

May 01, 2023
(79) ARDR

WPA 8643 of 2020

Badamia Devi & anr.
Vs.
The Union of India & Ors.

Adv. Sangeeta Roy,
Adv. Sandeep Prasad Shaw,
Adv. Chandra Prakash,
Adv. Monalisa Maity,
...for the petitioners.
Adv. Manik Das,
...for the respondents no. 2 to 5.
Adv. Kallol Guha Thakurata,
Adv. Sharique Afzal,
Adv. Md. Wasim Rahaman,
...for the CMPFO.
Adv. Susmita Saha Dutta,
Adv. N. Saha,
...for the added respondents.

The petitioner's husband went missing on August 27, 1998. The petitioner filed a civil suit being T.S. No. 28 of 2006 before the learned Civil Judge (Junior Division), 2nd Court, Asansol, for a declaration of her husband's death. The said declaration was made on April 10, 2007 by the Civil Court. The petitioner's husband was an employee of the Eastern Coalfields Limited (ECL). The petitioner made an application for compassionate appointment of her son-in-law, but the said prayer was rejected by the ECL on May 12/14, 2020 on the ground that there was no provision for grant of compassionate appointment in a case where the employee is declared to be dead by the Civil Court after seven years from the date when the employee goes missing. Such a case is not

covered under the National Coal Wage Agreement (NCWA).

Mr. Shaw, learned counsel appearing for the petitioners prays for disbursal of the provident fund dues that accrued in favour of the husband of the petitioner no.1 from Coal Mines Provident Fund Organisation (CMPFO) and disbursal of leave encashment benefits which also accrued in favour of her husband. Documents are handed over before this Court to show that necessary prayer for disbursal of leave encashment benefits have been made before the authorities concerned. Necessary prayer has also been made for disbursal of provident fund amount before the authorities concerned.

Considering the materials placed on record and the submissions made by the parties, this Court is of the view that the respondents/ECL were under a duty to inform the petitioner and advise the petitioner about the applications which were required to be made by her for disbursal of the terminal benefits of her husband once the decree was passed by the Civil Court and intimated to the ECL. The death benefits of her husband could not have been withheld by the employer/ ECL on the ground that appropriate applications were not made by her. Beneficial reference may be made to a Division Bench judgment of this Hon'ble Court passed in MAT 86 of

2022 on April 21, 2022 (**M/s. Eastern Coalfields Ltd. & ors. vs. Smt. Dukhni Bhuiya**).

In such view of the matter, the employer/ECL is directed to release the leave encashment benefits to the petitioner within six weeks from date along with interest at the rate of six per cent per annum payable from the date on which the decree passed by the Civil Court was brought to the notice/intimated to the respondents/ECL. Furthermore, the CMPFO is directed to release the entire provident fund dues of the petitioner's husband to the petitioner within six weeks from date along with interest at the rate of six per cent per annum from the date when the decree passed by the civil Court was brought to the notice of the employer/ECL.

It is made clear that the said interest of six per cent is over and above the interest that has already accrued in the account of the petitioner's husband on the amount that is lying with the hands of CMPFO. The CMPFO cannot justify their inaction of withholding the legitimate dues of the petitioner no.1 and refuse to pay additional interest because the money is lying with the P.F. authorities in an interest bearing account.

On the issue of compassionate appointment, this Court finds that the petitioner or her representative is not entitled to the same relying on the principles applicable for compassionate appointment. The petitioner's husband went missing in 1998. There may be

an element of voluntariness involved in the said process which cannot be equated with the factum of 'death' or permanent incapacitation. The civil suit was filed by her in 2006. The same was decreed on April 10, 2007. At least nine years passed from the date when the husband of the petitioner went missing till the date on which the decree has been passed.

The object of compassionate appointment is to provide immediate succour to the family members since there may be a immediate financial crisis due to the death of the bread earner of the family. Since the petitioner's husband went missing in 2006 and the family has been surviving without his income this Court finds no reason for consideration of the petitioner's prayer for compassionate appointment. Moreover, several years have passed since the petitioner's husband was declared dead in 2007 and the date on which such prayer was rejected on May 12, 2020 by the Area Personnel Manager, Kunustoria Area. ECL. Even the said prayer of rejection was challenged after several months in 2020. Any order of consideration of the petitioner's prayer at such a belated stage will frustrate/belie the purpose of giving compassionate appointment. Reliance is placed on Apex Court's judgment passed in Civil Appeal Nos. 8842-8855 of 2022 **(State of West Bengal vs. Debabrata Tiwari)**.

In the light of the discussions above due to elapsed of long period of time from the date when the petitioner's husband went missing and was declared dead till the date of rejection, this Court finds that there is no merit in the prayer for compassionate appointment.

In the light of the discussions above, **WPA 8643 of 2020** is **disposed of**.

All parties shall act on the serve copy of this order duly downloaded from the official **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(Lapita Banerji, J.)