

12.09.2023
DL-139-140
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5211 of 2022

Smt. Kulsun Bibi @ Kulsum
Vs.
M/s. Eastern Coalfields Limited & Ors.

With
WPA 13759 of 2023

Azma Khatun @ Azmira Bibi & Ors.
Vs.
M/s. Eastern Coalfields Limited & Ors.

Mr. Partha Ghosh,
Mr. Amal Kumar Dutta,
Ms. Simran Sureka,
Mr. Debashis Das

...for the petitioner.

Ms. Priti Banerjee

....for ECL.

Written instruction, as handed over in Court today by Ms. Banerjee, is retained with the records.

Two writ petitions are being taken up together. WPA 5211 of 2022 is taken up along with WPA 13759 of 2023.

The original writ petitioner in WPA 5211 of 2022 died during the pendency of the writ petition on May 2, 2022. She was survived by 2 sons and 2 daughters. The original writ petitioner filed the writ petition for grant of monetary compensation being a female dependant of her husband. Her husband died-in-harness on March 8, 2012, being an employee of Eastern Coalfields Limited (ECL).

Initially, a prayer for compassionate appointment was made by the original writ petitioner before ECL. Thereafter, she made an application for compassionate appointment of her son on or about June 13, 2017. The same was rejected by a letter dated July 18, 2017 on the ground of delay. After the said prayer was rejected, the original petitioner made an application for payment of 'MMCC' on September 3, 2021. By a reasoned order dated February 16, 2022, the General Manager Bankola Area, ECL granted 'MMCC' with effect from September 3, 2021. However, in the said reasoned order it was not addressed why 'MMCC' was granted with effect from September 3, 2021 and not with effect from March 8, 2012, being the date on which her husband passed away or from the date of representation on April 2, 2012.

An Hon'ble Coordinate Bench by its order dated April 13, 2022 recorded that by several judgments of the Hon'ble Division Benches of this Court, it has been clearly held that 'MMCC' is payable from the date of death of the employee. The said orders of the Hon'ble Division Benches have not been interfered with in the Special Leave Petitions preferred by ECL before the Apex Court.

When an application for substitution was made by the present writ petitioners in WPA 5211 of 2022, Ms. Banerjee, learned counsel appearing on behalf of

ECL opposed the same by disputing the identity of such writ petitioners and also the genuinity of the relationship of the writ petitioners with the original writ petitioner.

By an order dated November 25, 2022, this Court directed the Officer-in-Charge, Nala Police Station, District – Jamtara in the State of Jharkhand to investigate and file a report regarding the heirs of the original writ petitioner. Pursuant to the report filed by the Officer-in-Charge, Nala Police Station, this Court allowed the application for substitution on January 20, 2023.

On June 28, 2023 again it was urged on behalf of ECL that the genuinity of the relationship between the present writ petitioners and the erstwhile writ petitioner has not yet been established and necessary documents were not produced before the learned Oath Commissioner.

This Court held that it had no reason to disbelieve that the learned Oath Commissioner duly performed his duty and verified the documents before affirmation was done by the present writ petitioners. This Court was of the view that the learned Oath Commissioner complied with the formalities before the present writ petitioners were allowed to file the substitution application and substituted in place and stead of the erstwhile writ petitioner pursuant to the order passed by this Court on January 20, 2023.

Mr. Ghosh, learned counsel appearing on behalf of the petitioners submits that despite knowledge of death of the erstwhile writ petitioner, ECL have sought to disburse the admitted amount of 'MMCC' in the bank account of the original writ petitioner on May 18, 2022. He submits that the factum of the death was brought to the notice of the Hon'ble Coordinate Bench on May 17, 2022 and the amount was disbursed in her bank account on May 18, 2022.

Opposing such submissions of Mr. Ghosh, necessary documents have been produced by Ms. Banerjee. She submits that the office order for release of arrears of 'MMCC' along with monthly payment of 'MMCC' was made on April 11, 2022, prior to the death of the erstwhile writ petitioner.

This Court does not find much substance in the submission regarding admitted amount of 'MMCC' being disbursed on May 18, 2022 for harassment of the present writ petitioner. However, this Court also sees no legally tenable reason for disbursement of arrears of 'MMCC' from the date of the application in September 2021.

This Court directs the arrears of 'MMCC' to be disbursed to the writ petitioners, being the heirs of the original writ petitioner, in WPA 5211 of 2022 to be calculated from March 9, 2012 (being the date subsequent to the date of death of the employee) till September 3, 2021, upon production of proper

identification before the authorities concerned. Such arrears shall be disbursed within 2 months from the date of this order along with interest @ 6% per annum from March 9, 2012 till the date of actual payment of such arrears. A calculation sheet shall be furnished by ECL when such payment is disbursed in favour of the present writ petitioners.

With the directions aforesaid, **WPA 5211 of 2022** is **disposed of**.

Since there has been significant delay in renewing the prayer for compassionate appointment and the said prayer was also not made by the original writ petitioner in WPA 5211 of 2022, this Court is not willing to consider the prayer for compassionate appointment as urged in WPA 13759 of 2023.

Accordingly, **WPA 13759 of 2023** 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.)