

24.08.2023
DL-15
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9357 of 2022

Smt. Purnima Singh
Vs.

M/s. Eastern Coal Fields Limited & Ors.

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

....for the petitioner.

Mr. Bijoy Kumar

....for ECL.

The petitioner's husband was an employee of Eastern Coalfields Limited (ECL). The petitioner's husband died-in-harness on March 19, 1998. The petitioner's name appeared in the service record of her deceased husband as the wife and nominee. Consequent to the death of her husband, the petitioner received the provident fund and gratuity benefits. The private respondent no.8 claimed to be the second wife of the petitioner's husband. She agitated her claim against the petitioner in Title Suit No.189 of 1998 before the learned Civil Judge (Junior Division), 1st Court, Durgapur. A compromise decree was executed between the petitioner and the private respondent. The compromise decree provides that the private respondent no.8 has no objection if employment is granted in favour of the petitioner/her son by the ECL. However, there was no mention of payment of Monthly Monetary Cash Compensation

(MMCC), in favour of the petitioner in such compromise decree.

The petitioner claims that neither compassionate appointment was granted to the petitioner's son nor was MMCC given to her, even though she was *entitled* under National Coal Wage Agreement (NCWA). The application for compassionate appointment of her son was turned down on May 5, 2007 on the ground that he was under aged. The reason for rejection was that her son was less than 15 years of age at the time of death of her husband. The petitioner now states that there is a provision of keeping a male dependant on live roster for compassionate appointment in the event such male dependant is more than 12 years old on the date of death of the deceased employee. Therefore, the rejection by the ECL in 2007 was in violation of the provisions of NCWA. After the initial rejection, the ECL again sought to proceed with the said application for compassionate appointment in 2008. However, the petitioner was neither intimated as to the fate of such application nor was paid MMCC. Hence, the petitioner had no option to file the present writ petition.

Mr. Ghosh, learned counsel appearing on behalf of the petitioner submits that a settlement was arrived at under section 2 (3) of the Industrial Disputes Act, 1947 between the Management of ECL

and the workmen represented by Colliery Mazdoor Congress before the Assistant Labour Commissioner (Central), Raniganj at Durgapur. As per the said agreement, the Management was required to examine the documents and after verifying the genuinity of the case, it was under an obligation to forward the application to the ECL Head Quarter for compassionate appointment within 90 days of receipt of application for employment.

Since this Court was not willing to consider the prayer for compassionate appointment of the petitioner's son as the initial rejection was in May, 2007 and hardly any steps were taken by either of the parties since 2008, the question of *entitlement* of the petitioner to 'MMCC' arose. While considering the question of MMCC, it appeared to this Court that ECL raised discrepancies as to the age of the petitioner. It was submitted that the age recorded in the service book of her husband does not tally with the declaration affirmed by the petitioner in the indemnity bonds dated March 19, 2004 and March, 2011.

By an order dated January 18, 2023, this Court was *prima facie* of the view that the stand taken by ECL was unfair since neither employment was given to the dependant of the deceased employee nor was 'MMCC' granted to the petitioner, assuming the

earliest date of birth of the petitioner to be true. Therefore, this Court directed the Medical Superintendent-cum-Vice Principal, Burdwan Medical College and Hospital, Purba Bardhaman to constitute a Board for conducting ossification test on the petitioner for determination of her age.

From the report dated March 22, 2023, it appears that the petitioner was aged about 55 years $\pm$ 2 years on the day of radiological examination, i.e. March 14, 2023. Therefore, this Court proceeds on the basis that the **deemed** age of the petitioner was 55 years on March 14, 2023.

After receipt of the report from Burdwan Medical College and Hospital, the private respondent no.8 made her appearance before this Court to contend that the compromise decree was not arrived at, on her own volition and the affidavit showing her “no objection” to the petitioner receiving ‘MMCC’ was also not affirmed on her own volition. She had cast severe aspersions on the learned advocate representing her. Aspersions were also cast upon the learned advocate appearing on behalf of ECL, by the petitioner since he had taken upon himself to communicate with certain authorities concerned including the Police regarding the issue of identity of the petitioner and private respondent along with the non-appearance of the private respondent before the Court, without being

authorised by ECL. As recorded by the earlier orders this Court, it had neither appreciated the conduct of the learned advocate appearing on behalf of the private respondent nor had it appreciated the conduct of the learned counsel appearing on behalf of ECL.

This Court is firmly of the view that once ‘compassionate appointment’ was rejected to a dependant of the deceased employee, the grant of ‘MMCC’ in favour of the petitioner should have been considered immediately by ECL upon such rejection. Once the private respondent no.8 gave her “no objection” to ‘compassionate appointment’ being granted to the petitioner or her son before a competent court of law it could not lie in her mouth to turn around and object to the payment of ‘MMCC’ in favour of the petitioner. The petitioner was entitled to ‘MMCC’ in lieu of *compassionate appointment*.

It is a well-settled proposition of law that a litigant should not be allowed to approbate and reprobate.

Therefore, the private respondent’s grievance before this Court that an affidavit containing her “no objection” to payment of ‘MMCC’ in favour of the petitioner was not affirmed out of her free will or done at the coercion of her Advocate is completely unfounded and unmeritorious.

In the light of the discussions hereinabove, this Court directs 'MMCC' to be granted to the petitioner with effect from March 20, 1998 (the date subsequent to the date of death of her husband). Such arrears of 'MMCC' shall bear interest @ 6% per annum from March 20, 1998 till the date of actual disbursal. Arrears of 'MMCC' shall be disbursed within 3 months from the date of this order.

The petitioner shall be entitled to payment of current MMCC starting from October 10, 2023 and thereafter month by month.

With the directions aforesaid, **WPA 9357 of 2022** is **disposed of**.

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.)