

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment Reserved on 17.03.2021****Judgment Delivered on 25.03.2021****Writ Appeal No. 479 of 2020***(Arising out of order dated 09.12.2020 passed in Writ Petition (S) No.5129 of 2020 by the learned Single Judge)*

Ramkeli D/o Late Genduram, Aged about 47 years, R/o Hiragir Dafai, Haldibadi, P.S. Chirmiri, P.S. Chirmiri, District Koriya, Chhattisgarh.

---- Appellant**Versus**

1. South Eastern Coalfields Limited, Through Chairman Cum Managing Director, South Eastern Coalfields Limited, Head Office, Seepat Road, Bilaspur, Chhattisgarh.
2. Director (Personnel), South Eastern Coalfields Limited, Head Office, Seepat Road, 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 Appellant	: Shri N. Naha Roy, Advocate.
For Respondents	: Shri Vivek Ranjan Tiwari and Shri Atul Kumar Kesharwani, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Judgment****Per Parth Prateem Sahu, Judge**

1. Correctness and sustainability of order dated 09.12.2020 passed in Writ Petition (S) No.5129 of 2020 by the learned Single Judge is put to challenge in this appeal.

2. Facts relevant for disposal of this appeal are that, Genduram father of appellant, was an employee of respondents. He died in harness on 24.11.2020. After death of Genduram, his widow i.e. mother of appellant submitted an application for dependent employment, subsequently, an application with request for dependent employment of appellant has been made. Application for dependent employment of appellant came to be rejected on 19.12.2011. The reason assigned for rejection of application for dependent employment of the appellant was that she was a married daughter of Late Genduram (deceased employee) and as per National Coal Wage Agreement (for short 'NCWA'), married daughters were not included as one of the dependents for consideration of dependent employment.
3. Aggrieved by rejection of application for dependent employment by the respondents, appellant has approached this Court by filing Writ Petition (S) No.3092 of 2013. During the pendency of writ petition, another writ petition was filed by one Asha Pandey claiming similar relief. Case of Asha Pandey was considered and decided in Writ Petition (S) No.4994 of 2015 vide order dated 15.03.2016 in favour of petitioner therein (married daughter) for consideration of her case for grant of dependent employment. Writ Appeal No.246 of 2016 was filed against the order dated 15.03.2016 by the respondents, which came to be dismissed on

03.09.2019. Writ Petition (S) No.3092 of 2013 filed by the writ petitioner/appellant herein came up for hearing on 10.12.2019 whereby learned Single Judge taking into consideration the order passed in Writ Appeal No.246 of 2016 dated 03.09.2019, allowed the writ petition in terms of order passed in Writ Appeal No.246 of 2016 and directed the respondents to reconsider the claim of the petitioner for dependent employment subject to fulfillment of other requirements entitled for dependent employment in terms of the provisions of law governing the field. Respondents in pursuance to order passed in Writ Petition (S) No.3092 of 2013 reconsidered the candidature of appellant for dependent employment and rejected the candidature of appellant on the ground that appellant has crossed the maximum age limit prescribed under the NCWA for dependent employment of female. This made the appellant/writ petitioner to approach this Court by filing Writ Petition (S) No.5129 of 2020 challenging the letter of rejection of candidature on the ground of overage, with following reliefs :

“10.1 Issue a writ of mandamus and quash the impugned order dated 07.11.2020 (Annexure P/1), whereby the petitioner's candidature for appointment under the scheme of dependent employment prevailing with the respondents under

National Coal Wage Agreement has been rejected by saying that she has crossed the upper age limit for such purpose.

10.2 Issue a writ of mandamus and direct the respondents to consider the petitioner's candidature for appointment under the scheme of dependent employment by treating her to be a candidate within the prescribed upper age limit of 45 years for such purpose in view of her age being 40 years on the date of filing of earlier writ petition in 2013, which has been allowed by this Hon'ble Court.

10.3 Grant any other relief, which is deemed fit in the circumstances of the case.”

4. Learned Single Judge upon considering the submission made by learned counsel for the writ petitioner/appellant held that benefit can be claimed under the scheme framed by the respondents prescribing minimum and upper age limit, claim for dependent employment can be made specially under the scheme itself, dismissed the writ petition by impugned order.
5. Shri N. Naha Roy, learned counsel for the appellant submits that the respondents rejected the candidature of appellant only on the ground that the appellant on the date of consideration has crossed the age of 45 years. Learned Single Judge has not considered the fact that on the date of

filing of application for dependent employment, age of appellant was 40 years i.e. below 45 years of age, hence, candidature of appellant and her entitlement with respect to NCWA ought to have been considered as on the date of submitting of application for grant of dependent employment. In support of his contention, learned counsel for the appellant places his reliance on Clause 9.3.2 and Clause 9.5.0 of NCWA. Referring to Clause 9.5.0 of NCWA, it is argued that maximum age limit is prescribed as 45 years and female dependent would have an option for employment or monetary compensation. It is contended that appellant was well within the maximum age limit i.e. 40 years only on the date of submitting of application for dependent employment, hence, order dated 07.11.2020 issued by the respondents is *per se* wrong, illegal and arbitrary, which requires to be set aside.

6. Per contra, Shri Vivek Ranjan Tiwari, learned counsel for the respondents submits that on the date of consideration of candidature of appellant for grant of dependent employment in pursuance to order dated 10.12.2019, appellant has crossed the upper age limit of 45 years and on the date of consideration, she was aged about 47 years and 6 months. It is contended that as per policy framed under NCWA-VI, the candidates who are not more than 45 years of age, would be entitled to get dependent employment. It is further

contended that principle of 'relate back' will not apply to the facts of present case which are dealing with dispute arising out of service matters and submits that impugned order passed by learned Single Judge does not call for any interference.

7. We have heard learned counsel for the respective parties and also perused the writ petition.
8. From perusal of pleadings made in the writ appeal as well as reply submitted by the respondents, it is apparent that rejection of candidature of appellant for dependent employment was only on the ground that she has crossed the upper age limit of 45 years. The candidature of appellant has been rejected for dependent employment by the respondents on the ground of overage.
9. To consider the right of appellant under Chapter-IX 'Social Security' under NCWA-VI, we find it appropriate to extract relevant Clauses of Chapter-IX under NCWA-VI, which is reproduced below for ready reference :-

“9.3.2 Employment to one dependent of the worker who dies while in service

In so far as female dependents are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.”

“9.3.4 the dependents to be considered for employment should be physically fit and

suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far male spouse is concerned, there would be no age limit regarding provision of employment.”

10. From bare perusal of aforementioned two Clauses for employment to one dependent of an employee, the female dependents have been held entitled for the employment or in alternate, payment of monetary compensation as per Clause 9.5.0. The age for considering a candidate for dependent employment has been specifically prescribed under Clause 9.3.4. The maximum age has been fixed to be 35 years for dependents other than spouse. For female spouse, maximum age is prescribed as 45 years. Under the scheme, maximum age for a person to be considered for dependent employment other than spouse has been fixed as 35 years. The appellant is claiming her right for dependent employment under Chapter-IX of NCWA-VI. Hence, for getting the dependent employment, candidate shall come within the criteria fixed for dependent employment. In the case at hand, as per claim of appellant herself, she was 40 years of age in the year 2013 and on the date of making an application in the year 2011, she was about 38 years of age, which is more than 35 years as prescribed under Clause 9.3.4.

11. In view of above, submission made by learned counsel for the appellant that appellant was fulfilling the criteria of age on the date of filing of application, is also not sustainable.
12. From reading of Clause 9.3.4, which is a Clause fixing the maximum age for consideration of grant of dependent employment, age of 45 years has been mentioned for female spouse and not for other female dependents. For other female dependents like the appellant, who is a married daughter, maximum age for consideration of grant of dependent employment shall be 35 years as mentioned in Clause 9.3.4. This Court cannot pass any order contrary to the Clauses of NCWA-VI, which is available in the writ petition as Annexure P/4, even if such a defence is not taken by respondents in their reply.
13. From the aforementioned discussions and facts of the case that even on the date of filing of an application in the year 2011, appellant was about 38 years of age (more than 35 years), we do not find any tenable ground to interfere with the impugned order. The appeal being devoid of any substance, is liable to be and is hereby dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge