

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1156 of 2012**

Shajada Khan (dead) through LR's

1a Smt.Nasima Begam, aged about 54 years, W/o Shajada Khan

1b Shanawaz Khan, aged about 33 years, S/o Shajada Khan

1c Firoj Khan, aged about 32 years, S/o Shajada Khan

1d Sabir Khan, aged about 27 years, S/o Shajada Khan

1e Shabina Khan, aged about 25 years, D/o Shajada Khan

1f Shamtabrez Khan, aged about 21 years, S/o Shajada Khan

1g Jishan Mohd Khan, aged about 18 years, S/o Shajada Khan

1h Rabiya Khan, aged about 16 years, D/o Shajada Khan

---- LR's of Petitioner

Versus

1. South Eastern Coalfield Ltd. Through its Chairman cum Managing Director, Seepat Road, Bilaspur
2. Director (Personal), Seepat Road, Bilaspur
3. Deputy Chief Medical Officer, Regional Hospital Kurasia, Chirmiri Area Distt. Korea
4. Chief Medical Superintendent SECL Seepat Road, Bilaspur
5. Deputy Regional Manager, Chirmiri Open-cast Project, Chirmiri, Distt.Korea

---- Respondents

For LR's of Petitioner	: Mr.Parag Kotecha, Advocate
For Respondents	: Mr.B.S.Rajput, Advocate appears on behalf of Mr.R.K.Gupta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

14/9/2021

1. The original petitioner filed this writ petition (who died during pendency of this writ petition) claiming that since he has become medically unfit, therefore, his

one of the son / dependant is entitled for dependents employment in terms of clause 9.4.0 of the National Coal Wage Agreement-IX (hereinafter called as 'NCWA-IX').

2. Return has been filed opposing the writ petition stating inter-alia that on 23.5.2012 the petitioner has been medically examined and he has found amputation of right leg and diabetic foot and therefore, he has been recommended alternate surface duty and he has been granted alternate surface duty and therefore, he cannot be declared medically unfit and as such, the writ petition deserves to be dismissed.
3. It is stated at the Bar that the petitioner after completing his service has retired on 1.7.2012 and thereafter died on 25.5.2013.
4. Mr. Parag Kotecha, learned counsel for the petitioner, would submit since the petitioner was found medically unfit in examination and he has been given alternate surface duty, therefore, he ought to have been declared medically unfit and one of his legal representatives be given dependents employment in terms of clause 9.4.0 of the NCWA-IX.
5. On the other hand, Mr. B. S. Rajput, learned counsel for the respondents, would submit that the petitioner was only found some physical infirmity i.e. amputation of right leg and therefore, he was recommended and granted alternate surface duty and as such, his legal

representatives would not be entitled for dependents employment in terms of clause 9.4.0 of the NCWA-IX and the writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove also went through the records with utmost circumspection.

7. True it is that the petitioner was medically examined before Apex Medical Board, SECL, Bilaspur on 23.5.2012 and he was found suffering from diabetic foot and his right leg was amputated, he was recommended alternate surface duty and allowed him to alternate surface duty, to which he has completed his tenure upto 1.7.2012 and allowed to superannuated with all consequential service benefits. It is not the case where he was declared medically unfit for job warranting grant of dependents employment in terms of clause 9.4.0 of the NCWA-IX.

8. Since the petitioner was never declared medically unfit during his lifetime and he was completed his service while performing alternate surface duty pursuant to the report of the Medical Board and he was granted full consequential benefits and he was not declared medically unfit in terms of clause 9.4.0 of the NCWA-IX and he has completed his service and retired on 1.7.2012, now he cannot be declared medically unfit on account of his death and one of his legal representatives cannot be granted dependents employment in terms of clause 9.4.0

of the NCWA-IX.

9. Consequently, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-