

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

The Hon'ble Justice Subrata Talukdar
&
The Hon'ble Justice Lapita Banerji

MAT NO. 1006 of 2022

With

CAN 1 of 2022

CAN 2 of 2022

M/s. Eastern Coalfield Limited

Vs.

Smt. Ambabati Mahali.

For the Appellant : Mr. Bijoy Kumar
Mrs. Dipa Roy

For the Respondent No.1 : Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debashis Das
Mr. Rahul Agarwala

Hearing Concluded on : 22.08.2022

Judgment on : 02.09.2022

Lapita Banerji, J:- This intra court appeal is directed against a judgment and order dated April 18, 2022 passed by an Hon'ble Single Judge in WPA No. 15187 of 2021(Impugned Order).

2. By the Impugned Order the appellant/ECL (Eastern Coalfield Limited) was directed to pay monthly monetary cash compensation (in short, "MMCC") with effect from, April 22, 2002 to the writ petitioner. The writ petitioner's husband was an employee of ECL who died-in-harness on April 21, 2002.

3. Initially the writ petitioner/respondent applied for compassionate appointment in favour of her brother-in-law (husband's brother). However, the said application was not approved of.

4. The writ petitioner/respondent made an application for her own employment on September 22, 2011 under the provisions of National Coal Wage Agreement (for short, "NCWA"). The relevant clause being 9.5.0 of NCWA is produced herein below:-

"9.5.0 Employment/Monetary compensation to female dependent

Provision of employment / monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

- (i) In case of death due to mine accident; the female dependant would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.*

- (ii) *In case of death/total permanent disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0., if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment.*

In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment.

- (iii) *In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0. If no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on alive roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.*
- (iv) *Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.*
- (v) *The existing rate of monetary compensation will continue. The matter will be further discussed in the Standardisation Committee and finalised.”*

5. The writ petitioner gave two reminders for compassionate appointment. The first one was on July 23, 2012 and the other one was on September 12, 2020. Even though the appellants by a letter dated July 27, 2012 offered MMCC in lieu of the compassionate appointment to the respondent no further steps was taken.

6. When the writ petitioner initially made an application for employment on compassionate ground in 2011, she was asked to attend a screening test on July, 30, 2012. Thereafter, there was no response from the ECL/appellants. The writ petitioner again applied on March 14, 2016 and requested the appellants to provide her monetary compensation since her application for employment was not accepted.

7. Thereafter, the appellants asked the writ petitioner to appear for a medical examination on January 3, 2019 and the writ petitioner appeared for the same. The appellants did not take any further step after that. The writ petitioner again applied on September 10, 2020 praying for an employment. A letter dated October, 12, 2020 was issued by the working president of the union but no heed was paid to the same.

8. The writ petitioner again made an application on July 13, 2021 for providing her with monetary compensation.

9. Since the appellants did not take any step for either granting compassionate appointment or monetary compensation to the petitioner, she filed the instant writ petition being **WPA No. 15187 of 2021** in August, 2021.

10. The Hon'ble Single Judge by the Impugned Order held:-

i) If ECL had promptly processed /rejected the initial application of the writ petitioner's brother-in-law the petitioner could have immediately

applied for employment. ECL kept the petitioner waiting till 2011 before rejecting her brother-in-law's application.

ii) From 2002 till 2021 August the writ petitioner was neither given compassionate employment nor MMCC.

iii) Even though ECL evinced its intention to give compassionate appointment at a belated stage, it was too late in the day to offer her the same in lieu of MMCC.

(iv) Since no compassionate appointment was given within a reasonable period of time since the initial application in 2002 as well as the petitioner's application on September 22, 2011, the ECL was liable to pay MMCC.

11. Since the petitioner was around 34 years during the time of her application and as per her self-declaration was about 45 years at the time of allowing of the writ petition, The Hon'ble Single Judge held MMCC would be a better option for the writ petitioner instead of the compassionate appointment. MMCC was directed to be paid from April 22, 2002 till March 31, 2022 at the rate of prevailing from time to time with interest at the rate of 3% per annum by June 30, 2022. The current MMCC was directed to be paid from the month of April 2022. The interest was granted at a reduced rate as the writ petitioner made a belated application for appointment on compassionate grounds.

12. Mr. Kumar appearing for the appellants/ECL strenuously argued that if MMCC as directed by the Hon'ble Single Judge is paid to the writ petitioner/respondent, the same would not be utilized by her and the proper course of providing benefits to the writ petitioner would be to grant her compassionate employment. The said course of action would be more beneficial to the writ petitioner.

13. Mr. Ghosh appearing for the writ petitioner submits that his client has been unnecessarily harassed due to the deliberate in-action/willful omission on the part of the appellants. She has been forced to live in dire financial straits even though she was entitled to either compassionate appointment or monetary compensation pursuant to 9.5.0 of NCWA. The action of the ECL has been unduly harassive towards the writ petitioner. Despite being a female dependant of her husband/workman she was not given the benefit of a bi-partite settlement which was a welfare measure taken by Coal India Limited for the benefit of its workmen.

14. Having considered the rival submissions of the parties and materials placed on record this Court is of the view that:-

(a) There was no valid reason to keep writ petitioner's brother-in-law's application pending for a very long time before rejecting the same.

(b) Had the appellants/ECL rejected the application within a reasonable time, the writ petitioner could have exercised her option under 9.5.0 of NCWA at a much prior date.

(c) Due to the arbitrary and high handed action on the part of the appellants/ECL the writ petitioner was forced to live in penury.

(d) The writ petitioner made an application for compassionate appointment in September, 2012, more than 10 years after passing away of her husband since her brother-in-law's application was rejected at a belated stage.

(e) Despite several representations/requests neither was the writ petitioner given a compassionate appointment nor was her claim for MMCC considered

(f) Such a deliberate act/willful omission on the part of the ECL/appellants is in colourable exercise of power and an abuse of the process of law.

(g) Since the writ petitioner is more than 45 years of age at present, this court does not feel that an appointment on compassionate grounds would be the suitable course for her.

(h) When the writ petitioner applied for compassionate appointment she was around 34/35 years of age and if considered, at that point she would have be a suitable candidate for discharging her functions.

(i) The clause 9.5.0 of NCWA itself stipulates that the female dependants if above 45 years will be entitled to only monetary compensation and not employment.

(j) In the circumstances, the concession made by ECL through its counsel of granting the employment to the writ petitioner even after the age of 45 years seems to be made for protracting her misery.

(k) Unnecessarily legal complications are sought to be made to defeat the legitimate dues of the writ petitioner/respondent.

(l) The Appellants themselves have offered monetary compensation (MMCC) to the writ petitioner/respondent instead of compassionate appointment way back in 2012. No plausible explanation was given for not granting MMCC in 2016 when the writ petitioner made an application for the same. Now the appellants should not be allowed to approbate and reprobate in order to defeat the legitimate claims of the writ petitioner.

14. In the light of the discussion above, this Bench finds no reason to interfere with impugned order dated April 18, 2022 passed by the Hon'ble Single Bench. The said order is only to be modified to the extent that the arrears of MMCC to be paid by the appellants will be from April 22, 2002 till September 30, 2022 at the rate prevailing from time to time with interest payable at the rate of 6% per annum by September 15, 2022. Since the Appellants/ ECL's conduct/omission led to the rejection of her brother-in-law's

application at a belated stage this Court sees no reason to grant interest to the writ petitioner at a reduced rate.

15. The current MMCC for the month of September, 2022 shall be paid on or before September 15, 2022. ECL shall continue to pay the MMCC at the applicable rate month by month from September 15, 2022 onwards by 15th day of each successive month for which it falls due.

16. Since no affidavit has been called for in the appeal and stay application, the allegations made therein are deemed to have been not admitted.

17. The appeal being **MAT 1006 of 2022** along with **CAN No. 2 of 2022** are accordingly **dismissed**.

18. However there will be no order as to costs.

19. All parties to act on server copy of this order as downloaded from the official website of this Hon'ble Court.

20. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)

Later:

Stay is prayed on behalf of the appellant/ECL for a period of four weeks.

Such prayer is considered and refused.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)