AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3007 of 2021

1. Bihari Lal S/o Late Dholu Ram, Aged about 31 years, Caste Uraon.
2. Vijay Lal Sahu, S/o Late Dholu Ram, Aged about 20 years, Caste Uraon.

All R/o Minus Quarters, House No. 1257, Vivekanand Colony, Charchar Collliery, Distt. Korea, Chhattisgarh.

---Petitioners

Versus

1. South Eastern Coalfield Limited, through the Chairman-cum-Managing Director, Seepat Road, Bilaspur, Distt. Bilaspur, Chhattisgarh.
2. The General Manager, South Eastern Coalfields Limited, Baikunthpur, Distt. Korea, Chhattisgarh.
3. Deputy Chief Personnel Manager, South Eastern Coalfields Limited, Baikunthpur, Distt. Korea, Chhattisgarh.
4. The Personnel Manager, South Eastern Coalfields Limited, Churcha Colliery, Baikunthpur, Distt. Korea, Chhattisgarh.
5. Sub Area Manager, South Eastern Coalfields Limited, Churcha Colliery, Baikunthpur, Distt. Korea, Chhattisgarh.

---Respondents

For Petitioners :- Mr. S.M. Ali, Advocate

For Respondents :- Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/12/2021

1. This is the third writ petition filed by the petitioners against the respondents seeking dependent employment, retiral dues and other terminal benefits on account of death of their father Shri Dholu Ram, who died in harness on 23/10/2012 while working as General Majdoor with the respondents/SECL.
2. After the death of their father, petitioners moved various applications to the respondents/SECL for dependent employment and terminal benefits, but they were not granted stating that the service records of deceased Dholu Ram is not traceable, which led to the filing of WPS No. 6576/2016 by the petitioners wherein the Chairman-cum-Managing Director of the respondents/SECL filed an affidavit stating that SECL is ready and willing to provide dependent employment and terminal benefits to the Legal heirs of deceased Dholu Ram subject to submission of succession certificate/decree of declaration from the competent Court, however, the claim of the petitioners was rejected by the respondent authorities vide order dated 21/02/2017 against which WPS No. 1037/2017 was filed by the

petitioners which was disposed of by order dated 29/11/2017 directing the petitioners to obtain succession certificate and thereafter approach the respondents.

3. Thereafter, in Civil Suit No. 20A/2019, learned trial Court granted decree of declaration in favour of the petitioners herein pursuant to which the petitioners again approached the respondents by filing a representation but neither dependent employment nor other terminal benefits have been granted to the petitioners which has led to the filing of this writ petition.

4. Respondents have filed the return stating inter alia that they have conducted an enquiry by three member committee in respect of the deceased father of the petitioners and communication dated 21/05/2021 (Annexure R/13) has been filed by which dependent employment has been denied to the petitioners.

5. Mr. S.M. Ali, learned counsel for the petitioners, would submit that so far as terminal benefits and gratuity is concerned, petitioners are entitled for amount of gratuity along with an interest of 18 %. He would also submit that the Chaiman-cum-Managing Director of the respondents/SECL has already given affidavit before this Court that petitioners being

the legal heirs of deceased Dholu Ram are entitled for dependent employment subject to submission of succession certificate and even after submission of succession certificate by the petitioners, their claim for dependent employment is not being considered by the respondents, as such, appropriate direction be issued for grant of terminal benefits and dependent employment to the petitioners.

6. Mr. Vinod Deshmukh, learned counsel for the respondents, would submit that the amount of gratuity has already been deposited with the Controlling Authority/R.L.C. (Central) Bilaspur on 18/06/2021 and petitioners are not entitled for dependent employment as their father ought to have been retired on 01/01/2008 but he was illegally continued till the date of his death i.e. 23/10/2012. He would also submit that when the affidavit was filed by the Chairman-cum-Managing Director before this Court, the service records of petitioners' father were not available with the respondents and when the records were traced they were subjected to departmental enquiry and charge-sheet, therefore, the instant writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made herein-

above and went through the records with utmost circumspection.

8. In the first round of litigation, this Court directed the respondents/SECL to file affidavit which was filed by Mr. B. Ramachandra Reddy, Chairman-cum-Manaing Director, SECL on 27/12/2016, in which it has been submitted as under :-

> “6. The service record of the deceased employee is not traceable despite all efforts made by SECL. A committee was constituted to trace the records and the committee submitted a report to the effect that the record were not traceable. Two employees who were responsible for custody of the records/documents have been charge-sheeted.
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> 7. It is submitted that management is always ready to provide compassionate employment and terminal benefits accrued as company's rule to the legal heirs of Late Dholu Ram S/o Mohra ex-worker after receipt of succession certificate/declaratory decree issued by the competent court in respect of declared son of Late Dholu Ram S/o Mohra ex-worker.”

9. An affidavit has also been filed by Mr. Ashok Kumar Bishwas, Manager Personal, Churcha Mine (RO) on 27/12/2016, which states as under :-

> “13. In view of the above, it is submitted that management is always ready and willing to provide compassionate employment and terminal benefits accrued as per company's rule to the legal heirs of Late Dholu Ram S/o Mohra ex-worker after receipt of succession certificate issued by the competent court in respect of declared son of Late Dholu Ram S/o Mohra ex-worker.”

10. A careful perusal of the aforesaid undertakings would show that both the officers have unequivocally assured this Court by which

respondents/SECL has expressed its willingness to grant dependent employment and terminal benefits to the legal heirs of deceased Dholu Ram. Not only this, in the order dated 29/11/2017 passed by this Court in WPS Nos. 1037/2017 and 6576/2016, statement has been made by learned senior counsel appearing on behalf of the respondents/SECL which states as under :-

> "7. Learned Senior counsel for the respondents would fairly submit that as soon as succession certificate is placed before the authority, all the retiral dues would be promptly paid and proper consideration would also be made to claim for dependent employment according to applicable policy under the National Coal Wage Agreement applicable at the time of death of the employee."

11. Thereafter, decree for declaration was granted in favour of the petitioners herein on 25/02/2020 by the Civil Court pursuant to which the petitioners again approached the respondents/SECL for dependant employment but now it is being denied on the pretext that petitioners' father ought to have been retired on 01/08/2008 but since his service records were not traceable, he continued to work till the date of his death i.e. 23/10/2012.

12. In the considered opinion of this Court, once an officer of the respondents/SECL, that too, Chairman-cum-Managing Director has given an affidavit before this Court submitting that SECL is

ready and willing to provide dependent employment and terminal benefits to the petitioners on receipt of succession certificate/decree of declaration, then it cannot change its stand and deny dependent employment to the petitioners stating that their father ought to have been retired on 01/08/2008. Such a ground raised by the respondents/SECL is totally contrary to its earlier affidavit filed before this Court as well as the statement made by the counsel on behalf of SECL which is a State within the meaning of Article 12 of the Constitution of India. Respondents/SECL has to act fairly and reasonably as well.

13. The doctrine of Election is based on rule of estoppel. The principle that one cannot approbate and reprobate inheres in it. The doctrine of Estoppel by Election is one of the species of Estoppels in pais, which is rule of Equity. Further the parties cannot blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.

14. The principle of "approbate and reprobate" has been described as species of estoppel which seems to be intermediate between estoppel by record and estoppel in pais (See Halsbury' Laws of England, para 512, Volume XII, page 454).

15. The doctrine of election is based on the principle that the parties cannot, after taking advantage under an order, be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it. The Supreme Court in the matter of **<u>Nagubai Ammal and others v. B. Shama Rao and others</u>**[1] relied upon English case and held as under:-

The observations of Scrutton, L. J. on which the appellants rely are as follows:

> "A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election-namely, that no party can accept and reject the same instrument: Ker v. Wauchope(1819) 1 Blight 1 (21) (E): Douglas-Menzies v. Umphelby 1908 AC 224 (232) (F). The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction".

It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury's Laws

1 AIR 1956 SC 593

of England, Volume XIII, page 454, para 512:

> "On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".

16. Similarly, in the matter of **C. Beepathuma and others v. Velasari Shankarnarayana Kadambolithaya and others**[2], Their Lordships of the Supreme Court have held that a person cannot approbate and reprobate the same transaction. Paragraphs 17 and 18 of the report states as under:-

> “17. The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland-
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> > “That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.”
> >
> > (See Maitland’s lectures on Equity Lecture 18)
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> The same principle is stated in White and Tudor’s Leading cases in Equity Vol. 1 8th Edn, at n. 444 as follows:

2 AIR 1965 SC 241(1)

> "Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both…..That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."
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> 18. The Indian courts have applied this doctrine in several cases and a reference to all of them is hardly necessary. We may, however, refer to a decision of the Mardas High Court in Ramakottayya v. Viraraghavayya, ILR 52 Mad 556: (AIR 1929 Mad 502 FB) where after referring to the passage quoted by us from White and Tudor, courts Trotter, G.J. observed that the principle is often put in another form that a person cannot approbate and reprobate the same transaction and he referred to the decision of the Judicial committee in Rangaswami Gounden v. Nachiappa Gounden, ILR 42 Mad 523: (AIR 1918 PC 196). Recently, this court has also considered the doctrine in Bhau Ram v. Baij Nath Singh, AIR 1961 SC 1327."

17. Similar is the effect of the decision of the Supreme Court in the matter of **Commissioner of Income Tax, Madras v. MR. P. Firm Muar**[3] in which Their Lordships of the Supreme Court have explained the doctrine of "approbate and reprobate" and it has been held as under:-

> "The doctrine of "approbate and reprobate" is only a species of estoppel, it applies only to the conduct of parties."

18. In the matter of **R.N. Gosian v. Yashpal Dhir**[4], the Supreme Court observed similarly as under:-

3 AIR 1965 SC 1216
4 (1992) 4 SCC 683

> "10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

19. In the matter of **Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.**[5] explaining the meaning of "approbate and reprobate", it has been held as under:-

> "15. A party cannot be permitted to "blow hot blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. Thus rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience [Vide Nagubai Ammal v. B. Shama Rao[6], CIT v. V. MR. P. firm Muar (supra), Ramesh Chandra Sankla v. Vikram Cement[7], Pradeep Oil Corpn. v. MCD[8], Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd.[9] and v. Chandrasekaran v. Administrative Officer[10].
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> 16. Thus, it is evident that the doctrine of election is based on the rule of estop-

5 (2013) 5 SCC 470
6 AIR 1965 SC 593
7 (2008) 14 SCC 58
8 (2011) 5 SCC 270
9 (2011) 10 SCC 420
10 (2012) 12 SCC 133

pel- the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

20. Finally, in the matter of **State of Punjab and others v. Dhanjit Singh Sandhu**[11], it has been held by the Supreme Court in no uncertain terms that a party complying and deriving advantage from the order, cannot challenge it on any ground and concluded as under:-

> "22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statue (Vide CIT v. V. MR. P. Firm Muar (supra).

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground (Vide Maharashtra SRTC v. Balwant Regular Motor Service[12].) In R.N. Gosain v. Yashpal Dhir (supra) this Court has observed as under: (SCC pp. 687-88, para 10)

> "10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it

11 (2014) 15 SCC 144
12 (AIR 1969 SC 329

is void for the purpose of securing some other advantage.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or couduct, or slience when it is his duty to speak, form asserting a right which he would have otherwise had."

21. Accordingly, the argument of learned counsel for the respondents/SECL that petitioners are not entitled for dependent employment on the ground that the service records of deceased Dholu Ram were not available and he ought to have been retired on 01/08/2008 as established on subsequent enquiry is rejected. Even otherwise, the petitioners have been declared the legal representatives of the deceased Dholuram by decree of declaration granted by jurisdictional Civil Court under Section 34 of the Specific Relief Act, 1963, in which the respondents were also party defendant, therefore, decree of declaration granted under Section 34 of the Act of 1963 is binding the respondents under Section 35 of the Act of 1963 and respondents are obliged to consider and decide petitioners' case for dependent employment as per Clause 9.4.0 of the NCWA-V within 30 days from the date of receipt of a copy of this order.

22. Now coming to the question that petitioners are entitled for interest on payment of gratuity. The amount of gratuity could have been paid to the petitioners but it was not being paid and ultimately, the amount of gratuity has been deposited with the Controlling Authority/R.L.C. (Central) Bilaspur on 18/06/2021 (Annexure R/14) by virtue of Section 7(3A) of the Payment of Gratuity Act, 1972 and petitioners would be entitled for interest @ 10% from the date of death of their father i.e. 23/10/2012 till the date of payment of gratuity. Respondents/SECL is directed to make payment of the aforesaid amount within 30 days from the date of production of a copy of this order. However, the remaining interest will be paid by the respondents/SECL to the petitioner within 45 days from the date of receipt of copy of this order. The amount of gratuity deposited with the Controlling Authority/R.L.C. (Central) Bilaspur shall be paid to the petitioners, if applied by them, expeditiously.

23. Accordingly, this writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet