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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20553 of 2021

Smt. Chitra Chatterjee
Vs.
M/s. Eastern Coalfields Limited & Ors.

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

Ms. Priti Banerjee
... For ECL.

The petitioner's exception to the report filed by the respondent no.1, is taken on record.

The petitioner's husband, Ramsevak Chatterjee, while working in Eastern Coalfields Limited (in short, ECL) died-in-harness on 18th September, 2002. The petitioner on 7th October, 2002 had applied to ECL for providing compassionate employment to her son, Rudra Gopal Chatterjee, under the provisions of Chapter IX of the National Coal Wage Agreement (in short, NCWA). Rudra Gopal Chatterjee was medically examined by ECL authority on 12th August, 2003 and was medically found unfit for his low vision.

The petitioner and her son made representations before ECL authority after the rejection. Pursuant thereto another medical examination was conducted on 27th

November, 2007 but nothing substantive turned out thereafter.

The petitioner on 15th December, 2021, has approached this Court by filing the instant writ petition, *inter alia*, claiming employment for her son Rudra Gopal Chatterjee with retrospective effect and if necessary for being re-examination by an independent medical board. The petitioner has also made an alternative prayer for release of monetary compensation from the date of death of her husband with interest.

On behalf of ECL, an objection has been taken that the writ petition is not maintainable as the petitioner if aggrieved by the initial medical examination was required to challenge the same in terms of the provisions of the Mines Rules, 1955.

After considering the provisions of Rule 29A and 29B and the Medical Attendance Rules of Coal India Limited referred to by the petitioner, I find that the provisions of 29A and 29B of the 1955 Rules is not applicable to a person who has applied for compassionate employment and has been medically examined for such purpose. The Medical Attendance Rules of Coal India Limited is applicable to ECL. In the said Rules, Chapter 8 provides for pre-employment medical examination. This is distinct from periodical medical examination under the provisions of Rule 29A and 29B of the 1955 Rules

although it has been stated in the said rules to be applicable to persons seeking employment. There is also a mention of initial examination in the 1955 Rules but the same relates to an employee who is examined for the first time after such rules came into operation and does not apply to pre-employment medical examination. The distinction has been more clearly laid down in Chapter VIII of the Coal India Medical Attendance Rules by placing the pre-employment medical examination and medical examination of an employee into two different and distinct class.

The argument advanced by ECL that the writ petition is barred in view of the available alternative remedy is, therefor, rejected and I hold that the writ petition is maintainable.

The very object of employment of a dependent of an employee who died-in-harness is to relief unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the said family. The compassionate employment under NCWA is in the same line. The whole basis of granting compassionate employment gets frustrated if enormous delay is caused in giving the same. The employment on compassionate ground is also an exception made to Article 14 of the Constitution of India only to save the bereaved family from the economic crisis arising out of the loss of the bread

earner. The time is, therefor, very vital in case of employment on compassionate ground. The delay defeats cause and frustrates the whole objective of the Scheme for giving employment on compassionate ground. In the instant case, the death of the employee occurred on 18th September, 2002 and the application for compassionate employment was made on 2nd October, 2002. The medical examination, under question in the instant writ petition, was conducted on 12th August, 2003. The last date with regard to the medical examination of the petitioner's son as appears from the petitioner's exception is 27th November, 2007. About fifteen years had elapsed in between. The enormous delay in approaching this Court disentitles the reopening of the medical examination in which the prayer for compassionate employment to the petitioner's son was rejected at the instance of the petitioner. The prayer for compassionate employment as made by the petitioner is, therefor, rejected for having approached the Court after long delay and laches on the part of the petitioner.

The petitioner has made an alternative prayer for Monthly Monetary Cash Compensation (in short, MMCC) available to the petitioner under the provisions of Chapter IX of NCWA.

After considering Clause 9.3.2 and 9.5.0, I find that the petitioner, being the wife of the deceased employee, is

a female dependent and is entitled to compassionate employment and monetary compensation in lieu thereof. The compassionate employment to a female dependent is available till the age of 45 years and in case of male dependent till the age of 35 years. The petitioner as per the declaration of age given in the writ petition and the affidavit of exception is aged about 54 years. The petitioner is, therefor, not entitled to compassionate employment due to her age but she is entitled to MMCC under the provisions of Clause 9.5.0 of Chapter IX of NCWA though her prayer for granting employment on compassionate ground to her son may have been rejected. It is now well-settled that the MMCC is required to be given from the date of death of the employee. In the instant case, the death of the employee took place on 18th September, 2002.

In the aforesaid facts and circumstances, I direct ECL to pay MMCC to the petitioner under the provisions of Clause 9.5.0 of Chapter IX of NCWA. The current MMCC shall be started from 10th May, 2022. This will be for the month of April, 2022. The arrears between 18th September, 2002 till 31st March, 2022 shall be paid with 4 per cent simple interest per annum on reducing balance by 10th June, 2022.

So far as awarding interest, ECL has objected to on the ground that there was no fault on the part of ECL in

paying the MMCC. The petitioner according to ECL had applied for compassionate employment of her son which was rejected. Therefor, there was no obligation on the part of ECL to pay MMCC and as such, ECL is not liable to pay interest. The fact remains that from the language of Chapter IX of NCWA it is clear that either compassionate employment has to be given or MMCC in lieu thereof. In the instant case, no compassionate employment has been given by ECL although applied for on the ground of disqualification for health reason. ECL therefor was obliged to offer MMCC to the petitioner once the application for compassionate employment made by the petitioner for her son was rejected. ECL has not done so and as such, they are liable to pay interest. However, considering the long delay in approaching the Court on the part of the petitioner, the interest awarded is only 4 per cent that too on reducing balance keeping in mind that the money in respect of MMCC remained with ECL for over years and had earned interest, while the petitioner on the other hand was deprived of the benefit of the money. The interest awarded, according to me, is fair and reasonable and as such the objection of ECL to award interest is turned down.

Parties shall act on the basis of the server copy of this order without insisting upon production of a certified copy thereof.

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

Since I have not called for any affidavits and only invited report and the exception to the report, allegations made in the writ petition are deemed to have not been admitted.

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

(Arindam Mukherjee, J.)