

**IN THE HIGH COURT AT CALCUTTA**

**(Civil Appellate Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Subrata Talukdar**

**And**

**The Hon'ble Justice Supratim Bhattacharya**

**FMA 98 of 2023**

**With**

**CAN 1 of 2022**

**CAN 2 of 2022**

**Eastern Coalfields Ltd. & Ors.**

**- Vs.**

**Smt. Panwa Bhuia**

For the Appellants : Ms. Priti Banerjee

For the Respondent No.1/ : Mr. Partha Ghosh

Writ petitioner Mr. Amal Kumar Datta

Ms. Simran Sureka

Mr. Debashis Das

Mr. Rahul Agarwal

Heard On : 18.04.2023

Judgement Delivered On : 28.06.2023

**Supratim Bhattacharya, J.:-**

1. The instant appeal has been preferred by the appellants Eastern Coal Fields Ltd. and others against Srmt. Panwa Bhuia the writ petitioner. The appellants herein were the respondents in the writ petition while the respondent herein was the writ petitioner.
2. Being aggrieved by and dissatisfied with the orders dated 22.09.2022 and 26.09.2022 passed in WPA No. 3409 of 2022 by the Hon'ble Single Bench, the instant appeal has been preferred.
3. Through the impugned order dated 22.09.2022 the Hon'ble Single Bench has passed the following order:

*"After considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the writ petitioner is entitled to 'MMCC' as per the provisions of the National Coal Wage Agreement (a bipartite agreement between the workers union and the employer/ECL)*

*In the circumstances, the petitioner will be entitled to 'MMCC' till the age of 60.*

*The petitioner will be entitled to arrears on account of MMCC from the date succeeding the death of her husband i.e. from May 28, 2012 till September 30, 2022. Thereafter, the petitioner will be entitled to regular monthly payment within 10th of each succeeding month from October 2022.*

*Needless to mention that the MMCC will be paid to the writ petitioner taking into account that she is aged 48 years in July 2022."*

4. The fact of the instant lis is that the husband of the writ petitioner namely Rajendra Bhuia being an employee of the ECL has expired on 27.05.2012 being in service. Initially in the year 2013 the writ petitioner prayed for appointment on compassionate ground and the said prayer was rejected by the ECL in the year 2017. Thereafter during the month of

February 2018 the Deputy Manager Personnel sent a noting sheet to the Area Department Personnel recommending for approval from the competent authority for Monthly Monetary Cash Compensation (for short MMCC) to be granted to the writ petitioner. Thereafter on 21.10.2019 the Deputy Commissioner of Police, Paschim Burdwan, sent a report to the District Magistrate, Paschim Burdwan stating that the writ petitioner was the wife of the ex employee Rajendra Bhuia since deceased and in the said report it was also written that nothing adverse could be found against her. In spite of the aforesaid report and the recommendation of the Deputy Manager, MMCC was not paid to the writ petitioner, as such the writ petitioner was compelled to file the writ application.

- 5.** A dispute was raised as regards to the age of the writ petitioner as from several documents furnished by the petitioner her age revealed to vary from one document to the other.
- 6.** Considering the inconsistency in age reflecting from different document a coordinate Bench of this Hon'ble Court directed to assess the age of the writ petitioner by a Board constituted by the Medical Superintendent, Purba Burdwan Medical College and after the said medical examination, a report was sought for. The said report was forwarded to the Hon'ble Single Bench through a sealed cover.
- 7.** From the report furnished by the Board after medical examination, it revealed that the age of the writ petitioner was 48 years as on the date of medical examination, that is on 13.7.2022.

8. Through the order dated 26.9.2022 a modification of the order dated 22.09.2022 was made by the Hon'ble Single Bench by stating the following :

*“By an order passed on September 22, 2022 the respondent authorities were directed to pay arrears of “MMCC” from May 28, 2012 till September 30, 2022 within a period of three months from the date of the order and interest calculated at the rate of 6% per annum from May 28, 2012 till the date of actual payment of the arrears.”*

9. The Learned Counsel appearing on behalf of the appellants during his exhaustive argument has submitted that the scheme of compassionate appointment is not a right heritable by the writ petitioner and the same cannot be equated with the right to pension. The Learned Counsel also submitted that initially an application for compassionate appointment was made by the writ petitioner and after the first screening of the application for compassionate appointment the contradictions regarding the age of the writ petitioner was pointed out to the appellant. He has further submitted that there are contradictions between the information provided by the ex employee and the declarations made by the writ petitioner. He has further submitted that decision for employment in lieu of MMCC was confirmed by the writ petitioner once again on 21.2.2016. He has further submitted that on 26.2.2016 the writ petitioner had declined to accept MMCC. He has further submitted that on 11.3.2017 appointment on compassionate ground was regretted because of discrepancy in explanation of facts. The Ld. Counsel has submitted that on 20.8.2018 application for MMCC was made by the writ petitioner and

accordingly proposal for MMCC was initiated. He has further submitted that there were several discrepancies as regards to legal heirs certificate and in the police verification report. The Ld. Counsel has also submitted that there is contradiction as regards to the writ petitioner's age. In support of his contention he has submitted that in the affidavit affirmed on 07.03.2013 the writ petitioner's age reflected as 35 years while on the same date an indemnity bond was submitted by the writ petitioner wherein her age was mentioned as 42 years, in addition in an affidavit affirmed on 12.01.2021 the writ petitioner has declared her age to be 46 years.

The Ld. Counsel appearing on behalf of the appellants hence submitted that considering the aforesaid facts and circumstances, the ECL cannot be held liable for the delay in coming to the conclusion as to whether compassionate appointment will be given or MMCC will be paid.

Relying on the aforesaid facts and circumstances the Ld. Counsel appearing on behalf of the appellants submitted that the Hon'ble Single Bench has not come to the correct conclusion which ought to have been done and as such he prays for setting aside the order of the said Hon'ble Single Bench.

- 10.** Ld. Counsel appearing on behalf of the respondent/writ petitioner has submitted that it is a fact that to overcome the hard financial situation MMCC and compassionate appointment is provided. He has further submitted that NCWA is like a social legislation and the family of

the employees since deceased do get a chance to overcome the penury and it is nothing but provisions for the benefit of the poor employees. Ld. Counsel further submitted that the writ petitioner is a rustic villager having no sense of law and the family was wholly dependent upon the earning of the employee since deceased.

The Ld. Counsel has further submitted that the writ petitioner along with his family members have been made to suffer since long and by some way or the other the writ petitioners have been kept away from compassionate appointment/MMCC. Ld. Counsel has also submitted that in spite of the verification report being submitted, ECL has time and again denied the appointment or MMCC. The Ld. Counsel has further submitted that the Hon'ble Single Bench has rightly come to the finding and has prayed for rejection of the instant appeal.

**11.** From the facts submitted above it is apparent that the husband of the writ petitioner, that is the employee, expired 27.5.2012 and the writ petitioner made an application for compassionate appointment during the year 2013. Thus there is no inordinate delay made by the writ petitioner.

**12.** It is evident from the facts that some contradiction as regards to age of the writ petitioner was prevalent. In this aspect it is to be stated that a coordinate Bench of this Hon'ble Court directed to assess the age of the writ petitioner by a Board constituted by the Medical Superintendent, Purba Burdwan Medical College.

**13.** From the medical examination report it reveals that the age of the writ petitioner was 48 years as on the date of the examination, held on 13.07. 2022. So at the time of the death of her husband that is on 27.5.2012 the age of the writ petitioner was 38 years.

**14.** In this context this Court refers to Paragraph 6 of the Judgemnt passed by the Hon'ble Apex Court reported in (2018) 11 SCC 201 wherein it is enunciated as follows:

*“6. In Para 9.5.0(ii) of the Agreement, it is very clearly and specifically mentioned that a female dependant, if below 45 years of age, has an option either to accept the monetary compensation or employment. It is not an option reserved to the employer, but an option given to the employee. It was in terms of the Agreement only that the appellant had been insisting that she should be given employment, if she is otherwise eligible in terms of the Bipartite Agreement. But the second respondent kept on insisting that the son, being above the age of 12 years, would be kept on live roster until he attains the age of 18 years and till such time, the appellant would be given compensation @ Rs 3000 per month in terms of Para 9.5.0(iii) of the Agreement.”*

**15.** The Hon'ble Single Bench has found the writ petitioner to be entitled to MMCC as per the provisions of the National Coal Wage Agreement being entitled from 28.05.2012 that is the date of death of her husband and has further stated that MMCC has to be paid to the writ petitioner taking into account that she was aged 48 years during the month of July, 2022. The Hon'ble Single Bench has also come to the finding that the writ petitioner is entitled to the arrears on account of MMCC from the date succeeding the date of death of her husband that is

28.05.2012 and the payment is to be made within the 10<sup>th</sup> of each month.

- 16.** Before the Hon'ble Single Bench a report of the ossification test, being conducted by a Board constituted by the Medical Superintendent, Purba Burdwan Medical College, was placed as per the direction of the Hon'ble Court, considering the inconsistency in respect of the age of the petitioner. The Hon'ble Single Bench has stated that the said report was placed before the Court by way of a sealed cover. The Hon'ble Single Bench found the age to be mentioned as 48 years in the said medical examination report and the Hon'ble Single Bench did not find any reason to dispute the said document.

In the impugned Judgement and order it has been mentioned that an exception to the medical report was taken by the ECL questioning the identity of the writ petitioner as the identification of the writ petitioner was not confirmed by any representative of the ECL.

The Hon'ble Single Bench has dealt with the said dispute by directing the Ld. Advocate appearing on behalf of the writ petitioner to affirm an affidavit and took into evidence the fact that the identity of the writ petitioner was confirmed by the said Ld. Advocate in Court. As such this dispute has been addressed by the Hon'ble Single Bench.

After considering all the aspects the Hon'ble Single Bench has come to the finding that the writ petitioner is entitled to MMCC as per the provision of the National Coal Wages Agreement from the date

succeeding the date of death of her husband that is 28.05.2012 and has also stated that the writ petitioner will be entitled to regular monthly payment within 10<sup>th</sup> of each month.

This Court is also of the view that the respondent/writ petitioner is entitled to MMCC from the date succeeding the date of death of her husband.

As such this Court finds no reason to interfere with the impugned Order and Judgement.

**FMA 98 of 2023 with CAN 1 of 2022 with CAN 2 of 2022**  
stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**I Agree.**

**(Subrata Talukdar, J.)**

**(Supratim Bhattacharya, J.)**