

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 7644 of 2015

Sk. Ansar @ Sk. Ansar Mondal

Versus

Eastern Coal Fields Limited & Ors.

For the petitioner : Ms. Madhu Priya
Mr. Arindam Chatterjee
.....Advocates

For the respondents : Mr. Susanta Pal
Mr. N. Banerjee
.....Advocates

Heard lastly on : 29.08.2022

Judgment on : 28.11.2022

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India seeking directions upon the respondents to cancel and/or rescind and quash the impugned order dated 23.06.2010 and to immediately give

appointment to the petitioner on compassionate ground as prayed for in his application dated 28.11.2003.

2. On 10.11.1995 Md. Nizamuddin @ Najimuddin, the father of the petitioner, died on duty while working for the Eastern Coal Fields. On 27.12.1995 Fatima Bibi, the petitioner's mother, applied for employment on compassionate ground before the Agent, Narkonda Colliery, under dying-in-harness quota. However, she passed away on 22.09.1996. On 10.10.1996 Nadira Khatun, the elder sister of the petitioner, applied for employment on compassionate ground in place of the said Fatima Bibi. But, in April 1999 she got married and left her maternal home. On 28.11.2003 the petitioner made an application for appointment on compassionate ground in place of her sister Nadira Khatun. On 11.10.2004 the petitioner gave a letter to the respondent authorities requesting them to give employment to the petitioner and also to disburse the death benefits arising out of his father's demise. As the same was not granted, the petitioner was constrained to file a writ petition being WP No. 656(W) of 2005. On 12.08.2009 this Court disposed of the said writ petition, inter alia, directing the Chairman-cum-Managing Director to consider the prayer for compassionate appointment of the petitioner in accordance with law and to pass a reasoned order and also to release the terminal benefits arising out of the death of the petitioner's father. The order was duly communicated to the respondent authorities. On 23.06.2010 the respondent no. 2 passed the impugned order rejecting the petitioner's prayer for appointment on compassionate ground.

3. Ms. Madhu Priya, learned counsel appearing on behalf of the writ

petitioner, submitted as follows. The petitioner's right emanated from the National Coal Wage Agreement (the NCWA for short). It was a settlement in view of Section 18 of the Industrial Disputes Act, 1947 and was binding between the parties. The terms of the NCWA were such that a dependant, if he or she satisfied all the conditions in Clauses 9.3.5 and 9.3.4 i.e., he or she was a dependant of the deceased employee and had the requisite eligibility criteria for being employed by the ECL, was entitled to claim as of right that he or she ought to be extended the benefit of compassionate appointment or monetary compensation, as the case may be. Besides, the NCWA did not provide time frame for making an application for employment. Reliance was placed on the decisions reported in *Sujit Kora Versus Coal India Ltd. & others* reported at 2002 (2) CHN 557, *Mohan Mahato Versus Central Coal Fields Ltd. & others*, reported at (2007) 8SCC 549 and *M/s Eastern Coalfields Ltd. Versus Dewanti Kumari & others*, reported at (2016) 3 WBLR (Cal) 464. Moreover, the provisions contained in Clause 9.5.0 of the NCWA-V was not applicable in the present case. The said clause applied only when the age of the son of the deceased employee was between 15 and 18 years. The Clause did not debar making of an application by a dependant of the deceased upon his attaining 18 years of age. In the instant case, none of the conditions for application of clause 9.5.0 were fulfilled as the female dependants of the deceased employee made applications for the employment, which were kept pending and the petitioner was below 15 years of age and no monetary compensation was paid to such female dependants. The Clause did not even require that an application of the

minor male dependant be made upon attaining majority. The petitioner's application was an independent one which could not be equated with one under Clause 9.5.0 (iii) of the NCWA-V. On the other hand, the respondent authorities had taken different stands and different times. In the earlier round of litigation in the writ proceeding of 2005, the only stand of the respondents was that the petitioner could not provide employment as 7 years had lapsed. But, in the order under challenge the only ground for rejection was the non-conformity to Clause 9.5.0 of the NCWA-V. That apart, the respondent authority had taken contrary stands on certain facts. The age of the petitioner was shown as 12 years 9 months at the time of death of his father in the order under challenge while at paragraph 4 of the Opposition the age was shown as 9 years. The date of birth of the petitioner was 4th February 1983 and the service record maintained by the respondent no. 1 could not supersede the birth certificate evincing such fact. As was indicated earlier, delay could not be a ground for rejection of the prayer for appointment. The respondents admitted that the writ petitioner was entitled to terminal benefits for his deceased father. Yet, no terminal benefits were disbursed except a sum of Rs. 20,000/- under life cover scheme. In terms of Clause 9.2.7 of the NCWA-V, the writ petitioner was also entitled to an ex-gratia amount of Rs. 15,000/-. Terminal benefits would also include pension, provident fund and gratuity. Reliance was placed on the decisions reported at (2007) 8 SCC 549 (Mohan Mahato Versus Central Coalfields Ltd. and Ors.), 2002 (2) CHN 557 (Sujit Versus Coal India Ltd. Versus Ors.), (2006) 9 SCC 195 (Syed Khadim Hussain Versus State of Bihar and others),

2017 (6) WBLR (Cal) 255 (Putul Rabidas Versus Eastern Coalfields Ltd.), (2016) 3 WBLR (Cal) 464 (M/s Eastern Coalfields Ltd. Versus Dewanti Kumari & Ors).

4. Mr. Susanta Pal, learned counsel appearing on behalf of the Eastern Coal Fields Ltd., submitted as follows. Public employment in offices or posts under the State or its instrumentalities or an authority covered by Article 12 of the Constitution must be in accordance with Articles 14 and 16. Even otherwise, the appointment must be preceded by an invitation to the public for offering candidature for consideration, providing equal opportunities to each of the applicants to participate in the process and subject to fulfilment of eligibility criteria, selection on the basis of merit. Appointment on compassionate ground, which was offered on humanitarian grounds, was an exception to the above rule of equality in the matter of public employment. However, in such cases compassionate appointments scheme should be strictly followed. An application for compassionate appointment had to be made immediately upon the death/incapacitation and in any event, within a reasonable period. Otherwise, a presumption would be drawn that the family of the deceased was not in immediate need of financial assistance. In the present case, the petitioner did not make any such application even after becoming eligible to make one. There could not be a reservation vacancy till such time the applicant became a major after a number of years. The idea of compassionate appointment was not to provide for endless compassion. While an over aged dependant could not seek appointment even an under aged dependant could also not seek such appointment. The compassionate

employment being an exception, the scheme had to be strictly construed. Reliance was placed on the decision reported at AIR 1966 SC 529 (Martin Burn Ltd. Versus Corporation of Calcutta) on the point that the Court had no power to ignore the provision to relieve what it considered a distress resulting from its operation. In Life Insurance Corporation Versus Asha Ramchandra Ambekar, (1994) 2 SCC 718, the Hon'ble Apex Court held that it was well settled that no mandamus would be issued directing to do a thing forbidden by law. On the question of delay in approaching the Court, reliance was placed on a decision reported at (2019) 3 SCC 653 (State of Himachal Pradesh & another Versus Shashi Kumar). In Umesh Kumar Nagpal Versus State of Haryana & Ors., (1994) 4 SCC 138, the Hon'ble Supreme Court emphasized that the basis of a scheme of compassionate appointment lay in the need for providing immediate assistance to the family of the deceased employee. The sense of immediateness was evidently lost in the delay on the part of the dependant in seeking compassionate appointment. As regards the terminal benefits, it was found that the life cover scheme amount had been paid to the wife of the deceased by a cheque dated 04.07.1996. But no record was found regarding payment of gratuity to the dependant. As per Section 7(3) of the payment of gratuity (Central) Rules 1972, a legal heir of employee who was eligible for payment of gratuity under the second proviso to sub-Section (1) of Section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him in Form K to the employee. The petitioner failed to established that he had applied for the benefit following the condition stipulated under the Act. Moreover, as per

Section 209 (4A) of the Companies Act 1956, the books of account of a company was to be kept for a period not less than 8 years immediately preceding the current year together with vouchers. The petitioner approached for alleged gratuity more than 8 years of death of the deceased, when unfortunately the records were not available. The impugned order was a reasoned one and did not suffer from any illegality. On the question of delay, reliance was placed on the decision reported at AIR 2007 SC 1365 (New Delhi Municipal Council Versus Pantiugh & Ors.)

5. In reply, learned counsel representing the petitioners further submitted as follows. Section 7(1) of the Payment of Gratuity (Central) Rules 1972 was not applicable as the petitioner was not the employee of the respondent authority, but was a dependant of the deceased employee. Moreover, Companies Act had no relevance to the issue at hand. On the contrary, Sections 6 and 7 of the Public Records Act 1993 provided that no public records could be destroyed or otherwise disposed of except in such manner and subject to such conditions as would be prescribed. The judgments relied on upon by the respondent authority had no relevance in the present facts. In this regard reliance was placed on a decision reported at (2008) 1 SCC 494 (Sarba Sramik Sanghathan (KV) Mumbai Versus State of Maharashtra & Ors.)

6. I heard the submissions of learned counsels appearing on behalf of the parties and perused the writ petitions, the affidavits and the written notes of submissions.

7. The National Coal Wage Agreement was a settlement arrived at in view of Section 18 of the Industrial Disputes Act 1947. It was indeed binding on the parties. The terms provided that if a dependant satisfied all the conditions of Clauses 9.3.5, 9.3.4 i.e., he or she was a dependant of the deceased employee and had the requisite eligibility criteria for being employed by the ECL, was entitled to claim, as of right, the benefit of compassionate appointment or monetary compensation, as the case may be. It was also emphasized that the NCWA did not specifically provide any time frame for making an application for employment.

8. The facts of the present case have to be seen in the light of the above. The original employee of the ECL being the father of the present petitioner died on 10.11.1995. On 27.12.1995 the petitioner's mother applied for employment on compassionate ground. She passed away on 21.09.1996. On 10.10.1996 the elder sister of the petitioner applied for employment on compassionate ground in place of the said mother. But, in April, 1999 she got married and left the maternal home. Therefore, it is not in doubt that the other family members of the present petitioners were able to make prayers for appointment on compassionate ground, but could not obtain the benefits for some reason or the other.

9. After about 7 years from the death of his father, the petitioner made an application for appointment on compassionate ground in place of his sister on 28.11.2003. On 11.10.2004 he gave a letter to the respondents requesting them to give employment to him and to disburse the death benefits arising out of his father's death. As the same was not granted, the

petitioner moved a writ petition being WP No. 656 (W) of 2005. On 12.08.2009 this Court disposed of the writ petition, inter alia, directing the Chairman-Cum-Managing Director to consider the prayer for appointment on compassionate ground in accordance with law and to pass a reasoned order and also to release the terminal benefits arising out of the petitioner's death. The rejection of the petitioner's prayer for employment on compassionate ground on 23.06.2010 led to the present application.

10. It is true that Clause 9.5.0 of the NCWA-V applied only when the age of the son of the deceased employee was between 15 and 18 years. In fact, the petitioner's age was less than 15 years at that time. It is also canvassed that the Clause did not require a minor male dependant to make an application upon attaining majority. Therefore, the petitioner contended that his application was an independent one and could not be equated with the one under Clause 9.5.0 (iii) of the NCWA-V. Clause 9.5.0 was evidently incorporated to accommodate a family member who had not come of age. Implicit was the immediate needs of the family. In a way, the immediateness was extended to three more years. But, if a dependant who was younger in age is treated in the same manner, then Clause 9.5.0 itself would become redundant. Therefore, even if such an application made afterwards by a dependant who was less than 15 years at the time of death is found entertainable, then such application has to pass through the rigours of eligibility and immediate need.

11. Moreover, in respect of the petitioner's claim of employment on compassionate ground, the sequence of events of the instant case have to be

taken into consideration. It is admitted that the mother, when she was alive, and the elder sister of the petitioner, after her, were able to apply for the benefit of such claim. It is another thing that neither could obtain the benefit for reasons beyond the control of anyone. Although the NCWA does not provide for a time limit for applying for compassionate appointment, a limitation period is implicit in any such engagement of public nature. After all, one has to remember that employment on compassionate appointment is an exception to the normal procedure. Public employment in offices or posts under the State or its instrumentality or an authority covered by Article 12 of the Constitution must be in accordance with Articles 14 and 16. Even otherwise, the appointment has to be preceded by an invitation to the public for offering candidature for consideration. This ensures providing equal opportunities to all subject, of course, to the fulfilment of the eligibility criteria. Selection has to be on the basis of merits. Appointment on compassionate ground is thus an exception to the said rule of equity in the matter of public employment.

12. It is settled law that an application for compassionate appointment has to be made soon after the death or incapacitation and in any event, within a reasonable period. Or else, one would have to presume that the family of the deceased was not in any immediate need of financial assistance. In the present case, whether the NCWA required it or not, the petitioner did not make any application even after becoming eligible. On the question of immediate relief being the touchstone for granting compassionate appointment, reliance may be placed on Umesh Kumar

Nagpal Versus State of Haryana & Ors.(supra) and State of Himachal Pradesh & another Versus Shashi Kumar (supra).

13. As rightly pointed out by the learned counsel for the respondent, the idea of compassionate appointment was not to provide endless compassion. It has to come to an end at some point. Otherwise, the public at large would be left in the lurch and the family members of those who were able to obtain government service at some point would continue to inherit such posts.

14. When this Court is asked to deal with the infringement of the rights of a citizen, it will not confine itself to the grounds behind an impugned order only, but also look into the other attending questions of fact and law.

15. Therefore, the petitioner's claim to compassionate appointment in respect of the death of his father cannot be sustained.

16. As regards payment of retiral benefits, it appears that a Life Cover Scheme amount was paid to the wife of the deceased by a cheque dated 04.07.1996. So, the family members of the deceased were aware of the fact that some terminal benefits could be claimed. Yet, the present petitioner approached the authorities for alleged gratuity dues more than 8 years after the death of the deceased.

17. Be that as it may, by an order dated 12.08.2009 passed in WP No. 656 (W) of 2005, this Court asked the respondents to see that the terminal benefits of the deceased employee were disbursed in accordance with law. This order was not challenged and has also not been departed from in the impugned order.

18. In view of the above discussions, this Court does not find any merit in the petitioner's prayer for compassionate appointment. Accordingly, such prayer is turned down.

19. However, the respondents shall make all endeavours to pay within a reasonable time the rest of the retiral benefits in respect of the petitioner's deceased father to the petitioner in compliance with the order dated 12.08.2009 passed by this Court in WP No. 656 (W) of 2005. For this, the respondents shall trace out the relevant records or reconstruct the records, if necessary and calculate the applicable dues.

20. With these observations, the writ petition is disposed of.

21. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)