

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1445 of 2014

Gulshan Prakash, aged about 30 years, S/o Late Chandra Prakash Panigrahi, R/o G.M. Complex, West Chirmiri Colliery, Thana Pondi, Tahsil Baikunthpur, Distt. Koriya
---- Petitioner

Versus

1. South Eastern Coalfields Limited, through its Chairman-cum-Managing Director, Seepat Road, Bilaspur
2. Director (Personnel), South Eastern Coalfields Limited, Seepat Road, Bilaspur
3. Chief General Manager, Manpower, South Eastern Coalfields Limited, Seepat Road, Bilaspur
4. Chief General Manager, South Eastern Coalfields Limited, Chirmiri, Malviya Nagar, G.M. Complex, Pondi, Chirmiri, Distt. Koriya
5. Deputy CPM, Malviya Nagar, G.M. Complex, Pondi, Chirmiri, Distt. Koriya

---- Respondents

For Petitioner:	Mr. Parag Kotecha, Advocate.
For Respondents:	Mr. R.K. Gupta & B.S. Rajput, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/12/2015

1. Shri Chandra Prakash Panigrahi, while working as SECL employee, died in harness on 20-10-2007. The petitioner being son and dependent of Late Chandra Prakash Panigrahi, made an application for dependent employment

in terms of the National Coal Wage Agreement (NCWA). His application for dependent employment has been rejected by the respondent SECL by order Annexure P-3 dated 3-3-2014 holding that the petitioner's mother is already in employment and, therefore, the petitioner is not entitled for dependent employment. The petitioner has filed this writ petition questioning the order passed by the SECL holding that the NCWA is a settlement and it does not bar dependent employment merely on the ground that some other member of the family is in employment.

2. Return has been filed opposing the writ petition holding that the petitioner is not entitled for compassionate employment.
3. Rejoinder has also been filed opposing the return.
4. I have heard learned counsel for the parties and also perused the record.
5. Father of the petitioner was SECL employee and his services were governed by the National Coal Wage Agreement-VIII. Clauses 9.3, 9.4 & 9.5 of NCWA-VIII are operative so far as dependent employment is concerned.
6. The question is whether the respondent SECL being governed by the NCWA, a settlement within the meaning of Section 2 (p) of the Industrial Disputes Act, 1947 which

is binding under Section 18 (3) of the said Act, can decline to grant dependent employment to the petitioner despite provision in the NCWA solely on the ground that one of the members of the dependent family is in employment.

7. Aforesaid question came to be considered by this Court in W.P.(S)No.832/2012 (Avinash Saloman v. South Eastern Coalfields Limited and others) decided on 30-11-2015 and this Court has answered in paragraphs 27 & 28 of its judgment as under: -

“27. The respondent/SECL is subsidiary company of the Coal India, a public sector undertaking and undoubtedly, a State within the meaning of Article 12 of the Constitution of India and it has also been conferred with the status of “Miniratna Company” by the Government of India and therefore, it is obliged to act fairly, reasonably and bonafidely and should take a plea, which is legally available to them. The plea taken in this writ petition is an unholy plea as observed by Their Lordships of the Supreme Court in the matter of Mohan Mahto (supra), but such a plea has been taken only to deny the claim of the petitioner and as such, denial on the part of the respondents to consider the case of the petitioner for dependant employment in terms of Section 9.3.3 of the NCWA is per-se illegal and arbitrary.

28. Accordingly, it is held that action of the respondents in not considering the case of the petitioner for dependant employment provided under Section 9.3.0 of the NCWA, which is binding settlement and which nowhere excludes the dependant employment on the ground of one of the family member of dependant employee on employment is ex-facie illegal and plainly arbitrary.”

8. Thus, the question raised in this writ petition is squarely covered by the decision rendered by this Court in Avinash Saloman (supra).
9. Accordingly, it is held that refusal / rejection by order dated 3-3-2014 on the part of the respondents to grant dependent employment to the petitioner only on the ground that his mother is already in employment, stands quashed. The respondent SECL authorities are directed to consider the petitioner's application for grant of dependent employment in accordance with the provisions contained in the NCWA-VIII on its own merits, within 45 days from today.
10. The writ petition is allowed to the extent indicated herein-above but without imposition of cost.

Sd/-
(Sanjay K. Agrawal)
Judge