

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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**WRIT PETITION Nos.12493 of 2013; 37825 of 2014 AND CONTEMPT C/
No.2102 of 2013**

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COMMON ORDER:

These three cases are being disposed of by this common order as they were filed by the same petitioner and arise out of the same cause of action.

W.P.No.12493 of 2013 was filed challenging the action of respondent Nos.4 and 5 in denying appointment to the petitioner by rejecting his candidature on untenable grounds by proceedings dated 29.11.2012 and 04.12.2012.

When this Court granted an interim direction in W.P.M.P.No.15412 of 2013 on 01.08.2013 to consider the case of the petitioner for appointment to the post of "Badli Filler" or to any other suitable post to which he is entitled as per the scheme, and when the same was not implemented, the petitioner filed C.C.No.2102 of 2013.

Strangely, the petitioner filed W.P.No.37825 of 2014 challenging the action of the respondents in not considering the case of the petitioner for appointment under dependant employment scheme.

The petitioner is son-in-law of Late Hanumanthu, who worked as Senior M.S. SRP-1 Incline. His father-in-law was declared medically unfit for further service. During his lifetime, his father-in-law submitted an application on 14.04.2011 to the respondents requesting to provide dependant employment to the petitioner, who is his son-in-law. In view of the same, his father-in-law did not receive the compensation amount of Rs.5,00,000/- . The petitioner possesses the qualifications of B.Com., M.A.(English), B.Ed., and PGDCA. He claims that he is eligible and qualified for appointment in a suitable post. On his application his case was recommended for employment in the company after interview was

held on 16.06.2012. He was directed to report to Area Hospital, RKP/MM to ascertain fitness for employment. His case was referred to main hospital by respondent No.6 on 20.10.2012 as he was suffering from Diabetes Mellitus. He was subjected to fitness test on 29.10.2012 and was declared unfit by proceedings dated 06.11.2012. Respondent No.4 issued proceedings on 29.11.2012 requesting respondent No.5 to inform the petitioner that he is medically unfit for any employment in mines. Accordingly, respondent No.5 issued proceedings on 04.12.2012 intimating that he is not eligible for any employment in the mines. Upon receipt of the said order of rejection, a representation was made on 03.01.2013 requesting for re-examination by an appellate medical board and it was followed by a notice through his Counsel on 24.01.2013. He submits that as per the medical standard of fitness for persons to be employed in mines, mere presence of albumen and sugar in the urine without any gross organic disease producing signs and symptoms should not be considered as a disability. He further submits that his sugar levels are within the permissible limits as per the reading obtained on 03.09.2012.

The respondents filed a counter affidavit admitting the fact of employment of the father-in-law of the petitioner, his application for providing employment to the petitioner and processing the case of the petitioner for employment. It is stated that the Committee, which is formed for the purpose of examining the suitability of the candidates, recommended to the post of Badli Filler underground, if he is otherwise declared fit for dependent employment. But, in the medical examination he was declared unfit for any employment below ground or any work. In those circumstances, he can opt the provision of seeking lump sum payment of Rs.5.00 lakhs in lieu of providing dependant employment due to his medical unfitness/ineligibility or seek MMC of Rs.6,000/- per month by the wife of late P.Hanumanthu, Ex-Sr.Mining Sirdar, SRP.1 incline. It is further stated that there is no provision for providing any other suitable employment except providing the post of Badli Filler below

ground for which he is found to be unfit.

Learned Counsel for the petitioner submits that in view of the qualifications possessed by the petitioner, he is entitled to be considered for several posts in the respondent company other than the post of Badli Filler in underground.

Learned Senior Counsel Sri D.Prakash Reddy appearing for the respondents submits that the initial application by the petitioner cannot be considered in view of the National Coal Wage Agreement – VIII and the petitioner wants to take advantage of processing his application till he was found unfit. In reply, learned Counsel for the petitioner submits that the ineligibility of the petitioner to apply was not stated as a ground for rejection of his case and his application was rejected solely on the ground that he was suffering from Diabetes Mellitus and was medically found to be unfit for any employment in mines.

The relevant clauses providing for employment/payment of monthly monetary compensation to the dependant is governed by clauses 9.3.0, 9.4.0 and 9.5.0 and it states as follows:

“9.3.0, 9.4.0 & 9.5.0 Provision of Employment/payment of monthly monetary compensation to Dependant

(i) The Clauses 9.3.0, 9.4.0 & 9.5.0 of NCWA-VI will be operative in NCWA-VIII till a revised scheme is jointly prepared keeping in view the various verdict of Hon'ble Supreme Court at the earliest.”

When the said clause is read along with Clause 9.3.2 of the National Coal Wage Agreement – VI, it is clear that the son-in-law should be residing along with the employee and should be wholly dependant on the earning of the employee. The relevant clauses read as follows:

“9.3.2 Employment to one dependant of the worker who dies while in service

In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.

9.3.3 the dependant for this purpose means the

wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

9.3.4 the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

9.4.0 Employment to one dependant of a worker who is permanently disabled in his place

...

(iii) The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependant on the earning of the employee may be considered."

It is not in dispute that the deceased is having two sons and gave no objection certificate in favour of the petitioner. Apart from that, the daughter of the deceased employee, who is the wife of the petitioner, is employed and the petitioner is admittedly not wholly dependent on the deceased. Though the said ground was not raised in the impugned order of rejection, in view of the ineligibility of the petitioner for consideration of his case for dependant employee, this Court is of the opinion that without going into other aspects of the matter, the Writ Petitions are liable to be dismissed.

The Writ Petitions are, accordingly, dismissed. However, dismissal of the present Writ Petitions will not disentitle the wife of the deceased employee from claiming the compensation or monthly monetary compensation as per the rules in force. In view of the dismissal of the Writ Petitions, the Contempt Case is also dismissed. The miscellaneous petitions pending in these cases, if any, shall stand

closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

04.08.2016
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