

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. 1007 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022

M/s. Eastern Coalfield Limited

Vs.

Smt. Dulali Majhian @Majhan & Ors.

For the Appellant : Mr. Bijoy Kumar, Adv.
Ms. Dipa Roy, Adv.

For the Respondent : Mr. Partha Ghosh, Adv.
Mr. Amal Kumar Datta, Adv.
Ms. Ria Paul, Adv.
Ms. Simran Ssureka, Adv.
Mr. Debashis Das, Adv.
Mr. Rahul Agarwala, Adv.

Heard on : 29.08.2022

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 15161 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, June 10, 2004 to the writ petitioner. The writ petitioner's husband was an employee of ECL who died-in-harness on June 9, 2004.

3. The writ petitioner applied for her employment on December 1, 2004. The authorities by its letter dated September 9, 2006 asked for further documents in respect of her claim.

4. By a letter dated April 16, 2007 signed on April 18, 2007, the Superintendent Manager of ECL/Central Kajora Colliery intimated to the Personnel Manager, Kajora Area vide Memo No. CKC/P&IR/C-6/07 that all the clarifications were given apropos the queries raised. The file of the petitioner containing all the papers were sent to him for doing the needful.

5. By a letter dated May 2, 2007 issued by the Personal Manager, CKC the writ petitioner was directed to attend the Kajora Area office along with all relevant documents.

6. Thereafter, no steps were taken by the appellant in processing the application for her employment.

7. Ultimately, at a very belated stage, it transpired that no compassionate employment would be given to the petitioner.

8. Finally, on January 16, 2021 and on January 25, 2021 the petitioner made applications for payment of **MMCC** from the date of death of her husband.

9. The applications of the writ petitioner/respondent No.1 initially for appointment of compassionate ground and later for **MMCC** were made 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.”*

10. The appellant kept the writ petitioner's application pending for compassionate appointment since 2004. The petitioner was also not intimated why such application was not approved of despite the protection given to her under NCWA.

11. The applications for **MMCC** made by the writ petitioner were also not processed by the appellant.

12. Since the appellant did not take any step for either granting compassionate appointment or monetary compensation to the writ petitioner she was compelled to file the instant writ petition being WPA 15161 of 2021 in July, 2021.

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

i) The application for compassionate appointment was made on December 1, 2004 immediately after the death of the employee concerned.

ii) Between 2004-2021 compassionate employment was not granted to the petitioner.

iii) When the petitioner applied for compassionate employment on December 1, 2004 her self-declared age was around 31 years i.e., much below the age of 45 years. At present, her age is about 49 years.

(iv) Even though ECL through its counsel, evinced its intention to give compassionate appointment at the belated stage, it was too late in the day to offer her the same in lieu of “**MMCC**”.

(v) By not giving compassionate appointment within a reasonable period of time from the date of the application i.e., December 1, 2004 the ECL has rendered the Social Security Provisions as granted by NCWA otiose and was now liable to pay “**MMCC**”.

14. Since the petitioner was around 31 years during the time of her application and as per her self-declaration was about 49 years of age 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 June 10, 2004 till March 31, 2022 at the rate prevailing from time to time with interest at the rate of 3% per annum by June 30, 2022. The interest was granted at a reduced rate as the

petitioner applied for **MMCC** at belated stage. The current **MMCC** was directed to be paid for the month of April 2022.

15. 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. He also objected to the **MMCC** being granted to the writ petitioner from the date of death of her husband.

16. 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/the employee, she was not given the benefit of the bi-partite settlement which was a welfare measure taken by Coal India Limited/its subsidiaries for the benefit of its workmen. He also relied on various judgments including judgments of Co-ordinate Benches of this Hon'ble Court, in support of his contention that the relevant date for payment of **MMCC** should be the date of death of the petitioner's husband and not the date of application for the same.

17. Having considered the rival submissions of the parties and materials placed on record, this Court finds:-

(a) There was no valid reason to keep writ petitioner's application for compassionate appointment pending from 2004 till 2021.

(b) Had the appellant/ECL rejected the application within a reasonable period of time, the writ petitioner could have exercised her option for claiming **MMCC** 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 appellant/ECL, the writ petitioner was forced to live in penury.

(d) The writ petitioner made an application for compassionate appointment in December, 2004 and despite her compliance with all the formalities and her documents admittedly being in order, her application was not approved of.

(e) The writ petitioner being an uneducated widow was forced to live in penury despite being protected under the provisions of NCWA.

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

(g) Since the writ petitioner is more than 49 years of age at present, this court does not feel that an appointment on compassionate ground would be the suitable course for her especially, keeping in mind Clause 9.5.0 (ii)

which clearly stipulates that in case of a female dependant above 45 years she would only be entitled to monetary compensation and not to employment.

(h) In the circumstances, the concession made by ECL through its counsel of granting the employment to the writ petitioner at the age of 49 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.

18. Several Co-ordinate Benches of this Hon'ble Court have held that the relevant date for payment of **MMCC** should be the date of death of the workman/employee and not the date on which the application for payment of **MMCC** was made. This Court sees no reason to differ with the said judgments passed by the Coordinate Benches, in the field of granting of **MMCC** in lieu of compassionate appointment.

19. 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 June 9, 2004 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 Appellant/ECL's conduct/omission was the sole reason for rejection of the application for compassionate appointment at a much belated stage, this Court

sees no reason to grant a reduced rate of interest to the writ petitioner/respondent.

20. 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 the 15th day of each successive month for which it falls due.

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

22. The appeal being **MAT 1007 of 2022** along with **IA CAN No. 2 of 2022** are accordingly **dismissed**.

23. However, there will be no order as to costs.

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

25. 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.)