

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.Nos.44170 & 43732 of 2016, 16007, 16011, 16015, 16019, 2917, 2931, 2976, 3375, 3516 of 2019, 3629, 8377, 8388, 8955, 18588, 18591, 21653, 24750 of 2017, 36635, 36914 of 2018, 1116, 2929, 2964, 2967, 2973, 3369, 3497,3946, 3991, 8243, 8261, 8263, 8269, 8304, 8310, 8312, 8331, 8738, 8761, 9110, 9566, 10660, 10662,10663, 10664, 10665, 10666, 10667, 10669, 10671, 10673, 10674, 10677, 10678, 10896, 10882, 11101, 11114, 11469, 11530, 11850, 11998,12767, 14411, 14415, 14448, 14451, 14465, 14467, 14736, 14777, 14804, 15294, 15306, 15368, 15431, 15449 and 15486 of 2019

COMMON ORDER

Since the issue involved in all these writ petitions is one and the same, they are being heard and disposed of together by this common order.

The petitioners in all these writ petitions are employees of Singareni Collieries Company Limited. Since they are suffering from one ailment or the other, they were referred to the Medical Board and the Medical Board has declared the petitioners as medically unfit.

Learned counsel appearing for the petitioners submits that National Coal Wage Agreement-VI has been entered into between the managements of the coal companies and some of the Central Trade Unions and as per the above agreement, as a social security measure, certain issues have been incorporated in the settlement more particularly in respect of medically unfit persons. Clause 9.4.0 of National Coal Wage Agreement reads as under:

“Employment to one dependant 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 dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant 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.

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

(iv) The dependants 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.”

Learned counsel appearing for the petitioners further submits that the petitioners have submitted representations seeking employment to their wards, but the respondent-company has

rejected their cases on the ground that their left over service is less than two years. It is contended that the petitioners in all these writ petitions have crossed 58 years and that while declaring the petitioners as medically unfit, the Medical Board ought to have categorized the petitioners and if the employees fall within Clause (i) of 9.4.0, then they would be entitled for dependant employment and if the employees fall within Clause (ii) of 9.4.0, then the dependants of the petitioners would not be entitled for dependant employment however, they are entitled to certain compensation. It is submitted that the action of the respondents in not certifying or categorizing the petitioners to see whether they would come within Clause (i) or (ii) of 9.4.0, is arbitrary and illegal and that without categorizing the nature of disability, the respondents have erroneously rejected the cases of the petitioners for dependant employment. It is contended that the respondents should forward the medical certificates of the petitioners to the competent Medical Board so as to enable the Medical Board to categorize the employees as to whether they fall within Clause (i) or (ii) of 9.4.0.

Learned Additional Advocate General appearing for the respondents submits that the cases of the petitioners and other employees would be considered and appropriate orders

would be passed after their categorization as per Clause (i) and (ii) of 9.4.0 and based upon the Medical Board opinion.

Having considered the rival submissions made by the learned counsel on either side, these Writ Petition are disposed of directing the respondents to once again forward all the medical invalidation certificates to the competent Medical Board so as to decide as to whether the petitioners/employees fall within Clause (i) or (ii) of 9.4.0 and after re-assessing/re-categorizing the employees, the respondents shall accordingly act in terms of the National Coal Wage Agreement-VI and pass appropriate orders in accordance with law. The entire exercise should be completed within three months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

30th June, 2019
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