

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 09/8/2019

Judgment delivered on 03/09/2019

WA No. 246 of 2016

1. Coal India Ltd Through Its Chairman Present Address Rajarhat, Kolkata (West Bengal) (address wrongly mentioned as 10 Netaji Respondents Subhash Road Calcutta in cause title of the writ petition).
2. South Eastern Coalfields Limited, Chairman- Cum- Managing Director, Seepat Road, Bilaspur, District Bilaspur (CG)
3. Deputy Manager (wrongly mentioned as Deputy Regional Manager in the writ petition), South Eastern Coalfields Limited, Hasdev Area, Ramnagar Sub Region, Anuppur (MP)

---- Appellants

Versus

- Smt. Asha Pandey W/o Anil Pandey (before marriage Asha Sharma) aged about 30 years, R/o Ravi Nagar Colony, Pouradhar, District Anuppur (MP)

---- Respondents

WA No. 474 of 2016

1. Coal India Ltd. Through Its Chairman 10 Netaji Subhash Road Calcutta (West Bengal)
2. South Eastern Coalfields Limited, Chairman-cum-Managing Director, Seepat Road, Bilaspur, District Bilaspur (CG)
3. Senior Manager (Works), Charcha Mines, South Eastern Coalfields Limited, Koriya (CG)

---- Appellants

Versus

1. Smt. Kalinta W/o Jyoti Prakash Ekka, Age 30 Years Quarter No. 1442 Vivekanand Colony Charcha Colory, Post Charcha, District Koriya (CG)

---- Respondents`

WA No. 4 of 2017

1. South Eastern Coalfields Limited Through Chairman-cum Managing Director, Head Quarter, Seepat Road, Bilaspur (CG)
2. Director Personal, South Eastern Coal Field Ltd. Head Quarter, Seepat Raod, Bilaspur (CG)
3. Sub Area Manager, South Eastern Coal Fields, Rajnagar, R.O. Sub Area Hasdeo Area, P.O. Rajnagar Colliery, District- Anuppur (MP)
4. Senior Manager (Personal), Rajnagar R.O. Sub Area, P.O. Rajnagar Colliery, District- Anupur (MP)

---- Appellants**Versus**

1. Smt. Indrawati W/o Late Sampat Singh Aged About 55 Years R/o Rajnagar Colliery, Tahsil- Kotma, P.S. Ramnagar, District- Anuppur (MP)
2. Smt. Ramkali W/o Indrapal Singh Aged About 31 Years R/o Rajnagar Colliery, Tahsil- Kotma, P.S. Ramnagar, P.O. Rajnagar, District- Anuppur, Madhya Pradesh, District : Anuppur, Madhya Pradesh

---- Respondents

For Appellants	:	Shri HB Agrawal, Sr. Advocate with Shri Vinod Deshmukh, Advocate
For Respondents	:	Shri Ajay Shrivastava & Shri Sunny Agrawal, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Order****Per Parth Prateem Sahu, J;****03/09/2019**

1. As a common question is involved in all above three appeals, therefore, they are being disposed off by this common order.
2. Appellants have challenged the order passed by learned writ

Court in different writ petitions on different dates, one of which is WPS No.4994/14, parties being Smt. Asha Pandey v. CIL & ors, wherein learned writ Court held a married daughter also to be entitled for dependent employment.

3. Brief facts relevant for disposal of these appeals are that appellant company is a public-sector government undertaking who looking to interest of its employees had entered into an agreement with the Employees' Union under which one of the issues is with respect to grant of employment to dependent of deceased employee amongst other members. Memorandum of agreement executed between the employer and employees' union has been reviewed and modified from time to time and presently 'National Coal Wage Agreement - IX' (for short 'NCWA') is in operation. A married daughter of deceased employee of appellant company filed a writ petition before the learned Single Judge challenging rejection of her application for grant of dependent employment only on the ground that she being a married daughter of deceased employee is not entitled for appointment under the scheme of dependent employment. Taking into consideration various decisions of Hon'ble Supreme Court on this issue, learned writ Court allowed writ petition by holding Clause No. 9.3.3 of NCWA - VI & Clause No. 9.4.0 (1) of NCWA - IX to be inoperative and discriminatory to the extent of excluding married daughter from consideration for dependent employment and declared the same to be void and inoperative and further directed the appellants to consider application of respective private respondent in

accordance with law.

4. Learned Senior Counsel for appellant-Company submits that NCWA is a bi-parte agreement and after considering various factors & issues by both the parties to agreement, a married daughter has been cautiously excluded from consideration for dependent employment on compassionate basis. He also submits that as after marriage the daughter leaves her parental home, therefore, she cannot be treated to be dependent on deceased employee. He also submits that in the NCWA only unmarried daughter has been made entitled for dependent employment treating her to be one of the dependent members of deceased employee, but this does not amount to discrimination between a married and an unmarried daughter of deceased employee.
5. On the other hand, learned counsel appearing on behalf of respective respondents supported the impugned order passed by learned writ Court and submitted that only on the ground of marriage of a daughter, it cannot be said that she was not dependant on deceased employee. It has further been argued that under the aforementioned clauses of NCWA, a 'son, adopted son, daughter, widow, daughter-in-law and son-in-law' have been held to be entitled and eligible for dependent employment and only 'married daughter' has been excluded from consideration for dependent employment. The exclusion of a 'married daughter' from consideration for dependent appointment is illegal and discriminatory.

6. We have heard learned counsel for the parties and perused the record.
7. Annexure P-2 is the order passed by appellant company rejecting application of a married daughter of deceased employee for grant of dependent employment solely on the ground that she happens to be a 'married daughter'. Annexure P-3 is the Memorandum of Agreement dated 31.1.2012. Clause 9.3.0 of this agreement provides for 'Employment to Dependant'. Clause 9.3.3 defines the word 'dependant' for the purpose of employment to dependant, which reads as under:-

“9.3.3. 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 deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

A bare reading of above quoted clause makes it amply clear that even a 'son-in-law', who was residing with deceased employee and almost wholly dependant on the earnings of deceased employee, has also been shown entitled for consideration for dependent employment.

8. A married daughter may also be one of the dependants of deceased employee for more than one reasons. She being only

daughter of her parents, if chooses to marry with a man who is not having any source of earning, and the family of married daughter is supported by deceased employee from his earnings or she is deserted by her husband after marriage. These are some of the examples under which a married daughter can be dependant on the earnings of deceased employee.

9. The aforementioned act of appellant company clearly shows that a gender discrimination is created by it in providing dependent employment. For providing dependent employment to a son of deceased, there is no condition that he should be unmarried. Further, instead of granting dependant employment to the married daughter of deceased employee, the NCWA provides that a son-in-law will also be entitled to dependant employment.

10. Constitution of India provides protection from discrimination, equal opportunities of employment and right to adequate means of livelihood for all citizens, men and women. Article 14 of the Constitution of India provides for equality before law, which reads as under:-

“14. Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

11. Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth, whereas Article 16 gives the right of equality in public employment. Article 16 (1) & (2) are extracted herein below for ready reference;-

“16. Equality of opportunity in matters of public

employment.- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

A bare reading of above mentioned constitutional provisions makes it clear that all the citizens, men & women, are equal before law and entitled for equal opportunity for employment irrespective of their religion, race, caste, sex, descent, place of birth, residence etc.

12. Article 39 of the Constitution of India lays down certain principles of policy to be followed by the State. Article 39 (a) & (b) reads thus;-

“(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(d)that there is equal pay for equal work for both men and women.”

13. In view of the above, the appellant company, which is a public-sector undertaking company, is a State within Article 12 of the Constitution of India, has certain principles of policy to be followed. Much more duty is cast upon the appellant to act and apply all the constitutional provisions strictly in all the fields. The appellant is duty bound to act in such a manner that there cannot be any discrimination and to provide equal opportunity to men and women in all sorts of employment so that all the citizens have the right to an adequate means to livelihood. The appellant by excluding 'married daughter' only from considering them for dependant employment amounts to gender discrimination and

violative to constitutional provisions and therefore the same cannot be allowed to stand. In the matter of Charu Khurana & ors v. Union of India & ors reported in (2015) 1 SCC 192, Hon'ble Supreme Court while dealing with the issue of discrimination only on the basis of gender, has held as under:-

“44. As is evincible, the Respondent No. 5-Association has been registered under the Trade Unions Act having registration No. 1871. Its aims and objects are as follows:

- a) To organize and unite the Motion Picture Costume Artist's Make-Up Artist's and Hair Dressers and their Assistants with a view to protect their interests.
- b) To secure to the members fair conditions of life and services and to protect them from unfair labour practice in the Trade, keeping the relations with other Trade Unions in the Film Industry.
- c) To try to standardize minimum wages and contractual remuneration, as devised from time to time.
- d) To try by all legal means to redress their grievances.
- e) To endeavour to regulate the relations of the members among themselves as and for their employers, and to secure them fair conditions of life service and career.
- f) To endeavour to secure compensation for members in case of accidents under the Workmen's Compensation Act.
- g) To provide the members against unemployment, sickness, infancy, old age if funds permit.
- h) To provide legal assistants to members in respect of matters arising out of or incidental to their employment if in the opinion of the Executive Committee it is found necessary and expedient.
- i) To endeavour to render aid to the members during any strike or lockout brought about with the sanction of the Association.
- j) To co-operate and federate with other Organisations in India and abroad having similar object.
- k) To help in accordance with Indian Trade Unions Act, working classes in India and outside in the promotion of the objects mentioned in this

clause.

45. The Association has its own bye-laws. Clause 4 of the bye-laws reads as follows:

“4. Membership: Membership of the Association shall comprise of Make-up men, Costume men, and Hair Dressers who were admitted as members by the Association & who continue to be members 14.4.85 and all those who shall be admitted hereafter Under Clause 6 & 7 of the constitution of the Association including the membership in Family Relief fund, provided he/she agrees & abide by the rules & sub-rules that may form by the Association from time to time.

Clause 6 deals with admission of new members. It reads as follows:

“**6.ADMISSION of NEW MEMBERS:** Any person desiring to become the member of the Association who has attained the age of majority of 18 and who possess a good moral character shall send an application in prescribed form and duly recommended by two members with its prescribed fees.

A. Applicant should have been a resident of Maharashtra at least for 5 years.

B. Son or Daughter of members who have completed 15 years of membership shall be eligible to be enrolled as members of the Association, provided they fulfil other conditions relating to age and domicile status of 5 years in the State of Maharashtra.

46. These bye-laws have been certified by the Registrar of Trade Unions in exercise of the statutory power. Clause 4, as is demonstrable, violates Section 21 of the Act, for the Act has not made any distinction between men and women. Had it made a bald distinction it would have been indubitably unconstitutional. The legislature, by way of amendment in Section 21A, has only fixed the age. It is clear to us that the clause, apart from violating the statutory command, also violates the constitutional mandate which postulates that there cannot be any discrimination on the ground of sex. Such discrimination in the access of employment and to be considered for the employment unless some justifiable riders are attached to it, cannot withstand scrutiny. When the access or entry is denied, Article 21 which deals with livelihood is offended. It also works against the fundamental human rights. Such kind of

debarment creates a concavity in her capacity to earn her livelihood.

51. Presently, we shall advert to the law laid down in ***Vishaka*** case. The Court referred to the 1993 Treaty and opined that the meaning and content of Fundamental Rights in the Constitution are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. In that context, the Court observed thus:

"14....The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in *Minister for Immigration and Ethnic Affairs v. Teoh*. 128 ALR 535, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia".

The three-Judge Bench, while noting the increasing awareness on gender justice, took note of the increase in the effort to guard against such violations. The Court observed that when there is violation of gender justice and working woman is sexually harassed, there is violation of the fundamental rights of gender justice and it is clear violation of the rights Under Articles 14, 15 and 21 of the Constitution.

52. Thus, the aforesaid decision unequivocally recognises gender equality as a fundamental right. The discrimination done by the Association, a trade union registered under the Act, whose rules have been accepted, cannot take the route of the discrimination solely on the basis of sex. It really plays foul of the statutory provisions. It is absolutely violative of constitutional values and norms. If a female artist does not get an opportunity to enter into the arena of being a member of the Association, she cannot work as a female artist. It is inconceivable. The likes of the Petitioners are given membership as hair dressers, but not as make-up artist. There is no fathomable reason for the same. It is gender bias writ large. It is totally impermissible and wholly unacceptable."

14. While discussing this issue in detail, learned writ Court has taken into consideration the decision of Hon'ble Supreme in the matter of Savita Samvedi (Ms) and another v. Union of India & ors reported in (1996) 2 SCC 380, which reads as under:-

"16. In the matter of Savita Samvedi (Ms) and another v. Union of India and others⁶, Their Lordships of the Supreme Court have quoted following saying with approval-

"6. A common saying is worth pressing into service to blunt somewhat the Circular. It is - "A son is a son until he gets a wife. A daughter is a daughter throughout her life."

Their Lordship further held that provision in Railway Board Circular restricting the eligibility of married daughter, of the retiring official, only to cases where such official has no son or the daughter is the only person prepared to maintain the parents and the sons are not in a position to do so, suffers from gender discrimination by holding as under:-

"7. The retiring official's expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he was only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularization of railway accommodation. It is only in the case of more than one children in Railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the railways authorities irrespective of the gender of the child. There is no occasion for the railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his

parents. The railway Ministry's Circular in that regard appears thus to us to be wholly unfair, gender biased and unreasonable, liable to be struck down under Article of the Constitution. The eligibility of a married daughter must be placed at par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, above-quoted."

15. Learned writ Court has also taken into consideration other decisions of Hon'ble Court passed in Indra Sarma v. VKV Sarma reported in (1998) 8 SCC 296; Air India Cabin Crew Assn. v. Yeshaswinee Merchant reported in (2003) 6 SCC 277; Shreejith L. v. Director of Education, Kerala reported in (2012) 7 SCC 248; Malathi Ravi, MD v. B.V. Ravi, MD reported in (2014) 7 SCC 640; Charu Khurana v. Union of India reported in (2015) 1 SCC 192; National Legal Services Authority v. Union of India reported in (2014) 5 SCC 438, and held thus;

"28. Thus, from the aforesaid case it is quite vivid that marriage is a social circumstance and basic civil right of man and woman, and marriage by itself is not a disqualification. Thus, denial of dependent employment to married daughter of SECL employee is gender biased, unreasonable and violative of Articles 14 and 15 of the Constitution of India and it is clearly impermissible in law, as such, a clause in the National Coal Wage Agreement excluding consideration of married daughter for dependent employment, which has the force of law, is unjust, unfair and opposed to law."

16. So far other ground raised by learned Senior Counsel for appellant that NCWA is binding on both the parties is concerned, the said proposition is not in dispute but clauses of agreement should be in conformity with the constitutional provisions.

17. In view of the above mentioned constitutional provisions and verdicts of the Hon'ble Supreme Court on the subject-matter, we do not find any infirmity in the order passed by learned writ Court in WPS No.4994/15 and other subsequent orders passed relying on the order passed in WPS No.4994/15.
18. It is made clear that the writ Court after holding part of Clause 9.3.3 of NCWA -VI and Clause 9.4.0 (1) of NCWA - IX to be void and inoperative to the extent it excludes married daughter from consideration for dependent employment, directed appellant company to consider the claim of petitioners therein for dependent employment afresh, in accordance with law. Said direction of the writ Court is only with regard to consideration of claim for dependent employment and to grant the same subject to fulfilment of other requirements of becoming entitled for dependent employment as prescribed in Clause 9.3.3 of NCWA- IX.
19. For the foregoing discussions, we do not find any substance in both the appeals, the same are liable to be dismissed and are hereby dismissed.

Sd/-
(P.R. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-