

10.
25.04.2022.
Ct. No. 11.
F.B.

**MAT 363 of 2022
with
IA No. CAN 1 of 2022**

**Ashoke Kumar Roy & Anr.
-Vs.-
Eastern Coalfields Ltd & Ors.**

**Mr. Surajit Samanta,
Ms. Sohini Samanta,
Mr. Biswajit Samanta
..... For the Appellants.**

**Mr. Shiv Shankar Banerjee,
Ms. Sanchita Banerjee Roy,
Mr. Sk. Selim Mallik
..... For the Respondent
No.1.**

**Mr. Tapash Bhattacharyya,
Mr. Aviroop Bhattacharyya
..... For the Respondent
No. 5.**

Party/parties is/are represented in the order of
their name/names as printed above in the cause title.

Under challenge in this appeal is the order of the
Hon'ble Single Bench dated 23rd of February, 2022 in
the writ petition being WPA 110 of 2022. The appellants
were the writ petitioners before the Hon'ble Single
Bench.

The Appellant Nos. 1 and 2 are respectively the
father and mother-in-law of the Private Respondent No.
5, both in the writ petition and in this appeal. The
Respondent Nos.1 to 4 are the Eastern Coalfields

Limited (*ECL*), being a State within the meaning of Article 12 of the Constitution of India.

The appellants brought a grievance before the Hon'ble Single Bench to the effect that after the death of one of their sons, who was an employee of *ECL*, the appellants agreed to give a No Objection Certificate (*NOC*) in favour of the Private Respondent No. 5 on the condition that in the event the Private Respondent No. 5 received employment under *ECL* in place and stead of her deceased husband, she would, out of her salary, maintain the appellants.

Mr. Samanta, Learned Counsel appearing for the appellants, draws the attention of this Court to the affidavit sworn by the Private Respondent No. 5 before the Learned Executive Magistrate at Durgapur, of which paragraphs 3 and 4 are of immediate relevance to this discussion and hence are quoted below:-

“3. That if I join in service on behalf of my deceased husband Late Angshuman Ray Then no objection from anybody else or in my family members will arise.

4. That in the event of my employment I will look after the dependent family member of ex-employee i.e. my husband named Late Angshuman Ray and also declare and undertake that if I fail to maintain them

then management may share 50% (fifty-percent) of my salary for their maintenance.”

It is further pointed out that the Affidavit was supported by an Indemnity Bond executed by the Private Respondent No. 5 along with two Sureties. By the Indemnity Bond, the Private Respondent No. 5 bound herself to be legally obliged to maintain the Appellant Nos. 1 and 2.

It further transpires from the records that pursuant to the Undertaking on Affidavit and the Indemnity Bond (*supra*) executed by the Private Respondent No. 5, both the Appellant Nos. 1 and 2 through sworn Affidavits executed before the Learned Executive Magistrate at Asansol agreed to the grant of employment in favour of the Private Respondent No. 5. Of immediate relevance to this discussion are Paragraphs 2 and 3 of the said Affidavit which are quoted below:

“2. That I intend to provide service to my Daughter-in-law Smt. Solanki Ray against death of my son as per NCWA. As Solanki Ray have submitted 50% (fifty percent) Maintenance Bond (Affidavit) to E.C. Ltd. and have also assured about my maintenance. I have got NO OBJECTION if employment is provided to my daughter-in-law named Smt. Solanki Ray under NCWA.

3. That the relationship between me and my aforesaid daughter-in-law Smt. Solanki Ray is correct and genuine and if it is found false then my daughter-in-law will be liable to be dismissed from her service.”

The Appellants now complain of the fact that the Private Respondent No. 5, although having received the employment on the basis of the Undertaking and the Indemnity Bond with the support of the *NOC* from the Appellant Nos. 1 and 2 (*supra*), has failed to act in terms of such Undertaking and Indemnity Bond. The Private Respondent No. 5 has received employment under the *ECL* with effect from March, 2021 but, has not paid a single farthing in favour of the Appellant Nos. 1 and 2 although she was obliged in law to pay 50% (fifty percent) of her regular monthly salary as maintenance.

Mr. Samanta therefore submits that the Hon'ble Single Bench was wrong in relegating the parties to the civil forum since the factual position as emanating from the Undertaking and the Indemnity Bond as well as the *NOC (supra)* are admitted and not denied by any of the parties. It is submitted that the Hon'ble Single Bench ought to have taken cognisance of such documents and directed the *ECL* to honour the commitment made by the Private Respondent No. 5 since law presently universally recognises that senior citizens/aged parents/aged dependents are required to be maintained.

Mr. Bhattacharyya, Learned Counsel appearing for the Private Respondent No. 5, submits that the Private Respondent No. 5 has been driven out from her matrimonial home. It is therefore implied in such submission that in the event the Private Respondent No. 5 was allowed to stay in her matrimonial home, she would honour her Undertaking and the Indemnity Bond.

However, the obligation of the Private Respondent No. 5 to maintain her aged parents-in-law is not denied by Mr. Bhattacharyya, although it is submitted that the allegations of failure to maintain brought against the Private Respondent No. 5 are questions of facts which have been correctly relegated to civil action by the Hon'ble Single Bench.

Mr. Banerjee, Learned Counsel appearing for the Respondents/*ECL*, submits that in civil law the mother of the deceased, i.e. the Appellant No. 2 and the widow, i.e. the Private Respondent No. 5, are in the nature of Class-I heirs to the estate of the deceased. Therefore, in law, the Appellant No. 2 and the Private Respondent No. 5 have an equal claim to the estate of the deceased, in this case his service benefits.

Having heard the parties and considering the materials placed, this Court is of the view that the Undertaking and the Indemnity Bond executed by the

Private Respondent No. 5 which is not denied, is a condition precedent for grant of service by *ECL* to the Private Respondent No. 5. It is also a condition for the grant of *NOC* from the other legal heirs to the estate of the deceased, in this case the Appellant Nos. 1 and 2.

This Court is unable to appreciate the stand of the Hon'ble Single Bench that notwithstanding the relevance of the admitted evidence on record, the parties have been put to further proof of the same by way of a civil action. This Court is also of the view that by now the law on maintenance of senior citizens/aged parents/aged dependents stands universally recognised, codified and, failure to maintain invites penal consequences.

In the above view of the matter, this Court sitting in extraordinary Writ Jurisdiction is in a position to remind *ECL* to hold its employees to the discharge of their lawful obligations by acting as a model State employer.

Accordingly, with effect from April, 2022, *ECL* shall pay 50% (fifty percent) of the salary of the Respondent No. 5 to the Appellants and continue to pay such amount regularly month by month.

The Appellants shall submit their Bank Account details to the Respondent No. 3, who shall then take

steps to pay the aforesaid amount commencing from April, 2022 and regularly thereafter month by month.

ECL shall also take steps to deduct the arrear amounts payable to the Appellants on and from March, 2021 till March, 2022, i.e. the period of employment already undergone by the Private Respondent No. 5, in six equal instalments from the emoluments of the Private Respondent No. 5 and pay the same to the Bank Account of the Appellants as furnished.

MAT 363 of 2022 along with **IA No. CAN 1 of 2022** stands accordingly **allowed**.

The **Order** impugned of the Hon'ble Single Bench stands accordingly set aside.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)

Later

Mr. Bhattacharyya, Learned Counsel, prays for stay of operation of this Order.

Prayer for stay is considered and rejected.

(Krishna Rao, J.)

(Subrata Talukdar, J.)