

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16781 OF 2003

ORDER:

The petitioner, who worked as Telephone Operator (Trainee) by an alternative appointment in the 1st respondent- Singareni Collieries Company Limited (SCCL), filed this writ petition being aggrieved by the order No.P.40/5911/IR/2684 dated 20.10.2000 of the 3rd respondent, whereby the petitioner was appointed as Telephone Operator (Trainee), as illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and seeks consequential direction to the respondents to revive their order dated 20.10.2000 and provide his original posting as Head Overman/Overman by giving pay protection from 1998 onwards.

2. The case of the petitioner is that he was appointed as Temporary General Mazdoor (TGM) on 14.03.1974. His services were regularized as General Mazdoor. Later, he was also worked as Shot firer and Sirdar and passed the competency examinations of Overman in the year 1982 and promoted as Overman in the year 1984 as per the provisions of Coal Mines Act & Regulations. He was further promoted as Head Overman in the year 1994. When he was working as Head Overman in GDK 3 Incline Godavarikhani, on 02.02.1999, supervising the workers as Head Overman in the underground, at that time one loaded material tub came in

the way as obstruction, so he instructed the workmen working under him to move the tub, but the workers were struggling. Then, in order to facilitate the movement of the tub, he pushed the tub along with other workmen. In that process, he got exerted and developed chest pain. Immediately, with the help of some workmen, he went to Area Hospital, Godavarikhani and complained about his chest pain. The Doctor, on duty, took ECG. The Physician Dr. Sri Srinivas identified his problem as a heart problem and advised him to be on bed rest for a week as an inpatient. Then, the Medical Officers of the respondent company referred him to Osmania General Hospital, Hyderabad on 12.02.1999. He was admitted in Osmania General Hospital, Hyderabad on 15.02.1999. On 27.05.1999, the doctors at Osmania General Hospital had done PTCA and put stent and he was discharged from hospital on 31.05.1999 and the doctors gave a report stating that the petitioner is fit to join duty. Accordingly, petitioner reported to duty, but the Personnel Department instructed the petitioner to report at Godavarikhani Hospital, who in turn asked him to report at Kothagudem Main Hospital to obtain fitness certificate. He went to Kothagudem Hospital where he was admitted as inpatient on 21.06.1999 and was kept for three days as inpatient and several tests were conducted. The report was forwarded to the 2nd respondent. According to the company procedure, unless the Chief Medical Officer certified him as

fit, he cannot be allowed to join duty. The petitioner had completed all necessary formalities and waiting for office order to join duty. On 05.07.1999, Dr. K.Srikanth, Physician, sent a letter stating that the petitioner's case was reviewed by the Medical Board and declared unfit to work as Head Overman underground. Basing on the report, the 2nd respondent and Mining officials issued letters dated 08.08.1999 and 11.08.1999 and copies were addressed to the petitioner. He protested for the issuance of the letter and medical certificates stating that he was hale and healthy. Petitioner requested the 1st respondent-Management to provide him job on surface as he worked in GDK-3 incline. In spite of the petitioner's request, he was not provided with surface job though he rendered 26 years of service and was hale and healthy. The trade unions raised a demand with the management to provide him an alternative employment on surface as the petitioner was declared unfit as per the Settlement dated 12.03.1990. As per the Settlement, the respondent-Management has to provide alternative employment with pay protection. The petitioner was not allowed to discharge duties from 08.08.1999 till 2000 on the ground that the petitioner was unfit for the job. The petitioner was called before the Medical Board on 15.07.2000 and without any examination, an office order dated 08.11.2000 was issued stating that he was found fit for job of Telephone Operator (surface) in the company. Being

aggrieved by the action of the respondent-management for not providing surface job of Head Overman basing on the fitness certificate issued by the Osmania General Hospital, Hyderabad, compelling the petitioner to work as Telephone Operator Trainee (surface) by order No.P.40/5911/IR/2684 dated 20.10.2000 issued as per order in GMK/Corp/Med-U/167/3444 dated 12.07.1999, the petitioner filed the present writ petition.

3. The Chief General Manager of Ramagundam Area-I filed counter on behalf of the respondents, stating that during the year 1999, the petitioner was put to several medical examinations regarding his suitability to perform the job of Head Overman wherein it was found by the medical authorities that the petitioner cannot perform the job of Head Overman. The request of the petitioner for providing alternative employment was considered sympathetically and he was given the post of Telephone Operator (Trainee) by proceedings dated 20.10.2000. Now, the petitioner after nearly two years, filed this writ petition. He further averred that providing alternative employment depends on the suitability of the employee. When the petitioner was found indifferent health, he was reviewed by the Medical Board and he was made unfit to work on 12.07.1999. Further, the petitioner sought for re-medical examination as per the circular dated 10.03.2000, by his application dated 05.04.2000. As such, a Broad Based Medical Committee

examined the petitioner on 15.07.2000 and informed the petitioner that he was fit for surface job and unfit for original job of Head Overman. The petitioner was suffering from Coronary Artery Disease – acute anterior wall Myocardial Infraction. The petitioner had availed special leave for the said disease under National Coal Wage Agreement from 03.02.1999 and he was under inpatient care at Area Hospital, Ramagundam. The petitioner was discharged on 12.02.1999 and referred to Osmania General Hospital, Hyderabad vide letter No.AHR/38/1446 dated 12.02.1999 and he was under inpatient care at Osmania General Hospital from 15.02.1999 to 17.02.1999 and he was subjected to 2D Echo & CAG. His 2D Echo dated 16.02.1999 showed Hypokinesia of I.V.S. and Apex, Dilated LA & LV. CAG was done on 16.03.1999, which shows LAD-Proximal total Occulusion; RCA-Normal Rt. Dominant system. He had undergone PTCA with stunt to LAD on 27.05.1999. While discharging from Osmania General Hospital on 31.05.1999, the petitioner was given a certificate of fitness to join duty immediately. The petitioner was referred to super-specialities to assess the fitness. The fitness will be decided by the Medical Board of the respondent company. The petitioner was referred to Main Hospital, Kothagudem, for assessing his fitness. He was admitted to Main Hospital, Kothagudem on 21.06.1999. The Medical Board has reviewed the case of the petitioner and declared him unfit to work as Head Overman underground due to his

CAD Anterior Wall MI and post PTCA stunt vide letter No.CHK/CORP/MED-U/167/3444, dated 12-7/5-8-1999. The investigation reports suggested that he has suffered heart attack and he had undergone PTCA stunt. He was extended half pay special leave from 03.02.1999 to 30.06.1999 as per the provisions of National Coal Wage Agreement. As per Clause 17 of the Memorandum of Settlement dated 21.02.2000 which deals with provision of alternative employment to workmen declared unfit to their original job due to the reasons other than mine accidents, seeking alternative employment as on date would be considered by the Broad Based Medical Committee headed by Director (Personnel, Administration and Welfare) to ascertain their suitability for their own job or alternative job in the underground or as an exception in surface departments/open cast projects, subject to their fitness for such jobs. The petitioner submitted an application dated 05.04.2000 to the Chief General Manager, Ramagundam-I, requesting him to find out his fitness to the post which he was holding at the time of medical unfit and if he was found unfit for his original post in the respondent-medical examination to provide alternative job either in underground or surface subject to his fitness for such post. The petitioner was re-examined by the Broad Based Medical Committee on 15.07.2000 at Ramagundam and declared fit for any surface job. The petitioner was terminated from the services of the company

vide letter No.P.RG.I/8/5065 dated 8/9.08.1999 and letter No.Gdk3/04-L/99/1761 dated 11.08.1999 with effect from 11.08.1999 and as per company's Standing Orders, he was paid one month's wages as Notice Pay. A Memorandum of Settlement arrived under Section 12(3) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Regional Labour Commissioner (Central) Hyderabad, between the Management of SCCL and the workmen represented by five major Trade Unions on 12.03.1990. One of the terms of the settlements is reproduced hereunder:

“17. Alternate employment to underground employees declared medically unfit:

For employees involved in mine accidents and declared medically unfit for underground work but found suitable for surface jobs, all efforts will be made to offer a suitable alternative employment on surface with protection of wages.

Employees medically unfit for underground due to reasons other than mine accidents will be considered for alternative jobs on surface.

Employees found unfit for the original jobs underground will be offered other suitable underground jobs for which they are fit.

The rehabilitated employees will be allowed increments in the lower category of jobs offered to them, equivalent to the number of increments drawn by them in their original categories. Continuity of service will be given for purposes of terminal benefits. Cases where continuity of service was not given will be reviewed on their representation.”

The mining staff found unfit to their original job will be offered suitable underground job for which they are fit, as per the Memorandum of Settlement arrived under Section 12(3) of the Act, on 21.02.2000 between the Management of SCCL and the workmen. As per the Memorandum, Item No.4 providing alternative employment to the workmen declared unfit to their original job due to reasons other than mine accidents. The Union demanded that the workmen declared unfit for their jobs due to reasons other than mine accident should be provided alternative jobs on surface. The cases of those medically unfit workmen whose terminal benefits have been settled or opted for dependant employment or opted for payment of monthly monetary compensation are not covered under the purview of this item. In response to the Circular No.P40/5911/IR/336 dated 10.03.2000, he made a representation dated 05.04.2000 requesting the Management to arrange re-medical examination by Broad Based Medical Committee to find out his fitness to the post which he was holding at the time of medical unfitness and if he is found unfit for his original post in the re-medical examination, he requested the Management to provide alternative job either in underground or in surface, subject to his fitness for such post. Accordingly, the petitioner was examined by Broad Based Medical Committee (Corporate Medical Board) on 15.07.2000 and found fit for surface job. In consideration of his application dated 05.04.2000 and in terms of Item No.4 of

Memorandum of Settlement dated 21.02.2000, he was appointed as Telephone Operator Trainee (Surface) in Cat.IV and posted to work at GDK No.11A incline with effect from 08.11.2000. As per the Memorandum of Settlement, the period from the date of termination due to medical unfit to the date of reporting for duty be treated as loss of pay and continuity of service is allowed for the purpose of terminal benefits only and his basic pay in the present scale of pay was fixed taking into consideration the number of increments drawn by him in his original category/grade at the time of termination due to medical unfitness.

4. Sri A.K.Jayaprakash Rao, learned counsel for the petitioner, would contend that while the petitioner working as Head Overman In GDK3 incline at Godavarikhani, on 02.02.1999, one loaded material tub came in the way as obstruction, so he instructed the workmen working under him to move the obstruction and when the other workers struggling hard to move that tub, in order to facilitate the movement of the tub, he pushed the tub along with other workmen and in that process, he got over exerted and developed chest pain and thereafter he underwent treatment at Area Hospital, Godavarikhani and he was discharged from the said hospital on 12.02.1999 and was referred to Osmania General Hospital. Accordingly, the petitioner reported at Osmania General Hospital on 15.02.1999 and took treatment and thereafter he was discharged on 31.05.1999 along with

the medical certificate stating that the petitioner was fit to join duty immediately. When he approached the respondents for re-posting, he was referred to the Chief Medical Officer, who has to certify the fitness to join duty. The petitioner worked for 26 years in the underground in various capacities and thereafter he was terminated. Later, as per the Broad Based Medical Committee, on his representation and as per the settlement arrived under Section 12(3) of the Act, he was appointed as Telephone Operator Trainee (surface) with effect from 06.11.2000, but his pay was not protected, which is illegal and arbitrary. As per the settlement, the petitioner is entitled for alternative job with pay protection on being medically unfit for the job which he was holding in the underground, but he was given job as a Telephone Operator Trainee (surface) without pay protection. As per the Memorandum of Settlement dated 21.02.2000 under Section 12(3) of the Act, Item No.4 provides alternative employment to the workmen declared unfit to their original job due to reasons other than mine accidents. The persons similarly situated to that of the petitioner were given surface jobs in the same category or provided surface job with pay protection, whereas the petitioner was discriminated and he was posted in the surface other than the post which he was holding at the time of medically unfit i.e. Telephone Operator Trainee (surface) without pay protection, which is illegal, arbitrary,

discriminatory and violative of Articles 14 and 16 of the Constitution of India.

5. Per contra, Sri J.Sreenivasa Rao, learned counsel appearing for the respondents, would contend that the petitioner was found medically unfit as he suffered from coronary artery disease-acute anterior wall myocardial infarction and he took treatment at Area Hospital, Ramagundam and later at Osmania General Hospital, Hyderabad. He was found unfit by the Broad Based Medical Committee to post him in the same post which he was holding i.e. Head Overman in the underground. The petitioner was terminated on medical grounds and on his application, he was provided job of Telephone Operator Trainee (surface) by fixing his pay taking into consideration the number of increments drawn by him in his original category at the time of termination due to medical unfitness. As per the Memorandum of Settlement under Section 12(3) of the Act and under Clause 17: *Alternative employment to underground employees declared medically unfit, for employees involved in mine accidents and declared medically unfit for underground work but found suitable for surface jobs, all efforts will be made to offer a suitable alternative employment on surface with protection of wages. But, employees medically unfit for underground due to reasons other than mine accidents will be considered for alternative jobs on surface.* As per the Memorandum of Settlement dated

21.02.2000, the petitioner was provided with alternative employment. Under Clause 17 and 2.3, he was appointed as a Telephone Operator Trainee (surface). Hence, there is no illegality or irregularity in appointing the petitioner in such post.

6. In reply, the learned counsel for the petitioner would contend that the petitioner is entitled for pay protection on providing alternative job on medical grounds and he placed reliance on the decision reported in *Narendra Kumar Chandla Vs. State of Haryana and others*¹, wherein the Hon'ble Supreme Court held that when an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a suitable post. Since the petitioner therein was eligible for the post of LDC, the Hon'ble Supreme Court directed the respondents to appoint him in the post of LDC by protecting his scale of pay of Rs.1400-2300 and directed to pay all the arrears.

The learned counsel also placed reliance on the judgment of this Court in W.P.No.13653 of 2003 dated 28.06.2011.

The learned counsel further placed reliance on the judgment of this Court in W.P.No.19245 of 2012 dated 25.07.2016, whereunder this Court directed the respondents

¹ (1994) 4 S.C.C. 460

to provide alternative employment or continue in the post of Head Overman (surface) and set aside the impugned order to the extent of denying the wages of Head Overman (surface) and difference of wages during the period the petitioner worked in the lower category and also for the period from 11.06.1998 to 11.04.2001. The respondents were also directed to compute the wages payable to the petitioner, who was no more, and pay the same to his legal representatives, who came on record, within a period of three months. The learned counsel for the petitioner herein sought similar direction as given in W.P.No.19245 of 2012.

Per contra, the learned counsel for the respondents would contend that those directions are contrary to the Memorandum of Settlement dated 21.02.2000 arrived under Section 12(3) of the Act and the same cannot be extended to the petitioner herein.

7. In the facts and circumstances of the case and in considered view of this Court, the petitioner while working as Head Overman in GDK3 incline, Godavarikhani, on 02.02.1999 in the underground while he was pushing the tub along with other workmen, suffered chest pain and thereafter he underwent treatment in the Osmania General Hospital on the reference of the respondent-Management. He was discharged on 31.05.1999 with the medical certificate stating fit to join duty. When the petitioner reported to duty, the

Management refused to allow him to join duty on the ground that he would be allowed to duty only on production of the medical fitness certificate issued by the Chief Medical Officer. But he was found to be unfit for the job on the examination of the medical board and at his request, he was referred to Broad Based Medical Committee of the company. He was found unfit to work as a Head Overman in the underground, but he was found fit to work on surface. Instead of providing him the job of Head Overman on the surface, which benefit was extended to the similarly situated persons to that of the petitioner, he was provided alternate job of Telephone Operator Trainee (surface) and his pay scale was also not protected, as per the Memorandum of Settlement, pay protection will be given to only those employees who suffered mine accidents and found medically unfit, were given jobs basing on the medical certificates issued by the competent medical board on the surface in the similar post which they were holding at the time of discharge on medical grounds whereas the persons who are found medically unfit in cases other than the mining accidents were given alternative jobs as per the Memorandum of Settlement on being found medically fit for the jobs on the surface, at their request to work in any of the posts on the surface but without pay protection. But the respondent-management extended the benefits of providing alternative employment with pay protection to the

persons who are found medically unfit due to mining accidents while on job in the company.

8. The classification of medically unfit persons into two categories, viz., 1) medically unfit due to mining accidents and 2) medically unfit other than mining accidents, for providing alternate job with pay protection, is discriminatory and violative of Articles 14 and 16 of the Constitution of India. There shall be only one classification for all the employees, who found to be medically unfit and such discrimination is not permissible under Article 14 of the Constitution of the India. There is no nexus sought to be achieved by the said classification.

9. The respondent-company is also showing discrimination from person to person in providing alternative employment on the surface for the reasons best known to them and such discrimination is violative of Article 14 of the Constitution of India and if the same is allowed the employees will be deprived of financial benefits which amounts to violation of Article 21 of the Constitution of India. In the similarly placed circumstances, when this Court directed the respondents to give alternative appointment duly protecting the scale of pay as Head Overman on surface and to pay difference of wages during the period the employee worked in the lower category and also for the period out of employment, this Court finds that the petitioner herein is also entitled for the same relief

and when the post of Head Overman on surface is available, providing him the alternative job as Telephone Operator Trainee on surface when he was found to be fit to do the job on the surface and that too without pay protection, is illegal, arbitrary and violative of Article 14 of the Constitution of India.

10. During the pendency of the writ petition, the petitioner was expired and his legal representative was brought on record. Hence, to meet the ends of justice, the respondents are directed to pay the emoluments of Head Overman by duly protecting the pay scale, difference of wages during the period the petitioner worked in the lower category i.e. Telephone Operator Trainee (surface) and also for the period he was out of employment after he found medically unfit. The respondents are further directed to settle the amounts payable to the legal representative of the deceased petitioner i.e. petitioner No.2 within a period of two (2) months from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition is disposed of with the above directions. No order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand dismissed.

JUSTICE M.GANGA RAO

26-07-2018
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