

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5129 of 2020**

Ramkeli D/o Late Genduram Aged About 47 Years R/o Hiragir Dafai,
Haldibadi, P.S. Chirmiri, P.S. Chirmiri, District- Koriya, Chhattisgarh, District
: Koriya (Baikunthpur), Chhattisgarh

---- Petitioner**Versus**

1. South Eastern Coalfields Limited Through Chairman Cum Managing Director South Eastern Coalfields Ltd. Head Office, Seepat Raod, Bilaspur, Chhattisgarh
2. Director (Personnel), South Eastern Coalfields Limited, Head Office, Seepat Raod Bilaspur, Chhattisgarh
3. Chief General Manager, South Eastern Coalfields Limited Chirmiri Area, District Koriya, Chhattisgarh
4. Sub Area Manager, South Eastern Coalfields Limited, Ncph Colliery, Chirmiri Area, District- Koriya, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. N. Naha Roy, Advocate
For Res.-SECL	:	Mr. V. R. Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

09/12/2020

1. The challenge in the present writ petition is to the order Annexure P-1 dated 07.11.2020 whereby the petitioner's candidature for appointment under the scheme for dependent employment has been rejected. The reason for rejecting the candidature of the petitioner was that when the petitioner was subjected to age determination it was found that she was

more than 47 & ½ years of age and whereas the maximum upper age limit for grant of employment is 45 years under the respondents.

2. The ground of challenge by the petitioner is that applying the doctrine of relating back petitioner's age should have been considered on the date when the petitioner first approached the respondents for grant of appointment and if not at least the age at which the petitioner had approached this High Court for appropriate direction to the respondents. According to the petitioner both when she had first applied for dependent employment so also when she had approached this High Court in the earlier round of litigation i.e. by WPS 3092/2013, she was well within the permissible age limit for grant of employment. However, the writ petition could only be disposed of on 10.12.2019 and therefore the pendency of the writ petition for a considerable period of time before the High Court should not be the hurdle in the case of petitioner from being denied employment.
3. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of Inderchand Jain (Dead) through LRS. Vs. Motilal (Dead) Through LRS., 2009 14 SCC 663 in this regard highlighting the observations of the Supreme Court wherein it says that the doctrine of relating back has to be considered on the date of institution of suit.
4. Per contra opposing the petition learned counsel for the respondent submits that so far as dependent employment is considered the authorities concerned are bound to follow the rules, regulations and scheme applicable for dependent employment under the respondents. The recruitment rules prescribes an upper age limit for grant of employment. According to the counsel for the respondents, immediately after this Court on 10.12.2019 disposed of the said writ petition WPS 3092/2013 the respondents have promptly complied with the directions of this Court and considered the claim of the petitioner, however in the course of considering

the claim of the petitioner she was found to be more than 45 years of age and therefore the respondents have expressed their inability in providing dependent employment. It is the further contention of the counsel for the respondent that even on the date when the writ petition was disposed of earlier on 10.12.2019 the petitioner stood overaged for being considered for employment and therefore the decision of the respondents while passing the impugned order does not warrant interference.

5. Having heard the contentions put forth on either side and on perusal of record some of the admitted factual matrix of the case as it stands is that the petitioner is a married daughter of the deceased late Genduram. The Late Genduram was an employee who died in harness on 24.11.2010. The petitioner had made a claim for dependent employment with the respondents which was not considered at the first instance on the ground that petitioner was a married daughter who does not fall within the categories envisaged under the NCWA for dependent employment under the respondents, leading to the filing of WPS 3092/2013.
6. Admittedly during the said period when the petitioner had sought for dependent employment there was no provision for grant of employment to a married daughter. It is subsequently that Co-ordinate Bench of this Court in WPS 4994/2015 in the case of **Asha Pandey Vs. Coal India Ltd. & Others** decided on 15.03.2016 for the first time held that even a married daughter is entitled for being considered for dependent employment. Based upon which the writ petition which was preferred by the petitioner came up for hearing on 10.12.2019 and was disposed of directing the respondents to consider granting of appointment to the petitioner under the scheme for dependent employment.
7. All said and done, once when there is a specific scheme framed by the respondents for grant of appointment and scheme prescribes for upper age

limit as also the minimum age limit, unless the scheme is challenged got declared as bad or modified, the respondents are bound to consider the claim for compassionate appointment strictly in accordance with the scheme applicable.

8. Moreover, what needs to be considered at this juncture is that so far as granting of dependent employment is concerned the same can only be in accordance with the scheme or rule applicable under the respondents. Neither the Court nor the authorities under the respondents have power to dilute the rules and regulations governing the field.
9. As regards, the judgment which has been cited by the learned counsel for the petitioner what has to be seen is the fact that from a plain reading of the first paragraph of that judgment itself would reveal that same has been pronounced under entirely different contextual background. Moreover, the same was not under the service law jurisprudence. The Dispute therein arose purely involving the interpretation of the provision of the CPC which cannot in a straight jacket formula applied in the service law jurisprudence where there are specific rules, regulations, guidelines and schemes formulated by the employer for smooth running of the establishment.
10. In the process if the employer has fixed an upper age limit so also the lower age limit, unless the same is held to be bad any decision taken by the respondents within the four corners of the said scheme cannot be held to be in any manner erroneous or contrary to the rules.
11. For the aforesaid reasons, this Court does not find any strong case made out calling for an interference with the impugned order. The writ petition fails and stands accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge