

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 91 of 2023

1. Prakash Gorait, aged about 20 years, son of Ganesh Gorait, resident of at Subhash Nagar, P.O. Dakra, P.S. Khelari, District Jharkhand. Ranchi

2. Sunita Devi, aged about 40 years, wife of Ganesh Gorait, resident of at Subhash Nagar, P.O. Dakra, P.S. Khelari, District - Ranchi, Jharkhand

... .. **Petitioners**

Versus

1. Central Coalfields Ltd. through its Chairman-cum- Managing Director, having its office at Darbhanga House, Ranchi, P.O. G.P.O., P.S. Kotwali, District Ranchi.

2. Director (Personnel), Central Coalfields Ltd. having its office at Darbhanga House, Ranchi, P.O. G.P.O., P.S. Kotwali, District - Ranchi.

3. General Manager (MP & IR), Central Coalfields Ltd. having its office at Darbhanga House, Ranchi, P.O. - G.P.O., P.S. Kotwali, District - Ranchi.

4 General Manager, N.K. Area of Central Coalfields Ltd. having its office at Dakra, P.O. + P.S. - Dakra, District Ranchi.

5. Project Officer, Churi Project under N.K. Area of Central Coalfields Ltd., having its office at Churi, P.O. Ray, P.S. - Dakra, District – Ranchi

6. Chief Manager (P/MP) Central Coalfields Limited, having its office at Darbhanga House, Ranchi, P.O. G.P.O. P.S. Kotwali, District-Ranchi

... .. **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Mr. Uday Prakash, Advocate

For the Respondents : Mr. Pravin Kumar Pandey, Advocate

08/18.03.2024

Learned counsel for the parties are present.

2. This writ petition has been filed for the following reliefs:-

(i) *For issuance of writ(s)/ order(s)/ direction(s) particularly in the nature of Certiorari commanding upon the respondents to quash and set aside the order dated 23.02.2022 (Annexure 9) passed by respondent no. 5 whereby and whereunder, case of employment of petitioner no. 1 on compassionate ground under provision 9.3.0 of NCWA has been declined on the ground that, deceased employee was a "Badli Worker" and died before his regularisation as a permanent workman.*

And

ii. *For issuance of a writ(s)/order(s)/direction(s) particularly in the nature of mandamus to consider and*

provide employment petitioner no. 1 on compassionate ground under provision 9.3.0 of NCWA.

AND/OR

iii. For the issuance of such other writ, order or direction as may appear just and proper in the facts and circumstances of the case for doing conscionable justice to the petitioners.

3. The learned counsel for the petitioners has submitted that the father of the petitioner no. 1 was in service of the respondents and w.e.f. 16.02.2006 he was removed from service and subsequently vide order dated 11.05.2016 he was reinstated as 'Badli Worker.' He reported for duty on 29.06.2016 and expired on 26.12.2020. The father of the petitioner no. 1 was never removed from service and continued to be 'Badli Worker'. Father of the petitioner no. 1 was appointed as 'Badli Worker' but no order for regularization was passed with respect to the father of the petitioner no. 1.

4. The learned counsel has referred to the certified standing order and has submitted that different categories of workman has been mentioned 'badli' or 'substitute' is mentioned at clause 3.1(b). He has also referred to clause 3.3. and has submitted that as per the said provision a 'badli' or 'substitute' is one who is appointed in the post of permanent workman or probationer who is temporarily absent but he would cease to be a 'badli' on completion of a continuous period of service of one year.

5. The learned counsel submits that requisite period was duly completed by the father of the petitioner no. 1 and accordingly the petitioner no. 1 was entitled for compassionate appointment. For this , he has referred to the judgment passed by this Court in ***W.P. (L) No. 5398 of 2005 dated 14.08.2019 and the said judgment was affirmed in LPA No. 273 of 2020.***

6. The learned counsel appearing on behalf of the respondents on the other hand has opposed the prayer and has submitted that charge sheet was issued to the father of the petitioner no. 1 vide charge sheet No. 2077 dated 29.11.2018 and before the proceeding could be taken to a logical end, the father of the petitioner no. 1 expired on

26.12.2020 before any order of regularization could be passed. However, it is not in dispute that father of the petitioner no. 1 was appointed as 'Badli Worker'.

7. Learned counsel has relied upon a judgment passed by this Court in *LPA No. 393 of 2017* and has submitted that there is no concept of automatic confirmation in service and the said case was arising out of the claim for compassionate appointment in which the ex-employee was a trainee and he expired before he could be confirmed.

8. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, this court finds that it is not in dispute that the father of the petitioner no. 1 was removed from service on 16.02.2006. However, on 11.05.2016 he was reinstated as a 'Badli Worker' and he joined as 'Badli Worker' on 29.06.2016. In the counter affidavit at annexure-D a document dated 28.08.2019 has been placed on record which is issued by the respondents giving the total period of attendance of the father of the petitioner as 265 days and also indicating that as per point no. 3 of the order of reinstatement dated 11.05.2016 the father of the petitioner shall be considered for confirmation as permanent employee in category-I on completion of 190 days of physical attendance in case of underground work and 240 days of physical attendance in case of surface work ,as the case may be, immediately following 12 calendar months from the date of joining on reinstatement. It was recorded that father of the petitioner had completed 265 days of attendance till 15.05.2017. However, no order of regularization of the father of the petitioner no. 1 in the services in category-I was passed by the respondents.

9. As per the case of the respondents, a charge sheet was issued to the father of the petitioner on 27.11.2018 on account of unauthorized absence. However, before the proceeding could be taken to a logical end, the father of the petitioner expired on 26.12.2020. No final order in connection with the disciplinary proceedings initiated on 27.11.2018 has been placed on record.

10. This court finds that the petitioner applied for compassionate appointment and his claim for compassionate appointment was rejected by the impugned order dated 23.02.2022 by mentioning that an employment under para 9.3.0 of NCWA is provided to one of the dependent of deceased employee if the employee was the permanent workman of the company and since late Ganesh Goraik was a Badli Worker and he died before regularization as permanent workman the claim was declined.

11. The provisions of the standing order with regard to classification of workman as placed on record by the petitioner in the rejoinder is as follows: -

Clause 9.3.1

“For the purpose of these standing orders workmen shall be classified as follows: -

(a) Apprentice (b) Badli or substitute (c) Casual (d) Permanent (e) Probationer (f) Temporary.”

Clause 9.3.2 *'Apprentice' is a learner*

Clause 9.3.3 *'Badli or Substitute' is one who is appointed in the post of permanent workman or probationer who is temporarily absent; but he would cease to be a 'badli' on completion of continuous period of service of one year (190 attendances in the case of below ground workmen and 240 attendances in the case of any other workmen) in the same post or other post or posts in the same category, or earlier if the post is vacated by the permanent workmen or probationer. A 'badli' working in place of a probationer would be deemed to be permanent after completion of the probationary period.”*

Clause 9.3.4. *A 'Casual workman' means*

Clause 9.3.5. *A 'permanent workman'*

Clause 9.3.6. *A 'probationer' means a person who is provisionally employed to fill a vacancy in a permanent post for a period not exceeding 6 (six) months and who has not completed his probationary period provided that the period of probation may be extended by the management beyond the original period by not more than 3 (three) months for reasons to be recorded in writing. If a permanent workman is employed as a probationer in a new post, he may be at any time during the probationary period, not exceeding 6 (six) months, be reverted to his old permanent post unless the probationary period is extended by another 3 (three) months for reasons to be recorded in writing. If no positive order is issued by the Management on the expiry of the probationary period or extended probationary period, as the case may be, the employee concerned shall be deemed to have been confirmed.*

Clause 9.3.7. 'Temporary workman' means workman ...

12. Upon perusal of clause 3.1 it appears that there are different categories of workers including 'badli' or 'substitute' which is a category different from that of a probationer. However, in the definition of probationer there is a provision of deemed confirmation upon completion of period as stipulated and in terms of the definition as clause 9.3.6. Further clause 9.3.3 of the standing order defines 'badli' or 'substitute'. It provides that 'badli' or 'substitute' is one who is appointed on the post of permanent worker or probationer who is temporarily absent but would cease to be a 'Badli' on completion of continuous period of service of one year (*190 attendance in case of below ground workman and 240 attendances in case of any other workman*) in the same post or other post or posts in the same category. A 'Badli' Worker in place of a probationer would be deemed to be a permanent after completion of the probationary period.

13. This court finds that the respondents have themselves certified vide Annexure-D to the counter affidavit that the father of the petitioner no.1 had completed the required period for his regularization in as much as he has completed 265 days of attendance in one calendar year but ultimately no order of regularization was passed. This Court also finds that in case of 'Badli' or 'substitute' there is a provision under 'work standing order' that upon completion of the requisite period, the status of 'badli' will cease to be a 'badli' and he will be deemed to be permanent.

14. No formal order in connection with permanent employment of the father of the petitioner no. 1 was passed and the impugned order only reflects that the claim for compassionate appointment was declined as the father of the petitioner no. 1 was a 'Badli' Worker.

15. Considering clause 3.3 of the standing order and considering the admitted fact that father of the petitioner had completed 240 days attendance and had in fact had completed 265 days, the status of the father of the petitioner ceases to be 'badli' on completion of the requisite period and he was deemed to be permanent although no formal order of being permanent was passed.

16. This is over and above the fact that in the judgment passed by this Court in *W.P. (L) No. 5398 of 2005* the Award was challenged by the employer BCCL and the case was arising out of an industrial dispute in *Reference case no. 228 of 1998*, the standing order of BCCL was taken into consideration in which also there was similar provision of 'badli' or 'substitute' and 'probationers' and this Court held that the status of worker as 'Badli' Worker would not have made any difference as the definition of worker provided under clause 7.1 of the standing order contains 'Badli' Worker also and therefore 'Badli' Worker is a worker under BCCL and dependent of such worker who died in harness would be entitled for compassionate appointment as per 9.4.2. of NCWA-IV and the contention of BCCL was rejected. The said judgment was subject matter for consideration in LPA No. 273 of 2020 and the appeal was dismissed.

17. This court finds that even if the status of the father of the petitioner no. 1 is considered to be that of 'Badli' Worker as mentioned in the impugned order then also claim of the petitioner no. 1 could not have been rejected in view of the judgment passed in *W.P. (L) No. 5398 of 2005* upheld in *LPA No. 273 of 2020* which is in favour of the petitioner no.1. This is over and above the fact that upon reading of the provisions of clause 3.1 of the standing order read with clause 3.3, the status of a 'Badli' Worker ceases to be so on completion of requisite period of 240 days and admittedly father of the petitioner no. 1 completed more than 240 days as per the records of the respondents.

18. So far as judgment passed in *LPA No. 393 of 2017* is concerned, it does not apply to the facts and circumstances of this case. The said judgement was arising out of a claim of compassionate appointment in connection with a person whose father was a 'trainee' appointed on stipend with a condition that upon successful completion of training period he may be put on regular basis or his period of trainee could be extended. Upon completion of one year, he was not confirmed and in the meantime he had expired. The plea of the son of the deceased employee was that upon completion of one year his father ought to have been treated as confirmed. Such plea was rejected

by Hon'ble Division Bench in *LPA No. 393 of 2017*. This Court finds that not only the status with regard to a 'trainee' is different from that of a 'Badli' Worker as there are different categories of workman and 'badli' or 'substitute' is a different category altogether. The terms and conditions of employment of 'trainee' is totally different in as much as there is no clause of any automatic confirmation upon completion of stipulated period. There is a clear stipulation that upon successful completion of training period, the trainee may be put on regular basis or his training period could be extended, but, in the case of 'badli' or 'substitute', clause 3.3 is totally distinct and it clearly provides that upon successful completion of requisite period, the 'badli' would cease to be a 'badli' and he would be deemed to be permanent. In such circumstances, the judgment passed in *LPA. No. 393 of 2017* does not apply to the facts and circumstances of this case, terms of appointment of trainee is remarkably and materially different from that of a 'badli'.

19. So far as argument of the respondents that a charge sheet was issued to the father of the petitioner no. 1 on 27.11.2018 prior to his death is concerned, the same has no bearing in the matter as no proceeding or order in connection with the charge sheet has been placed on record to show that any order of punishment was ever imposed upon him and the records reflect that no such final order was passed and the father of the petitioner no.1 expired on 26.12.2020. Accordingly, the respondents cannot take any advantage of the charge sheet dated 27.11.2018.

20. Considering the totality of the facts and circumstances of this case and in view of the aforesaid findings, this Court is of the considered view that the impugned order rejecting the case of compassionate appointment of the petitioner no. 1 on the ground that father of the petitioner no. 1 was a 'Badli' Worker and he died before regularization as permanent worker cannot be sustained in the eyes of law. The impugned order is accordingly set aside.

21. The respondent no. 2 is directed to consider the claim of compassionate appointment of the petitioner no. 1 subject to satisfaction of other requisite criteria for grant of compassionate

appointment. The needful be done within a period of one month from the date of receipt of copy of the order along with the copy of the writ records.

22. This writ petition is accordingly disposed of.

23. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

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