

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

W.P.A 21414 of 2021

ARTI MURMU

VS.

COAL INDIA LIMITED & ORS.

For the petitioner : Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Ms. Ria Paul,
Mr. Debashis Das
.....Advocates

For the Respondent Nos. 3 to 8. : Mr. Manik Das
.....Advocate

Last Heard on 27.04.2022

Judgment on : 22nd December, 2023.

Arindam Mukherjee, J.:

1. The petitioners father-in-law namely Nunulal Hembram was an employee of the Eastern Coalfields Limited (in short "ECL") and died in harness on 16th June, 2019. His son, Krishna Kumar Hembram that is the petitioner's husband applied for appointment under the provisions of Chapter IX of National Coal Wage Agreement (in short NCWA) as a male dependant. The application of the petitioner's husband was processed and his appointment was approved. The place of posting of the petitioner's

husband was also notified. At this juncture before joining ECL the petitioner's husband died.

2. The petitioner is, therefore, the widowed daughter-in-law of the deceased employee i.e. Nunulal Hembram. The employee's wife that is petitioner's mother-in-law had applied before ECL authorities for granting job to the petitioner. Since this application has been rejected the petitioner has approached this Court seeking redressal.
3. On behalf of Eastern Coalfields Limited (in short "ECL"), it is submitted that the petitioner was not a dependant in terms of Clause 9.3.3 of the National Coal Wage Agreement (in short "NCWA"). It is further submitted by ECL that the cause, if any, to get compassionate employment crystallized on the death of employee this is on 16th June, 2019.
4. The petitioner's husband being the son of the deceased employee was alive at that point of time and as such the petitioner was not a dependant in terms of Clause 9.3.3 of NCWA and is, therefor, not entitled to compassionate employment. In support of this contention, ECL has relied upon a judgment and order dated 22nd June, 2018 being WP (C) No.605 of 2018 (Sri Prasenjit Datta vs. The State of Tripura & Ors.).
5. The petitioner says that the petitioner comes under the "indirect dependant" as mentioned in Clause 9.3.3 of NCWA. The petitioner says that the husband of the petitioner though was given compassionate employment but before he could join, he passed away and as such for all practical purpose no compassionate employment was given by ECL. After the death of the petitioner's husband, the petitioner is entitled to compassionate employment as an indirect dependant in terms of Clause 9.3.3 of the NCWA. The petitioner has relied upon a judgment reported in

1989 (2) SCC 691 (Shri Anandi Mukta Sadguru & Ors. vs. V.R. Rudani & Ors.) and the judgment dated 7th January, 2014 passed in W.P No.4 of 2014 (Kajoli Bouri vs. Coal India Ltd. & Ors.), the relevant paragraph relied upon by the petitioner is quoted below:-

“It is evident from or the month of following the death”.
Kajoli Bouri has been affirmed by the Hon’ble Division Bench in APOT No.269 of 2014 by an order dated 25th June, 2014.

6. Now, we proceed to deal with the nature of the NCWA. The NCWA is a negotiated agreement between the employees of a public employer and such employer, arrived at after collective bargaining and prolonged deliberation. It is a product of meeting of minds. It is not a product of a unilateral decision of the employer or the employee. It has a statutory force and the parties therein were adequately represented from both the employer’s and employee’s side and had contemplated all situations, before identifying the classes of persons who ought to be kept in the live roster, implying thereby that the class which is not included in the relevant clause of the NCWA are consciously excluded. The NCWA has been revised from time to time and fresh agreements and settlements were arrived at with modifications of previous settlements and introduction of additional benefits to the workers keeping pace with the changed situations but the relevant provision of 9.5.0 (iii) has never been altered. The NCWA made provisions for compassionate appointment or in the alternative, monetary payment of monthly compensation for the dependants of employees of Coal Companies under Clauses 9.3.0, 9.4.0 and 9.5.0.

7. In a decision of a learned Co-ordinate Bench of this Court in Eastern Coalfields Limited vs. Dilip Singh & Others, reported in, it has been held that it was not open for the Court to re-write the terms of the scheme for compassionate appointment provided in NCWA but, compassionate appointment being a privilege extended and an exception to the general rule of recruitment and given in terms of a scheme should be strictly construed, and such appointment was not a heritable right. The relevant portion of the said judgment is quoted below:-

“In the decision reported in 2005 (1) SLR 621 (Geetha Ramani vs. The District Educational Officer, Kancheepuram) the Madras High Court applied the provisions of Section 16 of the Hindu Marriage Act, 1955 to a scheme for compassionate appointment to hold that a son born out of second marriage would entitled to employment. We are unable to agree with such proposition. The scheme of compassionate appointment is neither property of the deceased nor a heritable right. It cannot be equated with a right to pension of the employee or his dependants upon his death. Hence the ratio of the Madras High Court does not appear to be based on sound logic. Reliance on the Apex Court decision is also faulty as a judgment is an authority for what it decides and not what logically follows therefrom”.

Right to compassionate appointment is an exception to the general rule of recruitment by public competition. Such privilege therefore is to be strictly construed according to the terms and conditions of the scheme and the same cannot be rewritten by the Courts. In Bhawani Prasad Sonkar vs. Union of India reported in 2011 (4) SCC 209, the Supreme Court, inter alia, held as follows:

“Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.”

8. It is well-settled now as held in **2019 (14) SCC 646 (Union of India vs. V.R Tripathi)**, that the policy of compassionate appointment is premised on the death of an employee while in harness. The death of an employee is liable to render the family in a position of financial hardship and need. Compassionate appointment is intended to alleviate the hardship that the family of a deceased employee may face upon premature death while in service. Compassionate appointment, in other words, is not founded merely on parentage or descent, for public employment must be consistent with equality of opportunity which Article 16 of the Constitution guarantees. Hence, before a claim for compassionate appointment is asserted by the family of a deceased employee or is granted by the State, the employer must have rules or a scheme which envisage such appointment. It is in that sense that it is a trite principle of law that there is no right to claim compassionate appointment dehors the scheme. Even where there is a scheme for compassionate appointment, an application for engagement can only be considered in accordance with and subject to fulfilling the conditions of the rules or the scheme.
9. As held in the Co-ordinate Bench Judgment of this Court, reported in **2017 SCC OnLine Cal 13128 Putul Rabidas vs. Eastern Coalfields Limited**, the clause “unmarried daughter” is diluted to include divorced daughter. Thereafter in *Eastern Coalfields Limited vs. Kumari Kiran Singh and Others* (W.P 556 of 2014) wherein the aforesaid precedent was upheld and the binding nature of Clause 9.5.0 is accepted. Moreover in *Madhubala Sinha vs. Central Coalfields Limited, Ranchi*, Division Bench held that sister and mother should also be included as dependents in the ambit of Clause 9.3.3 of the NCWA.

10. In that view of the matter, irrespective of the quantum of death benefits that a dependent might have received owing to death of his/her father/mother/father-in-law/mother-in-law/brother/sister, ECL cannot repudiate a claim for compassionate appointment or monetary compensation on the ground that the family, having received substantial death benefits, is not in need thereof. The terms of the NCWA-VI are such that a dependent, if he/she satisfies all the conditions in Clauses 9.3.3 and 9.3.4, i.e. he/she is a dependent of a deceased worker and has the requisite qualification for being given employment by ECL, is entitled to claim that he/she ought to be extended the benefit of compassionate appointment or monetary compensation, as the case may be, under Chapter IX with the only exception that delay in claiming compassionate appointment may disentitle such relief while delay in claiming monetary compensation may curtail the period for the same.
12. The question as to the whether the petitioner is a dependant of the employee who had died in-harness and stands in relation to the petitioner as her father-in-law can be answered directly by referring to the NCWA and the Workmen's Compensation Act, 1923 which is now known as Employees' Compensation Act, 1923. NCWA under chapter IX which provides for social security in Clause 9.2.1 states that the employees covered by this agreement shall be entitled to the benefits admissible under the Workmen's Compensation Act, 1923. Section 2(d) of the Employees' Compensation Act, 1923 defines dependent of a deceased employee. In section 2(d) (ii) (e), a widowed daughter-in-law is

a dependant of the deceased employee if she is wholly or in part dependant on the earnings of the employee at the time of his death.

13. In the instant case, at the time of death of the employee his son being the husband of the petitioner was dependent on his father's income either wholly or in part. Only upon finding, the son to be a dependant on his father, ECL had given compassionate appointment to the son. However, the son unfortunately died after being offered the compassionate appointment but before accepting the same by actually joining the services of ECL. The petitioner being the daughter-in-law in this analogy was dependent on her husband who in turn was dependent on his father-in-law if it is to be held that the petitioner was either wholly or partly dependent upon the income of her father-in-law. The petitioner, therefore, qualifies as a dependant of the deceased employee and as such is entitled to the benefits provided under chapter IX of the NCWA.

14. In the facts and circumstances as aforesaid the petitioner is entitled to compassionate appointment in ECL. In the event the petitioner has surpassed the age of 45 years she shall be entitled to Monthly Monetary Cash Compensation (MMCC). ECL shall take expedite steps to either give compassionate appointment if the petitioner is below 45 years on the date of filing of the writ petition i.e., 24th December, 2021 or else provide MMCC to the petitioner.

The writ petition is accordingly disposed of.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)