

SL
No.1
Court
No. 11
G.S.Das

02.12.2022

MAT 1789 of 2022
With
CAN 1 of 2022
CAN 2 of 2022

The General Manager, Kajora Area, Eastern Coal Field Ltd
-Vs-
Nimai @ Nemai Bouri

Mr. Indradeep Pal
Ms. Sougata Pal Das

... for the Appellant

Mr. Partha Ghosh
Mr. Debashis Das

... for the Respondent

Party/Parties is/are represented in the order of their
name/names as printed above in the cause title.

In Re: CAN 1 of 2022

The matter appears under the heading “Mentioned
Matters” on the ground of urgency pleaded by Learned
Counsel for the appellant.

The appellant is the Eastern Coal Fields Limited (for
short, ECL).

Mr. Pal, Learned Counsel appearing for the appellant,
submits that the appellant is facing Contempt Proceeding
before the Hon’ble Single Bench, which order is under
challenge in this appeal. The respondent to this appeal is the
writ petitioner before the Hon’ble Single Bench.

The appellant submits that there is a delay in filing
this appeal. In support of the prayer for condonation of delay,
the appellant relies upon CAN 1 of 2022, which is an
application under Section 5 of the Limitation Act, 1963.

The causes for the delay, as pleaded in CAN 1 of 2022, are objected to by Mr. Ghosh, Learned Counsel appearing for the writ petitioner.

Heard the parties on the issue of condonation of delay.

Considered the pleadings in CAN 1 of 2022.

This Court is satisfied that sufficient grounds have been made out for condoning the delay.

Accordingly, delay stands condoned.

The appeal stands admitted formally to board.

CAN 1 of 2022 stands accordingly **disposed of**.

In Re: CAN 2 of 2022

Next, taking the appeal and its connected application for stay of operation of the Judgement and Order impugned dated 22nd of March, 2022, being CAN 2 of 2022 on merits, it is submitted by Mr. Pal that the Hon'ble Single Bench fell into error by relying upon the medical examination conducted by the Burdwan Medical College and Hospital (for short, BMCH)

It is submitted that the Hon'ble Single Bench could not have solely considered the medical examination conducted by the BMCH. The Medical Assessment Board of the ECL, which is also an expert body, had opined differently.

It is relevant to mention that at the heart of the dispute is the claim to compassionate appointment by

the Respondent/writ petitioner to this appeal, which was turned down by the Recruitment Authority under the ECL on the ground that the writ petitioner is above 35 years of age, being the maximum permissible age for employment.

It is further relevant to mention here that the Medical Assessment Board of the ECL came to the conclusion that the writ petitioner/the respondent was aged between 35 to 40 years of age.

It is also relevant to mention here that the BMCH came to the finding that the writ petitioner/respondent was aged around 35 years +/- 2 years.

Having considered the above two Reports of the Medical Assessment Board and BMCH respectively, the Hon'ble Single Bench came to the conclusion that the mean age of 35 years could be applied to the writ petitioner on the basis of the more *scientific and specific* Report of the BMCH and therefore directed the ECL to consider the claim for compassionate appointment treating the age of the writ petitioner/respondent to be 35 years.

Per contra, Mr. Ghosh, Learned Counsel for the writ petitioner/respondent, submits that the earlier direction of the Hon'ble Single Bench referring the matter to the BMCH for evaluation of the age of the writ petitioner/respondent was never challenged by the ECL. Therefore, having accepted the procedure laid

down by the Hon'ble Single Bench for sending the matter to the BMCH, the ECL cannot resile from such acceptance.

Having heard the parties and considering the materials placed, this Court finds that this is purely a factual issue which must come to a logical conclusion.

The Hon'ble Single Bench is the first Court of facts which had the occasion to peruse both the reports of the Age Assessment Board of the ECL and of the BMCH.

The Hon'ble Single Bench came to the conclusion that the Report of the BMCH is more *scientific and specific*. Both the Reports have also been placed before this Court.

From the two Reports it is evident that the BMCH relied upon several physical, radiological and other details including hereditary, climate etc. to opine that the age of the writ petitioner/respondent could be assessed at 35 years +/- 2 years. Such *scientific and specific* opinion has not been reflected from the Report of the Age Assessment Board of the ECL.

Accordingly, this Court does not find that the findings of the Hon'ble Single Bench require to be interfered with in this appeal.

Further, with regard to the contention of Mr. Pal that the documentary evidence furnished by the writ petitioner/respondent shows otherwise, this Court is

conscious of the fact that the matter could not be resolved at the documentary evidence stage and, had to be referred to experts for assessment of age.

For the above reasons and having regard to the *scientific and specific* nature of the medical examination conducted by the BMHC, this Court does not intend to interfere with the Order impugned dated 22nd March, 2022.

CAN 2 of 2022 stands accordingly **disposed of**.

In view of the dismissal of CAN 2 of 2022, nothing further survives to be adjudicated in the appeal.

MAT 1789 of 2022 thus stands also **disposed of**.

Since affidavits are not invited, other allegations are deemed not to have been admitted.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)