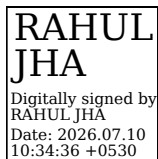




CGHC010205272024

2026:CGHC:28319

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## HIGH COURT OF CHHATTISGARH AT BILASPUR

### WPS No. 3628 of 2024

Sonu S/o Jagdev Aged About 37 Years R/o Ward No. 11, Ghoda Dafai, Gelhapani, Chirmiri, P.S. - Chirmiri, Tehsil - Chirmiri, District - Manendragarh, Chirmiri-Bharatpur,(MCB), Chhattisgarh.

**Petitioner(s)**

**versus**

**1** - South Eastern Coalfields Limited Through Chairman-Cum-Managing Director, South Eastern Coalfields Limited, Head Quarters, Seepat Road, Bilaspur, Chhattisgarh.

**2** - General Managar (Personnel/manpower) South Eastern Coalfields Limited, Head Quarters, Seepat Road, Bilaspur, Chhattisgarh.

**3** - Chief General Manager South Eastern Coalfields Limited, Chirmiri Area, Chirmiri, District - Manendragarh Chirmiri Bharatpur (MCB), Chhattisgarh.

**4** - Area Personnel Manager South Eastern Coalfields Limited, Chirmiri Area, Chirmiri, District - Manendragarh Chirmiri Bharatpur (MCB), Chhattisgarh.

**5** - Manager (E And M) South Eastern Coalfields Limited, Regional Workshop, Koriya, Post - Koriya Colliery, District - Manendragarh Chirmiri Bharatpur (MCB), Chhattisgarh.

**Respondent(s)**

**(Cause-title taken from Case Information System)**

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For Petitioner(s) : Mr. Chandresh Shrivastava, Advocate

For Respondent(s) : Mr. Sudhir Bajpai, Advocate

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**Hon'ble Shri Bibhu Datta Guru, Judge**

**Order on Board**

**08/07/2026**

1. The present writ petition has been preferred by the petitioner questioning the legality and validity of the order dated 30.11.2023 passed by respondent/SECL, whereby his claim for grant of dependant employment under the provisions of the National Coal Wage Agreement (NCWA) has been rejected on the ground that, as per the report of the Age Determination Committee (ADC), the age of the petitioner was found to be beyond the prescribed upper age limit of 35 years.

2. (A) Facts of the case are that the petitioner's mother, Late Fulkunwar, was an employee of the respondent Company and was working as Machinist Category-05 at Regional Workshop, SECL, Koriya Colliery. She continued in service till her untimely death on 16.07.2020. During her service period, she had submitted her service particulars, wherein the name of the petitioner was duly reflected as one of her dependants. After the death of his mother, the petitioner submitted an application before the respondent authorities seeking consideration of his case for grant of dependant employment under the provisions of the NCWA. The petitioner, being stated to be illiterate, relied upon his available statutory documents including his Aadhaar Card and PAN Card along with the service records of his deceased mother.

(B) It is the case of the petitioner that the service records maintained by the respondent Company itself disclose his particulars. In Form PS-3 relating to family particulars, the petitioner was shown as a family member/dependant, mentioning his age as 27 years in the year 2013. Similarly, in the nomination

form filled by the deceased employee and the LTC option form submitted earlier, the petitioner's particulars were duly recorded. The petitioner's case was thereafter considered by the Screening Committee. However, instead of granting the benefit of dependant employment, the matter was referred to the ADC. The said Committee, on the basis of radiological examination, assessed the age of the petitioner in the range of 35 to 40 years and determined the mean age as 35 years 4 months 6 days on the date of submission of application for dependant employment.

(C) Based upon the said report, the respondent authorities communicated the impugned decision dated 30.11.2023 (Annexure-P/1) rejecting the petitioner's claim on the ground that on the date of application he was aged more than 35 years and, therefore, was not eligible for dependant employment. Hence, this petition.

3. (I) Learned counsel appearing for the petitioner submits that the impugned order is wholly arbitrary and contrary to the records available with the respondent authorities themselves. It is submitted that the petitioner is an illiterate person and there was no discrepancy regarding the age of the petitioner in the service records of the deceased employee maintained by the respondent Company and the statutory documents furnished by him. Therefore, there was no occasion for referring the petitioner to the ADC for determination of his age.

(II) Learned counsel further submits that the provisions relating to dependant employment under the NCWA constitute a beneficial scheme intended to provide social security to the family of an employee who dies in

harness. Such beneficial provisions cannot be defeated by adopting a hyper-technical approach, particularly when the eligibility of the petitioner as a dependant was otherwise not disputed.

(III) It is further submitted that as per clause (iv) of the Implementation Instruction No.76 (I.I.No.76) [procedure for determination/verification of age of employees], which speaks about illiterate candidate and provides that in the cases of appointees not covered under the foregoing clauses, the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other relevant evidence as produced by the appointee. Date of birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances. According to learned counsel, the respondent authorities have selectively relied upon the report of the ADC while ignoring their own records which supported the claim of the petitioner. In support of his contention, learned counsel has placed the judgment passed by the Supreme Court in the matter of *Ajay Kumar Dubey v. Central Coalfields Limited & Ors*, (Civil Appeal Nos. 908 of 2025 decided on 21/01/2025) and the decision of the High Court of Jharkhand at Ranchi in the matter of *Lilwa Bhiyan v. Central Coalfields Limited & Others*, (LPA No. 687/2019 decided on 10/02/2021), which was travelled upto the Supreme Court in SLP (Civil) diary No. 31747/2022m (*M/s Central Coalfields Limited & Others v Lilwa Bhiyan*) and the same was dismissed as withdrawn by order dated 21.11.2022.

(IV) Learned counsel also places reliance upon the Standard Operating Procedure (SOP) issued by Coal India Limited (CIL) dated 28.08.2023, wherein it has been provided that the age of the dependant for the purpose of determining eligibility is to be reckoned as on the date of death of the ex-

employee. It is submitted that even if the age determined by the ADC is taken into consideration, the petitioner would still fall within the permissible age limit as on the date of death of his mother.

4. (a) Learned counsel appearing for the respondents/SECL opposes the writ petition and submits that the impugned order dated 30.11.2023 has been passed after due consideration of the relevant records and in accordance with the provisions governing dependant employment under the NCWA. It is submitted that the service conditions of the employees of the respondent Company are governed by the provisions of the said agreement. At the relevant point of time, NCWA-X was in force and the provisions contained in Clauses 9.3.0, 9.4.0 and 9.5.0 of NCWA-VI relating to dependant employment continued to operate. Under Clause 9.3.4, a dependant seeking employment is required to be physically fit, suitable for employment and should not have crossed the age of 35 years.

(b) Learned counsel submits that the petitioner submitted an application for grant of dependant employment after the death of his mother Late Phool Kunwar on 24.11.2020 wherein at para 3 he specifically stated that he is literate unemployed youth, however, subsequently in the affidavit dated 24.2.2022 he stated that he is an illiterate person. Since the petitioner had not produced any educational certificate and was stated to be illiterate, the age particulars available in the service records of the deceased employee were examined. It was found that there were variations regarding the age of the petitioner in different records maintained by the deceased employee. It is submitted that in view of the discrepancy regarding the age particulars, the case of the petitioner was placed before the Area Screening Committee, which recommended

determination of the actual age of the petitioner through the ADC. In fact, the petitioner himself gave consent for determination of his age through the said Committee and undertook to accept the report unconditionally.

(c) Learned counsel submits that the ADC examined the petitioner on 18.01.2023 and assessed his radiological age in the range of 35 to 40 years, determining the mean age as 37 years and 6 months on the said date. On the basis of the said report and the prevailing procedure followed by the respondent Company, the age of the petitioner on the date of application was found to be beyond the permissible limit of 35 years prescribed under Clause 9.3.4 of NCWA. It is further submitted that the SOP relied upon by the petitioner has no application to the present case as the same was issued subsequently and cannot have retrospective effect. The case of the petitioner was required to be considered in accordance with the rules and instructions applicable on the date of death of the employee and submission of the application.

(d) Learned counsel submits that the petitioner cannot claim dependant employment as a matter of right. Compassionate appointment is an exception to the general rule of recruitment under Articles 14 and 16 of the Constitution of India and is intended only to provide immediate financial assistance to the family of an employee who dies in harness. Learned counsel, therefore, submits that the respondent authorities have acted within the framework of the applicable rules and regulations, and the impugned order does not suffer from any illegality or arbitrariness warranting interference under Article 226 of the Constitution of India.

5. I have heard learned counsel for the parties and perused the pleadings as well as the material available on record.

6. The undisputed facts, which emerge from the record, are that the petitioner's mother Late Fulkunwar was an employee of the respondent Company and was working as Machinist Category-05 at Regional Workshop, SECL, Koriya Colliery. She expired on 16.07.2020 while in service. After her death, the petitioner submitted an application dated 24.11.2020 seeking consideration of his claim for grant of dependant employment under the provisions of the NCWA. It is not in dispute that the name of the petitioner was reflected in the service records of the deceased employee as her dependant. The petitioner relied upon the service records of his mother as well as statutory documents including Aadhaar Card and PAN Card to establish his age and eligibility.

7. The claim of the petitioner was considered by the respondent authorities. Since the petitioner had not produced any educational certificate, as he is an illiterate and discrepancies were noticed regarding his age particulars in the documents available on record, the matter was placed before the ADC. The petitioner also furnished an affidavit dated 24.02.2022 consenting to determination of his age through the said Committee.

8. The ADC examined the petitioner on 18.01.2023 and assessed his radiological age in the range of 35 to 40 years, with the mean age being determined as 37 years and 6 months on the date of examination. Based upon the said report, the claim of the petitioner for dependant employment came to be rejected vide order dated 30.11.2023 on the ground that on the date of

application he was beyond the prescribed age limit of 35 years under Clause 9.3.4 of the NCWA.

9. The principal issue which falls for consideration is -

*“Whether the respondents were justified in rejecting the claim of the petitioner for dependant employment solely on the basis of the opinion of the ADC, ignoring the documents relied upon by the petitioner as well as the service records of the deceased employee maintained by the respondent Company itself and the provisions of the NCWA and I.I.No.76 ?*

10. It is also not in dispute that the service records maintained by the respondent Company itself contain particulars of the petitioner as a dependant of the deceased employee and the said records were maintained during the lifetime of the deceased employee wherein his date of birth has consistently been recorded as 01.01.1986. It is also not disputed that the service records maintained by the respondent Company itself contain particulars of the petitioner as a dependant of the deceased employee.

11. The report of the ADC is based upon radiological assessment, which can only provide an approximate estimation of age and cannot ordinarily determine the exact date of birth of a person. In the present case, there is no material brought on record by the respondents to demonstrate that the statutory documents relied upon by the petitioner were forged, fabricated or obtained after the death of the employee only with a view to claim dependant employment.

12. In such circumstances, where contemporaneous documentary evidence maintained by the employer as well as statutory documents issued by

competent authorities consistently indicate the age of the petitioner, reliance solely upon a radiological age assessment for rejecting the claim of dependant employment may not be justified.

13. The Hon'ble Supreme Court in **Ajay Kumar Dubey (supra)** has considered the issue relating to determination of age of a dependant for the purpose of employment wherein it has observed thus at para 7, 9 & 10 :

*“7. After having considered the submissions and after perusing the documents, we are constrained to observe that the method adopted by the first respondent for determination of the age of the appellant, which is stated to be uniformly followed, is completely erroneous. An attempt should be made to determine the age of a candidate on the basis of authentic documents, such as birth certificate, school leaving certificate, matriculation certificate, etc. showing the date of birth.*

xxx    xxx    xxx

*9. A Medical Board by using scientific methods can never make an accurate estimation of the age of a human being. estimate which can never be accurate. It is always an estimate which can never be accurate.*

*10. We have perused the certificate The Medical Board In the present case, the relevant date for deciding the age of the appellant is 31 July, 2013. of the Medical Board dated 10th December, 2014. It is not necessary to has recorded that the recommendation is based on physical and radiological examination of the appellant. record detailed reasons to hold that it is unsafe to make an accurate estimation of the age on the basis of physical examination or radiological examination or ossification test. have their own limitations. These methods In fact, the opinion of the*

*Medical Board records that the age of the appellant as on 31st December, 2014 was in between 35-40 years. Going by the said opinion, in July 2013, it is quite possible that the age of the appellant was less than 35 years.”*

14. In the matter of **Lilwa Bhuiyan** (supra), the Division Bench of the High Court of Jharkhand at Ranchi held thus at paras 14 to 15 :

*“14. We have already referred hereinabove about the principle to be followed in a case of beneficial legislation which is to be interpreted liberally so as to give it a wider meaning than a restrictive meaning which would indicate the very object of the Rule and admittedly the Industrial Disputes Act, 1947 is a beneficial legislation and as such, the provisions contained therein may be construed taking the dominant purpose of the statute, intention of the legislature and underlying policy.*

*We have also referred hereinabove that the NCWA is by way of providing social security measures by entering into an agreement with the Union under the provision of Section 18(1) of the Industrial Disputes Act, 1947 and the same having the statutory fervor, the object underlying therein is to be considered. The foremost object of the said agreement is to act by way of providing social security measures to the employees and its dependant for which various provisions have been made to provide appointment in case of death of the bread earner as under Clause 9.3.0 and 9.5.0 of the said agreement and, therefore, when the underlying object of the said agreement is to provide social security measures to the employees and their dependants, the same is to be treated by the respondent authorities in a way so that the object and intent of the agreement be achieved.*

*The respondent CCL, however, failed to produce any decision of the authority, in case appointment on compassionate ground, to take the midpoint of the age assessed by the Medical*

*Board as has been done in the instant case, rather the document dated 07.07.1992 has been produced to assess the age of an employee by taking the midpoint of the age as has been assessed by the Medical Board but since it is not a case of an employee rather the case of a candidate who is seeking appointment on compassionate ground and, therefore, the said circular will not be applicable in the case of the writ petitioner and in that view of the matter, when the respondent authorities have asked the writ petitioner to go for the medical examination wherein the age of the writ petitioner has been assessed in between 35 to 40 years and taking the midpoint the age of the writ petitioner has been assessed as 37½ years of age, cannot be said to be an action to achieve the object and intent of the NCWA to provide social security measures to the dependant of the deceased employee, rather the approach of the respondent authorities ought to have been to consider the age of the writ petitioner by taking its lower point so that the object and intent of NCWA be achieved.*

*15. It requires to refer herein about the order passed by the Coordinate Division Bench of this Court in L.P.A. No.117 of 2010 dated 01.12.2010 which has been brought on record wherein also the issue fell for consideration about judging the age of appellant on medical opinion and therein it has been observed that if the petitioner's claim that her age is 43 years and the respondents considered that as per the medical evidence her age is 45 years then there always possibility of errors of two years (plus)/(minus) and in that view of the matter the claim of the petitioner's mother could not have been denied on compassionate ground.*

*It has been brought to the notice of this Court by the learned counsel for the appellant that in pursuance to the order passed in L.P.A. No. 117 of 2010 [Md. Rahim v. Project Officer, Kujju Colliery), the appellant namely Md. Rahim has already been provided with the appointment which fact has not been disputed by the learned counsel appearing for the respondent CCL.*

*Further, learned counsel for the appellant has relied upon the judgment passed by the learned Single Judge of this Court in the case of Jagdish v. Central Coalfields Limited & Others in W.P. (S) No. 3339 of 2016 wherein also the dispute about the age has been set at rest by the opinion of the Medical Board after assessment of the age of the writ petitioner in that writ petition which has been questioned by the writ petitioner on the ground that when the age of the writ petitioner is available in other records what is the necessity to go for the Medical Board and in that view of the matter the writ petition was allowed with a direction to appoint the writ petitioner of the said writ petition on compassionate ground.*

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15. It is noteworthy to mention here that the aforesaid decision of the High Court of Jharkhand at Ranchi travelled upto the Supreme Court in SLP (Civil) diary No. 31747/2022 (*M/s Central Coalfields Limited & Others v Lilwa Bhiyan*) and the same was dismissed as withdrawn by order dated 21.11.2022.

16. Applying the aforesaid principle to the facts of the present case, it is evident that the respondent authorities have not disputed the genuineness of the documents relied upon by the petitioner. The rejection of the claim is founded solely upon the report of the ADC. The said report only provides a range of age and not a definite date of birth. Therefore, merely adopting the mean age cannot conclusively establish that the petitioner had crossed the prescribed age limit on the relevant date.

17. Apart from that clause 9.3.0 of the NCWA-VI which provides for provision of Employment to Dependents and I.I.No. 76, which speaks about “Illeterate”, read thus :

**Clause 9.3.0 of NCWA-VI**

*“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 die 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.*

*9.3.3 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, 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 dependant of the deceased.*

*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.*

**I.I.No.76**

***“Illiterate.***

*In the cases of appointees not covered under the foregoing clauses, the date of birth will be determined by the colliery medical officer keeping in view any documentary and other relevant evidence as produced by the appointee. Date of*

*birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances.”*

18. A perusal of the aforesaid provision shows that in case of an illiterate appointee, the date of birth is required to be determined by the Colliery Medical Officer after considering documentary and other relevant evidence produced by the appointee. Thus, the provision does not contemplate determination of age solely on the basis of radiological assessment while ignoring the documentary evidence available on record.

19. In the present case, the respondents, instead of considering the documents produced by the petitioner and the records maintained by the employer itself, have rejected the claim solely on the basis of the report of the Age Determination Committee. Such an approach is contrary to the procedure contemplated under I.I. No.76.

20. In the present case, the petitioner has relied upon his Aadhaar Card, PAN Card and Voter ID, wherein his date of birth has consistently been recorded as 01.01.1986. Apart from the said documents, the service records maintained by the respondent Company itself reflect the particulars of the petitioner as a dependant of the deceased employee. There is no allegation that the said documents are forged or fabricated. The respondent authorities have not disputed the genuineness of the documents relied upon by the petitioner; rather, the rejection has been founded solely upon the report of the ADC, which assessed the age of the petitioner on the basis of radiological examination. In view of the law laid down by the Hon'ble Supreme Court, such estimation cannot override authentic documentary evidence unless the genuineness or correctness of such documents is specifically questioned and established.

Further more, even assuming the report of the ADC is taken into consideration, the same only provides a range of age and not a definite date of birth. The conclusion drawn by taking the mean age cannot by itself establish that on the relevant date of application the petitioner had crossed the prescribed age limit.

21. Applying the well settled principles of law to the facts of the present case and for the reasons mentioned hereinabove, the impugned order dated 30.11.2023 passed by respondent/SECL is hereby quashed. The respondent/SECL is directed to take suitable decision with regard to grant of dependant employment to the petitioner in the light of the observations and findings recorded in the preceding paras of this order, within a period of two months from the date of receipt of a copy of this order.

22. As a sequel, the Writ Petition is allowed, leaving the parties to bear their own cost.

Sd/-  
**(Bibhu Datta Guru)**  
**Judge**