

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

Before:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Lapita Banerji**

**MAT 1257 of 2021
with
IA No.CAN 1 of 2021**

**M/s. Eastern Coalfields Limited
Vs.
Smt. Kajol Badyakar & Ors.**

For the Appellant : Mr. Bijoy Kumar, Adv.,

For the Respondents/
Writ petitioner : Mr. Partha Ghosh, Adv.,
Mr. Amal Kanti Datta, Adv.,
Ms. Simran Sureka, Adv.,
Mr. Debashis Das, Adv.,

Hearing concluded on : 11.05.2023.

Judgment on : 15.06.2023.

Lapita Banerji, J.:- This is an intra Court Appeal from an Order dated September 7, 2021 passed by an Hon'ble Single Bench of this Court. The Hon'ble Single Judge held that the petitioner was entitled to Monthly Monetary Cash Compensation ('MMCC') from the date of death of the petitioner's husband. The petitioner's husband was an employee of Eastern Coalfield

Limited (in short, ECL). He died-in-harness on November 26, 2005.

2. The arrears of 'MMCC' was directed to be paid by the ECL by October 15, 2021. The Monthly payment of MMCC was directed to be paid on and from November 10, 2021 and within the 10th of each succeeding month.

3. The Hon'ble Single Bench did not call for affidavits by observing that the issue whether the respondent/writ petitioner was offered 'MMCC' in the year 2005-2006 is no longer relevant. Furthermore, it was recorded that whether the petitioner was declared '*physically fit*' in the Initial Medical Examination (IME) was also not germane to that stage of the proceedings. The Single Bench found that the writ petitioner's cause of action was a continuing one and the appellant/ECL was obliged to give either appointment on compassionate ground or 'MMCC' to the petitioner.

4. The appellant/ECL preferred the Appeal on the grounds that the writ petition was not maintainable since there was an alternative remedy under the Industrial Disputes Act, 1947. The writ petitioner had no right to claim monetary compensation after a long period of time. The right to claim monetary compensation was not statutory right. 'MMCC' was not required to be paid from the date of death of the workman/employee concerned. A copy of the writ petition was not served upon all the respondents. 'MMCC' is a type of mercy grant to the deceased workman's dependant. The Appellant was not allowed to bring on record an Affidavit in Opposition to the writ petition. The petitioner was not within the 'zone of consideration' as per the National Coal Wage Agreement (NCWA).

5. Mr. Kumar, learned Counsel appearing on behalf of the ECL argued that 'MMCC' should be paid, if at all from the date of the application and not from the date of death. He further submitted that despite being considered '*fit*' for employment in the 'IME' the petitioner chose not to accept the employment offered.

6. He referred to a Judgment/Order passed by a Coordinate Bench of this Court on November 3, 2014 in APO 418 of 2014 (**M/s Eastern Coalfields Limited Vs. Smt. Mahangi Bhuiya & Ors.**) in support of his contention that 'MMCC' was payable from the date of the application and not from the date of death.

7. Mr. Ghosh, Learned Counsel appearing on behalf of the writ petitioner/respondent argued that the dispute did not come under the purview of the Industrial Disputes Act, 1947 since, the 'MMCC' that was required to be paid to her was under NCWA and not under the 1947 Act. He denied and disputed the fact that any offer of appointment was made to the petitioner after being declared '*fit*' in the 'IME'. The brother-in-law of the petitioner prayed for compassionate appointment, being the brother of the deceased employee. Such employment was not granted to him being an '*indirect*' dependant. The petitioner being a female dependant of the deceased employee was either *eligible* for 'compassionate appointment' or *entitled* to 'MMCC'. The petitioner is now more than 45 years of age and therefore, can only be granted 'MMCC' and not compassionate appointment.

8. Considering the rival submissions of the parties and the materials on

record this Court finds that:

- a. The petitioner is a *female dependant* being the **wife** of the deceased employee/workman.
- b. The petitioner's husband died on November 26, 2005.
- c. Since, the prayer for appointment of the petitioner's brother-in-law was rejected, she applied for compassionate appointment on January 24, 2013.
- d. The petitioner appeared in the Initial Medical Examination ('IME') as directed by the Manager (Personnel) on December 20, 2013. Thereafter, several reminders were given by the petitioner to the authorities concerned but there was no response from the authorities concerned regarding her compassionate appointment.
- e. By a communication dated April 14, 2021, the petitioner was asked to appear before the screening committee for payment of 'MMCC'. By a communication dated June 10, 2021, the Chief Manager/Agent informed the Chief Manager (Personnel) that necessary action should be taken regarding the proposal of grant of 'MMCC' to the petitioner.
- f. After the writ petition was filed on March 15, 2021 and during the pendency of the same, steps were taken for processing the proposal for payment of 'MMCC'.
- g. The appellant has not made any application under Order 41 Rule 27 of the Code of Civil Procedure to bring Additional documents on

record to evidence whether or not compassionate appointment was offered to the writ petitioner after being declared '**fit**' in the 'IME'. As per the Writ Rules of the High Court at Calcutta, the provisions of the Code of Civil Procedure *shall* be followed, as far as may be applicable, in all proceedings under Article 226. Hence, the argument with regard to Appellant/ECL being prejudiced for not being able to file Affidavit-in-opposition is rejected. In the absence of such documents it has to be deemed by this Court that there was no communication from the ECL to the petitioner after she was called for the 'IME'.

h. 'MMCC' is required to be paid under NCWA and the argument with regard to 1947 Act being a bar to the maintainability of the Writ Petition cannot be accepted. It is an **entitlement** of the petitioner and not a *mercy grant* to the petitioner.

i. NCWA 9.5.0 is produced hereinafter, on the basis of which the petitioner claimed compassionate appointment/'MMCC'.

"9.5.0 Employment/Monetary compensation to female dependent 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 alive 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.”

j. By several Judgments of Hon'ble Coordinate Benches it has been reiterated that payment of 'MMCC' has to be made from the time of the death of the deceased employee, whether or not an application was made for the necessary purpose. A beneficial reference may be made to a Judgment dated September 2, 2022 passed in MAT 1007 of 2022 (**M/s. Eastern Coalfield Limited vs. Smt. Dulali Majhian @ Majhan & Ors.**). The said Judgment was carried in Appeal. The special leave petition was dismissed by the Hon'ble Apex Court on January 3, 2023. A similar view was taken in MAT 1006 of 2022 (**M/s. Eastern Coalfield Limited vs. Smt. Ambabati Mahali**) by this Bench, by a Judgment dated September 2, 2022. The said Judgment was carried in Appeal. The same was dismissed by the Hon'ble Supreme Court by an Order dated May 12, 2023. The Judgment reported in 2016(3) WBLR (Cal) 464 (**M/s. Eastern**

Coalfield Limited vs. Dewanti Kumari & Ors.) also held a similar view as that of a Coordinate Bench passed in APOT 149 of 2016 (**Eastern Coalfields Limited vs. Manjalaq Begum & Ors.**). It has been held that the Appeal carried by ECL was a complete waste of judicial time and money. The said Appeal was dismissed with costs quantified at Rs. 25,000/- by an Order dated July 18, 2016 in **Dewanti Kumari** (supra). The similar view has been reiterated by the Coordinate Bench in FMA 1693 of 2019 (**M/s. Eastern Coalfields Limited vs. Smt. Shefali Khan & Ors.**) by an Order dated December 12, 2019. Time and again same point is sought to be agitated before Concurrent Benches of this Court. Such Appeals are a complete waste of judicial time and money.

k. The case of **Mahangi Bhuiya** (supra) is distinguishable on facts. In that case, the deceased employee did not nominate the writ petitioner as his wife on the date of his appointment. Subsequently, the petitioner's name was inserted. A day before his death an attempt was made to include his mother's name. Before the same could materialize the employee died.

l. On the facts of that case there was nothing to show that either the writ petitioner or anyone else contemporaneously applied for compassionate appointment. The petitioner's husband died on June 6, 1993. She applied in 2013 after 20 years for compassionate appointment.

m. It was pointed out on behalf of the writ petitioner that in 1994

within 11 months from the date of death of her husband, she was informed that the Coal Company could not accept her prayer for employment because of delay. Since, there was a rival claim by her mother-in-law, the petitioner may not have applied for monetary compensation. Therefore, it was held that compensation was to be paid to the petitioner from the date of making of the application i.e from September 9, 2012 as the rival claim of the mother-in-law posed to be no impediment after her death.

n. The case of **Mahangi Bhuiya** cannot be equated to the facts of the present case since, there was no rival claim by any female dependant of the deceased employee in the present case.

o. It has been held by various decisions of the Coordinate Bench that payment of 'MMCC' is an **entitlement** and not a matter of *discretion* of the Coal Company. Such is the view taken by a Coordinate Bench in MAT 86 of 2022 (**M/s Eastern Coal Fields Ltd & Ors. Vs. Dukhni Bhuiya**). Therefore, no insistence can be made for filing of application for grant of 'MMCC'.

9. In the light of the discussions made hereinabove, the Order passed by the Hon'ble Single Bench in WPA 6536 of 2021 (Impugned Order) merits no interference. **MAT 1257 of 2021** along with **CAN 1 of 2021** are accordingly **dismissed**.

10. Assuming that the petitioner was aged 58 years on the date of filing of supplementary affidavit, the petitioner must have reached the age of 60 on the

date of this Order, this Court directs that the entirety of the arrears be paid to the respondent/writ petitioner within 4 weeks from date along with the notional interest awarded by the Hon'ble Single Bench. Since the admissible amount of Rs. 23,00,000 excluding the statutory deductions have already been paid by the 'ECL', such sum will be deducted from the dues payable to the petitioner.

11. A sum of Rs. 50,000 will be paid by the appellant/'ECL' as costs to the petitioner for prolonging the litigation and wasting substantial judicial time by preferring Appeals again and again on an issue which is no longer '*Res Integra*'.

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

13. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)

Later:-

Prayer for stay is made on behalf of the Appellant/ECL.

Such prayer is considered and refused.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)