

20.04.2023
DL-70
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18401 of 2022

Premlata Singh
Vs.
Coal India Limited & Ors.

Mr. Gobinda Kar
....for the petitioner.

Mr. Manik Das
....for the respondent nos.2-9.

The petitioner prayed for compassionate appointment due to the death of her husband on May 20, 2007. The petitioner's husband died-in-harness being an employee of Eastern Coalfields Limited (ECL). The petitioner's prayer for compassionate appointment was considered and she was called for an Initial Medical Examination (IME). As per the IME's report, the petitioner was aged about 16 years 8 months on the date of death of her husband. Therefore, being a minor, her prayer for compassionate appointment was not considered.

Mr. Kar, learned counsel appearing on behalf of the petitioner submitted on the previous occasion that as per the school leaving certificate issued by Madhyamik Siksha Parishad, Uttar Pradesh, the petitioner was aged around 18 years during that time.

Mr. Das, learned counsel appearing on behalf of ECL submitted that such document cannot be

considered and it is the IME report that should be considered prior to consideration of her prayer for compassionate appointment.

Considering the rival submissions of the parties, this Court directed the petitioner to be examined by a board constituted by the Medical Superintendent cum Vice Principal, Burdwan Medical College & Hospital, Purba Bardhaman. Pursuant to a report filed by the Medical Superintendent on March 24, 2023, it appears that the petitioner is aged around 32 years +/- 2 years on March 14, 2023.

Considering the opinion of the expert body, this Court finds no infirmity in the assessment of the petitioner's age in the IME. Therefore, the petitioner's prayer for compassionate appointment was rightly not considered by the authorities.

The petitioner, however, is entitled to Monthly Monetary Cash Compensation (MMCC) from the date subsequent to the date of death of her husband, i.e. on and from May 21, 2007 under National Coal Wage Agreement (NCWA) being a legally married wife of her husband.

From the letter of rejection dated September 6, 2017, it appears that one of the grounds for rejection was that the petitioner's age was 16 years 8 months on the date of death of the ex-employee. It was also

held by the Chief Manager (M)/(R) that as per Hindu Marriage Act, the minimum age of marriage for a girl is 18 years and marriage of a minor child was not permissible. The relevant provisions of the Hindu Marriage Act, 1955 are produced hereinbelow:-

“5. Conditions for a Hindu marriage. – *A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-*

- (i) neither party has a spouse living at the time of the marriage;*
- (ii) at the time of the marriage, neither party –*
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
 - (c) has been subject to recurrent attacks of insanity;*
- (iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;*
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;*
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;*

11. **Void marriages.** – Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. **Voidable marriages.** – (1) *Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-*

- (a) that the marriage has not been consummated owing to the impotence of the respondent; or*
- (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or*
- (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or*
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.*

Under the Prohibition of Child Marriage Act, 2006, child marriages are declared to be voidable

marriages. Under Section 3 (1) of the 2006 Act reads as follows:-

“3. *Child marriages to be voidable at the option of contracting party being a child.* – (1)

Every child marriage, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party

who was a child at the time of the marriage:

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.”

Considering the aforesaid provisions it is found that the marriage of the writ petitioner was at best a voidable one at the option of the party who was a minor at the time of contracting the marriage. Here, the petitioner herself claimed to be a legally married wife of the deceased employee even after 2 years of attaining the majority. Therefore, it was not open to the respondent/employer to reject any claim of the petitioner as the condition under Section 5(iii) of the 1955 Act was not fulfilled during the time of marriage.

This Court directs MMCC to be granted to the petitioner on a monthly basis on and from July 10, 2023. The arrears on account of MMCC from May 21, 2007 (being the date subsequent to the death of her husband) till June, 2023 will be released to the petitioner within 4 months from date of this order.

With the directions aforesaid, **WPA 18401 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.)