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MOHAN MAHTO

v.

M/S. CENTRAL COAL FIELD LTD. & ORS.

SEPTEMBER 18, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Labour Law:

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Compassionate appointment—Workman died in harness—National Coal Wage Agreement, V—Providing for compassionate appointment to dependent of workman—Application of son of deceased workman filed under sub-clause (iii) of Clause 9.5.0 of NCWA, V—Rejected by Management—HELD: A ‘settlement’ within the meaning of s.18(3) of the Industrial Disputes Act is binding on both the parties unless the same is modified or substituted by another settlement—No period of limitation was provided in settlement—Period of limitation provided in Circular was not statutory nor is it imperative in character—On facts, action of the Company declining appointment on compassionate ground to applicant being contrary to ‘settlement’ is neither fair nor reasonable nor bona fide—Company directed to offer appointment to the applicant—Industrial Disputes Act, 1947—ss. 18(3)—Constitution of India—Article 12.

Constitution of India, 1950:

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Article 12—‘State’—HELD: A public sector undertaking which is ‘state’ within the meaning of Article 12 is expected not only to act fairly but also reasonably and bona fide—Administrative Law—‘State’ authorities.

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A workman in the service of the respondent, a Public Sector Undertaking, died in harness on 23.2.1997. His son, the appellant, who at that time was minor but above 15 years of age, filed an application for appointment on compassionate ground on 25.10.1997. The terms and conditions of service of the workman of the respondent-Company were governed, *inter alia*, by a ‘settlement’ known as National Coal Wage Agreement, V (NSWA, V). Sub-clause (iii) of clause 9.5.0 of the said settlement provided, *inter alia*, that a minor male dependent, if he be 15 years of age, of a deceased be provided employment on his attaining 18 years of age and

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meanwhile his name be kept on the live roster. The application of the appellant was rejected by the respondent-Company on the ground that he was a minor at that time. He later filed another application on attaining majority on 26.9.1999. He was again declined the appointment stating that he was under age and also his name was not kept in the live roster. On the basis of the Circular dated 12.12.1995, providing for six months' limitation for filing the application for appointment on compassionate ground from the date of death of the deceased-workman, the respondent held that there was considerable delay in applying for appointment. The writ petition filed by the applicant was allowed by the single Judge of the High Court. However, the Division Bench of the High Court allowed the writ appeal filed by the Company. The Division Bench relying on the decision in *K.P. Viswanath's case** held that the Court had no jurisdiction to extend the period of limitation. Aggrieved, the writ petitioner filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. A settlement within the meaning of sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement. No period of limitation was provided in the settlement. The respondent might have jurisdiction to issue the circular prescribing a period of limitation for filing application for grant of appointment on compassionate ground, but, such circular was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into by and between the parties. [Para 10] [1148-F, G]

1.2. The right to obtain appointment on compassionate grounds, in the instant case, emanates from the settlement i.e. NCWA,V. The expanding definition of workman as contained in Section 2(s) of the Industrial Disputes Act, 1947 would confer a right upon the appellant to obtain appointment on compassionate ground, subject, of course, to compliance of the conditions precedent contained therein. The case for grant of compassionate appointment of a minor was undisputedly required to be considered in terms of sub-clause (iii) of Clause 9.5.0 of the N.C.W.A.V. In terms of the said provision, the name of the appellant was to be kept on a live roster. He was to remain on the live roster till he attained the age of 18 years. Respondents did not perform their duties cast on them thereunder. It took an unilateral stand that an application has been filed in the year 1999 in the prescribed form. For complying with the provisions of a settlement which is binding on the parties, *bona fide* or

A otherwise of the respondent must be judged from the fact as to whether it had discharged its duties thereunder or not. In this case, not only the respondent failed and/or neglected to do so, but it took an unholy stand that the elder brother of the appellant being employed, he was not entitled to appointment on compassionate ground.

[Paras 10, 11 and 16] [1148-G, H; 1149-A; 1151-A, B, C]

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I.G. (Karmik) and Ors. v. Prahalad Mani Tripathi, (2007) 6 SCALE 370 and *State Bank of India and Anr. v. Somvir Singh*, [2007] 4 SCC 778.

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1.3. A public sector undertaking which is a 'State' within the meaning of Article 12 of the Constitution of India is expected not only to act fairly but also reasonably and *bona fide*. While so acting, it must provide for a period of limitation which is reasonable. The period of six months' limitation prescribed in the circular letter dated 12.12.1995 was not statutory. It is also not imperative in character. Besides, the circular was a unilateral one. Further, the matter should also be considered keeping in view the subsequent conduct of the respondent insofar as it issued another circular letter in the year 2000 providing for filing of an application for appointment on compassionate ground within a period of one year. In this case, the action of the respondent is neither fair nor reasonable nor *bona fide*.

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[Paras 15 and 17] [1151-C, E; 1150-F; 1151-F]

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1.4. Furthermore, in the letter dated 2/3.08.2000, expiry of the period of limitation was not taken as a ground for rejecting the application of the applicant. Under-age and non-placement of his name in live roster are stated to be the reasons. It is, therefore, unfair on the part of the respondent to raise such a plea for the first time in its counter-affidavit to the writ petition. If he was under-age, definitely, it was obligatory on the part of the respondent to keep his name in the live roster. It was not done. Reliance placed by the High Court on *K.R. Vishwanath**, is misplaced. The impugned judgment cannot be sustained which is set aside. Respondent is directed to offer appointment to the appellant on a suitable post.

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[Para 17 and 18] [1151-G; 1152-A, E, F]

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Umesh Kumar Nagpal v. State of Haryana and Ors., [1994] 4 SCC 138 and **Commissioner of Public Instructions and Ors. v. K.R. Vishwanath*, [2005] 7 SCC 206, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4339 of 2007.

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From the Judgment and Order dated 20.02.2006 of the High Court of Jharkhand at Ranchi in L.P.A. No. 142 of 2004.

Rajesh Kumar and D.B. Vohra for the Appellant.

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A.M. Singhvi and Sunil Roy for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

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2. Appellant's father Rameshwar Mahto was employed as a Fitter, Category IV, in a coal mine belonging to the respondent known as Kuju Colliery. He died in harness on 23.02.1997. The terms and conditions of the service of the workmen working in coal mines are *inter alia* governed by a 'Settlement' known as National Coal Wage Agreement (N.C.W.A.) V. Indisputably, the said settlement, in terms of Sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 is binding on the parties. Clause 9.3.2 of N.C.W.A. V refers to appointment of dependants of the deceased employees working in the coal mines; sub-clause (iii) of Clause 9.5.0 whereof reads as under:

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“(iii) In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 15 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (I) and (ii) above.”

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3. Appellant filed an application for appointment on compassionate ground on 25.10.1997. The same was denied to him *inter alia* on the premise that he was a minor at the relevant time. He filed an application in prescribed form upon attaining majority on 26.09.1999 which was rejected by an order dated 3.08.2000 stating:

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“With reference to the letter No. GM(K)/PD-9.3.2/2000/749 dated Nil of Staff Officer (P), Kuju Area this is to inform you that the proposal has not been agreed by the competent authority since the dependent was not eligible for employment as he was under age and also his name was not kept in live roster. Also there was considerable delay in applying for employment by the dependent.”

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A 4. Respondent purported to have issued a circular letter on 12.12.1995 providing for six months' limitation for filing such an application for appointment on compassionate ground from the date of death of the concerned employees in the following terms:

B "It has been observed from the details of the statements prepared and submitted by the Area for Placement Interview under para 9.4.2 of NCWA-IV, that cases pertaining to the period beyond 6 months are also entertained without any reasoning. Considering this situation also in order to streamline the activities of the manpower and to have effective control over it, it has been decided that the cases falling

C beyond 6 months from the date of death of the concerned employees, the dependent of the deceased employees will not be entertained, unless express permission is given by Hqtrs. after thorough scrutiny of the case. Now as action will be taken against those who fail to complete the work within stipulated time.

D Therefore, all the Staff Officers (Pers.) should discuss this matter with the Personnel Executives of the Unit/Establishments and advise them accordingly."

5. It was replaced by another circular letter issued in the year 2000 stating:

E "It has been observed from the case files received from areas for appointment of dependants of ex-employees under para 9.3.2 of NCWA V/VI that the cases pertaining to the period beyond six months are also entertained and sent without any reasoning. Therefore, vide

F circular No. PD/MP/9.4.2/95/1151 dated 12.12.95 all areas were advised that the cases falling beyond six months from the date of death of the concerned employee will not be entertained unless express permission is given by Hqtrs. after thorough scrutiny of the case.

G Now in view of the persistent demands of unions relaxation was granted for one year from Feb. 2000 which was subsequently discussed and reviewed in the meeting held with unions at Corporate Level. It was decided that henceforth application submitted under clause 9.3.2. within one year after demise of an employee will not be treated as belated case. Thus the application submitted by dependant concerned after expiry of one year from the date of death of ex-employee will not

H be considered for employment."

6. A writ petition was filed by the appellant before the High Court of Jharkhand, Ranchi which was marked as WPS No. 471 of 2003 questioning the order declining him the grant of appointment on compassionate ground by the respondent. Before the High Court, the respondent took a stand that as the elder brother of the appellant has already been in employment, he was not entitled thereto. The said contention has since been given up. A learned Single Judge of the High Court took notice of the aforementioned circulars *vis-a-vis* the relevant provisions of N.C.W.A. V holding:

“From the scheme quoted herein above, it is clear that if on the date of death of the deceased employee, the male dependant is 15 years and above in age then he will be kept on a live roster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation. Admittedly, in 1997 petitioner was more than 15 years of age and an application was filed by the petitioner in 1997 but neither the petitioner was kept in live roster nor the widow of the deceased employee was paid monetary compensation. After attaining 18 years of age petitioner as per the aforesaid clause applied for compassionate appointment in 1999 which has been arbitrarily rejected by the respondents on the ground of delay. While the petitioner approached this court by filing instant writ application third case has been made out by the respondents that petitioner's appointment was refused on the ground of his elder brother, having been in employment of the subsidiary company. This fact was subsequently falsified in the manner discussed herein above.

For the aforesaid reasons, this writ application is allowed and the impugned letters are quashed. Respondents are directed to give benefit of National Coal Wage Agreement - VI to the petitioner by appointing him in place of his deceased father, who died in harness, as regular employee of the Company.”

7. An intra-court appeal was preferred thereagainst by the respondent herein which by reason of the impugned judgment was allowed by a Division Bench stating:

“In the case of *Commissioner of Public Instructions v. K.R. Vishwanath*, reported in [2005] 7 SCC 206, the Supreme Court held that the Court has no jurisdiction to extend the period of limitation

A and so was of the view of the Division Bench of this Court in the case of *Sushil Kumar Vengra v. Union of India*, reported in (2005) (1) JCR 282 (Jhr.)”

8. Mr. Rajesh Kumar, learned counsel appearing on behalf of the appellant, *inter alia* submitted:

- B (i) the Division Bench of the High Court committed a serious error in relying upon the judgment of this Court in *Commissioner of Public Instructions and Ors. v. K.R. Vishwanath*, [2005] 7 SCC 206 as therein a statutory rule was made providing for a limitation of one year for filing an application for appointment on compassionate ground from the date of death of the employee;
- C (ii) The period of six months envisaged under the circular letter dated 12.12.1995 will have no application as: (a) it is directory in nature and (b) the same was substituted by another circular of 2000.

D 9. Dr. A.M.Singhvi, learned senior counsel appearing on behalf of the respondents, on the other hand, urged:

- (i) Respondent as an employer is entitled to take a policy decision in regard to implementation of the settlement.
- E (ii) Grant of appointment on compassionate ground, being an exception to Article 16 of the Constitution of India, should be strictly construed.
- (iii) As the circular letter issued in 2000 is prospective in nature, the same will have no application in the instant case.

F 10. A settlement within the meaning of Sub-section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement. No period of limitation was provided in the settlement. We would assume that the respondent had jurisdiction to issue such circular prescribing a period of limitation for filing application for grant of appointment on compassionate ground. But, such circular was not only required to be strictly

G complied with but also was required to be read keeping in view the settlement entered into by and between the parties. The expanding definition of workman as contained in Section 2(s) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate ground,

H subject, of course, to compliance of the conditions precedent contained

therein.

11. The right to obtain appointment on compassionate grounds emanates from the settlement. Settlement is defined in Section 2(p) of the Industrial Disputes Act to mean 'a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer'.

12. Even in regard to prescription of a period of limitation, the respondent ought to have kept in view the spirit thereof.

13. We are not oblivious that grant of appointment on compassionate ground is an exception to Article 16(1) of the Constitution of India.

In *I.G. (Karmik) and Ors. v. Prahalad Mani Tripathi*, (2007) 6 SCALE 370, this Court observed:

"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 and Ors. v. Union of India and Ors.*, A.I.R. (1987) SC 1015.

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 bread earner. 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

A compassion.

In *National Institute of Technology & Ors. v. Niraj Kumar Singh*, (2007) 2 SCALE 525, this Court has stated the law in the following terms:-

B “16. All public appointments must be in consonance with Article
C 16 of the Constitution of India. Exceptions carved out therefore
are the cases where appointments are to be given to the widow
or the dependant 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.”

D 14. In *State Bank of India and Anr. v. Somvir Singh*, [2007] 4 SCC 778,
this Court held:

E “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
left with any of the authorities to make compassionate appointment
F *de hors* 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.”

G 15. The period of six months' limitation prescribed in the circular letter
dated 12.12.1995 was not statutory. It is also not imperative in character. Even
for entertaining such an application beyond the period of six months, the
H Headquarters of the Central Coal Field Limited is entitled to consider the facts
and circumstances of each case. Admittedly, Appellant filed an application for
grant of appointment on compassionate ground when he was a minor. His
application was rejected on that premise at the first instance but even at that
point of time the respondent did not take a stand that the same had not been
entertained on the ground that the same was filed after expiry of the period
of six months.

16. It is neither in doubt nor in dispute that the case for grant of compassionate appointment of a minor was required to be considered in terms of Sub-clause (iii) of Clause 9.5.0 of the N.C.W.A.V. In terms of the said provision, the name of the appellant was to be kept on a live roster. He was to remain on the live roster till he attained the age of 18 years. Respondents did not perform their duties cast on them thereunder. It took an unilateral stand that an application has been filed in the year 1999 in the prescribed form. For complying with the provisions of a settlement which is binding on the parties, *bona fide* or otherwise of the respondent must be judged from the fact as to whether it had discharged his duties thereunder or not. In this case, not only it failed and/ or neglected to do so, but as indicated hereinbefore it took an unholy stand that the elder brother of the appellant being employed, he was not entitled to appointment on the compassionate ground. Thus, what really impelled the respondent in denying the benefit of compassionate appointment to the appellant is, therefore, open to guess. We expect a public sector undertaking which is a 'State' within the meaning of Article 12 of the Constitution of India not only to act fairly but also reasonably and *bona fide*. In this case, we are satisfied that the action of the respondent is neither fair nor reasonable nor *bona fide*.

17. We have indicated hereinbefore, that it is not necessary for us to go into the question as to whether on the teeth of the provision of N.C.W.A.V., the respondent at all had any power to fix a time limit and thereby curtailing the right of the workman concerned. We would assume that even in such a matter, it had a right. But, even for the said purpose, keeping in view the fact that a beneficial provision is made under a settlement, the 'State' was expected to act reasonably. While so acting, it must provide for a period of limitation which is reasonable. Apart from the fact that the period of limitation provided for in the circular letter with a power of relaxation can never be held to be imperative in character, the matter should also be considered from the subsequent conduct of the respondent insofar as it had issued another circular letter in the year 2000 providing for filing of an application for appointment on compassionate ground within a period of one year. It may be that the said circular letter has prospective operation but even in relation thereto we may notice that whereas the said circular letter was issued upon holding discussion with the Unions, the circular letter of the year 1995 was an unilateral one. Furthermore, in its letter dated 2/3.08.2000, it will bear repetition to state, expiry of the period of limitation was not taken as a ground for rejecting his application. Under-age and non-placement of his name in live

A roster are stated to be the reasons. It is, therefore, unfair on the part of the respondent to raise such a plea for the first time in its counter-affidavit to the writ petition. If he was under-age, definitely, it was obligatory on the part of the respondent to keep his name in the live roster. It was not done.

B 18. Reliance placed by the High Court on *K.R. Vishwanath* (supra), with respect, is misplaced. Therein, the terms and conditions of the parties were governed by a statute known as 'Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996'. Rule 5 of the said Rules provided for a period of limitation. The said decision, therefore, cannot be said to have any application whatsoever in the instant case.

C 19. In *Umesh Kumar Nagpal v. State of Haryana and Ors.*, [1994] 4 SCC 138 whereupon reliance has been placed by Dr. Singhvi, this Court held:

D "6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

E What should be a reasonable period would depend upon the rules operating in the field.

F 20. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. Respondent is hereby directed to offer appointment to the appellant on a suitable post within eight weeks from date. As the appellant is not in employment for a long time, he is entitled to costs throughout. Counsel's fee assessed at Rs. 25,000/-.

R.P.

Appeal allowed.