for compassionate appointment was filed?*

11 Learned counsel for the appellants relying upon the judgment of Hon'ble Supreme Court of India in the case of **Santosh Kumar Dubey vs. State of Uttar Pradesh & Ors.** reported in (2009) 6 SCC 481 as also the judgment of Hon'ble Supreme Court of India in the case of **Sanjay Kumar vs. State of Bihar & Ors.** reported in (2000) 7 SCC 192 submits that the period of limitation of the suit was to be counted from the date of death of deceased and admittedly the date of death of deceased was since the year 1977 and the suit having been

filed in the year 1966 the suit is hopelessly barred by limitation.

Learned counsel for the appellants next relied upon the judgment of Hon'ble Supreme Court of India in the case of **Punjab State Power Corp. Ltd. vs. Nirval Singh** reported in (2019) 6 SCC 774, paragraph no. 8 of which reads as under:-

*"8. The first is the delay in approaching the courts for redressal after a period of 7 years even if he is making representations. The very objective of providing immediate amelioration to the family is extinguished. The second is that the earlier policy having been abolished and the new policy having coming into force, the application has been considered under the new policy and the options available were offered to the respondent who failed to avail of the same"*

As also the judgment of Hon'ble Supreme Court of India in the case of **Central Coalfields Ltd. vs. Parden Oraon** reported in (2021) 16 SCC 384, paragraph no.9 of which reads as under:-

*"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 dependants of her husband as per the records, are also shown as dependants of the respondent. It cannot be said that there was any financial crisis created immediately after the 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." (Emphasis supplied)*

and also the judgment of Hon'ble Supreme Court of India in

the case of **State of West Bengal vs. Debabrata Tiwari & Ors.** reported in **2023 SCC OnLine SC 219**, paragraph no.41 of which reads as under:-

*"41. Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226 of the Constitution. Further, the order of the High Court dated 17th March, 2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondents-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action."* (Emphasis supplied)

And submits that since the very objective of providing immediate succor to the family is extinguished; so after lapse of 15 years from the date of death of Bhukhal Mahato, the application for compassionate appointment in his place, by one of the dependents could not have been entertained by the employer and the employer having rightly refused the same, both the courts below have committed perversity by allowing the suit of the plaintiffs. It is lastly submitted by the learned counsel for the appellant that the substantial questions of law be answered in favour of the appellant and this appeal be allowed as also the suit of the plaintiff be dismissed.

12        Learned counsel for the respondents on the other hand

submits that cause of action for the suit arises when the compassionate appointment is refused and in this case since refusal was on 28.08.1995 hence, the suit having been filed in 1996 is well within six years. It is next submitted by the learned counsel for the respondents that the facts involved in the case of **Santosh Kumar Dubey vs. State of Uttar Pradesh & Ors.** (supra) is different from the facts of this case; as in the case of **Santosh Kumar Dubey vs. State of Uttar Pradesh & Ors.** (supra) the prescribed relevant rules has a time limit for five years; so the Hon'ble Supreme Court of India held that the application for the compassionate appointment ought to have been made within five years but in this case in the National Coal Wage Agreement-II since there is no outer limit for making any application for compassionate appointment so the ratio of **Santosh Kumar Dubey vs. State of Uttar Pradesh & Ors.** (supra) is not applicable to the facts of this case. It is further submitted by the learned counsel for the respondents that since under the National Coal Wage Agreement-II, it is incumbent upon the employer to provide one dependent of the worker who has met with death while in service so the right of the plaintiffs to get compassionate appointment subsists for all time to come and the same cannot be denied. Hence, it is submitted that the substantial questions of law is answered in favour of the respondents and this appeal being without any merit be dismissed.

13 Having heard the submissions made at the Bar and after going through the materials in the record, since the substantial question of law nos. (1) and (3) are intertwined together, hence, they

are taken up together.

14 It is a settled principle of law that the cause of action is a bundle of facts. The right of a dependent for compassionate appointment arises when an employee upon whom the petitioner is dependent dies. So it can be very well be said that the date of death of an employee dying in hardness, when there is a scheme for compassionate appointment, is one of the cause of action for filing the suit. But such death of an employee dying in hardness, never gives rise to the cause of action for filing the suit or any legal proceeding. Because the remedy that is the offer of compassionate appointment, lies with not any court or adjudicatory body but with the employer. So a person seeking compassionate appointment, in such cases, must approach the employer and the cause of action for approaching the court or adjudicator arises only when the claim for compassionate appointment is refused by the employer.

15 So far as the judgment of Hon'ble Supreme Court of India in the case of **Santosh Kumar Dubey vs. State of Uttar Pradesh & Ors.** (supra) is concerned, the time limit for seeking compassionate appointment was fixed for five years; basing upon the outer limit of 5 years provided for in the relevant scheme for compassionate appointment, and the fact of that case but unlike the case, in this case under the National Coal Wage Agreement-II, no time limit for seeking compassionate appointment has been provided for. Hence, the time limit for five years is not applicable to the facts of this case. So far as the judgment of Hon'ble Supreme Court of India in the case of **Sanjay Kumar vs. State of Bihar & Ors.** (supra) is concerned, in

that case, no such time limit has been prescribed.

16 Now coming to the facts of the case, the period of limitation to be counted "as mentioned in the substantial question no. (3)" is concerned, the same obviously relates to the period of limitation for the suit to be filed and the period of limitation for filing the suit of approaching any adjudicator, in the considered opinion of this Court begins when the application for compassionate appointment is submitted or in case of refusal, from the date of such refusal. So the third substantial question of law is answered accordingly.

17 So far as the first substantial question of law is concerned, coming to the facts of the case, the refusal of the compassionate appointment was made on 28.08.1995 and the suit was filed in the year 1996 so the suit cannot be held to be hopelessly barred by time. The first substantial question of law is answered accordingly.

18 Now coming to the second substantial question of law as to whether after lapse of fifteen years from the death of Bhukhlu Mahto an application for compassionate appointment, in his place, of one of his dependents could have been entertained is concerned, the question arises as to if there is no specific time limit prescribed in any rules or scheme or agreement whether such compassionate appointment can be claimed after a lapse of fifteen years. The question is no more *res integra*. As has been observed by the Hon'ble Supreme Court of India in the case of **Sanjay Kumar vs. State of Bihar & Ors.** (*supra*) that the compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of bread earner who had left the family in

penury and without any means of livelihood. It was also observed that there cannot be a reservation of a vacancy till such time as the dependent of a bread earner employee dying in harness becomes major after a number of years. To the same effect is the judgments of Hon'ble Supreme Court of India relied upon by the learned counsel for the appellants as already referred to above in paragraph no.11 of this Judgment; wherein in the facts of that case the Hon'ble Supreme Court of India, held that an application for compassionate appointment made after 7 years or 10 years cannot be entertained by the employer.

19 In view of the discussions made above, this Court answers the second substantial question of law by holding that after lapse of fifteen years from the death of Bhukhal Mahato, an application for compassionate appointment in his place by one of his dependent could not have been entertained and the same having rightly been not entertained, both the courts below have committed a gross illegality by decreeing the suit for compassionate appointment after an inordinate delay of fifteen years.

20 In view of the principle of law settled by the Hon'ble Supreme Court of India as already discussed above, the second substantial question of law is decided accordingly.

21 In view of the answer to the second substantial question of law, this Court has no hesitation holding that both the courts below have committed a gross illegality by decreeing the suit of the plaintiffs for compassionate appointment made fifteen years after the death of the bread earner employee Bhukhal Mahato.

22        Accordingly, the judgment and decree passed by both the courts below in Title Suit No. 31 of 1996 and Title Appeal No. 5 of 1999 being contrary to the settled principle of law is not sustainable in law. Accordingly the same are set aside and the suit of the plaintiffs is dismissed on contest but under the circumstances without any costs as the plaintiffs are not entitled to compassionate appointment by approaching for the same for the first time in 15 years after the death of Bhukhal Mahato; who died in harness.

23        In the result, this appeal is allowed.

24        Let a copy of this Judgment along with the Lower Court Records be sent back to the court concerned forthwith.

**(Anil Kumar Choudhary, J.)**

High Court of Jharkhand, Ranchi  
Dated the 13<sup>th</sup> August, 2024  
AFR/ Sonu-Gunjan/-