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APOT/47/2021
WITH
WPO/300/2020
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

EASTERN COALFIELDS LIMITED
VS.
PURNABASHI BEHERA AND ORS.

BEFORE:
THE HON'BLE JUSTICE SUBRATA TALUKDAR

THE HON'BLE JUSTICE KRISHNA RAO
Date: March 16, 2022.

Appearance:
Ms. Tanushree Dasgupta, Adv.
... for the appellant

Mr. Partha Ghosh, Adv.
Mr. Amal Kumar Dutta, Adv.
Ms. Ria Pual, Adv.
Mr. Debashis Das, Adv.
... for the respondents

The Court: Party/parties is/are represented in the order of their name/names as printed above in the cause title.

This appeal is directed against the order passed by the Hon'ble Single Judge in WPO No. 300 of 2020 dated 15th December, 2020 wherein the Hon'ble Single Judge has passed the following order :

"In view of the above, the instant writ petition is disposed of by directing the respondent No.6, who has access to all the documents of the deceased employee, to make necessary communication to the petitioner and make her aware of the formalities that she is required to comply for obtaining the monetary compensation. The same shall be communicated to her within a period of six weeks from the date of communication of this order. After compliance of all formalities by the

petitioner, the respondent No.5, under the supervision of the respondent No.3, shall take a decision in the matter strictly in accordance with the relevant Rules and communicate the reasoned order to the petitioner within four weeks thereafter.

The impugned rejections dated April 10, 2015, November 29, 2017 and 6th March, 2020 are hereby set aside.

The Eastern Coalfields Limited has filed the instant appeal on the ground that the respondent/writ petitioner is overage and, as such she is not entitled to either employment or any monetary compensation. On receipt of the application submitted by the writ petitioner, the authorities had considered the grievance of the petitioner and found that as per service record, the age of the writ petitioner is about 39 years as on the date of death of her mother Smt. Basanti Behera. It is further submitted that as per Form-F (Gratuity Nomination Form), the age of the writ petitioner/respondent is about 40 years as on the date of the death of Smt. Basanti Behera and, accordingly, the appellant/respondent had rejected the claim of the writ petitioner. Counsel for the appellant had relied upon Clause 9.3.4 of the scheme which reads as follows :

“9.3.4. the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.”

Relying upon the said Scheme, the counsel for the appellant submitted that age of 45 years is applicable only to the female spouse and not to any other legal heirs of the deceased.

The counsel for the writ petitioner/respondents submitted that Clause 9.3.4 was applicable when father has expired and after the death of the father, the mother has been granted employment under the said Scheme and as such after the death of the mother, Clause 9.3.4 is not applicable. The counsel for the respondent/writ petitioner relied upon Clause 9.3.3, which reads as follows:

“9.3.3. the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.”

Relying upon Clause 9.3.3, counsel for the writ petitioner/respondent submitted that as per the said Clause, the widowed daughter is also to be treated as dependant of the mother or the deceased employee and as such, the writ petitioner being the widowed daughter of the deceased is entitled to get employment.

This Court has considered the rival submissions of the parties, the judgment impugned and the scheme applicable in the instant case. It is found that the father of the respondent/writ petitioner was the employee of the Eastern Coalfields Limited and after the death of the father, the mother was given employment. After the death of the mother, who died in harness, the widowed daughter had applied for employment. As per Clause 9.3.3, the widowed daughter is also a dependant member of the deceased employee.

Clause 9.5.0 (ii) reads as follows:

“9.5.0.(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.”

In the said Clause, it is categorically mentioned that in case, female dependant is above 45 years of age, she will be entitled only to monetary compensation and not to employment.

As per Clause 9.5.0(iv), monetary compensation whenever applicable would be paid till the female dependant attains the age of 60 years.

In the instant case, the widowed daughter was aged about 40 years at the time of death of the mother. After the death of the mother, the widowed daughter had applied for employment. The respondents have rejected the claim of the writ petitioner on the ground of overage.

The Single Bench by considering all aspects and the documents available on record had passed an order directing the respondent no.6 to assess all the documents of the deceased employee, to make necessary communication to the petitioner and make her aware of the formalities that she is required to comply with the monetary compensation.

After considering all the aspects, this Court is of the view that the Single Bench had rightly directed the respondent no.6 for consideration of the case of the petitioner for grant of monetary compensation. This Court finds that there is no infirmity in the order passed by the Hon'ble Single Judge and

thus, this Court is not inclined to interfering with the impugned order. No affidavit is called for as only the law point is involved and thus, the allegations made are deemed to be denied.

GA/2/2021 in APOT/47/2020 with WPO/300/2020 is thus **dismissed.**

(KRISHNA RAO, J.)

(SUBRATA TALUKDAR, J.)