

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2315 OF 2014

Smt.Bhuribai W/o Nemsai Koshle and others

-vs-

The Sub-Area Manager, Umrer Sub-Area, Western Coalfields Ltd., Nagpur.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.S.K.Pashine, counsel for the petitioners.
Mr.S.C.Mehadia, counsel for the respondent.

CORAM : SMT. VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 28.04.2015.

By this petition, the petitioners challenge the order of the respondent, dated 17/08/2013 rejecting the claim of the petitioners for appointment of the petitioner No.2, the son of Nemsai on compassionate ground as per the National Coal Wage Agreement.

The husband of the petitioner No.1 by name Nemsai was in the employment of the respondent-Western Coalfields Limited and had sought leave to visit his native place in Tiharipali on 05/06/2001. Since the husband of the petitioner No.1 was on leave only from 25/05/2001 to 02/06/2001, it is the case of the respondent-employer that he was served with a charge-sheet on 30/06/2001. A departmental enquiry was conducted against Nemsai and the services of Nemsai were terminated by the respondent in the year 2002. Since the whereabouts of Nemsai were not known from 05/06/2001 and since Nemsai was not traced by the petitioners for long, the petitioners filed a civil suit for a declaration that Nemsai was dead. The trial Court by an

order dated 05/10/2012 declared that Nemsai had expired in June, 2001. The judgment of the trial Court was not challenged by the respondent-employer, who was a party defendant in the said suit and the same has attained finality. After the judgment, dated 05/10/2012, the petitioners approached the respondent for providing employment to the petitioner No.2 on compassionate ground under the National Coal Wage Agreement. The petitioners also sought the retiral benefits. Though the respondent paid the provident fund and gratuity to the petitioner No.1, the claim of the petitioners for appointment of the petitioner No.2 on compassionate ground was rejected by the impugned communication. The petitioners have challenged the rejection order in the instant petition and have sought the appointment of the petitioner No.2 on compassionate ground as per the National Coal Wage Agreement.

Shri Pashine, the learned counsel for the petitioners, submitted by placing reliance on Clause 9.5.0 of the National Coal Wage Agreement that in case of death of an employee for a cause other than a mine accident, a female dependent below the age of 45 years is entitled to employment or to monetary compensation of Rs.3,000/- per month. It is stated that if at the time of death of the employee, the male dependent of the concerned worker is about 12 years of age, he would be kept on a live roster and would be provided employment commensurate with the skill and qualifications when he attains the age of majority. It is stated that in view of Clause 9.5.0 of the National Coal Wage Agreement, the petitioner No.2 sought appointment, as he was more than 12 years of age at the time of death of his father Nemsai after he attained majority. It is further stated that the respondent has granted appointment to Vinod

Deorao Jivtode on compassionate ground and has discriminated between two similarly situated persons. It is stated that the respondent is liable to appoint the petitioner No.2 on an appropriate post in pursuance of the National Coal Wage Agreement.

Shri Mehadia, the learned counsel for the respondent, opposed the prayer made in the petition and submitted that the petition is liable to be dismissed on the ground of laches. It is submitted that Nemsai had expired in June, 2002 and the petition is filed in the year 2014. It is stated that the judgment of the trial Court in the civil suit filed by the petitioners for a declaration in regard to the death of Nemsai is liable to be ignored as the relevant provisions of the Evidence Act were not rightly considered by the trial Court while decreeing the suit of the petitioners. The learned counsel relied on the judgment reported in (2004) 8 SCC 706 (Balvant N. Viswamitra and others v. Yadav Sadashiv Mule (dead) through LRS.and others) and specially paragraph No.9 thereof to state that where a decree passed by the trial Court is “null” and “void”, the same could be ignored or overlooked.

On hearing the learned counsel for the parties and on a perusal of the National Coal Wage Agreement, it appears that the respondent was liable to employ the petitioner No.2 in the services of the respondent, as the petitioner No.2 was more than 12 years of age at the time of death of Nemsai in June, 2001. The petitioner No.1 was not interested in seeking appointment for herself and was also not interested in seeking monetary compensation. In this background, the petitioner No.1 sought employment for the petitioner No.2, who was admittedly above the age of 12 years at the time of death of his father, after he attained

majority. The petitioners have rightly based the claim on Clause 9.5.0 of the National Coal Wage Agreement.

The submission made on behalf of the respondent that the petition suffers from laches and is liable to be dismissed is liable to be rejected. The whereabouts of Nemsai were not known to the petitioners or to any other person and after making a Police complaint and securing the report from the Police Station, the petitioners filed a suit seeking a declaration about the death of Nemsai and the trial Court by the judgment, dated 05/10/2012, declared that Nemsai had died in June, 2001. This declaration was granted by the trial Court on 05/10/2012. The petition is filed on 07/01/2014. The petition could have been filed by the petitioners only after a competent Civil Court declared in regard to the death of Nemsai. There is no delay in filing the instant petition. We also do not find any merit in the submission made on behalf of the respondent that the judgment of the trial Court is a nullity. Merely because the trial court had not considered certain provisions of the Evidence Act in the right perspective, it cannot be said that the judgment of the trial Court is a nullity. The respondent was a party to the civil suit, but it had not challenged the decree of the trial Court in appeal. The judgment of the trial Court has attained finality.

Also, we do not find any merit in the submission made on behalf of the respondent that the services of Nemsai were terminated in the year 2002 and there is no provision in the National Coal Wage Agreement for granting appointment to the dependents of the terminated employee. The competent Civil Court has declared that Nemsai had died in the month of June, 2001. The chage-sheet was issued to Nemsai on 03/06/2001 and an *ex parte* enquiry was conducted against Nemsai and the services of Nemsai were

terminated in the year 2002, after Nemsai was dead. Nemsai is declared dead in June, 2001. An enquiry against a dead person is no enquiry in the eye of law. The submission made on behalf of the respondent on the basis of the termination order is ill founded and is liable to be rejected. The reason for rejecting the claim of the petitioner No.2 for employment is bad-in-law and hence the letter refusing employment to the petitioner No.2 is set aside.

For the reasons aforesaid, the writ petition is allowed. We direct the respondent to employ the petitioner No.2 in the services of the respondent on a suitable post in terms of the National Coal Wage Agreement within a period of three weeks.

Order accordingly. No costs.

JUDGE

JUDGE