

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8828 of 2022

Sujula Ankure @ Sujala Akuria
Vs.
M/s. Eastern Coal Fields Limited & Ors.

Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Mr. Debashis Das
Ms. Simran Sureka,
Ms. Ria Paul
Mr. Rahul Agarwala
.... For the petitioner.

Mrs. Aparna Banerjee
.... For the respondents.

The petitioner's husband, Abani Ankuria, while working in Eastern Coalfields Limited (in short, ECL), died-in-harness on 9th September, 1999. By an order dated 16th December, 2021, passed by the Director (Personnel), ECL, the petitioner's application for Monthly Monetary Cash Compensation (in short, MMCC) was allowed from 1st April, 2001, without any interest awarded on the arrears. The petitioner has challenged the said order dated 16th December, 2021 on three-fold grounds. The first ground of petitioner's challenge is that MMCC has to be granted from the date of death of the employee. Secondly, interest should be given on the arrears. The third ground is that the age of the petitioner was required to be ascertained before passing the order. Since the petitioner has been sanctioned MMCC till upto the age of 60 years as per National Coal Wage Agreement (in short,

NCWA) unless the age is ascertained at the present, in future there is every likelihood of complication on ECL saying that the petitioner had attained the age of 60 years on a particular date which may be disputed by the petitioner. There is also possibility, according to the petitioner, that the age declaration given by the petitioner in various documents may not be accepted by ECL.

On behalf of ECL, it is submitted that the petitioner is entitled to receive MMCC from the date of her application otherwise it does not stand to logic to pay MMCC even if not applied for from a retrospective date. ECL also says that at the time of death of the petitioner's husband NCWA – VI was in operation. The same does not provide for the date from which date the MMCC has to be paid and, as such, taking the date of the petitioner's first application for MMCC, the payment has been allowed from 1st April, 2001.

The date of payment of MMCC is no more *res integra* in view of the judgments delivered by the Division Bench and the Special Bench respectively reported in **(2016) 3 WBLR (Cal) 464 (M/s. Eastern Coal Fields Limited & Ors. Vs. Dewanti Kumari & Ors.)**, an unreported judgment dated 28th August, 2008 passed in APOT 518 of 2007 (Smt. Chhaya Singh Sardar vs. Coal India Limited & Ors.), another unreported judgment dated 8th March, 2013 passed in APOT 88 of 2013 (M/s. Eastern Coalfields Limited & Ors. Vs. Bipini Marandi & Ors.), the judgment

dated 15th September, 2017 passed in FMA 4401 of 2016, reported in 2018 (1) Cal. LT, 436 (Putul Rabidas vs. Eastern Coalfields Limited & Ors.) and lastly by the judgment dated 21st April, 2022 passed in MAT 86 of 2022 (M/s. Eastern Coalfields Limited & Ors. Vs. Smt. Dukhni Bhuiya)

The MMCC is, therefor, required to be paid from the date of death of the employee. In the instant case, the same has to be paid from 9th September, 1999. It is also admitted fact that the first application of the petitioner was made on or about 9th March, 2001, the same remained unprocessed till 16th December, 2021. The petitioner, therefor, is entitled to interest on the arrears amount as an by way of compensation since the petitioner was deprived of the fruits of the money and at the same time the money having remained with ECL, ECL has derived benefit out of the same.

In the aforesaid facts and circumstances, ECL is directed to pay MMCC to the petitioner from 9th September, 1999 at the applicable rate till 31st March, 2001 along with interest at the rate of 6 per cent per annum on such sum. The amount paid between 1st April, 2001 till the date of actual payment in terms of the order dated 16th December, 2021 passed by the Director (Personnel), shall also carry interest at the rate of 6 per cent. ECL shall pay the principal arrears amount for the period between 9th September, 1999 and 31st March, 2001

along with accrued interest and the interest on the arrears for the principal sum paid from 1st April, 2001 till the date of actual payment of such sum within a period of three months from date.

The rate of interest allowed is fair and reasonable in view of the ratio laid down in the judgment of the Hon'ble Supreme Court in **(2021) 11 SCC 543 (State of Andhra Pradesh and Another vs. Dinavahi Lakshmi Kameswari)**.

The issue as to ascertaining the petitioner's age is also very important as NCWA – VI provides for payment of MMCC to a female dependent upto the age of 60 years. Unless the age of the petitioner is ascertained there always remains a chance of dispute arising subsequently encircling the age of the petitioner.

The petitioner and ECL are, therefor, directed to approach the IPGME&R-SSKM Hospital, Kolkata, for ascertaining the age of the petitioner. The Medical Superintendent, IPGME&R-SSKM Hospital, Kolkata, on being approached by either of the parties with a copy of this order shall constitute a Board and conduct the ossification test of the petitioner for the purpose of ascertaining the age within a period of three months from the date of being so approached. The report of the medical examination, to be conducted on being approached by either of the parties, shall be served on

the petitioner and ECL so that payment of MMCC can be made by ECL till the age of 60 years as per the report. The parties will, however, be free to take recourse to challenge the findings of the medical examination of IPGME&R-SSKM Hospital, Kolkata, if so advised.

The petitioner and ECL shall co-operate with the authorities of IPGMER-SSKM Hospital, Kolkata, for the purpose of ossification test of the petitioner.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

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

(Arindam Mukherjee, J.)