

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 52 of 2019

- South Eastern Coal Fields Ltd. Through Its Chairman-Cum-Managing Director, Seepat Road, Bilaspur (CG)

---- Appellant

Versus

1. Manoj Singh Thakur S/o Late Shivnandan Thakur, Aged About 28 Years, R/o Q. No. D/s 790, Opposite Sawan Studio, Bhatgaon Area, Post Bhatgaon, District - Surguja (CG)
2. Chief General Manager Bhatgaon SECL Area, Post - Bhatgaon, District - Surguja (CG)

---- Respondents

For Appellant	:	Shri Vinod Deshmukh, Advocate
For Respondent No.1	:	Shri Gary Mukhopadhyaya, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Ajay Kumar Tripathi, CJ

11/03/2019

1. Respondent No.1 herein and his father filed a writ application challenging the action of the appellant Coal Company who held that benefit of Clause 9.4.0 of the National Coal Wage Agreement (NCWA) cannot be extended to them, to be an arbitrary and irrational decision. Clause 9.4.0 of the NCWA is relevant, therefore, the same is reproduced herein below:-

“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.”

2. In terms of the above clause, obviously keeping in mind the welfare of the workman and his family, the NCWA provided for a contingency where if a workman becomes disabled due to any injury or disease of a permanent nature, causing loss of employment, then benefit of appointment could be availed by the dependants. However, this benefit could only be availed by an employee only upto the age of 58 years.
3. During the pendency of writ application, father of respondent No.1 herein died, therefore, his name was deleted from the array of petitioners, but the matter was heard and decided in favour of the workman by the learned Single Judge by taking entirety of the facts and conduct of the appellant Coal Company.
4. The employee was suffering from High Diabetes & Hyper Tension and because of such medical condition he virtually lost his eyesight and keeping the same in mind, he filed an application on 7.1.2008 before the concerned authority of the appellant herein to consider his case and refer it to the Medical Board for declaring him to be unfit for employment. When

nothing emerged in relation to the first application of 7.1.2018, he filed a reminder on 29.8.2008, but again no decision was taken or was atleast not heard off by the respondents.

5. Learned Single Judge took note of the fact that right from the year 2007 the father of respondent No.1 was not keeping good health; he had undergone surgery at what is known as 'MGM Eye Hospital, Raipur' in the year 2008 itself and later on, he was also referred to the Shankar Netralaya, Chennai which certified that he had become blind. But for some strange reasons, the Coal Company dragged its feet and did not constitute a Medical Board. Only when the employee was on the verge of superannuation that hurriedly a medical board was constituted not only with regard to the father of respondent No.1 herein but some other employees as well. Thereafter, on the basis of office order dated 12.6.2010 it was decided that benefit of Clause 9.4.0 of NCWA could not be extended to the erstwhile employee. That seems to be the fate with regard to other four employees also whose names figured in the said order, which is Annexure R-2, filed before the learned Single Judge by the appellant.

6. Learned Single Judge took note of the submissions made on behalf of the learned counsel for the petitioners that no reason has been assigned in the said order as to why the benefit of Clause 9.4.0 could not be extended. That the appellant authorities were well aware of the health condition of the erstwhile employee right from the year 2008 and only to ensure that the employee crossed the barrier of 58 years, which would dis-entitle him from the benefit of Clause 9.4.0, that a Medical Board was constituted in the year 2010 which report anyway was neither produced before the learned Single Judge nor before us as to what was the finding

and recommendation of the Medical Board.

7. All these facts therefore led the learned Single Judge to opine that the very object and purpose behind Clause 9.4.0 provided under the NCWA has been defeated in this case since the application was filed by the erstwhile employee way back in the year 2008 by which time the doctors had already certified that the employee was suffering from “Proliferative Diabetic Retinopathy”. The most valued 'Shankar Netralaya, Chennai' had also certified in the year 2008 itself that the employee had become blind. This position also is reflected from Annexure P-2 dated 25.8.2008 issued by the Area Medical Officer of the appellant Coal Company. Therefore, the learned Single Judge was correct in taking a view that inaction or mischief practised by the appellant to rob the employee of the benefit of a beneficial clause i.e. Clause 9.4.0 of NCWA, cannot be allowed to be ignored. The facts speak for itself. The writ Court to that extent has rightly held in favour of the employee or dependants.
8. Learned counsel appearing for the appellant Coal Company submits that Annexure R-2 dated 12.6.2010 was never challenged by the erstwhile employee while he was in service and only after his superannuation, on 28.2.2011 he decided to move the High Court, therefore, the writ application ought not to have been entertained.
9. Learned counsel appearing for respondent No.1 herein submits that Annexure R-2 itself indicates that it is a confidential document and it does not show that the said decision has been communicated to any of the employees much less the father of respondent No.1 herein. He categorically denies any knowledge of such order and therefore that cannot be a ground for not entertaining the writ application, especially when the benefit provided under Clause 9.4.0 of NCWA has been

irrationally and arbitrarily denied.

10. We are satisfied that the appellant Coal Company has not been fair in dealing with such cases and extending benefit under Clause 9.4.0. It was a fit case where, in the interest of justice, the relief as prayed for was required to be allowed.

11. The appeal, thus, lacks merit and bonafides and therefore the same is dismissed.

12. Let the appellant Coal Company implement the order of the learned Single Judge without further delay.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-