

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

WRIT PETITION NO. 5981 OF 2015

Lakhan s/o Pyarelal Daheriya

-vs-

Western Coalfields Ltd., Nagpur through its Personnel Manager (Janshakti)

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

Court's or Judge's Orders.

None for the petitioner.
Mr. A.M.Ghare, counsel for the respondent.

CORAM : SMT. VASANTI A NAIK &
KUM. INDIRA JAIN, JJ.

DATE : 06.10.2016.

By this writ petition, the petitioner challenges the order of the respondent-Western Coalfields Limited, dated 16/07/1996, converting the job work of the petitioner as time rated worker instead of his regular duties in an underground mine as a Loader.

The petitioner joined the services of the respondent as a Loader in Category V in September, 1989. According to the petitioner, the petitioner suffered an injury in a mine accident in June, 1994 and acquired 20% physical disability, i.e. locomotory disability. It is stated that the petitioner was directed by the respondent to attend the Apex Medical Board. It is stated that it was found by the Apex Medical Board that the petitioner was unfit for underground duty and was fit for alternate surface duty, as his disability was to the extent of 20%. According to the petitioner, the petitioner was asked by the respondent by the impugned order, dated 16/07/1996 to work as a time rated employee instead of a Loader in the mines. By filing the writ petition on 31/08/2015, the petitioner has challenged the order of the respondent-Western Coalfields Limited, dated 16/07/1996. The petitioner has challenged the consequential office order, dated 30/01/2005, that upgrades the petitioner in category IV.

We had heard the learned counsel for the parties at length, on 29/09/2016 and we were not inclined to grant the relief sought by

the petitioner. The matter was, however, adjourned for today and was sought to be kept at the top of the board, as the counsel for the respondent-Western Coalfields Limited wanted to find out whether the old record in the case of the petitioner could be located. Though the matter was directed to be listed at the top of the board with the clear understanding that the decision would be rendered in the petition today, the petitioner's counsel is absent.

It was urged by the counsel for the petitioner on the previous date of hearing that the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and specially Section 47 (2) thereof, would entitle the petitioner to the relief claimed. It was urged that an employee, who acquires disability, during his service, is sought to be protected under Section 47 of the Act and even if a lighter job is given to an employee, after securing the disability, while in service, his pay is required to be protected. The counsel for the petitioner had urged that the definition of Person with Disability as defined in Section 2(t) would not apply to the case of the petitioner, as he was not a Person with Disability at the time of his initial appointment and he had suffered the disability, while in employment. The aforesaid submission was made, as the Act defines a Person with Disability to mean a person suffering from not less than 40% disability and the petitioner had allegedly, even as per his case, suffered only 20% disability. The learned counsel for the petitioner had relied on the judgment, reported in **AIR 2003 SC 1623 (Kunal Singh v. Union of India and another)** to canvass that there was a distinction between a person suffering with disability at the time of his employment and a person acquiring a disability, during his employment.

Shri Ghare, the learned counsel for the respondent-Western Coalfields Limited, opposed the prayer made in the writ petition. It is submitted that the petition suffers from laches. It is submitted that the petitioner was granted the work on time rate basis by the impugned order, dated 16/07/1996, that was passed twenty years earlier. It is submitted that several employees of the Western Coalfields Limited, that were not desirous of working in underground mines as Loaders and were ready to give up higher pay scale, as they were desirous to do lighter job, had requested the Western Coalfields Limited to grant them

lighter work. It is submitted that several employees are granted lighter work by the impugned order, dated 16/07/1996 and the petitioner is one of them. It is submitted that the petitioner did not make any grievance about the impugned order passed in the year 1996, as he was not aggrieved by the same. It is stated that the petitioner has now, after a lapse of more than 20 years, when most of the record in regard to the personal correspondence between the parties is not available with the Western Coalfields Limited, has filed the writ petition challenging the order of the year 1996. It is stated that the order, dated 03/01/2005 is a consequential order, placing the petitioner in Category IV and that the same is based on the order of the year 1996. It is stated that when the order of the year 1996 was passed, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was in force. It is stated that the petitioner could have made a grievance about the order immediately, by referring to the provisions of the Act. It is stated that the disability suffered by the petitioner is even according to the petitioner, only to the extent of 20% and hence, the petitioner would not be entitled to the benefit of the provisions of the Act of 1995. In any case, according to the learned counsel, since the case of the petitioner is not based on a certificate of disability issued by the Competent Authority under the Act and the Rules, the petitioner cannot claim that he had actually suffered 20% disability as per the provisions of the Act.

On a perusal of the documents annexed to the petition, we find that the petitioner has not made out a case for granting the relief claimed. The respondent-Western Coalfields Limited had passed the impugned order, on 16/07/1996. It appears that at the relevant time, the petitioner was working as a Loader in the underground mines and he was asked to do the time rated work in the year 1996. The petitioner accepted the order of the Western Coalfields Limited without a demur, continued to work on time rate basis and was also upgraded to Category IV in the year 2005. No grievance whatsoever was made by the petitioner about the order of the year 1996, granting him a lighter work with a little lesser pay scale for more than 20 years. We have come across several such petitions and it has become a regular feature in respect of the employees of the Western Coalfields Limited,

that had been granted lighter work a decade or two earlier to approach this Court by taking recourse to the provisions of the Act of 1995 to seek the protection of their pay scale. We do not find any certificate of the Medical Board showing the disability of the petitioner to the extent of 20%. To seek the benefit of the provisions of the Act a certificate of disability should be issued by a Competent Medical Board under the Rules. Though time was granted to the petitioner to produce a certificate from the Competent Medical Board under the provisions of the Rules, no such certificate is produced. Even if the same was produced, we doubt whether the same could have proved the disability of the petitioner in the year 1995. The petitioner cannot, in the circumstances of the case seek the benefit of the provisions of the Act of 1995 for a direction against the respondent-Western Coalfields Limited to protect the pay of the petitioner, by quashing and setting aside the order of the year 1996. We also find that the facts in the case are disputed. The petitioner has claimed to have suffered 20% disability, due to a mine accident. The fact that the petitioner suffered an injury in the mine accident is not brought on record. Also, there is no certificate on record, even a certificate of any Medical Board much less a Competent Medical Board that the petitioner had suffered a disability, as defined by the Act of 1995. The petition suffers from laches and it would not be proper to grant the prayer made in the writ petition, specially when the petitioner has not explained the delay, much less satisfactorily. The judgment reported in **AIR 2003 SC 1623** and relied on by the counsel for the petitioner cannot be made applicable to the facts of this case.

In the result, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 10/10/2016