

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(S) No. 2178 of 2021**

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Sita Kumari resident of Village Kadua Bitha, P.O. Chandra, P.S. Chandankiyari,  
District Bokaro ..... Petitioner

Versus

1. Bharat Coking Coal Ltd. through its Chairman cum Managing Director  
having Headquarter at Koyla Bhawan, District Dhanbad
2. General Manager (P) MP & R, Headquarter of M/s BCCL, District  
Dhanbad
3. General Manager, Eastern Jharia Area of M/s BCCL, District Dhanbad
4. The Project Officer, Incline Mine, ASP Colliery of M/s BCCL, District Dhanbad  
..... Respondents

**CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY**

For the Petitioner : Mr. Sidhartha Roy, Advocate  
Mr. Ajay Kumar Singh, Advocate  
For the Respondents : Mr. Amit Kumar Sinha, Advocate

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**Order No.09 / Dated : 31.10.2023**

Petitioner is the daughter of Late Chhote Ram Marandi, who was permanent employee of M/s BCCL and died in harness on 14.09.2014.

2. After his death, his son applied for compassionate appointment which was allowed by the letter dated 05.01.2018 by respondent no.2. However, by that time, he had died on 14.11.2017 in a road accident. After his death, the petitioner filed an application for appointment on compassionate ground on 29.10.2018 which did not find favour of Management and was rejected by letter dated 20.12.2019 which has been impugned in the instant writ petition.

3. The application of the petitioner was rejected on the ground that she was married daughter of the employee and she did not come under the purview of definition of dependent for being considered for appointment on compassionate ground as per the provision of National Coal Wage Agreement (NCWA).

4. The main issue for consideration before this Court is whether the married daughter of employee of BCCL is entitled to employment?

5. It is submitted by the learned counsel on behalf of petitioner that at the time of death of her father, she was unmarried and came within the meaning of dependent as provided under Clause 9.3.3 of the National Coal Wage Agreement-VI. The right to appointment accrued on the date of death, and had she applied, she would have been granted employment, but as her brother had applied for the post, she did not submit her application in this regard. However, on unfortunate turn of events, when her brother died in road accident and she submitted the application. It is further submitted that Clause 9.3.3 suffers from gender bias and it is unconstitutional as it provides for employment only of an unmarried daughter and not married daughter on compassionate ground. Reliance in this is placed on the judgment rendered by this Court in W.P.(S) No.1800 of 2018 (*Rita Giri Versus The*

*Jharkhand Urja Vikash Nigam Limited & Others*).

6. It has been held by Hon'ble Supreme Court in S.L.P. (C) No.20166 of 2021, *State of Karnataka & Others Versus C.N. Apporva Shree & Another* wherein order of Karnatka High Court was upheld regarding appointment of married daughter on compassionate ground. It is further submitted that the facts of the present case is quite distinct from the case of *The State of Maharashtra & Another Versus Ms. Madhuri Maruti Vidhate*, (2022) SCC OnLine SC 1327 where the compassionate appointment to unmarried daughter has been denied. The denial was based on the ground that she was not dependent on deceased mother and in principle, there is no bar to appointment on compassionate ground of unmarried daughter despite the interdict Clause 9.3.3. The High Court of Calcutta in *Dipali Mitra & Others Versus Coal India Limited & Others* in W.P.A.14349 of 2018 has held after detailed discussion the similar issue that married daughter was entitled to compassionate appointment and the same cannot be rejected solely on the ground that she was married. It must be assessed if the married daughter was dependent on the deceased employee.

7. It is argued by the learned counsel on behalf of respondent that admittedly the petitioner on the date of application was married and Hon'ble Supreme Court has categorically held in *The State of Maharashtra & Another Versus Ms. Madhuri Maruti Vidhate*, (2022) SCC OnLine SC 1327 which reads as follows:-

*"The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."*

8. It is further argued that the National Coal Wage Agreement is binding on both the employee as well as employer as held by this Court in W.P.(S) No.864 of 2023. In this case also, the petition for appointment on compassionate ground of married daughter was rejected on similar ground. Reliance is placed on *M/s. Central Coalfields Ltd., through its Chairman-cum-Managing Director Versus Sufia Baa*, L.P.A. No.161 of 2022.

9. Principles and object of compassionate appointment is to provide means of sustenance to the bereaved family on the loss of the sole bread earner, to prevent the family from vagrancy and destitution. Law is settled by a long line of judicial precedents that while making compassionate appointment the financial condition of the family of the deceased, and financial condition of the dependent is to be reckoned with, before offering any such employment. It has been held in ***Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138***

*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. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.*

**Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 :**

**11.** *However, it is now a well-settled principle of law that appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis. [See I.G. (Karmik) v. Prahalad Mani Tripathi [(2007) 6 SCC 162 : (2007) 2 SCC (L&S) 417] .]*

10. In the present case, this Court cannot enter into the issue of constitutionality of Clause 9.3.3 of the National Coal Wage Agreement, which is the relevant provision that provides for employment to the dependents meaning the unmarried daughter and not a married daughter. What is germane for the present is the fact that the petitioner was unmarried at the time when her father died, but the application was not referred because her brother had applied for appointment on compassionate ground. Before he could join the post on being appointed, he died in accident and by the time the petitioner applied she was married.

11. Another fact that has been brought to the notice of this Court by way of supplementary affidavit that husband of the petitioner died on 01.02.2022 in a road accident. Death certificate of her husband has also been enclosed with the supplementary affidavit. Under Clause 9.3.3 widowed daughter will come within the meaning of dependent.

Under the aforesaid facts and circumstance, this Court is of the view that the petitioner is entitled to appointment on compassionate ground. There has not been any delay on the part of the petitioner to prefer an application for compassionate appointment. Petitioner is directed to file a representation afresh before the competent authority bringing to the notice of competent authority regarding death of her husband during the pendency of the writ petition. On submission of the said representation for compassionate appointment, the same will be disposed of within three months of its presentation.

Writ Petition stands disposed of. I.A., if any, is also disposed of.

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