

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

WRIT PETITION NO.5969/2015

Shivram s/o Kundlik Dhawde

...Versus...

Western Coalfields Limited (A Government of India Undertaking) through its
Mine Superintendent/Manager, Office of the Superintendent of Mines,,
Kamptee, Tahsil and Taluqa Parsioni, District : Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D.S. Thakur, Advocate for petitioner
Shri T.R. Darda, Advocate for respondent

CORAM : SMT. VASANTI A NAIK AND
V.M. DESHPANDE, JJ.

DATE : 01.03.2017

By this petition, the petitioner challenges the order of the respondent - Western Coalfields Limited, dated 17.5.2003 accepting the request of the petitioner for grant of surface duty instead of duty under the mines and intimating the petitioner that he would be entitled to the wages that are payable for surface duty.

It is the case of the petitioner that while the petitioner was working as a Material Supplier Category-IV with the respondent – Western Coalfields Limited, he met with an accident in the year 2001, as a result of which there was an injury to one of his eyes. The petitioner requested the respondent – Corporation to grant him surface duty instead of duty as a loader under mines vide communication dated 2.1.2002. The request of the petitioner

was accepted and by the impugned order, dated 17.5.2003 the respondent – Corporation granted surface duty to the petitioner and informed the petitioner that he would be entitled to the pay scale admissible to a worker doing surface duty. The petitioner did not challenge the said order dated, 17.5.2003 till he filed this petition on 14.8.2015. The petitioner has relied on the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in support of his case. The learned Counsel for the petitioner has also relied on the judgment, reported in **2014 (2) Bom. C.R. 346**.

On hearing the learned Counsel for the parties and on a perusal of the documents annexed to the petition, it appears that the petitioner would not be entitled to the relief claimed. The petitioner has not placed the certificate of a competent Medical Board under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 in support of his claim that he suffered from a disability. The petitioner has only produced a certificate of a Resident Medical Officer, of the year 2001. The respondent has seriously disputed the certificate tendered by the petitioner. It also appears that in the present case, the petitioner had voluntarily made an application to the respondent on 2.1.2002 for grant of surface duty as he was working as a loader under the mines. Though the respondent had asked the petitioner to appear before the Medical Board, the petitioner did not appear before the Medical Board to prove his disability under the Act. The request made by the petitioner vide communication dated 2.1.2002 to permit him to work on surface was accepted by the respondent by the impugned order, dated

17.5.2003 and the petitioner was directed to work on the pay scale that was permissible for a worker working on surface duty. The petitioner accepted the said order, dated 17.5.2003 without a demur and has filed the writ petition on 14.8.2015, i.e., after a period of more than 12 years. The petition suffers from laches. Apart from the fact that there is no merit in the writ petition, the petition is liable to be dismissed also on the ground of laches. The judgment, reported in **2014 (2) Bom. C.R. 346** and relied on by the learned Counsel for the petitioner cannot be made applicable to the facts of this case. In the said case, a request was not made by the employee therein to the respondent – Corporation to grant surface duty and it was not a case where the surface duty was granted to the employee on his request. Moreover, in the case in the said judgment, it does not appear that the employee was not examined by a Medical Board. The facts involved in the reported judgment are distinguishable and hence, the petitioner cannot be entitled to the relief claimed, on the basis of the said judgment.

Since the prayers made by the petition cannot be granted in the circumstances of the case, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE