

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Lapita Banerji

W.P.A No. 16856 of 2021

**Usha Kumari Bhuiya @ Bhuia @ Usha Bhuiya @ Bhuia
Vs.**

M/s. Eastern Coalfields Limited & Ors.

For the Petitioner	: Mr. Partha Ghosh, Adv. Mr. Amal Kumar Datta, Adv. Ms. Simran Sureka, Adv. Mr. Debashis Das, Adv. Mr. Rahul Agarwala, Adv.
For the ECL	: Mr. Manik Das, Adv. Ms. Tanushree Dasgupta, Adv.
Hearing concluded on	: 05.04.2023.
Judgment on	: 04.05.2023.

Lapita Banerji, J.:- The petitioner's father died in harness on August 28, 1996. Within 2 years, the petitioner made an application for compassionate appointment on May 15, 1998. The said prayer was processed and the petitioner was asked to produce few documents for compassionate appointment on August 2/3, 2004. On December 27, 2004, the petitioner was called for initial medical examination. It was held by the Medical Officer of the Eastern Coalfields Limited (ECL) that the audiometry test for the petitioner was within the normal limits. The petitioner was directed to appear before the

Screening Committee for monetary compensation in lieu of compassionate appointment on February 25, 2005. Thereafter, the petitioner was neither given compassionate appointment nor was given monetary compensation.

2. The present writ petition was filed in 2021. The Hon'ble Coordinate Bench directed the age of the petitioner to be ascertained by way of an ossification test to be conducted by a Medical Board constituted by the Medical Superintendent – cum – Vice-Principal, Burdwan Medical College and Hospital since there was a huge discrepancy in the age of the petitioner based on records. In 2021 the petitioner declared her age to be 34 years but a simple arithmetical calculation from 1998 (when she applied for compassionate appointment being not less than 18 years) till 2022 indicated that she was around 42 years. The medical report from the Burdwan Medical College determined the age of the petitioner to be 42 years in 2022.

3. The Learned Counsel appearing on behalf of ECL, urged the point of maintainability and submitted that the claim of the petitioner is barred by *delay, acquiescence and laches* and therefore, the writ petition is not maintainable. He placed various Judgments on the issue of *delay, acquiescence and laches* by way of a compilation and the said Judgments/Orders merit a detailed consideration.

4a) AIR 1995 SC 1991 (**State of Maharashtra Vs. Digambar**) has been cited for the proposition that laches/undue delay disentitles the writ petitioner from discretionary relief under Article 226 of the Constitution of India.

b) In that case, there was an acute scarcity in 23,000 villages of the State of Maharashtra in 1971-72. Large scale scarcity relief works were undertaken by the State Government to provide employment to agricultural labour/small agriculturists for earning their livelihood. The Collectors and other social workers were instructed to impress upon people to donate their land to the Government without claim for any compensation, as the Government was not in a position to divert the relief funds for payment of compensation funds.

c) In 1991, the writ petitioner filed a petition before the Bombay High Court against the State of Maharashtra for grant of compensation for his land, since it was not utilized with his consent. In such a case, the Hon'ble Apex Court held that the conduct of the writ petitioner will disentitle him to get equitable relief because it is blameworthy due to *laches*, *undue delay*, *acquiescence* and *waiver*. The writ petitioner therein did not make any attempt to explain his blameworthy conduct. Therefore, the writ petition and the appeal was dismissed.

d) The case of **Digambar**(Supra) is completely distinguishable on facts and can have no relevance to a case where the petitioner made an application on compassionate ground within 2 years from the date of death of her father/deceased employee. Here, she was called for initial medical examination and also offered Monthly Monetary Cash Compensation "(MMCC)" in lieu of Compassionate Appointment. Thereafter, the respondent/ECL chose neither to give Compassionate Appointment nor "MMCC" that the petitioner was **entitled**

to. The conduct of ECL was harassing to say the least and ECL should not be permitted to take advantage of its own wrong.

e) How the facts of the present case can be equated with the facts of **Digambar** (Supra) where the petitioner had no entitlement to compensation is lost upon this Court. There, the petitioner did not pray for any compensation for 20 years nor did he have any legal entitlement to the same. Here, the petitioner prayed for the death benefits and received the same after the death of her father (excepting 'MMCC') and also prayed for Compassionate Appointment within 2 years. The legitimate claims of the petitioner cannot be defeated on the ground of *delay*, *acquiescence* and *laches* because This Court finds the conduct of the petitioner in no way blameworthy.

5a) Next, he relies upon a case reported in (2006) 11 SCC 464 (**U.P. Jal Nigam & Anr. Vs. Jaswant Singh & Anr.**). In that case, some of the employees of the Nigam retired after attaining the age of superannuation at 58, whereas, some others filed a writ petition challenging the discrimination between the employees of the Nigam and the State Government employees, who were allowed to continue in service till the age of 60 years. The Hon'ble Apex Court held that the employees of the Nigam were entitled to continue upto 60 years in **Harwindra Kumar vs. Chief Engineer, Karmik**, (2005) 13 SCC 300. After that case several writ petitions were filed in the High Court by employees who retired long time back. In that case, the Apex Court held that *delay/laches* was an important factor in exercise of discretion under Article 226 of the Constitution of India. A person, who is not vigilant of his right and

acquiesced with the situation, cannot be equated with the person, who was vigilant about his rights. *Acquiescence* does not mean standing by, while violation of a right is in progress but assent after such violation has been completed and the claimant became aware of it. It is unjust to give relief to a claimant where he by his conduct *waived* his right or even though he has not waived his right, but due to his *conduct/neglect*, the other party was put in a position where it would not be reasonable to put him if the remedy is asserted.

b) The aforesaid case cannot be compared to the case of the petitioner who is a female dependent of the deceased worker/employee of ECL and suffered extreme financial crisis after the sudden death of the breadwinner of the family/deceased employee. The petitioner prayed for compassionate appointment within 2 years and complied with the necessary formalities. The *delay and laches* were on the part of the respondent/ECL to provide either 'MMCC' or Compassionate Appointment to the petitioner. The respondents cannot be allowed/permitted to take advantage of their own wrong after accepting in 2005 that 'MMCC' is payable in lieu of Compassionate Appointment. The petitioner cannot be said to be non-vigilant of her rights.

6a) Next, he relied upon a decision reported in (2009) 2 SCC 479 (**S.S. Balu & Anr. Vs. State of Kerala & Ors.**) for the proposition that ***delay*** defeats ***equity***. The appellants in that case applied for post of Lower Primary/Upper Primary School Assistants. The rank list that was prepared by the Kerala Public Service Commission, was valid from June 5, 1997 till June 5, 2000. The names of the appellants were contained in the said list. The vacancies were,

however, not filled up. A second select list was published on September 16, 2002, which was valid till September 15, 2005. Vacancies in terms of both the select lists were filled up. The appellants approached the Court at a belated stage and got themselves added as parties in an appeal filed before the Division Bench by the State of Kerala in 2005. The original writ petitioners were advised to be given appointments, whereas, the appellants' claim was not allowed by the Division Bench. The appellants claimed that some of them were seniors in list to the original writ petitioners, who were directed to be appointed. In such a case, the Apex Court held that *delay* defeats **equity** and since they approached the Court after a long **delay**, relief may be denied, irrespective of the fact that they were similarly situated with other candidates who received the benefits of the Judgment.

b) This Court fails to see how the said decision aids ECL. This is not a case where the petitioner sat on the fence till such time other candidates in the selection process received benefits under a Judgment/Order of Court. The petitioner approached the ECL within this stipulated period for Compassionate Appointment. It is incomprehensible how can a case for compassionate appointment/payment of 'MMCC' that the petitioner is entitled to under NCWA (National Coal Wage Agreement) can be equated with the case where recruitment process is under challenge.

7a) Mr. Das, cited a decision reported in (2011) 3 SCC 436 (**State of Orissa & Anr. Vs. Mamta Mohanty**). In that case, the revised scale of pay was only applicable to the teachers/lecturers, who had a good academic record of 54%

or its equivalent in Master's Degree. The same was declared by a Notification dated October 6, 1989 issued by the Government of Orissa. The writ petitioner did not challenge the said Notification but directly approached the High Court after 16 years, in 2005, praying for the revised scale of pay as per the 1989 Notification. The Hon'ble Apex Court, inter alia, held that a teacher, who had been appointed without the requisite qualification initially, could not claim a revised scale of pay unless he acquired the requisite qualification or removed the deficiency. Since the said teachers could not get the benefits of a revised pay scale in grant-in-aid scheme, there was no question of later giving them UGC pay scale. In such a case the High Court was held to have committed error by granting relief without considering the issue of *delay* and *laches* by mainly placing reliance upon earlier Judgments passed in favour of diligent persons who approached the Courts within a reasonable time.

b) This Court fails to see how the facts of the present case can be equated with the case of **Mamta Mohanty** (Supra). In that case, the appointment itself of the teachers was against the criteria laid down in the table which made them *ineligible* to pray for revised pay scale. There is no dispute with regard to the fact that the petitioner in the present case was **eligible** to pray for Compassionate Appointment and **entitled** to the payment of "MMCC". The ratio of the case where the issue related to pay fixation of an *ineligible* candidate is inapplicable to a case where eligibility for compassionate appointment/**entitlement** has to be assessed.

8a) Next, he relies upon a decision reported in (2015) 15 SCC 602 (**State of Jammu and Kashmir vs. R.K. Zalpuri & Ors.**). The writ petitioner/respondent No.1 was dismissed from service on September 6, 1999. He did not prefer any departmental appeal nor approached any superior authority for redressal of his grievance. On February 18, 2006, he filed a writ petition challenging his dismissal from service. In the writ petition nothing was stated with regard to what he had done from 1999 to 2006. In such a case it was held that a Writ Court while deciding whether a writ petition is required to be kept alive to the nature of the claim, any unexplained delay on the part of the writ petitioner needed to be considered. Stale things were not to be adjudicated unless non-interference would cause grave injuries. On the facts of **Zalpuri** (Supra), it was held that since the writ petitioner had accepted the Order of Dismissal for half a decade and culminated the feeling that he could freeze time, his claim deserved to be thrown overboard, at the very threshold. When an aggrieved person without adequate reason approaches the Court at his own leisure or pleasure, then the Court would be under a legal obligation to scrutinize whether the '*lis*' at a belated stage should be permitted or not. Be it noted, that *delay* comes in the way of *equity* but in certain circumstances, *delay* and *laches* may not be fatal.

b) A writ petitioner from an economical backward section of the society, who has prayed for compassionate appointment within time and done the bidding of the respondent/ECL, cannot be penalized for inaction on the part of the ECL. In the event this Court allows the harassment of the petitioner in the

hands of the ECL, then, to the mind of this Court “*grave injustice*”/ “*grave injuries*” will be caused to the petitioner. Equity demands that ECL is prevented from highhandedness and colourable exercise of power in defeating the claim of poor female dependant of a deceased employee.

c) How the facts of **Zalpuri** (Supra), where an educated person was “dismissed” from service due to misappropriation of funds, can be equated with that of a poor litigant who has neither been given compassionate appointment nor “MMCC”, is beyond the comprehension of this Court. The respondents should not be allowed to gain a premium for their own colorable exercise of power/wrongful action/inaction. If such a course is permitted, then, it would go to mean that any authority which sat tight over a legitimate claim of an incumbent, year after year without any reasonable excuse whatsoever, would be permitted to defeat his/her claim since the incumbent was unable to approach the Court earlier, due extreme financial constraints of making the ends meet. Accessibility to justice and lack of knowledge/education are further constraints in approaching the Courts. This Court cannot turn a blind eye to the handicaps suffered by the members of the economically, socially and culturally backward sections of the society.

9a) Next, he relied on a decision reported in (2022) 2 SCC 25 (**Union of India & Ors. Vs. N. Murugesan & Ors.**). In that case, the writ petitioner was appointed to the post of Director General by an appointment letter dated March 22, 2010. He joined his office from March 26, 2010. The terms of appointment to the said post were very clear, since a very high degree of importance was

attached to the said post. Period of appointment was for 5 years or until further orders.

b) The writ petitioner went on performing his duties without any protest or demur. On finding his tenure coming to an end, after 4 years 9 months from the date of joining, he submitted a representation to the Secretary, Ministry of Power on December 30, 2014 praying that since his appointment was made by direct recruitment, he should be treated as a regular employee and should be allowed to continue till the date of his superannuation. In such a case, the principle of *delay, laches* and *acquiescence* was discussed by the Hon'ble Apex court. How the said case aids the contention of the ECL is unclear to this Court.

c) How a very highly placed employee, whose appointment was approved of by the Appointment Committee of the Cabinet (ACC) consisting of the Hon'ble Prime Minister and the Hon'ble Home Minister, at the end of his tenure of 5 years, chose to challenge the period of tenure, can be equated with a dependent of a poor worker/employee of the ECL praying for compassionate appointment/ "MMCC" is not comprehensible. The facts of **N. Murugesan** (Supra) has no relation with the facts of the present case. No illegality has been committed by the respondent authorities in not extending the tenure of the writ petitioner, whereas, in the present case, the respondents are solely liable for neither processing the prayer for Compassionate Appointment nor granting "MMCC" in the teeth of several Judgments passed by the Hon'ble Courts regarding the *entitlement* of a dependent to "MMCC" and the *eligibility* of

a dependent to be considered for compassionate appointment under NCWA. The respondents/ECL without any qualm or remorse acted in violation of the legal rights of the petitioner and is now bent on stifling the writ petitioner from having her grievance redressed before this Court.

10a) Next, he refers to a decision reported in (2008) 8 SCC 648 (**Union of India & Ors. Vs. Tarsem Singh**). In that case, the petitioner worked in Indian Army and was invalidated from service on November 13, 1983. He approached the Court for payment of disability pension in 1999. The Writ Court allowed payment of disability pension but restricted the arrears to 38 months prior to filing of the writ petition. The writ petitioner challenged the payment of pension being restricted to 38 months prior to filing of the writ petition. In such a case, it was held by the Apex Court that normally a belated service related claim would be rejected on grounds of *delay/laches*, but, in case of continuing wrong, relief can still be granted even if there is a long *delay* in seeking the remedy. In case a continuing wrong creates a continuous source of injury, then, such a claim may be entertained even at a belated stage unless it would affect the settled rights of the third parties. The Hon'ble Division Bench of the High Court allowed the arrears to be paid from November 13, 1983 (date on which the writ petitioner was invalidated). The Hon'ble Apex Court restricted the claim of the writ petitioner to a period of 3 years prior to the date of filing of the writ petition.

b) In **Tarsem Singh** (Supra) there was no representation or claim before the respondent authorities for a period of 16 years. In the present case, it is

undisputed that the petitioner prayed for compassionate appointment within 2 years of the death of her father and appeared before the Board for Initial Medical Examination and also before the Screening Committee. The petitioner complied with all the necessary formalities. It is the respondents/ECL, who are responsible for unreasonable delay causing severe prejudice to the petitioner by not considering/processing the petitioner's prayer for compassionate appointment or grant of "MMCC". This Court finds it perplexing that strenuous arguments have been made by the Ld. Counsel appearing on behalf of 'ECL', to permit the respondents/ECL to take advantage of its own wrong.

11a) Next, he relies on a Judgment reported in (2016) 3 SCC 797 (**Asger Ibrahim Amin Vs. Life Insurance Corporation of India**). In that case, the issue was whether the writ petitioner could claim pension even after voluntary retirement and if so, whether his claim could be barred by *limitation* or *laches*. The petitioner in that case, voluntarily retired from service on January 28, 1991 after working for 23 years and 7 months. After promulgation of Life Insurance Corporation of India (Employees) Pension Rules in 1995, the appellant inquired about his entitlement to pension on August 8, 1995. The respondent Corporation replied that the prayer of the appellant could not be acceded to.

b) Thereafter, the appellant again in the year 2000 asked LIC to favorably consider his prayer for pension. Such prayer was unanswered. In 2011, the appellant sent a legal notice to the respondent. The said Notice was answered

and the stand of the LIC remained the same. It was stated therein that since the appellant resigned from service, he was not eligible to claim pension under the Pension Rules. Subsequently, the appellant filed a writ petition on March 29, 2012, which was dismissed by the Single Judge. The Division Bench also dismissed the appeal. Such Order was challenged before the Apex Court.

c) In such a case the Apex Court held that voluntary retirement from service was not equivalent to resignation, disentitling the appellant from receiving pension. Since there was huge delay, not explained by proper reasons, on the part of the appellant in approaching the Court, the arrears of pension were limited to 3 years preceding the date of filing of the writ petition. Again how the facts of **Asger Ibrahim Amin** (Supra) are applicable to the present case, is beyond the comprehension of this Court. Despite huge delay which was not explained by proper reasons, still the Court granted relief to the writ petitioner even though the respondent authorities were unclear about the nature and extent of their obligation.

d) In the present case, there is no dispute with regard to the nature and extent of the obligation on the part of the respondent authorities and the defence of *delay*, *laches* and *acquiescence* was agitated only for the purpose of defeating the legitimate claims of the petitioner. The onus/duty is on the part of the respondent to explain while it failed in discharging the duty/obligation cast upon it.

12a) The next decision cited is reported in (1994) 4 SCC 138 (**Umesh Kumar Nagpal Vs. State of Haryana & Ors.**). In that case, it was held that as a rule

public services should be made strictly on the basis of open invitation of application and merit. However, there are some exceptions to the general rule. One such exception, is in favour of the dependents of an employee dying-in-harness and leaving his family in penury and without any means of livelihood. On purely humanitarian grounds, so that the family is able to make both ends meet, one of the dependents of the deceased employee may be eligible for gainful employment. The whole object is to tide over a sudden financial crisis. The object was not to give a post to a member of the deceased family equivalent to the post held by the deceased. The posts of Class III and IV are the lowest posts in non-manual and manual categories and they alone can be offered on compassionate grounds with the object of providing relief to the family and preventing financial destitution. Such exception is made considering the services rendered by the deceased employee and the legitimate expectation and the change in status and affairs of the family members due to the employment of the deceased employee which were being suddenly upturned.

b) In that case, the Apex Court held that the State Government's instructions rightly pointed out that employment to Class II posts could not be made. Since the High Court left it to the discretion of the Government to make appointments to Class I and Class II posts despite the said policy, appointments made above Class III and Class IV posts were contrary to law. In case a dependent found it below his dignity to accept the post offered, he was not free to do so since the post offered was not to cater to his status but to see the family through economic calamity. It was held that the consideration of

such employment was not a *vested* right which could be exercised at any time in future. Therefore, compassionate appointment could not be granted after a lapse of reasonable period of time.

c) In the present case, there is no dispute with regard to the fact that the deceased employee was a worker employed with the ECL. In all likelihood, the petitioner would have been eligible for a Group IV post. There is also no dispute to the penury in which the deceased family found itself. Under NCWA, the respondents were under an obligation to consider the appointment on compassionate ground which the respondents/ECL failed to do without any justifiable reason. Therefore, the purpose of citing this case to support the respondents/ECL's stand is not appreciated by this Court.

13a) The next Judgment relied upon by Mr. Das is reported in 2006 (4) CHN 507 (**Maitry Banerjee Vs. Union of India & Ors.**). In that case, the petitioner's husband died in harness on November 5, 1992. The petitioner applied for compassionate appointment on December 1, 1992. The petitioner claimed to have been selected for compassionate appointment in a selected list of candidates in 1996. However, no corroborative evidence in support of such a contention was brought on record.

b) The petitioner made a representation on February 10, 1998 to the effect that she had been given false assurances and was not appointed till date. Admittedly, the petitioner's date of birth was on December 12, 1955. She crossed age of 50 on December 13, 2005 and she approached the Courts in 2006. Therefore, the petitioner was held not to be eligible for compassionate

appointment since her inaction made her claim 'age barred' and 'time barred'. There is no explanation as to why even after being selected in 1996 the petitioner did not choose to exercise her right.

c) In the present case, the petitioner was neither provisionally selected nor was intimated the reasons for non-consideration of her prayer for compassionate appointment. Once the prayer for compassionate appointment was made within time, under the NCWA, the respondent/ECL was under an obligation to consider the same. Non-consideration of such a prayer (when made within time) would result in breach of contractual obligation on the part of the ECL.

d) In the case of **Maitry Banerjee** (Supra), the petitioner was unable to show any supporting document to her claim that she was already provisionally selected for compassionate appointment. Furthermore, she was unable to show why after being selected in 1996, she chose not to take any legal steps in 2006. Only after crossing the upper age limit for appointment, she chose to file the writ petition. The writ petitioner, in the present case, did not cross the upper age limit for appointment on compassionate ground on the date of filing of the writ petition. Facts of the present case are distinguishable from **Maitry Banerjee** (Supra).

14a) He relied on a Judgment reported in 2006 (5) Supreme 566 (**State of J&K & Ors. Vs. Sajad Ahmed Mir**). In that case, the father of the writ petitioner died in March, 1987. The petitioner applied for compassionate appointment in September 1991, almost 4 and a half years after the death of his father. The

decision not to appoint the petitioner on compassionate appointment was taken in 1996 and the writ petition was filed in 1999. In that case, the writ petitioner was a minor in 1991. When he applied for compassionate appointment after 4 and half years of his father's death, the Single Bench dismissed the writ petition but the Division Bench allowed the prayer of the writ petitioner by holding that he was "*entitled*" to compassionate appointment in terms of the rules and regulations which were in existence.

b) The Apex Court held that the Division Bench committed a clear error of law by setting aside the Order passed by the Single Judge. Not only the writ petitioner was a minor in 1987, he was also a minor when he made the application in 1991. When the writ petitioner was informed of the rejection in March 1996, he did not choose to take any action. He was again communicated the same decision in 1999. He then challenged the same. Therefore, there was a gross *delay and laches* on the part of the petitioner. In the present case, neither was the application made belatedly nor was the petitioner a minor at the time of the death or the application nor was there any order of rejection of the prayer for 'MMCC'. In fact there was an assurance that the 'MMCC' would be given in lieu of Compassionate Appointment. Therefore, facts of the present case are distinguishable from the facts of **Sajad Ahmed Mir** (Supra). The decision regarding dismissal of a prayer for compassionate appointment could not be relied upon by the respondents/ECL without analyzing the facts of the case.

15. Next, Mr. Das, relied on an unreported Judgment passed by the Apex Court in Civil Appeal No.897 of 2021 (**Central Coalfields Limited Vs. Smt. Parden Oraon**). In that case, the petitioner's father went missing in 2002. The petitioner's father was terminated from service in September, 2004. The writ petitioner filed a Suit for Declaration of a civil death and the same was decreed in July 2012 with effect from the date of filing of the suit in December, 2009. Prayer for compassionate appointment was made for her son in May, 2013 and the same was rejected since the petitioner's father was already dismissed from service and his prayer for compassionate appointment could not be considered. Since the application for compassionate appointment was filed by the respondent in 2013, more than 10 years after the respondent's husband went missing, the prayer could not be acceded to. This Court cannot understand how the facts of that case are applicable to the facts of the present case. The facts of **Smt. Parden Oraon**(Supra) is not applicable.

16. *Per Contra*, Mr. Ghosh, learned Counsel appearing on behalf of the petitioner submitted that he is squarely cover by various decisions of this Hon'ble Court and the Hon'ble Supreme Court of India on the issues raised in the writ petition.

17a) He referred to a Coordinate Bench's Judgment passed in (**Dewanti Kumari Vs. M/s. Eastern Coalfields Limited & Others**) reported in 2016 (1) CLJ Cal 507. The said Judgment was affirmed by the Division Bench in (**M/s. Eastern Coalfields Limited Vs. Dewanti Kumari and Others**) reported in 2016 (3) WBLR (Cal) 464. The Hon'ble Supreme Court did not interfere with the

Judgment passed by the Division Bench in a Special Leave Petition preferred by the ECL.

b) In that case, the Hon'ble Coordinate Bench directed the arrears, payable on account of "Monthly Monetary Cash Compensation" from the time of death of the deceased employee/within one month from date of death. The Division Bench held that appeal from Single Benche's Judgment and Order was absolutely frivolous and dishonest. The appeal of ECL was frivolous and dishonest, since the issues were already decided by several Judgments. The Appeal was filed only to harass a female dependant of a deceased employee who died on duty. The arrears of MMCC were to be calculated from the date of death of the father of the petitioner. The Hon'ble Division Bench held that the compensation will be payable to the female dependant from the date of death of the employee and not from the date when the application for compensation is submitted by the dependant. The cause of action is continuous, starting from the date of death of the employee.

18a) Mr. Ghosh, relied on a Judgment/Order passed in APOT 518 of 2007 (**Smt. Chhaya Singh Sardar Vs. Coal India Limited & Others**) for the proposition that "MMCC" should be paid to the writ petitioner from the date of death of the deceased employee. In that case the Hon'ble Division Bench held that a long period of time passed since the date of death of the petitioners husband/deceased employee. The husband of the petitioner died in 1993. The writ petition was filed in 2006, 13 years after the date of death of the deceased

employee. The Judgment was passed by the Division Bench in 2008, 15 years from the date of death of the husband/deceased employee.

b) This Court cannot accept the submissions of Mr. Das that since the Judgments cited by him on *delay*, *laches* and *acquiescence* were not considered by the Hon'ble Division Bench of this High Court case of **Chhaya Singh Sardar** (supra) is not applicable to the present writ petition.

19a) Next, Mr. Ghosh, cited the decision passed APOT 49 of 2019 (**M/s. Eastern Coalfields Limited & Others Vs. Premlata Devi and Others**). In **Premlata Devi's** case, the learned Single Judge held that the petitioner will be entitled to compensation with effect from June 21, 1997 (being date of death of the deceased employee) since the delay was caused due to arbitrary and illegal acts of the respondent no. 1. Merely, because 29 years have passed due to the pendency of the litigation/disputes, the right of the writ petition for obtaining financial benefit under NCWA cannot be defeated. The findings of the Hon'ble Coordinate Bench was upheld by the Division Bench. However, the rate of interest was reduced from 10% per annum to 6% per annum.

b) This Court cannot accept the submission of Mr. Das that the decision of **Premlata Devi** (supra) does not lay down any ratio since the ratio laid down by the Hon'ble Single Judge has been only affirmed by the Hon'ble Division Bench. The SLP being special leave to Appeal (c) no. 29907/2019 was dismissed by the Hon'ble Supreme Court on January 6, 2020. Therefore, the Judgment/Order passed by the Hon'ble Division Bench was affirmed.

20a) Mr. Ghosh, relied on the decision of (**Kajoli Bauri Vs. Coal India Limited & another**), WP No. 4 of 2014 passed by a Coordinate Bench on January 7, 2014. The said decision relied upon the decision in **Smt. Chhaya Singh Sardar** (supra). The decision of **Kajoli Bauri** (supra) was taken into consideration in **Dewanti Kumari** (supra). In that case the petitioner's husband/deceased employee died in 1995. Immediately, after his death the petitioner made an application for being appointed on compassionate ground. The petitioner application was neither considered nor rejected.

b) The Coordinate Bench analyzed the provisions of 9.5 of NCWA and held that the provisions ensures financial security to the female dependant of a deceased workman/employee and the right accrues instantaneously upon the death of the workman. The right to compensation was **unconditional, immediate** and **not dependant** on any application for that purpose. It was the duty of the Coal Company concerned to both advice the dependant female member of her rights and guide her to appropriate option.

c) A Government Company/Employer cannot be heard to say that the female dependant/distressed family would be deprived of the benefit by reason of a belated application. The decision of the Coordinate Bench in **Kajoli Bauri** (supra) was upheld by the Division Bench in APOT 269 of 2014 by a Judgment/Order dated June 25, 2014. The Appeal Court upheld the decision of the single bench but held that since the payment of arrears was made by ECL, albeit after the time stipulated by the Single Judge, ECL was not required to pay interest.

21a) A subsequent writ petition was filed, being WP 661 of 2015 (**Bimli Majhian vs. Coal India Limited and Others**). By an Order dated January 11, 2016 the Hon'ble Coordinate Bench held that the petitioner was entitled to "MMCC" from the month following the date of death of her husband. The respondents were directed to pay interest and costs. The said Order has to be seen in context of the Order dated August 21, 2013 passed in WP No. 196 of 2013 amongst the same parties. There the Coordinate Bench held that the writ petitioner would only be entitled to compensation from the date of the application as the writ petitioner approached the court belatedly. As far as the arrears of compensation were concerned the same would be considered by the ECL. An Appeal was preferred by ECL from the Order dated January 11, 2016 passed in WP 661 of 2015. The Order dated January 11, 2016 was affirmed by the Division Bench and not the Order dated August 21, 2013.

b) Two applications were made by the writ petitioner for appointment on compassionate ground. The petitioner's husband died in harness on February 6, 1998. The respective applications for Compassionate Appointment was made on April 12, 1998 and November 14, 1998. Since the same were not considered by ECL, an application for "MMCC" was submitted on January 21, 2013 after almost 15 years. The issue regarding *delay* was considered by the Hon'ble Coordinate Bench and also the Division Bench. The Appellate Court held that there was a deliberately dishonest Act on the part of ECL in preferring the Appeal. The conduct of ECL was truly reprehensible and the appeal was dismissed with costs.

c) The Division Bench clearly recorded the dates of the submission of the application for compassionate appointment and the “MMCC”. Therefore, it cannot be contended that the question of delay in filing of the application or approaching the Writ Court was not considered by the Division Bench especially when the order dated August 21, 2013 restricted the payment of ‘MMCC’ from the date of the application due to delay.

22a) The same view has been reiterated by Hon’ble Coordinate Bench in **(Manjala Begum Vs Coal India Limited)**, WP No. 660 of 2015. Mr. Das tried to distinguish the said case and the decision of the Hon’ble Division Bench passed in APOT 149 of 2016 where the Order dated January 11, 2016 was carried in appeal, on the ground that the issue of *delay, laches* and *acquiescence* was not dealt with in the aforesaid Judgments. The Hon’ble Single Bench clearly held that in the event a dependant of a deceased workman/employee who died in harness does not apply within a reasonable time for compassionate appointment she may not be entitled to the same but she will be entitled to compensation under the NCWA with effect from the month following the date of death of the workman irrespective of the date of application. There is no merit in the submission on behalf of ECL that the issue of *delay, laches* and *acquiescence* has not been considered by the learned single Judge and the Division Bench.

23a) The next Judgment cited by Mr. Ghosh is passed in FMA 169 of 2019 by the Hon’ble Division Bench **(M/s. Eastern Coalfields Limited Vs. Smt Shefali Khan and Others)** on December 12, 2019. In that case, that the husband of

the petitioner died in harness in 1997. An application for compassionate appointment was made for her son-in-law which was turned down in 1998. There was a lull for about two decades. An application was made by her daughter in 2017 for Compassionate Appointment. The same was also rejected.

b) Thereafter, the widow of the deceased employee/petitioner made an application for “MMCC” in lieu of employment relying on **Dewanti Kumari** (supra). The Hon’ble Division Bench held that in respect to the earlier Division Bench’s Judgment consistency and certainty of law was required to be maintained and the said Judgment was a binding precedent on a later Division Bench. There was no reason to differ from the earlier Judgment. Since, the facts of the case have been clearly discussed by the Division Bench, this Court cannot accept the submission of Mr. Das that the issue of *delay*, *laches*, and *acquiescence* was not dealt with. The Division Bench after considering the submissions made on behalf of ECL held that MMCC was to be paid from the date of death and not from date of the application.

24. Mr. Ghosh, refers to a reasoned Order passed by Director (personnel, ECL on November 27/28, 2020 in compliance of the order passed in writ petition being WPO 330 of 2020 (**Sanjua Bhuina Vs. M/s. Eastern Coalfields Limited and Others**). In that case the Director (Personnel) held that monetary compensation is to be payable to the writ petitioner from the date of death of her husband. In another reasoned Order dated November 27/28, 2020 passed in compliance of an Order passed in WPO 331 of 2020 (**Gita Bauri Vs. M/s. Eastern Coalfields Limited & Others**), the Director (Personnel) directed

monetary compensation to be paid to the writ petitioner from the date of death of her husband. By another Order dated November 27/28, 2020 passed in compliance of an Order passed in WPO 332 of 2020 (**Joti Devi Khoyra Vs. M/s. Eastern Coalfields Limited & Others**), the Director (Personnel) passed an Order granting monetary compensation to the petitioner from the date of death of her husband.

25a) In a Judgment and Order passed by the Hon'ble Division Bench in MAT 86 of 2022 (**M/s. Eastern Coal Fields Limited & Others Vs. Smt. Dukhni Bhuiya**) on April 21, 2022 it was held that the Order of the Hon'ble Coordinate Bench directing payment of MMCC to the writ petitioner with effect from the date of death of her husband does not suffer from any infirmity and the appeal was dismissed.

b) In that case, the husband of the writ petitioner died in harness on September 14, 1999. An application for 'MMCC' was made in March 2020. Since there was no response to the said application, a writ petition was filed. The respondent, ECL passed a reasoned Order stating that the petitioner will be paid 'MMCC' with immediate effect from May 28, 2021. The said Order was challenged by filing of the writ petition. The Coordinate Bench, directed 'MMCC' to be paid with effect from the date of death of the husband of the writ petitioner.

c) It was argued on behalf of ECL that only after a female dependant exercises her option to accept 'MMCC' the liability of the ECL to pay the same will arise. It was contended that the liability to pay from the date of death was barred by

the laws of limitation. The Division Bench held that the right to 'MMCC' of a female dependant arose from clause 9.5.0 of NCWA. It was a bipartite settlement between the Coal India Limited and its subsidiary companies on one hand and the workmen/employees represented by several trade unions on the other hand. Clause 9.5.0 is reproduced herein after:-

"9.5.0 Employment/Monetary compensation to female dependant

Provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

(i) In case of death due to mine accident; the female dependant would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.

(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.

(iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0. If no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.

(iv) Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.

(v) The existing rate of monetary compensation will continue. The matter will be further discussed in the Standardisation Committee and finalised."

d) The question whether or not the female dependant exercised her option paled into insignificance as the employer is obliged to pay monetary compensation if employment is not offered to the female dependant. Since, clause 9.5.0 did not stipulate an application needed to be submitted for being

entitled to monetary compensation the employer was obliged to pay from the date of death of her husband since, compassionate appointment was not offered to the writ petitioner, after the death of her husband. Even, though the application for 'MMCC' was made 21 years after the date of death of her husband still the Hon'ble Division Bench allowed 'MMCC' from the date of death of the deceased employer.

26. The Judgment and Order passed by an Hon'ble Division Bench on September 2, 2022 in MAT 1007 of 2002 (**M/s. Eastern Coal Field Limited Vs. Smt. Dulali Mejhian @ Majhan and Others**) whereby the Hon'ble Division Bench refused to interfere with the Order dated April 18, 2022 passed by the Hon'ble Coordinate Bench in awarding 'MMCC' from June 10, 2004 (the date subsequent to the date of death of the workman employee), was not interfered with by the Hon'ble Apex Court. In that case, the Hon'ble Division Bench held that there was no valid reason to keep the writ petitioner's application for compassionate appointment pending from 2004 till 2021 despite compliance of all the formalities. The writ petitioner being an uneducated widow was forced to live in penury despite being protected by the provisions of NCWA. The deliberate Act/willful omission on the part of the ECL was highhanded and is in colourable exercise of power and abuse of process of Court. It was held that unnecessary legal complications was sought to be made by the ECL to defeat the legitimate dues of the writ petitioner. A Special Leave Petition preferred from the said Judgment/said Order and the same was dismissed on January 3, 2023 by the Hon'ble Apex Court.

27.a) In another Judgment passed by the Hon'ble Division Bench on September 2, 2020 in MAT 1006 of 2022 (**M/s. Eastern Coal Fields Limited Vs. Smt. Ambabati Mahali**), it was again reiterated that the petitioner will be entitled to 'MMCC' from the date subsequent to the date of death of the husband. The petitioner's husband died in harness on April 21, 2002. The writ petitioner made an application within the stipulated time for compassionate appointment in favour of a brother-in-law which was not accepted by ECL. On September 22, 2011 the petitioner made an application for her compassionate appointment. The petitioner gave a reminder on July 23, 2012 and another one on September 12, 2020. By a letter dated July 27, 2012 'MMCC' was offered in lieu of compassionate appointment. The petitioner was asked to attend a screening test on July 30, 2012. Thereafter, there was no response from ECL. The writ petitioner again applied on March 14, 2016 for 'MMCC'. Without any reason the same was not paid to the petitioner.

b) Thereafter, the petitioner was asked to appear for medical examination on January 3, 2019. The writ petitioner again prayed for compassionate appointment on September 10, 2020. A letter was issued by the working President of the Union on October 12, 2020 but there was no response thereto. Therefore, the writ petition was filed.

c) Mr. Das, tried to distinguish the said case by arguing that *delay, laches* and *acquiescence* was not considered while granting 'MMCC' from the date subsequent the date of death of the petitioner's husband. With due respect to the learned Counsel such a submission cannot be accepted since the facts of

the case were discussed in detail before granting 'MMCC' to the petitioner from the date subsequent to the date of death of her husband. Surely, an uneducated widow's claim cannot be extinguished for belatedly approaching the Court when she was forced to live a life of penury due to the high-handed/arbitrary action of the 'ECL'.

28. Mr. Ghosh, relied upon a Judgment/Order passed in MAT 536 of 2022 (**M/s. Eastern Coal Fields Limited Vs. M/s. Kajali Mejhain and Others**). The issue of a dependant of an adhoc employee was discussed and the Division Bench held that the pronouncement of the Coordinate Bench to the effect that 'MMCC' is payable from the date of death of the deceased employee is binding. It was held that there was no mistake made by the Hon'ble Coordinate Bench in holding the writ petitioner as a dependant family member of the deceased employee.

29. Mr. Ghosh argued that the payment of 'MMCC' is like payment of a Pensionary Benefit, the difference being that pension is a lifelong benefit whereas 'MMCC' is payable up to the age of 60 years of the female dependant. In a decision reported in 2022 LiveLaw (SC) 785, the Hon'ble Apex Court held in (**The State of Rajasthan and Others vs. O.P. Gupta**) that denial of pension is a continuing wrong. Also the fact that the Court could not be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints.

30. In the present case, the female dependant of the deceased employee belongs to poorest of the poor section of the society. Any benefit granted to her

will not unsettle any third party rights. The 'MMCC' has not been granted by ECL in a deliberate abuse of power forcing the writ petitioner to live in penury. Therefore, there is no question of exercising discretion against the writ petitioner.

31. Next, he cited a Constitutional Bench Judgment reported in 2004 (11) SCC 26 (**State of Punjab and another vs. M/s. Devans Modern Breweries Limited and Another**) for the proposition that judicial discipline envisages that a Coordinate Bench will follow the decision of an earlier Coordinate Bench. There is no dispute in respect of such a proposition. On the issues raised in the present case, not only there are several Judgments and Orders passed by the Coordinate Benches but also the Hon'ble Division Bench of this Court which were not interfered with by the Hon'ble Apex Court. The same are binding precedents, on this Court.

32. Mr. Ghosh, relied on a Judgment reported in 2003 (1) SCC 184 (**S.K. Mastan Bee vs. The General Manager, South Central Railway and Another**). In that case, the petitioner's husband died in harness in 1969. In 1991 the petitioner made an application for payment of family pension. Her husband worked as a gangman in the Railways. The Railways rejected the prayer of the petitioner in 1992. A Coordinate Bench directed the arrears of the family pension to be paid with effect from the date of death of the petitioner's husband in a writ petition filed by her. The Hon'ble Division Bench held that since the petitioner approached the Court belatedly, she would receive the arrears after April 1, 1992 (date on which a legal notice was given by the appellant/ writ

petitioner). The said Order was challenged by the writ petitioner. The Hon'ble Supreme Court allowed the Appeal thereby granting the writ petitioner family pension from November 21, 1969 (the date on which the petitioner's husband died). The writ petitioner was a illiterate widow, not aware of her legal rights with no access to any information in respect of her rights to family pension and the ways in which she could enforce her right on the death of her husband were the factors that weighed with the Apex Court. It was obligatory for the railways/husband's employer to compute the amount of family pension payable to her. The same should have been offered to her without driving her to litigation. Since the appellant may not have had sufficient resources to agitate her rights and also because she was an illiterate widow, the Hon'ble Apex Court held that the Coordinate Bench was justified in granting relief to the appellant/petitioner from the date of death of her husband.

33. Following the Judgment and Order of the Apex Court in **S.K. Mastan Bee** (supra), this Court is of the opinion that the petitioner should be paid 'MMCC' from the time of the death of her husband.

34. Mr. Ghosh also relied on a decision reported in (2007) 3 CHN 683 (**Niranjan Chatterjee & Ors. vs. State of West Bengal & Ors.**). This Court finds the facts of that case inapplicable to the facts of the present case.

35. Since the facts of WPO 300 of 2020 (**Purnabasi Behera vs. Eastern Coalfields Ltd. & Others**), are not similar to the present case the said case has not been discussed in this Judgment.

36. In the light of the discussions made hereinabove, this Court holds that time and again it has been held that 'MMCC' is payable to the petitioner, being a female dependant of a deceased employee/workman, from the time of death of the deceased employee/workman. The said issue is no more '*Res Integra*'. Time and again the issue of '*delay, laches and acquiescence*' has been urged on behalf of the Coal Company to defeat the claim of a poor female dependant and time and again the same has been turned down by the Hon'ble Courts.

37. The learned Counsel appearing on behalf of the ECL again tried to urge the said issue of '*delay, laches and acquiescence*' for defeating the claim of the writ petitioner or for restricting the claim of the writ petition to 3 years prior to filing of the writ petition. The said stand on behalf of the ECL cannot be accepted. The argument on behalf of the ECL are frivolous and misdirected since they are aimed at defeating the legitimate claims of an illiterate, poor widow who was forced to live in penury due to the deliberate inaction on the part of ECL in colourable abuse/exercise of power.

38. All the cases cited by Mr. Das are not on the issue of refusal to grant 'MMCC' to the female dependant of the deceased employee/worker. The said cases inter alia relate to not challenging of a disciplinary action or pay fixation or a recruitment or selection process where *delay, laches and acquiescence* have been discussed. The ratio laid down in such a context cannot be applicable to the cases of compassionate appointment or payment of 'MMCC' where the blame is clearly attributable to the respondent coal company/employer.

39. The attempt on the part of ECL is not appreciated at all. It has resulted in waste of substantial judicial time since the issue has been agitated again and again and rejected. The conduct of ECL has been deprecated on earlier occasions.

40. Therefore, the prayer for 'MMCC' is allowed. The petitioner will be entitled 'MMCC' from May 16, 1998 (the date subsequent to the death of her father). The arrears of payment of 'MMCC' will be released within 3 months from date with interest at the rate of 6% per annum payable from May 16, 1998 till the date of disbursal of the entire amount.

41. The petitioner will be entitled to 'MMCC' on a month by month basis starting from July 10, 2023. The petitioner is also awarded costs assessed in Rs. 50,000 for the harassment caused by the employer/ECL to the petitioner by driving a poor widow to litigation and strenuously/vehemently contesting the same on an issue that is no more '*Res-Integra*'.

42. With the direction aforesaid **W.P.A No 16856 of 2021** is **disposed of**.

43. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

44. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)