

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6290/2014

Dindigala Shankar Gattaiya

-VERSUS-

Western Coalfields Ltd. and another.

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

Court's or Judge's Orders

Shri D.S. Thakur, Advocate for the Petitioner.
Shri S.C. Mehadia, Advocate for the respondents.

CORAM : **SMT.VASANTI A. NAIK**
AND A.M. BADAR, JJ.

DATE : **JULY 22, 2015.**

By this petition, the petitioner challenges the action of the respondents in de-categorizing the petitioner and reducing the pay-scale w.e.f. October, 1998 after acquiring disability. The petitioner has sought a direction to the respondents to pay/refund the arrears of wages that are liable to be paid to the petitioner.

The petitioner joined the services of the respondents as a general mazdoor on 06.05.1976. It is

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the case of the petitioner, that the petitioner suffered some locomotory disability in the year 1998 and hence, he was transferred by the respondents from Nakoda sub area to Ghuggus sub area. According to the petitioner, by the said order of transfer, dated 14-15/09.1998, while transferring the petitioner from Nakoda sub area to Ghuggus sub area, the pay of the petitioner was protected. According to the petitioner, the respondents paid a lesser amount to the petitioner from 1998 resulting into grant of lesser pension. It is the case of the petitioner that the petitioner suffers from locomotory disability and hence, it was necessary for the respondents to protect the pay of the petitioner in 1998.

The respondents have filed an affidavit in reply. It is stated in the said affidavit in reply that by the transfer of the petitioner from Nakoda sub-area to Ghuggus sub-area, the petitioner was shifted from an under ground mine to an open cast mine, at his request. It is stated that the basic pay of the petitioner was fixed at the highest in the point of scale of category-1 General Mazdoor on 17.09.1998, on the basic pay of Rs.96.98 per day. According to the respondents, the

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basic pay of the petitioner was protected on 17.09.1998 and it was fixed as per the last pay certified by Nakoda sub-area. It is submitted that there was a reduction of only 0.56 ps. due to the change of job, which was done at the request of the petitioner. The respondents have annexed a copy of the consent letter on which the petitioner has affixed his thumb impression, to substantiate the submission that the petitioner was transferred from Nakoda sub-area to Ghuggus sub-area in the year 1998 with his consent and on his own request. It is submitted that the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 would not apply to the case in hand. It is stated that it was not the case of the petitioner in the year 1998, that the petitioner was suffering from locomotory disability and hence, the petitioner was entitled to another job.

We do not find on a perusal of Annexure-A, on which the petitioner has placed reliance for proving his disability, that the petitioner suffered from any locomotory disability in the year 1998. A disability has to be proved by producing a certificate

from a competent Medical Board as provided by the Act of 1995, and the Rules of 1996 framed thereunder, specially Rule 3 thereof. After a lapse of nearly 16 years from the date of transfer of the petitioner from Nakoda sub-area to Ghuggus sub-area, the petition has been filed this petition by taking recourse to the provisions of the 1995 Act, though it is not applicable to the case of the petitioner. We also find from a perusal of the reply filed by the respondents, to which there is no rejoinder, that the pay of the petitioner was protected on his transfer from Nakoda sub-area to Ghuggus sub-area and the said transfer was at the request of the petitioner. The consent letter clearly shows that the petitioner had consented for his transfer from Nakoda sub area to Ghuggus sub area.

In the circumstances of the case we find that the prayers made in the Writ Petition are misconceived. We therefore, dismiss the Writ Petition, with no order as to costs.

JUDGE

JUDGE