

16.11.2022
DL-77
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17230 of 2022

Jayashree Mukherjee & Anr.

Vs.

M/s. Eastern Coal Fields Limited & Ors.

Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Mr. Debashis Das,
Ms. Simran Sureka,
Mr. Rahul Agarwala

....for the petitioner.

Mr. Syed Nurul Arefin,
Mr. Rhul singh

....for ECL.

The petitioners claim that the husband of the petitioner no.1 who was an employee of Eastern Coalfields Limited (in short "ECL") died-in-harness on January 11, 2017. The petitioner no.1 made an application for appointment of her daughter/petitioner no.2 on compassionate ground. The said application was considered by the Senior Manager (Personnel)/IC on August 28, 2017 and necessary documents were required to be submitted. Furthermore, by a previous letter dated June 26, 2017, the Senior Manager (Personnel)/IC informed the petitioner no.1 that the daughter of the deceased employee, being the petitioner no.2, was not eligible for employment on compassionate ground as she was under the age of 18 on the date of death of the

deceased employee. The first application for compassionate appointment was made on May 10, 2017. Thereafter, various documents were exchanged between the parties. An affidavit was also affirmed by the petitioner no.1 before the learned Judicial Magistrate, 1st Class at Durgapur to the effect that the date of birth of the petitioner no.2 is on January 5, 1999. The date of birth of the petitioner was inadvertently recorded as January 10, 2001.

From the report on affidavit filed by ECL, it appears that an application was made by the deceased employee for correction of his service records. From the certificate of birth annexed with his application for correction of the service records, it appears that the date of birth of the petitioner no.1's daughter, being the petitioner no.2, is January 10, 2001. From the office order dated January 30, 2015, it appears that the date of birth of the petitioner no.2 was recorded as on January 10, 2001. The said document has also been acknowledged by the petitioner no.1 putting her signature thereon. The authenticity of the said document has also not been disputed by the petitioner no.1. From the certificate of marriage retained with the employer, it also appears that the date of birth of the petitioner no.2 is January 10, 2001. The said date does not match

with the school leaving certificate produced by the writ petitioners annexed at pages 41, 42 and 43 of the writ petition. From the certificate issued by the West Bengal Council of Rabindra Open Schooling, it appears that the date of birth of the petitioner no.2 is January 5, 1999.

Mr. Ghosh, learned counsel, appearing on behalf of the petitioners submits that the petitioner no.2 is entitled to employment on the basis of the date of birth recorded in the school leaving certificate. He refers to clause 9.5.0 (ii) in support of his contention that in case of female dependant being less than 45 years she would either be entitled to compassionate appointment or monetary compensation in case of an employee dying-in-harness.

Mr. Arefin, learned counsel, appearing on behalf ECL/respondents submits that the petitioner no1 cannot approbate and reprobate at the same time. The signature of the petitioner no.1, clearly appears on the documents submitted by her to the employer of her husband for the purpose of recording the date of birth of the petitioner no.2 as January 10, 2001.

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view that the school leaving certificate along with the purported certificate issued by the board was

annexed with the writ petition to show that the petitioner no.2 attained 18 years as on the date of death of her father whereas the documents annexed to the Report on affidavit clearly reveal that the date of birth of the petitioner no.2 was January 10, 2001. Furthermore, the petitioner no.1 affirmed a false affidavit before the Judicial Magistrate, 1st class, Durgapur stating that the date of birth of her daughter/petitioner no.2 was inadvertently recorded as January 10, 2001. She suppressed the material fact that the correction of the service records of her deceased husband was done on an application by him upon producing the birth certificate of the petitioner no.2. The said rectification was duly acknowledged by the petitioner no.1. Therefore, the petitioner no.2 is not entitled to compassionate appointment on the death of her father since she did not attain the age of 18 on the date of death of her father, which was a mandatory requirement as per 9.5.0 of NCWA – VI. In case a male dependant of a deceased employee was more than 12 years of age, his name could have been kept on live roster till such time he attains the majority. No such provision is applicable in case of a female dependant.

This Court also finds that the petitioners have approached this Court within unclean hands by

annexing certificates to show that the petitioner no.2 attained the majority being born in 1999 whereas the petitioner no.1 herself has acknowledged the fact that the petitioner no.2 was born on January 10, 2001 by affixing her signature on the documents which have been submitted with the employer of her deceased husband by her husband. The conduct on the part of the petitioners is deprecated by this Court.

In the light of the discussions above, this Court is of the view that the petitioners are not entitled to any relief having approached this Hon'ble Court upon suppression of material facts and not having disclosed relevant documents.

The writ petition, being **WPA 17230 of 2022**, is **dismissed**.

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.)