

OD-8

ORDER SHEET

WPO 3057 of 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

CHAMPA MUNDA
VS.
M/S. EASTERN COAL FIELDS LIMITED & ORS.

BEFORE:
The Hon'ble JUSTICE LAPITA BANERJI
Date: 17th March, 2023.

Mr. Partha Ghosh, Ms. Simran Sureka, Mr. Debashis
Das, Mr. Rahul Agarwala, Advocates for the petitioner.

Mr. Manik Das, Advocate for respondent Eastern Coalfields Ltd.

The Court : The petitioner's husband was an employee of Eastern Coalfields Limited, in short ECL. He died in harness on November 23, 2007. The petitioner applied for compassionate appointment on October 12, 2008 within one year from the date of death. The respondent ECL delayed the said process of compassionate appointment. The documents in support of her claim were called for on October 17, 2014. A fresh set of documents were submitted by the petitioner on December 29, 2014. After approximately two and half years again clarification was sought for from the petitioner on March 9, 2017. Furthermore, another clarification was sought for on February 25, 2019. No steps were taken by ECL for grant of compassionate appointment. The Monthly Monetary Cash Compensation (MMCC) that the petitioner was entitled to was also not paid to the

petitioner from the date of death of her husband.

The petitioner again renewed her prayer for compassionate appointment on September 9, 2022. Alternatively, she has prayed for release of MMCC from the date of death of her husband.

Mr. Ghosh, learned Counsel appearing on behalf of the petitioner submits that she is entitled to MMCC from the date of death relying on a Division Bench judgment of this Hon'ble Court reported in (2016) 3 WBLR 464 (**M/s. Eastern Coalfields Ltd. Vs. Dewanti Kumari & Ors.**). There are several orders/judgments passed by the Division Bench of this Hon'ble Court holding that female dependant is entitled to MMCC from the date of death of the deceased employee. In a recent judgment passed by the Division Bench of this Hon'ble Court on September 2, 2022 in MAT 1007 of 2022 (**M/s. Eastern Coalfields Limited Vs. Smt. Dulali Majhian @ Majhan & Ors.**) it was again reiterated that the petitioner was entitled to MMCC from the date of death of her husband. An SLP was preferred from the said judgment and the same was dismissed by the Apex Court by an order dated January 3, 2023.

Mr. Das, learned Counsel appearing on behalf of the ECL submits that the writ petition should be dismissed in view of delay and laches. Alternatively, he submits that in the event the said petition is not dismissed, the relief of MMCC should be restricted to three years prior to the filing of the writ petition. He relies on a judgment reported in (2008) 8 SCC 648 (**Union of India And Others Vs. Tarsem Singh**) for the said proposition. The said decision of **Tarsem Singh (supra)** has been followed in a judgment reported in (2016) 13 SCC 797 (**Asger Ibrahim Amin Vs. Life Insurance**

Corporation of India).

It has also been followed in Civil Appeal No.4134 of 2022 (**Rushibhai Jagdishchandra Pathak Vs. Bhavnagar Municipal Corporation**).

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the application for compassionate appointment was made within time. It was due to inordinate delay on the part of the respondents that the petitioner has been suffering since the date of the death of her husband on November 23, 2007. For sixteen years the petitioner has neither been granted compassionate appointment nor has been granted MMCC from the date of death of her husband.

The attitude on the part of the employer/ECL is not appreciated by this Court at all. It is harassive in nature, to say the least.

It is submitted on the part of the respondent ECL that compassionate appointment cannot be granted to the petitioner due to delay and laches on her part.

This Court finds that there is no delay or laches on the part of the petitioner since she made an application within one year of the death of her husband.

The case of **Tarsem Singh (supra)** is distinguishable on facts. There, the retired employee who was declared invalid from service in army chose to approach the Court 16 years after the said declaration. In such a case the Court restricted the arrears of pension to three years from the date of filing of the writ petition. For 16 years the petitioner chose not to take any step. Furthermore, in **Asger Ibrahim Amin (supra)** the question that fell for

consideration was whether the petitioner was entitled to claim pension even though he resigned from service out of his own volition. In such case, the Apex Court held that the termination of the service of the petitioner was in the nature of voluntary retirement and the pensionary benefits should be restricted to three years preceding the date of filing of the writ petition. In **Rushibhai Jagdishchandra (supra)**, the petitioners have challenged the recovery of purported overdrawn amount that was made by the employer by granting a higher pay of scale wrongfully to the employees. In such a case, the Hon'ble Apex Court was pleased to hold that due to the belated approach of the writ petitioners, the recovery from October, 2010 could not be set aside or quashed. Only the recovered amount for the period of three years prior to filing of the writ petition along with interest at the rate of 7% per annum could be granted to the petitioners. The petitioners chose not to redress their grievances from 2010 onwards.

This Court is of the view that all the three decisions cited by Mr. Das have no manner of application to the present writ petition where the petitioner has approached the employer within the stipulated time and has been harassed continuously from 2008 onwards by seeking of documents time and again. This Court relies on a judgment reported in 2022 LiveLaw (SC) 785 (**State of Rajasthan & Others Vs. O. P. Gupta**) for coming to the finding that the Court cannot be oblivious to the difficulties of an uneducated widow from a financially and socially backward class in approaching the Court which would obviously include financial constraints. Here the Court cannot be oblivious to the fact that the bread earner of the family passed away in 2007. The female dependant was in severe financial

difficulties and therefore, any delay in approaching the Court has to be condoned in order to do justice. In **O. P. Gupta (supra)** the financial constraints of a retired employee were taken into account for condoning the delay in filing of the Writ Petition.

In the light of the observations above, this Court directs that in the event the compassionate appointment is granted to the petitioner's son within six weeks from date, then she will refrain from claiming MMCC. However, if such course of action is not followed, the petitioner will be entitled to MMCC from November 23, 2007, being the date of death of her husband. The entire amount of arrears will be paid to the petitioner along with interest at the rate of 5% per annum within three months from the date of the order. Thereafter, the petitioner will be paid MMCC from June 19, 2023 on month by month basis till she attains the age of 60 years.

With the directions aforesaid, **WPO 3057 of 2022** is **disposed of**.

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

(LAPITA BANERJI, J.)