

02.02.2023
DL-2
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5984 of 2022

Sangita Mukherjee
Vs.
M/s. Eastern Coal Fields Limited & Ors.

Mr. Vivekananda Bose,
Mr. Soham De Dhara,
Mr. Ratikanta Pal

.....for the petitioner.
Mr. Syed Nurul Arefin
.....for ECL.

The petitioner's grievance is that despite being a dependant daughter of her deceased father she was not considered for compassionate appointment by Eastern Coalfields Limited (ECL). The petitioner's father died-in-harness on May 3, 2021. The petitioner got married on March 4, 2013, but started living with her parents since August 12, 2015. The Matrimonial Suit, being No.94 of 2017 culminated into a decree of divorce by mutual consent on April 16, 2018. Therefore, it is evident that the petitioner was a divorcee since 2018 and residing with her parents.

After the death of the petitioner's father, an application was made by the petitioner's mother on May 24, 2021 for appointment of the petitioner on compassionate ground. Such prayer was also

reiterated on August 6, 2021. The petitioner also made a request on January 28, 2022 for consideration of the representations for her appointment on compassionate ground.

The representation of the petitioner dated January 28, 2022 was disposed of by a letter of rejection dated March 9, 2022. It is the stand of the ECL that a divorced daughter does not come within the purview of the word “**dependant**” as specified in the applicable NCWA (National Coal Wage Agreement).

Mr. Bose, learned counsel, appearing on behalf of the petitioner places reliance on a judgment of three-Judge Bench of this Hon’ble Court reported in (2018) 2 CLJ 1 (**Putul Rabidas Vs. Eastern Coalfields Ltd. & Ors.**). He submits that the Hon’ble Court held that there was no good reason why a divorcee daughter should be held to be excluded from the construction of the words “**unmarried daughter**” and be held ineligible for consideration of appointment on compassionate ground. He submits that the impugned order of rejection is bad in law and should be set aside and/or quashed.

Mr. Arefin, learned counsel, appearing on behalf of ECL submits that documents have been manufactured by the petitioner and/or her mother in support of the claim for compassionate appointment.

He refers to pages 27 and 29 of the writ petition in support of his claim that there is no stamp, seal of the company to show that the petitioner is a divorcee daughter of the deceased employee. He refers to pages 6 and 8 of his report on affidavit affirmed on May 12, 2022 in support of his contention that the daughter has never been shown to be a divorcee in the records of the company and the wife of the deceased employee is 100% nominee of him.

Having regard to the rival submissions of the parties and the materials placed on record, this Court is of the view:

- (a) The ratio of **Putul Rabidas** (supra) is squarely applicable to the facts of the case.
- (b) No difference can be made between an unmarried daughter and a divorcee daughter as long as the divorcee daughter is a dependant on the deceased employee.
- (c) A divorcee daughter is also entitled to pray for compassionate appointment in case she is able to show that she is a dependant.
- (d) There is no material suppression of any fact before this Court. The document annexed at page 29 of the writ petition only goes to show that the wife of the deceased employee is 100% nominee of him. The said document is also supported by the document annexed at page 8 of the report on affidavit.
- (e) The document annexed at page 27 of the writ petition which is intended to show the

daughter/petitioner is a divorcee is also not material for adjudication of the issues in the present proceeding since ECL has itself accepted that the petitioner is a divorcee daughter and has rejected her claim on that ground.

- (f) Furthermore, this Court is of the view that the nomenclature divorcee would not persuade ECL to accept that the petitioner is a divorcee/dependant without causing investigation as to whether or not she is entitled to compassionate appointment.
- (g) There is no denial on record of the fact that the decree that has been annexed to the writ petition is not a valid one or is procured by fraud.

In the light of the discussions above, this Court is constrained to hold that the document annexed at page 27 of the writ petition is not a material document and has not caused suppression of any material facts.

In the circumstances, the letters of refusal dated March 9, 2022 and February 18, 2022 (annexed at pages 36 and 37 of the writ petition respectively) are quashed and/or set aside.

The respondent no.4 and/or the respondent no.5 are directed to consider the representation dated January 28, 2022 within 4 weeks from date upon giving a personal hearing to the petitioner in the light of the decision reported in (2018) 2 CLJ 1 (**Putul**

Rabidas Vs. Eastern Coalfields Ltd. & Ors.). A reasoned order should be communicated to the petitioner within 2 weeks of passing thereof.

With the directions aforesaid, **WPA 5984 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

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

(Lapita Banerji, J.)