

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 21/02/2018****Judgment Delivered on : 04/05/2018****Writ Appeal No. 181 of 2017**

(Arising out of order dated 27.02.2017 passed in Writ Petition (S) No. 1360 of 2016 by the learned Single Judge)

1. Smt. Bhagmati W/o Late Santosh Singh, aged about 43 years, R/o village Sendha, PO Nagpur, PS Podi (West Chirimiri) Tehsil: Manendragarh, District Korea, Chhattisgarh.

2. Smt. Sukuriya Singh W/o Shri Ashok Singh, aged about 31 years, R/o village Sendha, PO Nagpur, PS Podi (West Chirimiri) Tehsil: Manendragarh, District Korea, Chhattisgarh.

---- Appellants**Versus**

1. South Eastern Coalfields Ltd. Through The Chairman cum Managing Director, Head Qtrs, Seepat Road, PS Sarkanda, Bilaspur, Chhattisgarh.

2. Director (Personnel) South Eastern Coalfields Ltd. Head Qtrs. Seepat Road, PS Sarkanda, Bilaspur, Chhattisgarh.

3. Chief General Manager, Chirirmiri Area, PS Podi (West Chirirmiri) Chirirmiri, District Korea, Chhattisgarh.

4. Sub Area Manager, New Chirirmiri Pondri Hill Colliery, South Eastern Coalfields Ltd. Chirimiri Area, Chirimiri, PS Chirimiri, District Korea, Chhattisgarh.

---- Respondents

For Appellants : Shri N.N.Roy, Advocate

For Respondents : Shri Sudhir Bajpai, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Judgment**Per Thottathil B. Radhakrishnan, Chief Justice**

1. Santosh Singh, the husband of the 1st Appellant died in harness on 12.04.2009 while employed as a Coal Loader in the 1st Respondent's Establishment. His daughter, the 2nd Appellant, applied for dependent employment. That was rejected by the Establishment for the reason that she was married. Thereafter, her husband i.e. the son-in-law of the deceased Santosh Singh applied for dependent employment. That was rejected on the ground that the son-in-law is not entitled for dependent employment because there were direct dependents available in the family. Thereafter, the 1st Appellant, Santosh Singh's widow, applied for dependent employment, for the first time, on 23.02.2012. The Establishment held that since she was more than 45 years of age, she was not entitled to claim dependent employment, but would be entitled to monetary compensation in terms of the National Coal Wage Agreement; for short 'the NCWA'. That decision of the Management was issued on 03.02.2013. Instead of availing the monetary compensation, the 1st Appellant filed another representation seeking dependent employment. That was also turned down on 30.08.2013 stating that since the 1st Appellant was found to be more than 47 years of age, she was not entitled to employment. The writ petition from which this writ appeal arises, was filed jointly by Santosh Singh's widow i.e. the 1st Appellant and their daughter, the 2nd Appellant. The learned Single Judge dismissed the writ petition. Hence this appeal.

2. Supporting this appeal, the learned counsel for the Appellants argued that the materials on record clearly show that as on 12.04.2009 i.e. the date of death of Santosh Singh, the 1st Appellant could not have been treated as having attained 45 years of age. The rejection of the application of Santosh Singh's daughter and of his son in law ought not to be treated as operating

against the interest of the 1st Appellant, it is argued. Making reference to the sequence of events following the death of Santosh Singh, it was also argued that the anxiety of the 1st Appellant-widow would have, obviously, been to get employment for her daughter and when that failed; followed by rejection of the application of the son-in-law for dependent employment; the 1st Appellant should be treated as bona fide and vigorously pursuing her claim for dependent employment in terms of the NCWA. It is also emphatically argued that the age of the 1st Appellant-widow ought to have been considered for determination as on the date of death of Santosh Singh i.e. 12.04.2009 which is the point of time when the eligibility for dependent employment arose under the NCWA.

3. The learned counsel for the Respondent-Establishment; reiterating the submissions in opposition to the writ petition, argued that the learned Single Judge was justified in refusing to interfere with the Management's decision and that the finding of the learned Single Judge that there is no illegality in the Management's decision, does not call for interference through this intra-court appeal. He argued that the learned Single Judge had marshalled the relevant facts in relation to the dates and had clearly held that it will be too late in the day to require the Management to entertain the application filed by the 1st Appellant on 23.02.2012 for dependent employment.

4. The fact of the matter remains that following the death of Santosh Singh on 12.04.2009, the 2nd Appellant daughter applied for dependent employment, leading to rejection of that claim on the ground that she was married. The 1st Appellant-widow did not even then apply for dependent employment for herself, instead, the son-in-law applied. That was also rejected. It is thereafter that the 1st Appellant made an application on 23.02.2012 for dependent employment. That was almost after three years from the date of death of Santosh Singh. These facts have been noticed and relied upon by the learned

Single Judge to hold that the 1st Appellant had not applied for dependent employment within a reasonable time. It is also to be noted the 1st Appellant had not challenged the earlier order dated 03.02.2013, whereby the Management had rejected the 1st Appellant's claim for dependent employment on the ground that she was more than 45 years of age.

5. While the learned counsel for the Appellants may be justified in arguing that the eligibility for dependent employment would accrue upon the death of Santosh Singh on 12.04.2009, we see considerable reason in the learned Single Judge having held that such principle does not by itself lead to the conclusion that an application for employment could be made at any later point of time.

6. The eligibility for dependent employment in terms of the NCWA is not a rule of inheritance or succession to office. It, essentially, provides the eligibility for employment to a dependent. Dependency is the primary criteria. Dependency in such situation is, fundamentally, monetary. The need to provide immediate succor to the surviving family is the primary goal of any provision for dependent employment or compassionate appointment. Judicial wisdom running through binding precedents clearly advise us that the operation of such provisions ought to be on case to case basis and it shall not encroach upon the eligibility for employment; which is otherwise, a matter that would strictly fall within the equality doctrine emanating out of Article 14 and 16 of the Constitution. Contextually, it is worthwhile to recall the law laid down by the Apex Court in **Umesh Kumar Nagpal v. State of Haryana; (1994) 4 SCC 138, Jagdish Prasad v. State of Bihar; (1996) 1 SCC 301, Union of India v. Bhagwan Singh; (1995) 6 SCC 476, Haryana SEB v. Naresh Tanwar; (1996) 8 SCC 23, MMTCL Ltd. v. Pramoda Devi; (1997) 11 SCC 390, State of U.P. v. Paras Nath; (1998) 2 SCC 412, Director of Education (Secondary) v.**

Pushpendra Kumar; (1998) 5 SCC 192, S. Mohan v. Govt. of T.N.; (1998) 9 SCC 485, Sanjay Kumar v. State of Bihar; (2000) 7 SCC 192, Haryana SEB v. Krishna Devi; (2002) 10 SCC 246, Punjab National Bank v. Ashwini Kumar Taneja; (2004) 7 SCC 265, National Hydroelectric Power Corpn. v. Nanak Chand; (2004) 12 SCC 487 and State of J&K v. Sajjad Ahmed Mir (2006) 5 SCC 766, all of which have been referred to in the Eastern Coalfields Limited v. Anil Badyakar & Others; (2009) 13 SCC 112. The facts of the case in hand, incidentally, appear to be not much different from that of **Anil Badyakar** (supra); except may be, as regards the period of time that had gone through before Anil Badyakar, the son-in-law of Kalo Dome applied for dependent employment on account of demise of the said person.

7. Following the principles contained in the aforementioned judicial precedents, we do not find any legal infirmity in the decision of the learned Single Judge in holding that the 1st Appellant's application was not eligible to be considered after the earlier order dated 30.08.2013 had become final and because the 1st Appellant never staked claim as a direct dependent at any point of time before 23.02.2012, though her husband had died on 12.04.2009. For the aforesaid reasons, this writ appeal fails.

8. In the result, this writ appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE