

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2971 of 2009

Ku. Noor Jahan, aged about 21 years, D/o Late Bilal Mansuri, R/o Village Khairaha, P.S. Burhar, Distt. Shahdol (MP)

---- Petitioner

Versus

1. South Eastern Coalfields Limited, Through its Chairman-cum-Managing Director, Seepat Road, Bilaspur (CG)
2. General Manager, Sohagpur Area, Post Dhanpuri Colliery, Distt. Shahdol (MP)
3. Sub Area Manager, Navagaon Mines, Post Dhanpuri Colliery, Distt. Shahdol (MP)

---- Respondents

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| For Petitioner:  | Mr. Gary Mukhopadhyay, Advocate. |
| For Respondents: | Mr. Abhishek Sinha, Advocate.    |

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/12/2015

1. The petitioner's father Late Bilal Mansuri while working as Trammer in Navagaon Mines of the respondent South Eastern Coalfields Limited (SECL) died in harness on 24-11-1997, unfortunately, same day the petitioner's mother also died leading to making of an application by the petitioner for dependent employment as contained in the National Coal Wage Agreement-VI, on 10-7-2003. The petitioner was informed by the respondent SECL that by

25-2-2005/4-3-2005, she can opt for Rs.3,000/- per month in lieu of dependent employment, but she cannot be given dependent employment. The petitioner while replying on 5-3-2005, insisted for dependent employment finding the employment to be a better option. Ultimately, on 18/23-7-2005, the respondent SECL by its letter refused to give employment to the petitioner on the ground that the petitioner was not in life roster of the Company, hence dependent employment cannot be given. The petitioner finding no option but to accept the monetary compensation, made a request on 28-6-2006 for monetary compensation which was refused by the respondents on 14-3-2007. This writ petition has been filed claiming various reliefs, but it has been confined to relief No.1 for grant of monetary compensation as provided in the National Col Wage Agreement.

2. Return has been filed by the respondents opposing the writ petition stating inter alia that the petitioner herself has refused to accept the monetary compensation as she had already waived the offer, therefore, no writ of mandamus can be issued for the same as there is delay on the part of the petitioner in approaching the SECL for getting monetary compensation and the petitioner has not challenged the order dated 14-3-2007, as such, she is not

entitled for monetary compensation.

3. Mr. Gary Mukhopadhyay, learned counsel appearing for the petitioner, would submit that the petitioner's father died in harness on 24-11-1997 and by virtue of the provisions contained in sub-clause (ii) of clause 9.5.0 under Chapter-IX, Social Security, of the National Coal Wage Agreement-VI, she is entitled for Rs.3,000/- per month or employment. He further submits that the National Coal Wage Agreement is a settlement within the meaning of Section 2 (p) of the Industrial Disputes Act, 1947 and is binding under Section 18 (3) of the said Act and is also binding on the SECL which has the force of law and, therefore, the petitioner cannot be denied the monetary benefit mainly on the ground that on earlier occasions, she had rightly claimed for dependent employment finding the employment to be more beneficial to her. In fact, the SECL is responsible for delay in granting monetary compensation and as such, a writ be issued directing the respondents to make payment of monetary compensation to the petitioner in terms of clause 9.5.0 (ii) of the National Coal Wage Agreement-VI.
4. Mr. Abhishek Sinha, learned counsel appearing for the SECL, would submit that first time, the petitioner made application on 10-7-2003 after her father died on 24-11-1997, as such, the application was delayed and when the

respondent SECL offered her the monetary compensation, she denied the same by her letter dated 5-3-2005 and insisted for dependent employment which was not granted to her and, as such, in absence of challenge to the order dated 14-3-2007, no writ can be issued granting monetary compensation to the petitioner. Moreover, the petitioner was minor on the date when her father died.

5. I have heard learned counsel for the parties and gone through the record with utmost circumspection.
6. It is not in dispute that the petitioner's father died in harness on 24-11-1997, she also lost her mother all of a sudden, unfortunately, on the same day. Finding no option to meet both her ends after attaining majority, the petitioner made application for dependent employment in terms of clause 9.5.0 (ii) of the National Coal Wage Agreement-VI which is a settlement within the meaning of Section 2 (p) of the Industrial Disputes Act, 1947 and is binding between the parties under Section 18 (3) of the said Act.
7. It is well settled that the National Coal Wage Agreement is a settlement having the force of law and is a contractual liability of the respondent SECL. {See the decision of this Court in W.P.(S)No.832/2012 (Avinash Saloman v. South Eastern Coalfields Limited and others) decided on 30-11-2015.}

8. Now, the question would be whether there is delay on the part of the petitioner to make her claim for monetary compensation.

9. Clause 9.5.0 (ii) of the National Coal Wage Agreement-VI provides for Employment/Monetary compensation to female dependent. Sub-clause (ii) of Clause 9.5.0 of the said Agreement provides as under: -

“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 dependent 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.”

10. Admittedly, at the time of death of her father, the petitioner was below the age of 45 years. She had option either to accept the monetary compensation of Rs.3,000/- per month or employment. She was 13 years of age. To some extent, Mr. Abhishek Sinha, learned counsel appearing on behalf of the respondents/SECL, is right in his submission that there is some delay in making application, as the application could be made by the petitioner only on 10-7-2003, but the fact remains that on the date of death of her father, she was minor and when she became major, she filed application on 10-7-2003 in addition to the fact that the petitioner unfortunately, lost her mother as well on the same day on which day her father / SECL servant died on 24-11-1997. The SECL has to

perform its contractual obligation which is provided in the National Coal Wage Agreement-VI and it is the contractual liability of the SECL. Therefore, delay cannot be attributed to the petitioner as to deny the claim of monetary relief to her. Thereafter, on 25-2-2005, the respondent SECL informed the petitioner to opt for monetary compensation as dependent employment cannot be given whereupon, on 5-3-2005 she made a request for dependent employment for obvious reason that she is having no source of income having lost her father and mother both and she insisted for dependent employment finding the employment to be better option which was ultimately turned down by the respondents on 18/23-7-2005. Once the petitioner's request for dependent employment was refused, thereafter, after giving second thought, on 28-6-2006, she made an application expressing her willingness to accept monetary compensation which was declined by the SECL by its internal memo dated 14-3-2007. The question is whether denial of the respondent SECL to even grant monetary compensation to the family dependent of its deceased employee is justified.

11. It has already been held that liability of the SECL to make monetary compensation or dependent employment is not a concession to the dependents of the deceased workmen

but is a contractual liability which is having force of law and which they are obliged to perform and which they have rightly offered to the petitioner on 25-2-2005/4-3-2005, though there was delay on the part of the SECL in offering, but yet they bonafidely offered the same to the petitioner. However, merely because the petitioner who was only aged about 20 years at that time in her young age, prayed for dependent employment, there can be no reason for the SECL not to make payment of monetary compensation for which she is entitled by virtue of clause 9.5.0 (ii) of the National Coal Wage Agreement-VI. It appears from clause 9.5.0 (ii) of the National Coal Wage Agreement-VI that a dependent and particularly a family dependent of the deceased employee is entitled to get two benefits which are in alternate, one is dependent employment and another is monetary benefit. It appears that the petitioner was of the view that she can get dependent employment which appears to be more beneficial. Thus, it cannot be held that the petitioner has waived her right to get monetary compensation.

12. In the considered opinion of this Court, refusal on the part of the SECL to make payment of even monetary compensation to the petitioner is plainly arbitrary and illegal, as the petitioner has a legal right to get monetary compensation at the rate of Rs.3,000/- per month from the

date of death of the SECL employee and the respondent SECL being the State under Article 12 of the Constitution of India and a public sector undertaking is obliged to act fairly and reasonably and to make payment as flowing from the legal settlement arrived at between the representatives of the workmen and the representatives of the coal companies. Therefore, the respondents are directed to make payment of monetary compensation to the petitioner at the rate of Rs.3,000/- per month as provided in clause 9.5.0 (ii) of the National Coal Wage Agreement-VI.

13. Determination of the petitioner to get monetary compensation leads me to advert to the date from which she is entitled for said compensation. According to Mr. Gary Mukhopadhyay, learned counsel for the petitioner, she is entitled from the date of making her application for dependent employment i.e. 10-7-2003, whereas according to Mr. Abhishek Sinha, learned counsel for the respondents, she would be entitled from the date of opting for making compensation i.e. 28-6-2006, not earlier than that. Clause 9.5.0 (ii) of the National Coal Wage Agreement-VI gives option to the dependent either to opt for dependent employment or for monetary compensation, therefore, the dependent will be entitled for monetary compensation from the date of opting for said compensation and not earlier than the date which a

dependent opts for. Accordingly, it is held that the petitioner will be entitled for monetary compensation with effect from 28-6-2006, the date on which she opted for monetary compensation. The respondent SECL is directed to make payment of the entire amount of monetary compensation with effect from 28-6-2006 within 45 days from the date of receipt/production of a copy of this order to the petitioner. It is made clear that the question of interest on monetary compensation is left open to the parties.

14. The writ petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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