

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
W.P.Nos.38451 of 2015,5223 & 13699 of 2016,
22864,23725,23746,23792,23795,24962,25019,25050,
25472,25484,30255,30270,30312,30353,30357,30359,30363,
30526,35381,30366,30445,35398,719,721,725,726,1171,
1188,6309,20381,20385,20392,20400,22722,22731,22853
of 2015,
13648 of 2016,19718 of 2014, 20514, 36577, 36589,
36847, 36856,36875,36881, 37762 of 2014,723 of 2015,
25036,30369,30370,38467,40022,40083 of 2015,
3948 of 2016,4950 of 2016,4962,
4963,5181,5187,5188,5193,
5194, 5202, 5204, 5205, 5214, 5224, 5227, 5238, 5239,
5244, 5252,5260, 5265,
5270,5271,5272,5275,5278,5282,5317,6718,6733,6740,6742,
6760,6800,6907,6933,6973,6974,11755,15051 of 2016,
19655 of 2014, 15201 of 2016, 11378 of 2014,
39048,37083 of 2015, 2822 & 2852 of 2016

COMMON ORDER

All these cases are being disposed of by this common order as they relate to the challenge made to the Constitution of Corporate Medical Board and Appellate Medical Board *vide* Circular Nos.P40/5911/IR/1206 & 1205, dated 29.05.2000, Memorandum dated 29.06.2014 and Circular No.CRP/PER/IRPM/C/081/1218, dated 7.4.2015.

Counter-affidavits are filed disputing the averments made in these writ petitions, but in view of the consensus arrived at by the parties before this Court, this Court has purposely not dealt with the averments made in the affidavit filed in support of the writ petition and the affidavit filed in reply thereto as counter-affidavit. However, the necessary facts for the purpose of disposal of these cases are detailed hereunder.

All the petitioners are employees of Singareni Collieries Company Limited working in various mines

operated by it. They have been discharging their duties in various capacities. Admittedly, Singareni Collieries Company Limited is a Government undertaking involved in the mining activity. The activities of the said company are governed by the provisions of the Mines Act, 1952 (for short 'the Act') and the rules framed thereunder. The company issued circulars from time to time dealing with the medical examination of its employees. Section

2 (1)(h) defines a qualified person employed in a mine and the injuries are defined as 'reportable injury' or 'serious bodily injury' in Section 2 (pp) and (q) of the Act. Chapter V of the Act deals with provisions regulating to health and safety during the course of employment. The Mines Rules, 1955 (for short "the Rules") were made and Chapter VI thereof provides for arrangements for training persons in first-aid etc. Rule 29-B deals with initial and periodical medical examination. Rule 29-C deals with the appointment of examining authority and Rule 29-D deals with notice of medical examination. Rule 29-E deals with failure to undergo medical examination. Rule 29-F deals with the standard and report of medical examination. Rule 29-J deals with appeal for

re-examination. Rule 29-L deals with standard and report of medical re-examination by the appellate medical board.

Rule

29-M deals with the prohibition of employment of unfit persons.

In the instant cases, all the petitioners were examined initially at the time of their appointment and they underwent periodical examination. All of them were found fit to

continue in the service. Strangely, this fitness is challenged by the petitioners for their own reasons and they wanted a re-examination by neutral doctors. They alleged that the circulars issued from time to time constituting the medical board and associating the persons on administration side with them caused prejudice to their cases. In that process, they challenged the circulars issued by the company.

Learned Standing Counsel appearing for the respondent-company submits that various circulars were issued from time to time in consonance with the rules made under the Mines Act and supplemental to the provisions of the Mines Act and Rules made thereunder. It is the submission of the learned Standing Counsel that the employees have not only to undergo periodical examination, but in the case of sudden accident or developing a disease making them unfit to continue employment, there should be a mechanism to examine those persons and in that context only the company issued various circulars. The circulars were never intended to cause prejudice to the cases of the petitioners. In fact, he submitted that since the company formulated a policy for making compassionate appointment in respect of the persons who are left with atleast two years of service and found to be unfit, this litigation was initiated strangely by the persons who are found to be fit.

In view of the consensus arrived at by both the parties, this Court is not inclined to go into the legality of the circulars issued by the company from time to time, but it is hoped that the company would take into consideration the

various challenges made by the petitioners to the said circulars more particularly associating the administration heads with doctors while examining the employees and make necessary amendments in future in order to inspire confidence in workers.

Learned counsel on both sides agreed that the medical certificates issued earlier by the medical officer or by the board of the company shall be treated as report of the medical examination under Rule 29-F of the Rules.

Now the issue is with regard to the appeal made by the petitioners for re-examination.

Though the learned Standing Counsel opposes the plea of the petitioners for re-examination by persons who were found to be fit, since Rule 29-J does not provide for an appeal by the persons who are found to be fit and provides for an appeal by the persons declared unfit for employment, this Court wants to consider the request of the workers in order to settle the issue.

In view of the doubts expressed by the petitioners with regard to the examination conducted by the medical board constituted by the company and the certificates issued by it, this Court, in order to dispel the impression of bias against them by the company, wanted to give another fair opportunity to them to undergo the medical examination even though they are not entitled for such re-examination under Rule 29-J of the Rules.

Learned Standing Counsel fairly agreed for re-examination by a committee of doctors constituted by this Court from the list of doctors made available to the company and headed by an outsider.

In the circumstances, without going into the legalities of the circulars and the rules made under the mines Act, all the writ petitions are disposed of with the following direction:

- (1) The company shall issue notices to all the petitioners who have not retired as on today and in respect of whom medical certificates were issued earlier and the petitioners in the above batch of cases have to undergo re-examination of their medical condition as on the date of examination by the committee appointed by this Court.**
- (2) The petitioners who receive such notices from the company shall invariably appear before the medical board at the time specified and undergo medical examination without any demur and their failure, if any, would be construed as their disinclination and the medical certificates issued earlier by the medical board constituted by the company shall remain valid.**
- (3) If the medical board constituted by this Court on re-examination holds any persons found to be unfit, the declaration shall relate to the date of the medical certificates issued by the medical board constituted by the company earlier and the age of the persons who have been declared fit or unfit shall be reckoned from the date of medical certificates issued by the board of the company and their rights and**

liabilities shall be regulated accordingly.

- (4) This Court accordingly requests the District Medical and Health Officer, Khammam to depute one Government Medical Practitioner to head the Committee of Doctors for examination of the petitioners as aforesaid. The DMHO, Khammam shall inform the name of the doctor to the company within 15 days from the date of receipt of this order. The company shall constitute the committee of doctors with the doctor recommended by the DMHO, Khammam as the head of the committee and consisting of the Company Doctors viz., Dr.B.Sashidhar Reddy of Ramagundam and Dr.B.Madhu Kumar of Bellampally. It is needless to observe that the said Committee of Doctors would discharge their duty in an objective manner without being influenced by any external influences as allegations are leveled by both sides across the bar that the litigation is initiated and continued for oblique purposes.

However, as one time measure, the above entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

22nd June, 2016
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