



Judgment delivered on : **17.02.2023.**

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No. 263 of 2022

1. Shri Rajib Sekhar Nath, Son of Jawhar Nath, Aged about 35 years, Resident of Audit Colony, M/175, Margherita, Tinsukia, Assam-786181.
2. Shri Jawhar Nath, Son of Manmohan Nath, Aged about 60 years, Resident of Audit Colony, M/175, Margherita, Tinsukia, Assam-786181.

.....Appellants

-Versus-

1. The Chairman, Coal India Limited, Head Office, Coal Bhawan, Premise No.-04 MAR, PlotNo. AF-III, Action Area-1A, Newtown, Rajarhat, Kolkata-700156.
2. The General Manager, Office of the General Manager, North Eastern Coalfields, Coal India Limited, Margherita, Tinsukia, Assam, 786181.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the appellants : Mr. S. Dutta, learned counsel.

Advocate for the respondents : 1.Mr. M. Z. Ahmed, learned Senior Advocate,
2.Mr. A. R. Dutta, learned Advocate.

JUDGMENT AND ORDER

(Soumitra Saikia, J)

Heard Mr. S. Dutta, learned counsel for the appellant. Also heard Mr. M. Z. Ahmed, learned senior Advocate assisted by Mr. A. R. Dutta, learned counsel for the respondents.

2. This writ appeal is directed against the Order dated 17.05.2022 passed by the learned Single Judge in WP (C) No. 7750/2019.

3. The appellant No.2 was an employee of the Central Store NEC of the North Eastern Coalfields (NEC), a small coal producing unit operating in Margherita, Assam. During the service period of the appellant No.2 he suffered from certain ailments which were diagnosed to be spino cerebeller ataxia with cerebro vascular

accident having with severe neurological deficit with 75% disability. According to the appellants, the disability suffered by the appellant No.2 affected his ability to render service properly. According to the appellant under Clause 9.4.0 of the Chapter-IX of the National Coal Wage Agreement-IX (NCWA) dated 31.01.2012, the appellant No.2 applied for being considered in terms of Clause 9.4.0 of the Chapter-IX to be superannuated on medical grounds. According to the appellants if the appellant No.2 would have been superannuated on medical grounds as per Clause 9.4.0 of the Chapter-IX of the National Coal Wage Agreement-VI, the appellant No.1 could have been considered for compassionate appointment in lieu of appellant No.2 as per the said clause of Clause 9.4.0 of the Chapter-IX of the National Coal Wage Agreement-IX. It is contended that in terms of the provisions of the said Clause 9.4.0 of National Coal Wage Agreement (NCWA), a Medical Board was required to be constituted for examination of the appellant No.2. However, the Medical Officer/Practitioner of the North Eastern Coalfields (NEC) was on leave and therefore, the competent authority, at the relevant point in time requested the Chief Medical Services, NEC, Margherita, Assam to constitute a Medical Board for examination

of the appellant No.2. However, no action was taken and the matter got delayed. Thereafter, a writ petition was filed being WP(C)/855/2018 and by order dated 18.01.2019 this Court disposed of the petition giving liberty to the appellants to submit representation to the General Manager, North Eastern Coalfields (NEC) and if the authority had no competence then the same would be forwarded to the competent authority, who shall dispose of the representation within a period of 2 (two) months from the finalization of the scheme of employment or financial benefits to the dependents in respect of *"social security of 10th Wage Agreement for CIL and HCCN-provisions of employment/payment of monthly monetary compensation to dependent scheme"* or any other substituted scheme in force. Liberty was also granted to the appellants to approach this Court a fresh.

4. More than 5 years had elapsed pursuant to filing of the application by the appellant NO.2 but there was no examination by the Medical Board constituted for the purpose and the case of the appellant No.2 was never considered by the respondent authorities. Before the learned Single Judge, it was urged that the North Eastern Coalfields (NEC) was duty bound to honour the National Coal Wage Agreement (NCWA) and conferred the

benefits on the appellant No.1 in terms of Clause 9.4.0 of Chapter-IX. The learned Single Judge upon consideration of the submissions and the pleadings rejected the contentions of the appellants/ writ petitioners and dismissed the writ petition by the impugned order dated 17.05.2022. The learned Single Judge held that with effect from 30.09.2018 the appellant No.2 had already retired from service on attaining the age of 58 years. It was further held that in terms of the RTI reply the North Eastern Coalfields (NEC) authorities had informed the appellants that Clause 9.4.0 was inoperative in North Eastern Coalfields (NEC), as the Committee constituted under the 10th Wage Agreement for CIL and HCCN was yet to finalize the scheme for employment or financial benefits to the dependents. As the committee constituted did not finalize the scheme for employment or financial benefits to be conferred on the dependent family members, the benefits under the NCWA could not be conferred on the appellants.

5. Before us the learned counsel for the appellant has drawn the attention of a Communication dated 04.02.2015 issued by the General Manager of North Eastern Coalfields (NEC) to all agents/HODs. By the said communication, applications of the employees/departments, who were suffering from the diseases

mentioned in the said communication under Clause 8.4.0 of NCWA were called for. The learned counsel for the appellants submits that from the various documents available on record that it is evident that the provisions of NCWA are enforceable and are applicable to the employees of North Eastern Coalfields (NEC) like the appellant No.2. In spite of that, the prayer of the appellant No.2 having not been considered enabling the appellants to avail the benefits under Clause 9.4.0 of NCWA, the same is wholly arbitrary and unreasonable. Learned counsel for the appellant submits that there is no dispute that the appellant No.2 namely the father of appellant No.1 suffered from medical conditions namely-spino cerebeller ataxia with cerebro with cerebro vascular accident having with severe neurological deficit with 75% disability. The appellant No.2 suffered disability to the extent of 75% because of the ailments /disease he had suffered. The learned counsel for the appellant submits that the North Eastern Coalfields (NEC) does not dispute the medical condition of the appellant No.2. Under the circumstances, it was incumbent on the respondents North Eastern Coalfields (NEC) to ensure that the benefit accrued to the appellants under Clause 9.4.0 of the Chapter-IX of the National Coal Wage Agreement-IX was not

denied. It is submitted that the learned Single Judge failed to consider these aspects of the matter and passed the impugned Judgment dismissing the writ petition and negating the claims made by the appellants.

6. Per contra Mr. M. Z. Ahmed, learned senior counsel assisted by Mr. A. R. Dutta, learned counsel for the respondents disputed the claims of the appellant and submits that the benefits claimed under Clause 9.4.0 of the Chapter-IX of the National Coal Wage Agreement-IX are not available to the appellants on two counts namely, the said NCWA has not been enforced in view of the non-finalization of the report/recommendation of the standing committee constituted under the 10th Wage Agreement for CIL and HCCN and secondly on account that the appellant No.2 had superannuated on 30.09.2018. As such it is submitted that there is no infirmity in the impugned order dated 17.05.2022 passed by the learned Single Judge and the writ appeal should therefore be dismissed.

7. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The impugned order

dated 17.05.2022 passed by the learned Single Judge has also been perused.

8. From the perusal of Clause 9.4.0, it is evident that the benefit under this clause of 9.4.0 will accrue to a dependent only on the loss of employment suffered by the workman. There is a finding recorded by the learned Single Judge that the appellant No.2 retired superannuated on 30.09.2018. Such finding returned by the learned Single Judge has not been disputed. The learned Single Judge have also held that the appellant No.2 having superannuated on 30.09.2018, no direction can be given to the respondents to treat the appellant No.2 to be notionally in service and then issue directions for constituting the medical board for examination to assess his entitlements under Clause 9.4.0.

9. In view of such findings arrived at by the learned single Judge that the appellant No.2 had superannuated on 30.09.2018 and the same not being disputed by the appellants, we find no infirmity in the order dated 17.05.2022 impugned in the present writ proceedings. The learned Single Judge had correctly held that once the appellant No.2 retired, no directions can be issued to the respondents to consider the entitlement of the appellants under

Clause 9.4.0 notionally. In order to avail the benefits of Clause 9.4.0, it is necessary that the concerned employee, namely, the appellant No.2, herein was unable to render any service because of the disability suffered.

10. In the facts of the present case, although it is contended that the appellant No.2 suffered from locomotor disabilities to the extent of 75%, he was ultimately allowed to superannuate on 30.09.2018 and it is not disputed by the appellants that the appellant No.2 was unable to render his services because of the locomotor disability he suffered and was therefore, required to be superannuated on medical grounds, prior to his date of superannuation as per his service records. The appellant No.2 had rendered his services inspite of suffering from locomotor disabilities and having superannuated on 30.09.2018, we are in agreement with the findings of the learned Single Judge that the benefits, if any, accrued under Clause 9.4.0 cannot be conferred on the appellant No.1 by way of grant of compassionate appointment notionally when the appellant No.2 had superannuated on 30.09.2018. We find no merit in the appeal and the same is accordingly dismissed.

11. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant