

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3441 of 2011**

Manoj Kumar Thakur, S/o. Shivnandan Thakur, Aged about 28 years, R/o. Q.No. D/S 790, Opposite Sawan Studio, Bhatgaon Area, Post Bhatgaon, District Surguja, Chhattisgarh

---- Petitioner**Versus**

1. South Eastern Coal Fields Ltd. Through: Its Chairman-cum-Managing Director, Seepat Road, Bilaspur, Chhattisgarh
2. Chief General manager, Bhatgaon Area, Post Bhatgaon, District Surguja Chhattisgarh

----Respondents

For Petitioner	:	Mr. Gary Mukhopadhyay, Advocate
For Respondents	:	Mr. H.B. Agrawal, Sr. Advocate along with Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****27/10/2018**

1. The present petition has been filed primarily challenging the action on the part of the respondents in holding that the respondents have arbitrarily held that the petitioner is not entitled for the benefit of clause 9.4.0 of the National Coal Wage Agreement.
2. The facts, which need consideration for the disposal of the present writ petition is that the petitioner No.1 who had initially filed the present writ petition namely Shivnandan Thakur was an employee of the respondents-company initially appointed as Clerk Grade-I and subsequently promoted to the post of Senior Clerk Grade-A. The date of birth as per the office record of the said employee was 11.02.1951. Pending the writ petition the said employee has since expired and the petition is being prosecuted by the petitioner No.2-

the son of the employee. The name of petitioner No.1 since has been deleted and would hereinafter be referred as the employee.

3. It is the contention of the petitioner that on account of ailment of blood pressure and diabetes the petitioner No.1 namely Shivnandan Thakur had suffered loss of vision and had become blind and had also taken the best of treatment that could have been provided or could have been obtained and yet he could not recover from the loss of vision and he became totally blind. The petitioner also referred to Annexure P/1 dated 14.09.2007, which itself shows that even in the year 2007 the petitioner was not well and he was also finding it difficult to perform his duties and that he was referred to for better treatment at MGM Eyes Hospital, Raipur.
4. The contention of the petitioner is that since the employee became blind, he had moved an application to the respondents-management on 07.01.2008 requesting for sending the case of the petitioner to the medical board for declaring him unfit, so that he can avail the benefits which are otherwise provided under the service regulations i.e. the National Coal Wage Agreement (in short "NCWA"). The reminder along with supported documents were again sent on 22.01.2008 and later on the further reminder was sent on 29.08.2008 for sending the case of the petitioner to the medical board for declaring the petitioner unfit.
5. The counsel for the petitioner referred to the documents enclosed along with the writ petition to substantiate the contentions that the petitioner in fact was suffering from total loss of vision and for this the petitioner referred to Annexure P/2 dated 25.08.2008, which

was the certificate by the Area Medical Officer, Bhatgaon Area of the respondents. The report clearly suggests that the petitioner was already suffering and he had also been operated in this regard at the MGM Eyes Hospital, Raipur, where the employee was in fact referred by the respondent-company.

6. It also reflects from the proceedings that the case of the petitioner was also referred to the Shankar Netralaya, Chennai, where the officers at the Shankar Netralaya has also confirmed the fact that the petitioner was totally blind from both eyes as is reflected from the certificate Annexure P/5 dated 29.01.2009. The said certificate also clearly depicts that the employee was unfit for doing official work.
7. In spite of all these, according to the petitioner, the respondents deliberately did not promptly constitute the medical board for examining the condition of the petitioner with which the respondents could have examined whether he was fit or not and had the respondents acted promptly, the petitioner would have been in a position to avail the benefits which are otherwise provided under the provisions of chapter-9 of the NCWA, which deals with the Social Security Aspect.
8. The case of the petitioner was also examined by the Area Medical Board on 03.04.2009 which further has certified that the petitioner was having an acute eye disorder and ultimately the case of the petitioner was referred to the Apex Medical Board under the respondents on 09.06.2011, thereafter the medical board is said to have submitted a report Annexure R/2 dated 12.06.2010 holding

that the petitioner is not entitled for the benefit under clause 9.4.0 of the NCWA. It is this action on the part of the respondents which is under challenge in the present writ petition.

9. The contention of the petitioner is that the action on the part of the respondents is totally arbitrary and malafides for two reasons, firstly according to the petitioner, they were never communicated of the report of the medical board and it is only subsequent to the filing of the present writ petition that they have produced the report as Annexure R/2. He further submits that even Annexure R/2 is not a speaking order; neither does it give any reasons as to why the petitioner is not entitled for relief under clause 9.4.0 of the NCWA. He further submits that it is also not evident from the medical board's report as to whether if he is unfit, whether he is fit to perform his duties normally.
10. The counsel for the petitioner submits that the document with which the petitioner's case was forwarded to the Apex Medical Board itself reveals that the employee was one among the few employees who were suffering from serious ailment and were unable to perform the duties for the past 2-3 years as is evident from Annexure R/1 itself, which was the document prepared by the Area Personal Manager of the respondents-company. He further submits that the arbitrariness on the part of the respondents also is writ large for the reason that when the petitioner had first moved an application for referring the employee to the medical board on 07.01.2008, the petitioner was well below the age of 58 years and if the respondents would have promptly acted upon his application by referring him to the medical board, the petitioner would had been entitled for the

benefits so provided under clause 9.4.0 of the NCWA. He further submits that the attendance of the petitioner for the previous five years starting from 2006 onwards would itself reveal that the petitioner was unable to discharge his duties as the period of attendance for all these periods were too marginal, which itself would show that the petitioner was not in a position to discharge his normal duties. For all these reasons the counsel for the petitioner submits that the present writ petition deserves to be allowed and appropriate suitable relief be granted to the petitioner i.e. the son of the deceased employee.

11. The learned counsel appearing for the respondents opposing the petition submits that the employee concerned was not suffering so badly with which he could have been declared unfit, as is evident from the report of the medical board. He further submits that by the time the medical board could be finally constituted and the case of the petitioner could be considered, he had already crossed the age of 58 years, beyond which the benefit of clause 9.4.0 of the NCWA would not be extended. It was further contended by the respondents that it is also a case where the petitioner was attending his duties periodically for the period since 2006 onwards, which would suggest that it is not a case where he was totally unfit to perform his duties. It was further the contention of the learned counsel for the respondents that the management had taken all necessary precautions possible to provide the best of treatment to the petitioner and only after all the treatments were provided, did the management sent the case of the petitioner for medical examination and by that time, the petitioner had already crossed the

age of 58 and therefore the benefit could not be extended to the petitioner.

12. Having heard the contentions put forth on either side and on perusal of the record, the facts which are on record particularly the contention of the petitioner in respect of his being under constant treatment, even before September, 2007 onwards as is evident from Annexure P/3 coupled with the fact that the report of the Area Medical Officer himself saying that the petitioner was suffering from "Proliferative Diabetic Retinopathy". It is also not in dispute that the petitioner's representation dated 22.01.2008 was in fact received by the management, which further indicates that he had already made a representation for sending his case for the medical examination so as to avail the benefit of clause 9.4.0 of NCWA.
13. The further document which needs consideration is the certificate issued by the Shankar Netralaya, Chennai Annexure P/5 dated 29.01.2009, which certified that the petitioner was totally blind from both eyes. Even on the date when the certificate by the Shankar Netralaya was issued, the petitioner was well with the age for availing the benefits of clause 9.4.0 of NCWA.
14. Another aspect, which needs consideration, is the fact that the petitioner inspite of the fact having made a request at the first instance on 07.01.2008 there does not appear to be any justified reason provided by the management in not referring the case of the petitioner to the medical board to take a decision. The management of SECL has its own internal mechanism for dealing with the health issues. They have their own area hospital and they have also

specialized regional hospitals and in addition they also have the facilities of referring the cases to Super Specialty Hospitals for the treatment.

15. As per the provisions of the NCWA, the chapter which has been introduced with the object of providing better social security to the employees working under the management. Clause 9.4.0 deals with the circumstances where employment to one dependent of a worker who is permanently disabled is provided. For ready reference clause 9.4.0 is reproduced herein under:

“9.4.0 Employment to one dependent of a worker who is permanently disabled in his place.

(i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) In case of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/she is upto the age of 58 years.

The term 'general physical debility' would mean deficiency of a workman due to any disease or other health reason leading to his/her disablement to perform his/her duties regularly and/or efficiently.

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

dependent on the earning of the employee may be considered.

If so far as female dependents are concerned, their employment would be governed by the provisions of clause 9.5.0.

(iv) The dependents 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.”

16. Once when the management has enacted such a provision and the object behind which is to provide security to its employees, it is incumbent upon the management to ensure that necessary steps are taken promptly to ensure that the employees get the benefits of the said provisions timely. The management cannot be permitted to sit tight over the claim put forth by the employees with an intention of defeating the interest of the employee. In the instant case the petitioner has crossed the age of 58 only on 11.02.2009. The records clearly reflect that right from 2007 the petitioner has been undergoing treatment for his loss of vision. The petitioner had already been declared to be suffering from “Proliferative Diabetic Retinopathy” by the Doctor of the management itself way back in August, 2008 itself, even then the respondents did not take steps to refer the case of the petitioner for a medical examination keeping in view clause 9.4.0. It appears that the management had deliberately sat over the claim of the petitioner so as to ensure that the

employee crosses the age of 58, so that the benefit cannot be extended to the petitioner and other such employees.

17. The overall conduct of the respondents does not seem to be in the interest of the employee and also does not seem to be keeping in consonance the object of framing the provisions 9.4.0 in the NCWA. What is all the more necessary at this juncture is the contents of the reply, which the management has filed, which is totally silent in respect of two aspects as to what prevented them from sending the case of the petitioner to the medical board promptly. The reply also is totally silent as to on what ground the medical board found the petitioner's case to be not entitled for the benefits under clause 9.4.0. No reason and no report whatsoever is brought to the notice of the Court in this regard, rather Annexure R/2 which has been filed along with the return only has a column giving a single line opinion that benefit of clause 9.4.0 cannot be given. The said report of the medical board also appears to be doubtful for the reason that in case if it is the conclusion of the medical board that the benefits of 9.4.0 cannot be given to the employee that also means that the employee was fit for duty. The medical board has not given any such report with which they have certified that the concerned employee was fit for employment and unfit for availing the benefit of clause 9.4.0. For all the aforesaid reasons, this Court is of the opinion that the action on the part of the management in refusing to grant the benefit of clause 9.4.0 to the petitioner and the concerned employee is arbitrary, bad in law and also totally unjustified and is also defeating the interest of the employees/ workers of the management, so far as the provisions of clause 9.4.0 is concerned.

18. Under the circumstances, this Court is compelled to allow the writ petition holding that the action on the part of the respondents to be in total violation of the provision of clause 9.4.0 of the NCWA. This Court is also of the firm opinion that the respondents have deliberately not sent the case of the petitioner's father to the Medical Board at the appropriate time only to ensure that he does get the benefit of clause 9.4.0. In view of the same it is directed that the respondents shall consider the case of the petitioner No.2 i.e. the son of the deceased employee for the benefits that he would be entitled for under clause 9.4.0. It is ordered that the respondents shall ensure compliance of the order within a period of 60 days from the date of receipt of the certified copy of this order.

Sd/-
(P. Sam Koshy)
Judge

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