

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos. 2611, 2726, 2733, 3098, 3259, 3464, 3813, 3871, 3877, 3879, 3881, 3883, 3885, 3902, 4025, 4026, 4031, 4043, 4066, 4068, 4098, 4215, 4217, 4374, 4434, 4443, 4457, 4491, 4502, 4507, 4520, 4547, 4582, 4607, 4616, 4621, 4656, 4660, 4701, 4708, 4709, 4718, 4722, 4726, 4737, 4788, 4793, 4800, 4817, 4823, 4978, 4984, 5005, 5007, 5008, 5082, 5088, 5137, 5183, 5194, 5229, 5240, 5269, 5307, 5311, 5313, 5344, 5406, 5446, 5455, 5467, 5500, 5543, 5545, 5546, 5684, 5804, 5806, 5821, 5945, 5957, 5960, 6015, 6116, 6199, 6234, 6243, 6798, 6800, 6821, 6822, 6823, 6825, 6826, 6827, 6901, 6946, 6973, 7031, 7039, 7381, 8164, 9418, 10057, 10138, 10912, 11134, 15248, 15526, 16128, 16368 and 23462 of 2020 and 4477 and 6490 of 2021

COMMON ORDER:

As the issue raised in these writ petitions is one and the same, these writ petitions are being disposed of by way of this common order.

2. For the sake of convenience, the facts in W.P.No.5455 of 2020 are hereunder discussed.
3. W.P.No.5455 of 2020 is filed seeking the following relief :-

“..... to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring that the Minutes of the Medical Board dated 2/1/2020 issued by the 9th Respondent Medical Board of the 5th Respondent Company which was communicated vide Letter in Ref.No.SRP/PER/18002/366 dated 17/1/2020 issued by the 8th Respondent in so far as stating that the petitioner disables to perform his duties regularly and efficiently having regard to the nature of disability he was suffering and categorized under Clause No (ii) of 9.4.0 of National Coal Wage Agreement (VI) as illegal, arbitrary, contrary to the Coal Mines Provident Fund Scheme 1963 contrary to the policy under the Mines Act 1952 and its Rules 1955 violative of the National Coal Wages Agreement violative of principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India and unconstitutional; and set aside the same by holding that the petitioner is medically invalidated under Clause (i) of NCWA-VI of 9.4.0 of the 2nd respondent by

providing employment to the petitioners son in the 5th Respondent Company as per clause (i) of 9.4.0 and further to pay all the statutory benefits under the Mines Act 1952 and its Rules 1955 with all consequential benefits”.

4. Heard Sri L.Ravi Chander, learned Senior Counsel representing Sri Ch.Venkat Raman and Sri P.S.Rajasekhar, learned counsel representing Ms.K.Hima Bindu, learned counsel appearing for the petitioners, Sri A.Sanjeev Kumar, learned Special Government Pleader representing Sri J.Srinivasa Rao, learned Standing Counsel appearing for the respondent Company and Sri Arvind Kumar Kata, learned counsel appearing for respondents 1 to 3.

5. It has been contended by the petitioners that they were all employed with the respondent Company and they are suffering from different ailments and their cases were referred to the competent Medical Board of the respondent Company and they were declared as medically unfit.

6. Learned counsel appearing for the petitioners had contended that as per National Coal Wage Agreement (vi), entered between the management of the Coal Companies and some of the Central Trade Unions, as a social security measure, certain issues have been incorporated in the settlement, more particularly, in respect of medically unfit persons.

7. Clause 9.4.0 of National Coal Wage Agreement reads as follows ;-

Employment to one dependent of a worker who is permanently disabled in his place:

- (i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.
- (ii) In case of disablement arising out of general physical disability so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/ she is up to the age of 58 years.

The term 'general physical debility' would mean deficiency of a workman due to any disease or other health reason leading to his / her disablement to perform his / her duties regularly and/ or efficiently.

- (iii) The dependant for this purpose means the wife / husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter / widowed daughter-in-law or son -in-law residing with the employee and almost wholly dependent on the earning of the employee may be considered.

In so far as female dependants are concerned, their employment would be governed by the provisions of clause 9.5.0.

- (iv) The dependants 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 as male spouse is concerned, there would be no age limit regarding provision of employment".

8. Learned counsel appearing for the petitioners had contended that a perusal of the above said clause makes it clear that the persons, who are suffering from disablement and who are falling under clause (i) are entitled for providing dependant employment plus other service benefits and for the persons, who are falling under clause (ii) and if they are declared medically unfit, then their children are entitled for dependant employment

provided that such employees have not crossed the age of 58 years. Admittedly, in the instant case, all the petitioners have crossed the age of 58 years and the petitioners were terminated from service on the ground that they are medically unfit and they are not in a position to discharge their duties.

9. Learned counsel appearing for the petitioners had further contended that when once the petitioners services were terminated on the ground that they are medically unfit, in all fairness, the respondents ought to have placed the petitioners in Clause (i) of para 9.4.0. so as to enable the children of the petitioners to get employment under dependant employment quota.

10. Learned counsel appearing for the petitioners had further contended that earlier when the respondents have mechanically placed all the petitioners under Clause (ii) of para 9.4.0., the petitioners have filed W.P.No.43732 of 2016 and batch of cases contending that the respondents never categorized the petitioners/employees as to whether they are falling under Clause (i) and (ii) of para 9.4.0. and the petitioners had contended before this Court let the respondents categorize the petitioners/employees in terms of Clause (i) or Clause (ii) of Clause 9.4.0. and this Court was pleased to dispose of the batch of writ petitions directing the respondents to once again forward all medical invalidation certificates to the competent medical board, so as to decide as to whether the petitioners therein fall under Clause (i) or Clause (ii) of para 9.4.0 and after assessing and re-categorising employees, the

respondents shall accordingly act in terms of National Coal Wage Agreement (vi) and pass appropriate orders in accordance with law.

11. Learned counsel appearing for the petitioners had further contended that in compliance of the order passed by this Court, the cases of the petitioners were referred to competent Medical Board by the respondents for categorizing as to whether the employees/petitioners fall under Clause (i) or (ii) of para 9.4.0. and the Medical Board had mechanically placed all the employees/petitioners under Category (ii) of Clause 9.4.0. To demonstrate, the counsel for the petitioners had contended that the petitioner in W.P.No.2611 of 2020 met with an accident and his right leg was amputated from the knee level and the respondents have terminated his services on the ground that he is medically unfit to discharge any kind of duty. Admittedly, in the said case, the petitioner suffered with an injury arising out of the accident and injury has been referred categorically in Clause (i) of para 9.4.0. and this aspect was never considered by the Medical Board and the medical Board has mechanically placed the petitioner in clause (ii) of para 9.4.0.

12. Learned counsel appearing for the petitioners had further contended that the Medical Board, which is constituted by the respondents, is headed by Chief Medical Officer, who happens to be the Chairman of the Medical Board and who is an employee of the respondent Company, and therefore, he cannot give fair report

against the respondents by categorizing the cases of the petitioners in accordance with law.

13. Therefore, learned counsel appearing for the petitioners had contended that all these matters be referred to independent Medical Board like any Government Hospital like Gandhi Medical Hospital, so as to enable the independent medical board to consider the cases of the petitioners afresh and categorize them as to whether they fall under Clause (i) or (ii) of para 9.4.0 and at the time of referring the cases of the petitioners, let the petitioners also be permitted to submit a small note to the competent medical board explaining about the disability as to how the petitioners have suffered the disability, so as to enable the independent medical board to consider each individual case and pass appropriate orders in accordance with law.

14. Learned Special Government Pleader appearing for the respondents had contended that exercise of examining the cases by the competent medical board was already conducted and the cases of the petitioners were considered and all the cases of the petitioners were individually examined and the Medical Board opined that all the petitioners fall under Clause (ii) of para 9.4.0 and the cases of the petitioners were already considered by the Corporate Medical Board. Therefore, there are no merits in the writ petitions and the same are liable to be dismissed.

15. Learned Special Government Pleader appearing for the respondents had further contended that the Corporate Medical

Board is consisted with four members and there were three independent specialists from outside the company and only the Chairman of the Corporate Medical Board was the Chief Medical Officer of the respondent Company. Therefore, the cases of the petitioners were rightly examined by the Corporate Medical Board and they were rightly assessed to be falling under Clause (ii) of para 9.4.0. On this ground also, there are no merits in the writ petitions and the same are liable to be dismissed.

16. Learned Special Government Pleader appearing for the respondents had further contended that all the employees of the respondent Company are entitled for benefits irrespective of the fact whether they are falling under (i) or (ii) of Clause 9.4.0. The persons, who are falling under (ii) of para 9.4.0. are entitled for payment of lumpsum amount of Rs.5,00,000/- or salary for the balance left over period and the persons, who fall under Clause (ii) of para 9.4.0 and whose age is less than 58 years, their cases also be considered for dependant employment also. Since all the petitioners have attained the age of 58 years, they are not entitled for consideration of their cases for dependant employment and they are entitled for Rs.5,00,000/- lumpsum or wages for the left over period of the service. Therefore, looking from any angle, the writ petitions are liable to be dismissed.

17. This Court, having considered the rival submissions made by the parties, is of the considered view that these writ petitions can be disposed of directing the respondents to refer the cases of petitioners to an independent medical board i.e., Gandhi Medical

Hospital by transferring the Medical record of the petitioners, so as to enable the Gandhi Medical Hospital to constitute Medical Board to examine the case of petitioners individually by perusing para 9.4.0, and recategorize the cases of petitioners by giving a specific finding as to whether they fall under Clause (i) or Clause (ii) of para 9.4.0 so that there is no chance to the element of bias as attributed by the petitioners against the Corporate Medical Board constituted by the respondents, wherein the Chairman of the Medical Board happens to be Chief Medical Officer and an employee of the respondent Company. This decision is being taken by this Court because the Corporate Medical Board has examined nearly 128 cases and even in a single case, it has not categorized any employee to be falling under (i) of Clause 9.4.0, which gives a doubt in the mind of this Court and that is the reason this Court is of the considered view that all the cases of the petitioners should be referred to an independent Medical Board i.e., Gandhi Medical Hospital and the Superintendent of Gandhi Medical Hospital is directed to constitute appropriate Medical Board, so as to examine the cases of the petitioners and also categorize the employees as to whether they are falling under Clause (i) or Clause (ii) of para 9.4.0 and the respondents Company will furnish para 9.4.0 of National Coal Wage Agreement to the Superintendent, Gandhi Medical Hospital, so as to enable the Medical Board to examine the cases of the petitioners and give a specific findings as to whether the petitioners are falling under Clause (i) or Clause (ii) of para 9.4.0. The whole exercise indicated above should be completed by the Superintendent of Gandhi Medical College, as

soon as possible, preferably within a period of four months from the date of receipt of a copy of this order. It is needless to state that the respondents Company shall forward the medical record of all the petitioners to the Superintendent, Gandhi Medical Hospital along with para 9.4.0 of National Coal Wage Agreement. It is needless to state that the relief granted in the present writ petitions is confined to the petitioners only.

18. With the above directions, the writ petitions are disposed of.
No costs.

Pending miscellaneous petitions, if any, shall stand closed.

07.12.2021
Prv

ABHINAND KUMAR SHAVILI, J