NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

Judgment reserved on 06.01.2020

Judgment pronounced on 06.03.2020

Writ Appeal No. 541 of 2019

(Arising out of Order dated 20.08.2019 passed by learned Single Judge in WPS-3605 of 2017)

- Smt. Rampati Devi, W/o Late R. N. Chauhan, Aged About 57 Years, R/o MQ/A-40, Balgi Project, District - Korba, Chhattisgarh, Through Sandeep Kumar Chauhan, S/o Late R.N.Chauhan, A/a 27 Years, R/o MQ/A-40, Balgi Project, District - Korba, Chhattisgarh. (The Appellant Is Mentally Unfit, Therefore This Petition Is Being Filed Through Her Son)

---- Appellant

Versus

1. South Eastern Coalfields Limited Through Its Managing Director, Headquarter, Seepat Road, Bilaspur, Chhattisgarh
2. Coal India Limited Through Its Chairman, 10th Netaji Subhash Road, Kolkata, West Begal
3. The Manager (Personnel) SECL, Balgi Project, SECL, District - Korba, Chhattisgarh
4. The Sub-Area Manager SECL, Balgi Project, District - Korba, Chhattisgarh

----Respondents

For Appellant	:	Shri Arvind Dubey, Advocate
For Respondents	:	Shri KK Shrivastava, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Heard Shri Arvind Dubey, learned counsel for the appellant and Shri KK Shrivastava, learned counsel for the respondents on IA-1 of 2019, which is an application for condonation of delay of 16 days in filing this appeal. For the reasons assigned in the application, we find that the appellant has satisfactorily explained the delay. Application for condonation of delay is allowed and the delay in filing appeal is hereby condoned.

2. Challenge in this appeal is to the order dated 20.08.2019 passed in WPS-3605 of 2017, whereby the Writ Petition seeking direction to the respondents-SECL to consider appellant's application for voluntary retirement under the scheme floated by respondents known as 'Coal India Special Female Voluntary Retirement Scheme-2015 (For brevity, SFVR Scheme) was dismissed.

3. Facts of the case, in a nutshell, are that appellant - Rampati Devi was initially appointed on 31.05.1991 as Gota Maker (General Mazdoor) Category-I. During the course of service, she was given benefit of service linked promotion from time to time and has been posted and working as Gota Maker General Mazdoor Category-II.

4. Respondent- 2 vide Office Memorandum dated 04.05.2015, had brought SFVR Scheme-2014 (revised), wherein it was mentioned that daily rated workers- General Mazdoor (Categories- I, II, III, IV and V) along with other categories may be considered for acceptability under this Scheme.

5. Appellant herein also moved an application on 07.02.2016 for benefit of SFVR Scheme. Her application was not considered on the ground that the Scheme is for unskilled Mazdoor and she being posted as 'Clay Cartridge Maker GrII' (CC Maker- GrII), which is semi-skilled Mazdoor.

6. Non-consideration of application submitted by the appellant under the Scheme made her to approach this Court by way of filing WPS-3605 of 2017 with following reliefs :

> "10.1 That, this Hon'ble Court may kindly be pleased to call for entire records pertaining to the case of the petitioner.
>
> 10.2 That this Hon'ble Court may kindly be pleased to direct the respondent authorities to forthwith take decision on the claim of petitioner for voluntary retirement, strictly in accordance with the guidelines/scheme prevailing in SECL and also considering the fact that the identically placed employees have been granted voluntary retirement.
>
> 10.3 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to forthwith release unpaid half salary from 20.08.2016 to till date.
>
> 10.4 That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the cost of the petition may be given."

7. The grounds taken in the Writ Petition are that other similarly placed Mazdoor workers have been extended benefit of SFVR Scheme but the appellant herein has been denied the same, which came to the knowledge of her son, and after getting relevant documents under RTI Act, had filed Writ Petition.

8. Respondent-SECL submitted its reply and pleaded that coverage of SFVR Scheme will apply to the regular/permanent and unskilled female employees only and modification of the Scheme came on 20.03.2017, which was having the effect only to the applications that were received and remained pending within the life of the Scheme ie from 26.11.2014 to 25.05.2015.

9. Appellant was working as Clay Cartridge Maker GrII and as per nomenclature /Job discretion and categorisation of Coal employees under NCWA (National Coal Wages Act), the designation on which appellant is working comes within the purview of semi-skilled employees and therefore, benefit of SFVR Scheme will not be extended to the appellant.

10. It is not the case that application of appellant only is not considered, but out of total 106 applications received for getting benefit of SFVR Scheme, only 30 applications were accepted and 74 applications were rejected. Appellant has already availed one year special leave in total (special leave of six months on two occasions) as per clause of NCWA (National Coal Wage Agreement). The claim of monetary benefit of half salary cannot be granted to the appellant as she remained un-authorised absent.

11. Along with rejoinder, appellant submitted letter dated 05.12.2018 in which it was mentioned that she was going to attain age of superannuation on 31.05.2019.

12. Writ Petition filed by the appellant came up for hearing before the learned Single Judge on 20.08.2019 and learned Single Judge taking note of the fact that date of superannuation of appellant was 31.05.2019 as mentioned in Annexure P12 order of SECL dated 04.12.2018 and at that juncture, relief sought for cannot be given and further observing that appellant's application rendered to be infructuous for the aforementioned reason, disposed off the Writ Petition granting her liberty to approach respondents-SECL for sympathetic consideration of her application on medical grounds. This order is under challenge in this appeal.

13. Shri Arvind Dubey, learned counsel appearing for the appellant submits that appellant was appointed as Gota Maker General Mazdoor Category I and now working as Clay Cartridge Maker GrII. Respondent-SECL brought into SFVR Scheme ie effective for a period of six months from the date of its notification ie w.e.f.16.12.2015. Life of this Scheme as mentioned in Annexure R5 is of six months from the date of its notification. Coverage of this Scheme as shown in part of Annexure R5 is applicable to regular/permanent and unskilled female employees of the Company. In pursuance to the Scheme, Coal India Limited, SECL wrote a letter to all its Directors, Chief General Managr, General Manager, Executive Director etc., of all areas within the working territory of SECL for its implimentation. Under the scheme floated by the SECL, it has been specifically mentioned that the scheme shall be applicable to regular/permanent and unskilled female employees of the Company, considered surplus to the requirement. The applications to be submitted within the first three months and those applications after scrutinisation at area level to be sent/forwarded to the Office of General Manager, SECL Bilaspur. Appellant submitted her application within time. Perusal of the scheme itself shows that benefit of the scheme will be extended to female regular/permanent and unskilled labour. He further submits that the appellant was facing with some mental disorder and she also attacked one of her co-employees. She was under continuous treatment at Mental hospital, Ranchi and in hospital of SECL. It was because of this reason that she had made an application for availing benefit of SFVR Scheme.

14. Respondents-SECL categorically contended and submitted reply mentioning therein that the appellant being working as Clay Cartridge Maker Category II, will not fall within the parameters of SFVR Scheme. It is also pointed out that there was separate cadre Scheme of Clay Cartridge Makers which was also circulated by Member Secretary JBCCI (Joint Bipartite Committee for the Coal Industries) NCWA-VII as Annexure R11 and the service linked upgradation ie SLU was granted to appellant on 30.08.2008. She has been given promotion from Gota Maker GrI to Clay Cartridge Maker GrII. Only General Mazdoor Category I comes within the unskilled labour and General Mazdoor Category II and particularly the post on which the appellant is working comes within the zone of semi-skilled Mazdoor. Appellant's promotion order is filed as Annexure R12. List of employees whose applications were considered as submitted by the appellant will not be applicable to this case, as the said list is of other company ie Western Coal Fields Limited.

15. Based on the above submissions, learned counsel for the respondents-SECL further contended that learned Single Judge has rightly not considered the claim of appellant as she stood retired from her services prior to the date of hearing of Writ Petition and further it is submitted that even on merits, the appellant is not entitled to get the benefit of SFVR Scheme, she being Clay Cartridge Maker Gr II, which comes under category of semi-skilled Mazdoor.

16. We have heard Shri Arvind Dubey, learned counsel for the appellant and Shri KK Shrivastava, counsel for the SECL and also perused documents placed on record in support of their pleadings.

17. It was not disputed by learned counsel for the appellant that the appellant on the date of filing her application dated 07.02.2016, was working as Clay Cartridge Maker GrII. As per the documents enclosed by respondents/SECL in Annexure R11 dated 31.08.2007 in this appeal, the said cadre scheme has been shown at Annexure XXX, only the Cartridge Maker Gr I is through direct recruitment and thereafter, as per the scheme of service link promotion; employee of this cadre is to be promoted within the cadre on promotion by considering their merit by Department Promotion Committee (DPC) to Category II, III, IV, V and VI.

18. Nomenclature, Job description and categorisation of Coal employees is also available on record. In this document, subjects have been mentioned as daily rated workers, technical and supervisory staff, Piece-rated workers, Clerical staff, etc. Under the head of Daily Rated workers, Category I has been shown as unskilled, Category II has been shown as Semi-skilled lower, Category III has been shown as Semi-skilled higher, Category IV has been shown as Skilled Jr, Category V as Senior and Category VI as higher scale.

19. From reading the above classification/categorisation of daily rated workers, Mazdoors only under Category I are mentioned as un-skilled. Undisputedly, appellant was working as Clay Cartridge Maker Gr II, on the date of submission of her application, which comes under the head of

Semi-skilled lower. From the above Nomenclature/Job Description and Categorisation of Coal employees list, appellant comes within the category of Semi-skilled (lower) worker/Mazdoor, and not as un-skilled worker/Mazdoor. Therefore, the contention made by learned counsel for the appellant that she being unskilled worker/Mazdoor, is entitled for the benefit of SFVR Scheme is not sustainable.

20. Now, if we go through the SFVR Scheme as floated by the Coal India Limited, ie respondent-2, this scheme is known as 'Coal India Special Female Voluntary Retirement Scheme, 2015' floated on 16.12.2015, effective for six months from the date of its notification. Under the coverage Clause, it has been mentioned that the scheme shall apply to regular/permanent and unskilled Female employees of the Company, **considered of surplus to the requirement**. From perusal of the scheme, it is clear that female employee had to meet out three requirements as mentioned therein the Scheme; the 1st she should be regular/permanent employee; the 2nd unskilled; and the 3rd to be considered of surplus to the requirement. Earlier Office Memorandum dated 04.05.2015 issued under the Scheme itself mentioned competent authority as the Director (Personnel) of SECL of the respective subsidiary and further, clause is also provided, wherein the right not to grant this benefit for reasons to be recorded in writing has been granted to the management.

21. On going through the clauses of scheme it is clear that all the categories of labour/Mazdoor are not entitled for taking benefit of SFVR Scheme. Applicants applying for this Scheme should be unskilled female employees and have to be surplus to the requirement, which are the two important components to be considered by the Management. In the Scheme it is also given that it is not mandatorily applicable to all the categories of Mazdoor, *Ipso facto.* Rights have also been given to the management not to grant the benefit of this scheme to any employee opted for it.

22. Argument rendered by learned counsel for the appellant showing that other similarly placed employees have been given benefit of SFVR Scheme is of other subsidiary Coal Company, not of SECL. The list enclosed along with the appeal Annexure P5 is issued by other Coal Fields Limited, therefore, appellant cannot claim benefit of the Scheme as a matter of right as granted by other Coal Companies. The employee of other subsidiary company cannot claim parity. The Hon'ble Supreme Court in case of **All India ITDC Workers' Union Vs ITDC** reported in 2006 (10) SCC 66 held that over the one unit of company cannot claim parity with employee of his second company and held thus:

> "29. The employees have also challenged the non-implementation of VRS in respect of the employees of Hotel Agra Ashok. In our view, the petitioners/employees cannot claim parity in respect of other employees working under ITDC in different properties who have been granted benefits under VRS as the scheme was never made applicable to the employees working with the present property. No disclosure of any such introduction of VRS was given by ITDC at the time of sale, neither was any amount to be deposited by the purchaser. We are, therefore, of the opinion that respondent Nos. 4 and 5 is under no obligation to float the VRS scheme because in para 9(4), the VRS has to be given only when company retrenches its regular employees. But here the company is ready to continue with its employees with the same terms and conditions mentioned in

the share purchase agreement. The employees are unwilling to continue on the same terms and, therefore, they cannot compel the management to introduce VRS scheme. When the share purchase agreement was executed with respondent No.5, then there was no scheme introduced for grant of VRS because prior to the sale the petitioners were employees of ITDC and not of Hotel Yamuna View Limited. They have already objected their transfer to Hotel Yamuna Private Limited. The petitioners are demanding VRS from ITDC because as per the orders dated 13.12.2001 and 05.03.2002 of the Allahabad High Court, the employees of Hotel Agra Ashok cannot be transferred to the new company Hotel Yamuna Private Limited. With intention to escape the liability of contempt, the ITDC specifically asked the buyer to maintain the service conditions of the employees on the same terms by entering into a share purchase agreement, however, no condition in this agreement was mentioned for offering VRS. In other words, a VRS scheme for employees of Ashok Travels & Tours was introduced by circular dated 02.03.2001 but there was no policy for VRS regarding Hotel Agra Ashok. Also under Clause 8 of the said circular regarding introduction of VRS, it is clearly stated that the scheme does not confer any right whatsoever on any employee to have their request for voluntary retirement accepted. The respondent has also no such obligation under para 94 (IV).

30. This Court in a recent judgment in the case of Board of Trustees, Visakhapatnam Port Trust & Others vs. T.S.N. Raju and Another, 2006 (9) Scale 55 (Dr. AR. Lakshmanan and Tarun Chatterjee, JJ) while considering the scheme of voluntary retirement applicable to Port Trusts considered the scope of entitlement to avail the benefit of the scheme. This Court held that the Chairman of the Port Trust has absolute right either to accept or not to accept the applications filed by the employees for retirement and the request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. This Court held in para 35 as under: (SCC p. 679, para 34)

> "In our opinion, the request of the employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. The Port Trust Authorities had the absolute discretion whether

> to accept or reject the request of the employee seeking voluntary retirement under the scheme. There is no assurance that such an application would be accepted without any consideration. The process of acceptance of an offer made by an employee was in the discretion of the Port Trust. We, therefore, have no hesitation in coming to the conclusion that the VRS was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an offer."

23. The Scheme floated by respondent- 2 Coal India Company Limited itself specifies that this is applicable to unskilled Mazdoor/workers who are considered surplus to the requirement and further, the right of granting the benefit of Scheme has been reserved with the Management of concerned Company, where the applicants are working. The right not to grant the Scheme for reasons to be recorded in writing is exclusively with the management. In the case at hand, as per the documents available on record, appellant was working as Clay Cartridge Maker GrII in the year 2016. In the Nomenclature of NCWA filed as Annexure R2, this category has been shown as semi skilled (lower) workers and therefore, appellant's application was rejected by order dated 10.06.2017. Only unskilled female employees are eligible for this scheme, whereas, the appellant is working as Clay Cartridge Maker GrII (semi-skilled) daily rated worker and not entitled for the scheme. The reason has been assigned by the respondents in their reply, for not accepting the application submitted by the appellant under SFVR Scheme.

24. Learned counsel for the appellant made only submission before us with regard to the rejection of her application for SFVR Scheme and no other ground has been raised by him before us.

25. From the above, we are of the considered opinion that on the date of submission of her application for getting benefit of SFVR Scheme, the appellant was working as Clay Cartridge Maker GrII, which comes under category of semi-skilled (lower) as per nomenclature of respondent Company, whereas, scheme was for unskilled female Mazdoor. Respondent-SECL rejected the application of as many as 47 employees submitted before them who were Category-II, III, IV Mazdoor etc. The application of the appellant has not been treated differently. There is no discrimination and arbitrariness in the action of respondent.

26. In view of above discussion, we do not find any merit in this appeal.

27. Accordingly, the appeal being devoid of any substance, it is hereby dismissed. However, appellant will be at liberty to make an application afresh for grant of unpaid half salary from 10.08.2016 within a period of 4 weeks and if such an application is submitted by the appellant before respondents-3 and 4, same shall be decided by a speaking order within further period of three months from the date of receipt of application/representation. Liberty already granted to the appellant by learned Single Judge to approach the department for sympathetic consideration on medical ground is reserved with the appellant.

28. Ordered accordingly.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma