

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 830 OF 2018  
[@ SPECIAL LEAVE PETITION (C) NOS. 28172 OF 2015]

SMT.SUBHADRA

APPELLANT (S)

VERSUS

THE MINISTRY OF COAL AND ANR.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. The appellant is before this Court since her claim for compassionate appointment under Respondent No. 2 was declined. Her husband died on 06.07.2003. It is not in dispute that as on the date of death of the husband, she was around 35 years of age. It is also not in dispute that as on the date of death of the husband, they had a minor son aged around 13 years.

3. The compassionate appointment is governed by a Bipartite Agreement, signed on 23.12.2000. The provisions read as follows:-

*"9.3.0 Provision of Employment to  
Dependants*

*9.3.1 Employment would be provided to  
one dependant of workers who are  
disabled permanently and also those who  
died while in service. The provision  
will be implemented as follows :*

9.3.2 *Employment to one dependant of the worker who dies while in service.*

*In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.*

9.4.0 *Employment to one dependant of a worker who is permanently disabled in his place.*

....

9.5.0 *Employment/Monetary compensation to female dependant.*

*Provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under :*

*i) in case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.*

*ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under Clause 9.4.0, if the female dependants is below the age of 45 years, she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment.*

*In case the female dependant is above 45 years of age, she will be entitled only to monetary compensation and not to*

employment.

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 dependant of the concerned worker is 12 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 as paras (i) & (ii) above. This will be effective from 1.1.2000." (Emphasis supplied)

4. It is the stand of the respondent-Organisation that they were prepared to grant the monetary compensation of Rs. 3,000/- per month to the appellant, whereas it was the appellant who insisted for employment. The learned counsel has also pointed out that the second respondent is prepared to put one of the sons of the appellant on live roster in terms of the Agreement. The stand is reflected at Paragraphs 5 to 10 of the Counter Affidavit, which reads as follows :-

"5. It is submitted that Petitioner on 21.10.2004 submitted an application to Respondent, refusing to accept the monetary compensation granted in favour of the petitioner,

by the Respondent on compassionate ground. Instead, Petitioner requested again to the Respondent to give her employment for herself, which was again submitted to the competent authority.

6. That Respondent replied to Petitioner's application dated 21.10.2004 via letter dated 12.01.2005, whereby, the Respondent's competent authority intimated Petitioner that as per the provisions applicable, Petitioner's son (dependant of deceased) was for keeping on the Live Roster. It is submitted that as per 9.3.0 Clause (iii) if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept in live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. Therefore, Respondent could not give employment to the Petitioner, can only offer monetary compensation till the time her son attains majority.

7. That petitioner once again refused to take monetary compensation that was granted in her favour, instead sent another application to Respondent dated 20.02.2005 to apply for employment for herself.

8. That the Respondent again vide letter dated 7/3/2005 rejected the claim of Petitioner for employment as there was a minor son of ex-employee who at that time was eligible to be kept in live roster and was to be given employment at the time of majority.

9. That vide application dated 26.09.2005 Petitioner again demanded employment from the Respondent. It is to be submitted that Petitioner in her application dated 26.09.2005 stated that she is not willing to keep the name of her son on live roster and demanded employment for herself on the ground that other ladies have also been provided with employment as the dependant of their husbands.

10. It is submitted that Respondent again investigated the matter, and examined the documents in relation to the deceased ex-employee and his dependants and came to the conclusion that employment to Petitioner cannot be granted as there was already existing minor son of the deceased who was kept in the live roster for employment."

5. Since the request for employment was rejected, the appellant approached the High Court and as per the impugned Judgment, the High Court has taken a

view that the appellant was only entitled to monetary compensation @ Rs. 3,000/- per month from 01.02.2004 till she attains the age of 60 years. Thus aggrieved, the appellant is before us.

6. The learned counsel for Respondent No. 2 - Organisation has invited our attention to the decision of this Court in Canara Bank & Anr. vs. M. Mahesh Kumar, reported in (2015) 7 SCC 412 and submitted that compassionate appointment is not a matter of right and there is a discretion available to the employer. We have no quarrel with the settled position, but the instant case is not a case of discretionary compassionate appointment governed by any statutory guidelines. It is governed by a Scheme, as agreed to by the parties and which has become part of the Bipartite Agreement. The terms of the Agreement are very specific and give no room for any discretion.

7. In paragraph 9.5.0(ii) of the Agreement, it is very clearly and specifically mentioned that a female dependant, if below 45 years of age, has an option either to accept the monetary compensation or employment. It is not an option reserved to the employer, but an option given to the employee. It was in terms of the Agreement only that the appellant had been insisting that she should be given employment, if she is otherwise eligible in terms of

the Bipartite Agreement. But the second respondent kept on insisting that the son, being above the age of 12 years, would be kept on live roster until he attains the age of 18 years and till such time, the appellant would be given compensation @ Rs. 3,000/- per month in terms of Paragraph 9.5.0(iii) of the Agreement.

8. Paragraph 9.5.0(iii) would come into play only in case paragraph 9.5.0(ii) does not operate. Employment is assured to the dependant in terms of the Bipartite Agreement. If the female dependant opts for employment, there is no further discretion left to the employer, unless she is otherwise ineligible. There is no such contention raised by anybody.

9. In the above facts and circumstances of the case, we have no other option but to set aside the Judgment of the High Court and dispose of the appeal in the proper perspective of the Bipartite Agreement.

10. The learned counsel for the respondents points out that the employment to the appellant at this stage and age may not be a workable relief since the appellant herself has later requested for employment to her son. But the question is how to compensate the appellant for the period from 2004 to 2018.

11. Having regard to the entire facts and circumstances of the case, we are of the view that

the interests of justice would be met and complete justice to the appellant will be rendered in case the appeal is disposed of as follows:-

I) The second respondent is directed to appoint one son of the appellant, who has otherwise become major as of now, as per the choice of the appellant, within two months from today. Needless to say that the appointment will be commensurate with the qualification and entitlement of the incumbent.

II) From 01.02.2004, as ordered by the High Court, the appellant shall be paid Rs. 3,000/- per month along with interest at the rate of 7.5% from the respective dates when the amount became due.

III) Towards all other claims on account of loss of employment for the last 13 years, as far as the appellant is concerned, it would be just, fair and reasonable that a lumpsum amount is paid to the appellant, which we fix as Rs. 5,00,000/- (Rupees Five Lakhs). This amount shall also be paid to the appellant within two months from today.

Ordered accordingly.

.....J.  
[ KURIAN JOSEPH ]

.....J.  
[ MOHAN M. SHANTANAGOUDAR ]

New Delhi;  
January 23, 2018.



ITEM NO.1

COURT NO.5

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 28172/2015

(Arising out of impugned final judgment and order dated 21-10-2013 in WP No. 5491/2010 passed by the High Court Of Judicature At Bombay At Nagpur)

SMT.SUBHADRA

Petitioner(s)

VERSUS

THE MINISTRY OF COAL AND ANR.

Respondent(s)

Date : 23-01-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Radhakanta Tripathy, Adv.  
Ms. Chandan Ramamurthi, AOR

For Respondent(s) Mr. Vivek Narayan Sharma, AOR  
Mr. Sidharth Mahajan, Adv.  
Mr. Ajay Singh, Adv.  
Mr. Manieesh Pathka, Adv.

Ms. Arunima Dwivedi, Adv.  
Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The civil appeal is disposed of in terms of the signed non-reportable Judgment.

Pending Interlocutory Applications, if any, stand disposed of.

(JAYANT KUMAR ARORA)  
COURT MASTER

(RENU DIWAN)  
ASSISTANT REGISTRAR

(Signed non-reportable Judgment is placed on the file)