

Writ Appeal No.1335/2010

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29.08.2011

Shri Rajas Pohankar, learned counsel for the appellant.

Heard.

By the impugned order, the learned Single Judge has rejected the contention of the employer-appellant, on the basis of which compassionate employment was refused to the son of the writ-petitioner (who is the respondent in this appeal).

It appears that a letter dated 19.5.1998, annexure P/1, was written by the Colliery Manager to the writ petitioner, whose husband has died in harness in 1997, that her son Shamsheer had attained the age of 16 years and his name could be kept on the live roster till he attains the age of 18 years for granting compassionate appointment, and in the meanwhile Rs. 2,000/- per month would be granted to the writ petitioner as monetary compensation. Written consent of the writ petitioner was sought by that letter.

On 20.5.1998 the petitioner seems to have sent a letter in which she said that her son was aged only 14 years and his year of birth has been (wrongly ?) written as 1983 at the time of admission in school. In that letter she said that she wanted her son to continue his studies and she wanted to be given compassionate employment in place of her late husband. This document is enclosed as Annexure R/2.

Admittedly, there was no response by the appellant (employer) to this letter. The appellant did not grant any compassionate employment to the writ petitioner nor did they intimate to her any reason why she could not be granted compassionate appointment. The appellant employer merely gave her monetary compensation of Rs.2,000/- per month which was later on increased to Rs.3,000/- per month.

A copy of the school certificate of the petitioner's son has been enclosed with this appeal as annexure P/3 in which his date of birth is shown as 4.5.1983.

The appellant relies upon the said letter of the writ petitioner for the defence that since the son at the time of his father's death was aged less than

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15 years, therefore, his name could not have been kept on the live roster under clause 5.0(iii) of Chapter IX, titled '**Social Security**' which is a part of NCWA-V.

We are not inclined to accept this defence because in all probability, the almost illiterate lady did not want to wait so long as to enable her son to attain the age of 18 years and wanted compassionate employment for herself for immediate financial support to the family. May be, in her anxiety to get the compassionate employment, she went a step further and stated that the son was aged only 14 years. But the school certificate mentions his age as 16 years and, therefore, even under the aforesaid clause 5.0(iii), his name could have been kept on the live roster. Moreover, the respondent has relied on annexure R/4 which is a letter dated 12/13.1.1999 issued by the Industrial Relations Department in clause 3 of which it has been stated that son of a deceased employee who is aged less than 15 years but not aged below 10 years may be considered for compassionate employment on attaining the age of majority on case to case basis.

Thus, the son of a deceased employees dying in harness could be granted compassionate employment even if the son was below the age of 15 years at the time of death of the deceased employee.

Considering all the above circumstances, we are not inclined to interfere in this appeal in this matter of compassionate appointment.

Appeal dismissed.

(Sushil Harkauli)
Acting Chief Justice

(K.K.Trivedi)
Judge

HS/AK