

OD-5

ORDER SHEET

WPO 3145 of 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUMI KAMIN
VS.
M/S. EASTERN COAL FIELDS LIMITED & ORS.

BEFORE:
The Hon'ble JUSTICE LAPITA BANERJI
Date: 24th March, 2023.

Mr. Partha Ghosh, Mr. Amal Kumar Datta, Ms. Simran
Sureka, Mr. Debashis Das, Mr. Rahul Agarwala, Advocates for the petitioner.
Mr. Manik Das, Advocate for respondent Eastern Coalfields Ltd.

The Court : Report on affidavit filed in Court today along with the
exception thereto are retained with the records.

The petitioner's husband died in harness on January 21, 2010 being
an employee of Eastern Coalfields Limited (in short, ECL). Under Clause 9.5
of the National Coal Wage Agreement (in short, NCWA) a female dependant
of a deceased employee was either *eligible* for compassionate appointment or
entitled to Monthly Monetary Cash Compensation (in short, MMCC). The
petitioner did not pray for compassionate appointment. As such that made
her eligible for grant of MMCC.

The petitioner applied for compassionate appointment of her son
under Clause 9.3 of NCWA. Such application was rejected by ECL on April
26, 2018. Despite such rejection, MMCC has not been paid to the petitioner
till date.

Mr. Ghosh, learned Counsel appearing for the petitioner prays for grant of MMCC from January 22, 2010 (the date subsequent to the date of death of the petitioner's husband). He submits that there is no legally tenable reason for withholding the grant of MMCC to the petitioner.

Mr. Das learned Counsel appears on behalf of ECL. He submits that the petitioner has made an application for compassionate appointment of her son. The petitioner has not made any application under Clause 9.5 of NCWA for grant of MMCC and therefore it was not possible for the employer to ascertain who the female dependants of the deceased employee were.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that the issue has been well settled by various Division Bench judgments of this Hon'ble Court. Relying on decisions reported in (2016) 3 WBLR 464 (**M/s. Eastern Coalfields Ltd. Vs. Dewanti Kumari & Ors.**) and reported in AIR Online 2022 Cal 243 (**M/s. Eastern Coalfields Limited Vs. Smt. Dulali Majhian & Majhan & Ors.**) this Court finds that the petitioner is *entitled* to be paid "MMCC" from the date subsequent to the date of death of her husband i.e. from January 22, 2010.

This Court also does not find much substance in the submission that the female dependants of the deceased employee could not be ascertained by the employer, since the name of the female dependants along with their age would have been readily available to the employer ECL from the service records.

In the present case, all the retiral benefits have also been handed over to the petitioner after ascertaining the fact that she is the female

dependant/wife/heir of the deceased employee.

In the light of the discussions above, this Court directs payment of the arrears of MMCC to the petitioner from January 22, 2010 by two months from the date of the order. The petitioner will also be entitled to interest at the rate of 6% per annum from January 22, 2010 till the date on which the actual payment is made.

The petitioner will also be entitled to monthly payment starting from May 15, 2023 and thereafter month by month by the said date of every month.

In the event it is found by the ECL upon verification of the documents that the petitioner has crossed the age of 60 years, the petitioner will not be entitled to monthly payment.

With the directions aforesaid, **WPO 3145 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.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(LAPITA BANERJI, J.)