

GAHC010171722016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3753/2016

SMT. P. YERAMMA
W/O- LT. P. APPAIYA, R/O VILL.- PATHAN LINE, BARAGOLAI, P.O.-
BARAGOLAI, P.S.- MARGHERITA, DIST.- TINSUKIA, ASSAM.

VERSUS

COAL INDIA LTD. CIL and 6 ORS.
COAL BHAWAN, 10, NETAJI SUBHASH ROAD, KOLKATA- 700001.

2:NORTH EASTERN COAL FIELDS NECF
COAL INDIA LTD.
REP. BY ITS GENERAL MANAGER
P.O. and P.S.- MARGHERITA
DIST.- TINSUKIA
ASSAM
PIN- 786181.

3:THE GENERAL MANAGER
NORTH EASTERN COAL FIELD LTD.
P.O. and P.S.- MARGHERITA
DIST.- TINSUKIA
ASSAM
PIN- 786181.

4:THE CHIEF MANAGER PandIR
BARAGOLAI COLLIERY
NECF
P.O.- BARAGOLAI
P.S.- MARGHERITA
DIST.- TINSUKIA
ASSAM
PIN- 786181.

5:THE CHIEF MANAGER P

BARAGOLAI COLLIERY
NECF
P.O.- BARAGOLAI
P.S.- MARGHERITA
DIST.- TINSUKIA
ASSAM
PIN- 786181.

6:THE ASSTT. MANAGER HR/P
BARAGOLAI COLLIERY
NECF
P.O.- BARAGOLAI
P.S.- MARGHERITA
DIST.- TINSUKIA
ASSAM
PIN- 786181.

7:THE AGENT
BARAGOLAI COLLIERY
NECF
P.O.- BARAGOLAI
P.S.- MARGHERITA
DIST.- TINSUKIA
ASSAM
PIN- 786181

Advocate for the Petitioner : MR.R S MISHRA

Advocate for the Respondent : MR.A M DUTTA

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 27-05-2024

Heard Ms. M. Nirola, learned counsel for the petitioner. Also heard Mr. M.Z. Ahmed, learned Senior Counsel assisted by Mr. A.M. Dutta, learned counsel for the respondents.

2. By filing this petition, the petitioner assails the impugned letter dated 29.09.2011, issued by the MT (HR/P), Boragolai Colliery, NEC, whereby the

petitioner was directed to submit the required documents within 6 (six) months after the death of the husband of the petitioner stating that after 6 (six) months from the death of her husband, the case will not be entertained in future. And the letter dated 20.07.2013, whereby, the claim of the petitioner for dependent employment of the son of petitioner has been rejected on the ground that the name of the son was not kept in the Live Roster. The petitioner also prayed for grant of monetary compensation as well as dependent employment in terms of the National Coal Wage Agreement (in short the NCWA).

3. The petitioner is the wife of Late P. Appaiya, who was an employee of Boragolai Colliery under Margherita, North East Coal Field India Limited. The husband of the petitioner had died-in-harness on 02.07.2008, leaving behind the petitioner and three minor children who were fully dependant on her husband. At the time of death of the petitioner's husband, her elder son Sri P. Sriramalu was recorded in the Service Book of her deceased husband as aged about 15 years. Due to sudden death of her husband, the petitioner was on financial destitution having no knowledge of the scheme of monetary compensation and dependent employment. Having come to know the scheme, on 25.02.2010, she applied for monetary compensation. Several correspondences were made between the respondent authorities. On 05.07.2011, the petitioner had applied for dependent employment of her elder son Sri P. Sriramalu in terms of the NCWA.

4. It is contended that surprisingly, vide letter dated 29.09.2011, the petitioner was directed to submit the required documents within 6 (six) months after the death of her husband stating that after 6 (six) months from the death of her husband, her claim shall not be entertained in future. The petitioner,

however, submitted the requisite documents/report as well as details of both the claims of the petitioner regarding monetary compensation and dependent employment to the concerned authority. Having no information or communication from the respondent authority, vide letter dated 12.07.2013, the petitioner has approached the respondent authority. Most surprisingly, the respondent authority has rejected the claim of the petitioner for dependent employment vide impugned letter dated 20.07.2013. Hence, this Writ Petition.

5. Ms. M. Nirola, learned counsel for the petitioner, submits that the petitioner and her son are entitled to be granted the monetary compensation as well as dependent employment under the NCWA. She further submits that the rejection of the case of the petitioner for monetary compensation as well as dependent employment militates against the NCWA, under which the petitioner and her son are duly entitled to. Therefore, she submits that direction may be issued to the respondent authorities to grant the monetary compensation as well as dependent employment to the son of the petitioner, in terms of the NCWA.

6. Mr. M.Z. Ahmed, learned Senior Counsel, appearing for the respondents, while referring to the affidavit-in-opposition filed on behalf of the respondents, submits that the issue relating to appointment on compassionate ground is governed by the provisions 9.3.0, 9.4.0 and 9.5.0 under Chapter-IX (Social Security) of the NCWA adopted on 23.12.2000 by the Coal India Limited. The main object of providing employment on compassionate ground and/or Monetary Compensation, is to give immediate relief to the dependants/family members, but since it was noticed that in most of the cases regarding dependent employment/monetary compensation, claims were forwarded to

Company's Headquarters at Margherita after a gap of 1 or 2 years or more, the Respondent Company, by way of an Office Memo No. 228/PIR/3129 dated 08.08.2012, ultimately took the decision that the dependent employment/monetary claims received after 6 months from the date of death of the employee would not be entertained. Mr. Ahmed, learned Senior Advocate, further submitted that as per the record available in the Company, an application dated 25.02.2010 was received from the Petitioner for the first time for payment of monetary compensation which was after a gap of one year eight months and seventeen days, and the Company, upon receipt of the said Application dated 19.03.2010, initiated steps for processing the case of the Petitioner for payment of monetary compensation, even though it was not necessary.

7. Mr. M.Z. Ahmed, learned Senior Counsel, submits that since certain irregularities were found while processing the case of the Petitioner for payment of monetary compensation, the Chief Manager (P&IR), NEC, CIL, Margherita, by way of letter dated 18.09.2010, duly informed the Agent, Baragoloi Colliery, about the said irregularities and accordingly, intimated to take necessary action, and the claim of the Petitioner, alongwith the related documents were sent back to the Respondent No. 7, for further necessary action. He submits that the Petitioner had submitted the Application dated 19.03.2010 for payment of monetary compensation after much delay, i.e., 1 year 8 months and 17 days, and as per the prevailing practice of the Company, the dependent employment/monetary compensation claims received after 6 months from the date of death of the employee shall not be entertained, and the said fact was ultimately informed to the Petitioner. He further submits that as per records available in the Company, again an application dated 05.07.2011 was received

from the Petitioner for dependent employment for her son, Shri P. Sri Ramlu, which was after three years from her husband's death, whereby it was informed that her son had attained the age for dependent employment as per Company's Rules and had requested to approve for dependent employment. Thereafter, the Respondent No. 4, vide letter dated 11.12.2011 addressed to the Respondent No.7, called for the details regarding dependent employment in favour of the son of the Petitioner, and while processing the case, the Chief Manager (P), Baragolai Colliery, vide letter dated 19.01.2012, addressed to the Respondent No. 4, informed that the Petitioner had applied for monetary compensation and the proposal was sent to Area Office, Margherita vide dated 25.08.2010 for necessary action and the file was returned back to Colliery Office for some clarifications vide letter dated 18.09.2010. While the same was being clarified from the concerned Agent, the Petitioner had, by way of the application dated 05.07.2011, informed that she was not interested for monetary compensation and applied for dependant employment for her son.

8. Mr. M.Z. Ahmed, learned Senior Counsel, submits that as per sub- clause (iii) of Clause 9.5.0 of the NCWA, it provides that in case of death either in mine accident or for other reasons of 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 qualification when he attains the age of 18 years. If the age of the male dependant of the concerned worker is 12 years and above, his name ought to be kept on a live roster in order to enable him to claim for employment when he attains the age of 18 years, and as per records available in the Company, the age of the son of the deceased employee was 15 (fifteen) years 6 (six) months at the time of death

of the said employee, but his name was not kept on any live roster, and as such, the claim for dependent employment of her son cannot be entertained and is liable to be rejected.

9. The learned Senior Counsel, further submits that the husband of the Petitioner Late P. Appaiya, died on 02.07.2008, and the Petitioner had applied for monetary compensation for the first time on 19.03.2010, which was after a delay of 1 year 8 months and 17 days and while our Company was processing the case of the Petitioner, the Petitioner submitted an application for dependent employment for her son on 05.07.2011 which was after a delay of 3 years, without applying for keeping her son's name on a live roster or without cancelling her claim for monetary compensation. Moreover, the age of the son of the Petitioner, Sri P Sri Ramlu was 15 years 7 months and 11 days on the date of death of Late P. Appaiya, and as such, the claim of the Petitioner for monetary compensation was a belated claim, i.e. after 6 months of the date of death of her husband. Since the name of the son of the Petitioner was not kept on a live roster after the death of Late P. Appaiya, the claims of the Petitioner for monetary compensation as well as dependent employment for her son cannot be entertained as the same are not in accordance with the provisions of the extant Rules of our Company. In that view of the matter, he submits that the claims of the Petitioner being not sustainable, instant Petition is liable to be dismissed.

10. Due consideration has been extended to the submissions of learned counsel for the parties.

11. It is taken note that the Wage Structure and other benefits and the service conditions of the employees are covered by the recommendation of the Central Wage Board for Coal Mining Industry and for that purpose wage

agreement executed between the authorities under the Coal India Limited and various recognized trade unions which is known as National Coal Wage Agreement (which is referred here in above as NCWA in short). At the time of death of the husband of the petitioner NCWA was in force.

12. I deem it apposite to refer to the relevant clauses 9.3.0, 9.4.0 and 9.5.0 of NCWA, which are quoted below:-

“Clause 9.3.0- Provision of Employment of Dependants.

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

Clause 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.

Clause 9.3.3-The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependents of the deceased.

Clause 9.3.4- The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

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

i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

ii) In case of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/she is upto the age of 58 years.

The term 'general physical debility' would mean deficiency of a workman due to any diseases or other health reason leading to his/her disablement to perform his/her duties regularly and/or efficiently.

iii) The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/ widowed daughter-in-law or son- in-law residing with the employee and almost wholly dependent on the earning of the employees may be considered.

In so far as female dependants are concerned, their employment would be governed by the provisions of Cl. 9.5.0.

iv) The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

Clause 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 cause other than mine accident and medical unfitness under Clause 9.4.0 if the female dependant 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 at paras (i) & (ii) above. This will be effective from 1.1.2000.

iv) Monetary compensation, wherever applicable, would be paid till the female dependant attains the age of 60 years.

v) The existing rate of monetary compensation will continue."

13. On bare reading of the above clauses, particularly clause 9.5.0, uncontrovertibly, same clearly provides for dependent employment and

monetary compensation to female dependant. It provides that provision of employment/monetary compensation to female dependant of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 would be regulated that 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. In case of death/total permanent disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0 if the female dependant 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. 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. It is also provide that monetary compensation, wherever applicable, would be paid till the female dependant attains the age of 60 years.

14. Admittedly, the husband of the petitioner had died-in-harness, who was an employee of Boragolai Colliery under Margherita North East Coal Field India Limited, on 02.07.2008, leaving behind the petitioner and three minor children who were fully dependant on her husband. At the time of death of the petitioner's husband, her elder son Sri P. Sriramalu was aged about 15 years. Due to sudden death of her husband, the petitioner was on financial destitution. The

petitioner on 25.02.2010, applied for monetary compensation and on 05.07.2011, the petitioner had applied for dependent employment of her elder son Sri P. Sriramulu in terms of the NCWA.

15. This court finds that no limitation period is provided in the NCWA for filing application for monetary compensation or dependant employment. It appears to be a mere decision of some authorities of the respondents. Thus, I am of the view that the rejection of the case of the petitioner for grant of monetary compensation and the dependent employment on the ground of delay in submission of the claim is not sustainable.

16. The petitioner having been submitted all the required documents within a reasonable period, terming the claim of the petitioner being belated and thereby rejecting the same on the ground of delay and on not maintaining live roster, in my view is not justified. Another aspect of the matter is that the petitioner has brought on record that some similarly situated persons have been provided with monetary compensation and dependant employment by the respondents in terms of the NCWA. Considering the objective of the policy in the NCWA, the claim for monetary compensation of the petitioner and her son's dependant employment, ought to have considered diligently and promptly.

17. Record reveals that the petitioner has submitted all the necessary documents as required by the respondent authorities and approached the respondents by filing representations from time to time for monetary compensation and her elder son's dependent employment in terms of the NCWA. Having considered above, I am of the view that the impugned letters of rejection warrants interference and the claim of the petitioner deserves to be reconsidered by the respondents.

18. In view of what has been discussed herein above, I am of the considered view that the rejection of the claim of the petitioner for monetary compensation and her elder son's dependent employment cannot be sustained. Consequently, impugned letter dated 29.09.2011, issued by the MT (HR/P), Boragolai Colliery, NEC, and the letter dated 20.07.2013 are hereby set aside and quashed. The respondents are directed to provide monetary compensation to the petitioner and to consider the claim of the petitioner for her elder son's dependent employment in terms of the NCWA within a period not later than 2 (two) months from the date of receipt of the copy of this order.

19. In the result, writ petition stands allowed. However, no order as to costs.

JUDGE

Comparing Assistant