

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

Writ Petition Nos.42417, 42418 of 2018; 1734, 8475, 8485, 8491, 8494, 8524, 8732, 8741, 8916, 9106, 9564, 9994, 10300,10679, 10757,10763, 11090, 11213, 11287, 12316, 12755, 13008, 14898, 14914, 14923, 14950, 15238, 15251, 15255, 15271, 15289, 17049, 17245, 17246, 17252, 17525, 17565, 17577, 17594, 17669, 17686, 17689, 17715, 17719, 17751, 17885, 17928, 17930, 17953, 17956, 17963, 17980, 18000, 18118, 18162, 18277, 18278, 18303, 18334, 19244, 19245, 19350, 19919, 20740, 20744, 20745, 20751, 21068, 21222, 21646, 21647, 21678, 21839, 22097, 22347, 22349, 22436, 22618, 22624, 22900, 23486, 23495, 23502, 23512, 23534, 23541, 23542, 23543, 23578, 24326, 24389, 25063, 25064, 25657, 25688, 26407, 27033, 27560, 27563, 28175, 28562 of 2019; 1008, 1118, 1689, 2083, 2610 and 3713 of 2020.

COMMON ORDER:

Petitioners are employed by the Singareni Collieries Company Limited (hereinafter referred to as 'the SCCL'). Claiming that they were not keeping good health, they applied to subject them to medical examination to test their fitness to continue in the employment. Accordingly, petitioners were examined by the Corporate Medical Board (the Board) of the SCCL. The Board found that petitioners are not fit to work in the job held by them, for most of them in the underground mine. However, the Board declared them fit to work on the surface instead of underground/another surface job. Accepting the report of the Board, the petitioners were declared as medically unfit to continue in the job held by them at the time of medical examination and provided alternative job on the surface. Petitioners are not satisfied with the course adopted by the

SCCL management and instituted these writ petitions. Petitioner claim that having declared them unfit to hold the present job, they should be retired on medical grounds and their dependent should be provided employment.

2. In this batch of writ petitions, based on the prayers sought, they can be grouped into three categories. For convenience, in each category prayer in one writ petition is extracted, i.e., W.P No. 42417 of 2018 (Category I), W.P No. 10757 of 2019 (Category II) and W.P. No. 17245 of 2019 (Category III).

(i) Category I cases are:— W.P.No.s 42417/2018, 42418/2018, 11287/2019, 17885/2019, 2083/2020 and 3713/2020.

Prayer in W P No. 42417 of 2018 reads as under:

.....to issue a Writ Order or Direction more particularly a Writ of Mandamus declaring the action of the 4th respondent in declaring me as medically fit for duties as per the result declared on 18 07 2018 without conducting proper medical examination by the specialist even though the petitioner is not able to perform his duties in view of various ailments and not sending the petitioner to Corporate Medical Board for medical reexamination as per the representation submitted by him on par with other similarly situated employees as illegal arbitrary abuse of process of law violation of principles of natural justice and discrimination and set aside the result of the Corporate Medical Board dated 18 07 2018 in so far as the petitioner is concerned who was shown at Sl No 187 and consequently direct the respondents to conduct medical reexamination on the petitioner as per the directions issued by this Honble Court in Writ Appeal No 1080 of 2017 and batch dated 06 09 2017 and W P No 38451 of 2015 and batch dated 22 06 2016 by considering the representation submitted by him in the interest of justice and pass

(ii) Category II cases are:— W.P.No.s 10757/2019, 10763/2019, 12316/2019, 15238/2019, 15251/2019, 15289/2019, 17049/2019, 21646/2019, 21647/2019, 21678/2019, 21839/2019, 27560/2019, 27563/2019, 2610/2020.

Prayer in W P No. 10757 of 2019 reads as under:

.....to issue a writ Order or Direction more particularly one in the nature of Writ of Mandamus declaring the decision dated 21 05 2019 of the respondents Corporate Medical Board in declaring the petitioner as Medical Unfit for Under Ground and Fit to work as General Mazdoor on surface intended with a view to avoid dependant employment to the family member as per existing scheme which benefit was provided to similar to the petitioner provided dependant employment thereby denying to extend the said benefit to the petitioner as wholly illegal unjust unconstitutional violative of Articles 14 191 g of the Constitution of India contrary to the provisions of Mines Act 1952 and Rules 1955 as well Corporate Medical Rules clarification dated 17 05 2013 Circular dated 09 03 2019 and amounts to forcible continuity in service on surface and consequently direct the respondents to forthwith discharge the petitioner from service and to provide dependant employment to the petitioner family member as per Law and pass

(iii) Category III cases are:— W.P.No.s 17245/2019, 17246/2019, 17252/2019, 17525/2019, 17565/2019, 17577/2019 , 17594/2019, 17669/2019, 17686/2019, 17689/2019, 17715/2019, 17719/2019, 17751/2019, 17928/2019, 17930/2019, 17953/2019, 17956/2019, 17963/2019, 17980/2019, 18000/2019, 18118/2019, 18162/2019, 18277/2019, 18278/2019, 18303/2019, 18334/2019, 24326/2019, 26407/2019, 27033/2019, 2083/2020, 3713/2020 and 17885/2019 [W.P Nos.2083/2020, 3713/2020 , 17885/2019 also forming part of category 1].

Prayer in WP 17245 of 2019 reads as under:

.....to issue writ or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in issuing the letter No ref No CRP/PER/IR/C/081/903 dated 05 06 2019 to the petitioner to work as a General Mazdoor on surface is illegal arbitrary against the mines Act 1952 its rules 1955 against the National Coal Wages Agreement and violative of the Rights Guaranteed by the Constitution of India and consequently declare that the petitioner is medically invalidated as per the Mines Act 1952 Rules 1955 National Coal Wages Agreement and also as per the circular of the Respondents vide Ref CRP/Per/IR/C/081/305 dated 09032018 and further directed the Respondents to provide dependent employment to the petitioners family and to pass.

2.1. Though, there is some variation in the prayers sought in the writ petitions, in substance, petitioners are aggrieved by the decision of the respondent-SCCL in providing them alternative job on the surface

instead of retiring them on medical invalidation grounds by extending all other benefits, including provision of dependent employment, having declared as medically unfit to perform the duties and responsibilities hitherto performed by them in the post held by them at the time of medical examination. The orders declaring them as unfit to perform the jobs held by them and orders appointing them to alternative posts on the surface are challenged in these writ petitions. Having regard to the issues involved, all the learned counsel requested to hear these cases together.

3. As the issues for consideration in all these writ petitions are same, they are taken up together, heard learned counsel and decided by this common order.

4. Heard learned counsel for petitioners Sri Ch.Venkat Raman, Sri Srinivas Rao Pothuri and Sri S.Surender Reddy and learned Special Government Pleader, Sri A. Sanjeev Kumar attached to the office of learned Additional Advocate General, for SCCL.

5. **Submissions on behalf of petitioners:**

(I). **Submissions of learned counsel Sri Ch.Venkat Raman:**

(1) The employment in SCCL is governed by the Indian Mines Act, 1952 (for brevity, the Act) and the Mines Rules, 1955 (for brevity the Rules) made thereunder and the National Coal Wage Agreements (NCWA). According to Rule 29-M of the Rules, read with paragraph 9.4.0 of National Coal Wage Agreement VI, once an employee is declared as unfit for employment in the mines, such employee has to be retired from service on medical grounds and should be provided with all

consequential benefits and the question of offering alternative employment does not arise. He would submit the very action of SCCL in declaring the petitioners as unfit to work underground and declaring them as fit to work on surface and providing alternative employment on the surface is illegal.

(2) By referring to Circular Ref.No.CRP/PER/IRPM/C/081/218 dated 7.4.2015, he would submit that detailed procedure is laid down in the said circular regarding medical examination of the employees by Corporate Medical Board, but said procedure is not observed and in mechanical manner, the employees are declared as unfit to work underground. If the medical examination is conducted strictly in accordance with the circular instructions, the major grievance of the petitioners would be answered. He would also submit that for many employees the findings of the Corporate Medical Board and reasons to declare them as unfit to work underground and fit to work on the surface were kept in the dark, except making available a tabulated statement of employees declared as 'fit / unfit / fit for surface job'. Unless medical report is furnished to individual employee, he can not work out his remedies and by such actions, grave prejudice is caused to the employees.

(3) He would further submit that as per Circular Ref.No. CRP/PER/IR/C/081/305 dated 9.3.2018, 'medical invalidation' means a person totally incapacitated to work; therefore, dependent employment has to be provided when an employee is declared medically invalidated even to work underground. He would further submit that as per the

orders of the Government notified vide Circular Ref.No.CRP/PER/IR/C/081/306 dated 9.3.2018, 16 diseases are covered for assessment of suitability of employee. The list is comprehensive and if Corporate Medical Board examines the fitness of the employees strictly in accordance with parameters laid down in the circular dated 9.3.2018, the petitioners' cannot be declared as medically fit even to do surface job.

(4) He would further submit that the National Coal Wage Agreement (NCWA) is binding on the SCCL. Whereas, the definition of 'medically unfit' in circular dated 9.3.2018 is contrary to the definition provided in NCWA. As per the SCCL, circular only when an employee is totally incapacitated, i.e., unemployable, he would be retired from service extending all benefits. Whereas, terms of NCWA, once an employee is declared as medically unfit, he has to be retired from service by extending all benefits flowing there from, and is not necessary that employee should be totally incapacitated-unemployable.

(5) Further, memorandum of settlement dated 21.2.2000 was arrived under Section 12 (3) of the Industrial Disputes Act, 1947 by the management and workmen. Item 4 of this settlement is exhaustive and covers all cases where employee is declared as unfit to perform duties of the post held by him prior to declaration as unfit, and invariably employee has to retire on medical invalidation grounds and benefits of such retirement should be extended to the employee.

(6) He would submit that issues agitated in these writ petitions were not considered in W.P.(PIL) No.19 of 2017 and there was no

discussion on binding nature of National Coal Wage Agreement (NCWA) on SCCL.

(7) He would further submit that employment in SCCL is also governed by Factories Act, 1948, Employees Compensation Act, 1923 and The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 2016. These enactments specify list of injuries sufferance of which are classified as incapable to do any other job. The injuries/ailments suffered by petitioners are covered by the said list.

(8) He would further submit that Rule 82 of the Rules prescribe occupational diseases as provided in Employees Compensation Act, 1923. Rule 82-A deals with disabilities allowance which is again relatable to Schedule-III of Employees Compensation Act, 1923. Diseases mentioned therein are treated as accidents under the Employees Compensation Act and therefore once a person is declared as suffering with a particular ailment, the question of providing other employment does not arise.

(9) He would further submit that once an employee is declared as medically unfit to hold the job in which he was working at the time of medical examination alternative employment cannot be thrust on him without his willingness.

(10) He would further submit that by circular dated 29.6.2014, Corporate Medical Board was constituted. However, for no justifiable reason or cause, the remedy of Appeal against decision of Corporate Medical Board is withdrawn. By referring to the procedure adopted by

the other companies, he would submit that hierarchy of Assessment Boards are constituted, where an employee can ventilate his grievances on wrong assessment of fitness but no such mechanism is created by the SCCL.

(11) Learned counsel Sri Venkat Raman placed reliance on following decisions:

M/s Bharat Cooking Coal Limited Vs Md. Alam Ansari¹, Manager, Burhar Colliery No.3 of South Eastern Coalfields Limited Vs Usant Ram², Surthi Devi Vs Central Coal Field Limited³, Bhimlal Mahato Vs Eastern Coalfields Limited⁴, and Girish Deo Majhi Vs M/s Eastern Coalfields Limited⁵.

(II). Submission of learned counsel Sri Srinivas Rao Putluri:

(1) Learned counsel Sri Srinivasa Rao Putluri, would submit that the entire exercise of medical examination by Corporate Medical Board is farcical. More than 200 employees were asked to appear before the Board on a single day. It would be impossible for the Board to examine and assess the health condition of such large number of employees on a single day. This would clearly show that medical examination exercise was undertaken mechanically and assessment was made depending on personal preferences and prejudices of the authorities, and medical certificates were issued declaring them as unfit to do underground job as per their whims and choices and do not reflect

¹ 2009 SCC Online JHAR 96

² 2001 SCC Online MP 478

³ 2019 SCC Online JHAR 473

⁴ 2019 SCC Online CAL 6214

⁵ 2018 SCC Online CAL 4866

actual medical condition. This is causing lot of heart burn to employees who have genuine claims but their claims are not properly assessed.

(III). Submissions of learned counsel Sri Surender Reddy:

He would submit that petitioners are forced to work though medical condition do not permit them to work. He would submit that to overcome the obligation to provide dependent employment, SCCL is resorting to declaring employees as fit to alternative job, even though respondent company is aware that they cannot work in alternative job also. He would further submit that there is total lack of transparency in assessment of health by respondent company and arbitrary decisions are made as per the whims and fancies of the Corporate Medical Board and competent authority.

(IV) All the learned counsels have submitted that though Rule 29-J vests right in an aggrieved employee to prefer appeal, the same is deprived to petitioners.

6. Submissions of learned Special Government Pleader representing learned Additional Advocate General, on behalf of SCCL:

(1) He submitted that SCCL issued circular on 20.12.2016 introducing a scheme known as 'Voluntary Retirement Scheme on Health Reasons'. The scheme envisaged provision of employment to the dependant if an employee seeks retirement on health grounds. Validity of the said scheme was challenged before this Court in WP (PIL) No.19 of

2017. Division Bench of this Court by order dated 16.3.2017 declared the scheme as unconstitutional. Following the judgment of this Court, the scheme was amended. The relevant amendment would prescribe that to provide dependant employment, person has to be declared totally incapacitated on medical grounds i.e., unemployable, thereby becoming a burden on the family. Only on such declaration, dependent of that employee would be granted employment. Whenever medical condition of an employee makes him unemployable, and dependent has to be provided employment, the dependent employment is provided to the post of Badli Worker (underground) if dependant is male and Badli Worker (Surface) if dependant is female.

(2) Further, another significant aspect brought out by this circular is, if an employee is declared unfit to work underground, he would be provided employment in the post of Badli Worker on surface. However, he would be granted pay protection of the post held by him at the time of medical examination. By referring to the post held by petitioner in WP No. 9994 of 2019, he would submit that petitioner was working as 'support-man', carries higher emoluments compared to Badli Worker. After he was declared unfit to work underground, said petitioner was given employment as Badli Worker on the surface and the pay and emoluments drawn by him in the earlier post are protected. Thus, insofar as employee is concerned, no inconvenience is caused to him with reference to emoluments and other allowances payable to him.

(3) According to learned Special Government Pleader, Rule 29-B of the Rules deal with medical examination. According to sub rule (a),

such retirement and further injustice is caused to them by not assigning work in the alternative employment and they are only made to attend to the office. He would submit that this action of the respondents would amount to arbitrary exercise of power, humiliation, disrespect to honour and dignity, and circumventing the law governing the service conditions of the employees working in coal mines.

(4) Learned counsel for petitioners Sri Srinivas Rao Pothuri submitted that Corporate Medical Board is not a statutory board, therefore, assessment made by the Corporate Medical Board has no legal sanctity. Petitioners have to be subjected to medical examination as required by the Mines Act and Rules made thereunder and National Coal Wage Agreement. He would also emphasize that there is change of attitude of the management since 2018 on account of introduction of dependent employment.

8. I have carefully considered the respective submissions, the relevant provisions of the Mines Act, 1952 (the Act) and the Mines Rules 1955 (the Rules), the NCWAs, Memorandum of Understanding dated 21.02.2000 and the decisions cited at the Bar.

9. Following issues arise for consideration:

- i) Whether the Mines Act and the Mines Rules prohibit provision of alternative employment on being declared medically unfit to hold the present post?
- ii) When dependent employment can be provided?

