

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

WRIT PETITION NO. 7264/2014

Keshav Hari Patil

-VERSUS-

Western Coalfields Ltd. and others.

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.**

Heard.

By this petition, the petitioner challenges the order of the respondent, dated 09.05.2003 de-categorizing and reducing the pay scale of the petitioner w.e.f August, 2003 after acquiring disability.

According to the petitioner, the petitioner joined as a Loader with the respondents in an underground mine, in January, 1990. It is the case of the petitioner that the petitioner suffered from Leprosy and it was certified by the Assistant Director (Medical)

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G.M.LF. Wardha on 09.04.2002 in that regard. It is submitted that the cases of 50 employees were considered for alternate job and the petitioner was found to be fit for the job of Loader in Silewara as per the order, dated 09.05.2003. It is stated that the petitioner was paid only the initial basic, after he was asked to perform the alternate job, by the order dated 09.05.2003.

By the petition filed on 10.12.2014, the petitioner has, in effect challenged the order dated 09.05.2003. The petitioner has relied on the provisions of Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to submit that the petitioner has suffered from disability and as he was leprosy cured, the pay of the petitioner was required to be protected in view of the provisions of Section 47 of the Act of 1995.

The respondents have filed an affidavit-in-reply. It is stated on behalf of the respondents that the petitioner was not performing his duties as a time rated loader since 1990, and he was paid as a piece rated worker. It is submitted that by the order dated

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09.05.2003, the petitioner was asked to work as a loader in Sillewara as a piece rated loader only. It is stated that it is clear from the order annexed to the petition at Annexure-4, dated 02.11.2013 that the petitioner was brought on time rated category, only w.e.f. 02.11.2013, and till then he was working as a piece rated worker. It is submitted that the provisions of the Act of 1995 cannot be applied to the case of the petitioner, as there is nothing on record to prove that the petitioner suffered from a disability under the Act of 1995, in the year 2003, and hence, he was granted an alternate job. It is further stated that in terms of the order passed in the meeting with the CTU dated 15.09.2014, the petitioner's pay would be fixed and be protected, like all the other similarly situated employees.

On hearing the learned counsel for the parties and on a perusal of the documents annexed to the petition and the affidavit in reply, as also the provisions of the Act of 1995 and the Rules framed thereunder, it appears that the petitioner has mischievously filed this petition by depicting that he has suffered disability as specified by the provisions of

the Act of 1995. To prove that the petitioner has suffered a disability under the Act of 1995, the petitioner has produced a certificate issued by the Assistant Director (Medical) G.M. LF., Wardha. It is not stated in the certificate that the petitioner either suffers from Leprosy or had suffered from Leprosy and is Leprosy cured. Even if the certificate had recorded that the petitioner has suffered from Leprosy or that the Leprosy is cured, the said certificate could not have been helpful to the petitioner to prove that the petitioner was suffering from a disability, as specified by the provisions of the Act of 1995, as it is necessary for a person claiming the benefits under the Act of 1995 to produce a disability certificate from a competent authority, as specified by the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996. A disability certificate under the Rules of 1996 is required to be issued by a Medical Board, duly constituted by the Central Government and the State Government. The Medical Board should consist of, three members, out of which at least one member shall be a specialist in the particular field in which the

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disability is claimed. In the instant case, the petitioner has not filed any disability certificate on record to prove that he suffered from a disability under the Act of 1995. The petitioner, therefore cannot rely on the provisions of the Act of 1995 to seek pay-protection under Section 47 of the Act.

We also find that the petitioner was never working on monthly wages or as a time rated worker till he was brought in that category by the order dated 02.11.2013. In the year 1990, the petitioner worked as a piece rated loader and at his own request, as can be seen from the order dated 09.05.2003, the petitioner was granted an alternate job of a loader at Sillewara. The case of the petitioner that the pay scale of petitioner was required to be protected on 09.05.2003 while granting the alternate job to him is rejected, as at the relevant time he was working as a piece rated worker. Since the provisions of the Act of 1995 do not apply to the petitioner, and since the petitioner was working as a piece rated worker, there was no question of protecting his pay scale. Also we find that the order impugned was passed on 09.05.2003, and the petition has been filed on

10.12.2014. The inordinate delay in filing the petition has not been explained satisfactorily. We find, on a perusal of Annexure-R1, appended to the affidavit in reply of the respondents, that the petitioner's pay would be fixed along with the other employees and the petitioner would be ensured pay protection, in parity with the similarly situated employees.

As the petition is devoid of merit, the same is dismissed with no order as to costs.

JUDGE

JUDGE

Rgd.