

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1360 of 2016**

1. Smt. Bhagmati W/o Late Santosh Singh, Aged About 43 Years R/o Village Sendha, P.O. Nagpur, P.S. Podi, West Chirimiri), Tehsil Manendragarh, District Korea Chhattigarh
2. Smt. Sukuriya Singh, W/o Shri Ashok Singh, Aged About 31 Years R/o Village Sendha, P.O. Nagpur, P.S. Podi, (West Chirimiri), Tahsil Manendragarh, District Kroea, Chhattisgarh/

---- Petitioners**Versus**

1. South Eastern Coalfields Ltd. Through The Chairman Cum Managing Director, Head Qtrs, Seepat Road, P.S. Sarkanda, Bilaspur Chhattisgarh
2. Director (Personnel), South Eastern Coalfields Ltd. Head Qtrs., Seepat Road, P.S. Sarkand, Bilaspur Chhattisgarh
3. Chief General Manager, Chirmiri Area P.S. Podi, (West Chirmiri), Chirmiri District Korea, Chhattisgarh
4. Sub Area Manager, New Chirimiri Pondri Hill Colliery, South Eastern Coalfields Ltd. Chirimiri Area, Chirimiri, P.S. Chirimiri, District Korea Chhattisgarh.

---- Respondents

For Petitioners	:	Shri NN Roy, Advocate.
For Respondents	:	Shri Sudhir Bajpai, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/02/2017**

1. The petitioner by way of this petition under Article 226 of the Constitution of India seeks for following reliefs:

“10.1. Issue a writ of mandamus and quash the order dated 30.08.2013 (Annexure P/1) whereby case of the petitioner No.1 for dependent employee has been negated arbitrarily and in a most improper manner.

10.2. Issue a writ of mandamus and direct the respondents to consider case of the petitioner No.1 for appointment under the scheme of dependent employment for being a lady of below 45 years of age as per documents of respondents itself.”

2. The facts in brief relevant for adjudication of this petition is that, the Husband of petitioner No.1 and the Father of petitioner No.2 Santosh Singh was working as Coal Loader with the respondents-SECL. The said employee Santosh Singh died in harness on 12.04.2009. At the time of death of deceased, the provisions of National Coal Wage Agreement-VIII (for short NCWA) was in force so far as dependent employment is concerned. The NCWA-VIII which was in force had adopted Chapter-IX of NCWA-VI for the purpose of grant of dependent employment.
3. After the death of deceased on 12.04.2009, the petitioner No.2, the married daughter of the deceased employee claimed for dependent employment. Her claim was rejected by the respondents as she was married lady. Subsequently, the Husband of petitioner No.2 i.e. son in law of the petitioner No.1 raised his claim. The said claim was also rejected on the ground that son in law is not entitled for dependent employment in the light of fact that there were direct dependent available in the family. It is only thereafter that the petitioner No.1 had raised her claim for the first time seeking for dependent employment on 23.02.2012. The respondents-management vide order dated 03.02.2013 had held that since the petitioner No.1 was more than 45 years of age, she would not be entitled for claiming employment with the management of SECL. She would only be entitled for monetary compensation till she attains the age of 60 years as per the provisions of Chapter-IX of NCWA. For which, she was asked to complete the requisite formalities for release of monetary compensation.

4. The petitioner No.1, however, did not take steps for grant of monetary compensation. She subsequently filed another representation seeking for dependent employment in place of monetary compensation. The said representation was decided on 30.08.2013 stating that since on 21.08.2013 the petitioner was found to be more than 47 years of age, she would not be entitled for employment and it was ordered that she would be given monetary compensation of Rs.3000/- per month till she attains 60 years of age.
5. It is pertinent that earlier order dated 03.02.2013 whereby it was ordered by the respondents-management that she is not entitled for employment on account of her crossing the age of 45 years and entitling her only for monetary compensation was not questioned or challenged. Another aspect which cannot be brushed aside is the fact that the daughter of the petitioner No.1 did not challenge the rejection of her claim of dependent employment. It is also an admitted factual aspect of the case is that the petitioner No.1 for the first time moved the application claiming for dependent employment before the respondents only on 23.02.2012 i.e. almost after three years from the death of employee. From the available records of the respondents-management, the age of the petitioner No.1 shows to be 19 years in the year, 1984. If that is accepted, then on the date when she applied for the first time seeking dependent employment, she was about 47 years of age.
6. At this juncture, it would be relevant to refer to Sub-clause 2 of clause 9.5.0 of NCWA which deals with providing employment/monetary

compensation to female dependents which reads as under:

“(ii). In case of death/permanent disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0, if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs.3000/- per month or employment.

In case the female dependent is above 45 years of age she will be entitled only to monetary compensation and not the employment.”

7. In view of the aforesaid policy applicable in the respondents-management at the time of death of deceased, indisputably, if the female dependent is over 45 years of age, she would not be entitled for employment, but would be entitled only for monetary compensation. The petitioner No.1 raised her claim only after crossing the age of 45 years dis-entitling her grant of dependent employment.
8. The only point of argument on which the petitioner stressed or canvassed is the fact that on the date of death of deceased employee, the petitioner No.1 had not crossed the upper age limit of 45 years for dependent employment as per aforesaid clause of NCWA. Therefore, if at all if she has made application after crossing the age of 45 years, she would be entitled for being considered for dependent employment. The NCWA does not show any embargo for not filing an application beyond the upper age limit of 45 years, neither is there any limitation for filing of such application. According to him, for all practical purposes, as per the provisions of Chapter-IX of NCWA dealing with dependent employment, the age of the dependent has to be considered what it was on the date of death of the employee and not on the date for claiming employment. He

relies upon the judgment of Supreme Court in case of Syed Khadim Hussain Vs. State of Bihar 2006(9) SCC 195.

9. Counsel for the respondents opposing the petition submits that it is a case where the management of SECL has already taken sufficient measures for ensuring the social security in respect of the employees working under the respondents-management. According to him, Chapter-IX has been framed keeping in view of any untoward incident which occurs in the family of any employee working in coal mines. He further submits that the respondents are governed by the conditions stipulated in the said policy and that the respondents on their own cannot relax the conditions which have been enumerated in the said policy. That, in the instant petition the policy is not under challenge. If the policy is not under challenge, the case of the petitioner has to be strictly considered in accordance with the provisions stipulated in Chapter-IX of NCWA.
10. Counsel for the respondents submits that the later part of Sub-clause 2 of clause 9.5.0 clearly stipulates that where the female dependent is above 45 years of age, she cannot be considered for employment, but shall only be entitled for monetary compensation. If order dated 30.08.2013 (Annexure P/1) and letter dated 03.02.2013 (Annexure P/10) both are taken into consideration, the management of SECL has always been willing to provide monetary compensation to the petitioner No.1 and the respondents still abide by the said stand. Therefore, the order passed by the respondents cannot be said to be bad in law and the petition deserves to be dismissed.

11. Having heard the rival contentions put forth on either side and on perusal of records, indisputably the case of dependent employment has to be considered in according with prevailing scheme and policy applicable in the respondents-management. When the scheme for compassionate appointment stipulates a procedure, it has to be adhered strictly and the management or the employer cannot overlook the policy without an amendment brought to the said policy. In the instant case, if the analogy which is canvassed by the petitioner is brought into force, then the situation would arise that even a person who has reached the age of retirement would also be entitled for dependent employment because there were no limitation in moving an application and the claimant was below 45 years when the deceased had expired. Therefore, the contention of the petitioner that there is no limitation for claiming dependent employment under the NCWA cannot be accepted. In any case, a claim for dependent employment/compensation should be raised promptly.
12. In the instant case, the petitioner at the first instance was not interested for dependent employment as is evident from her conduct. The employee died on 12.04.2009 and the petitioner No.1 applied for dependent employment only on 23.02.2012 i.e. after a period of three years from the date of death of employee. In between, two of her family members including the petitioner No.2 had put forth their claims for dependent employment which were duly considered and rejected which were never questioned before any court of law. This conduct of petitioner No.1 clearly gives an impression that the petitioner No.1 at the first instance was not interested for employment or she had relinquished her claim for dependent employment in favour of other members of the family. Thus, the petitioner No.1 when

claimed her right for dependent employment had already crossed the age of 45 years, the non crossing of which was necessary for getting employment and beyond the age of 45 years the policy itself does not permit the respondents management to consider the case of the petitioner No.1 for grant of dependent employment.

13. In the given factual matrix of the case, it cannot be said that the respondents have committed any illegality in passing the impugned order. Thus, the claim of the petitioner being devoid of merit is liable to be and is hereby dismissed.
14. The petition is accordingly dismissed. However, it is directed that the respondents-management, subject to petitioner's making fresh representation for monetary compensation, shall process the case of petitioner No.1 and order for release of monetary compensation forthwith within a period of three months from the date of receipt of representation. The petitioner No.1 is entitled for monetary compensation from the date of death of deceased.

Sd/-
(P.Sam Koshy)
Judge