

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WIT JURISDICTION
ORIGINAL SIDE

WPO 3354 OF 2022

IN THE MATTER OF:
BODI MEJHAIN
VS
M/S. EASTERN COAL FIELDS LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE LAPITA BANERJI

Date : 16th June, 2023.

Appearance:-
Mr. Partha Ghosh, Adv.
Mr. Amal Kumar Datta, Adv.
Ms. Simran Sureka, Adv.
Mr. Debashis Das, Adv.
Mr. Rahul Agarwala, Adv.
For petitioner
Mr. Manik Das, Adv.
For respondents

THE COURT:- By an order dated March 15, 2021 passed by Co-ordinate Bench of this Hon'ble Court in W.P.A. 243 of 2021 the petitioner's representation for monetary compensation was directed to be considered by the authorities concerned/Eastern Coalfields Limited. It has been record in the said order that the petitioner's husband died in harness on November 4, 1993. Her prayer for compassionate appointment was rejected by the authorities. Thereafter in 2020, the petitioner prayed for monetary compensation in lieu of compassionate appointment.

Mr. Ghosh, learned counsel appearing on behalf of the petitioner submits that a reasoned order was passed on April 16/17, 2021 by the General Manager, Pandaveswar Area, ECL. Such reasoned order is impugned in the present writ petition. By the impugned order dated April 16/17, 2021, the General Manager/respondent no.5 rejected the claim of the writ petitioner on the ground that there was no provision for payment of Monthly Monetary Cash Compensation (MMCC) on the date of death of the petitioner's husband. The said order records that MMCC was payable for the first time under National Coal Wage Agreement (NCWA-V) which was effective from the date of issuance of the said NCWA-V i.e. on and from February 22, 1996.

Mr. Ghosh, draws the attention of this Court to Clause 13.1.1 to contend that the date of implementation of NCWA-V was on and from July 1, 1991. He submits that the impugned order suffers from palpable mistakes of facts and error and of law on the face of records. As such the decision making process is perverse and the impugned order should be quashed and/or set aside.

Mr. Das, learned counsel appearing on behalf of the respondents/ECL submits that even though NCWA-V records that the effective date of implementation was from July 1, 1991 still the fact that an implementation circular was issued on February 22, 1996 would show that such was the date of implementation. Had the date of implementation been from July 1, 1991 there would have been no requirement for such implementation circular in February 1996. He also submits that due to inordinate delay on the part of the petitioner to approach this Court, MMCC should not be granted to the petitioner from the date of death of her husband. The petitioner should be entitled to MMCC, if at all from the date of making of the application.

Considering the rival submissions of the parties and materials placed on records, this Court finds that the Hon'ble Co-ordinate Bench had recorded the date of death of the petitioner's husband and also the date on which she made a representation for grant of MMCC before ECL. Therefore, the facts on which the petitioner made the representation have been considered by the Co-ordinate Bench. After considering such facts, the representation of the petitioner was directed to be considered by the authorities concerned.

The impugned order proceeds on the basis that MMCC was not payable to the petitioner since her husband died before the implementation of NCWA-V. The impugned order recorded that NCWA-V was implemented on and from February 22, 1996. The impugned order failed to take into consideration the fact that NCWA-V was applicable/implemented from July 1, 1991. Therefore, the petitioner was squarely covered under the provisions of NCWA-V.

By an order passed by a Co-ordinate Bench in WPA 16929 of 2021 (**Smt. Pabitra Bauri Vs. M/s. Eastern Coal Fields Limited & Ors.**) on April 18, 2022 the Hon'ble Co-ordinate Bench held that NCWA-V came into effect on and from July 1, 1991, although it was signed on January 19, 1996. To the mind of this Court, it appears that since NCWA-V was signed on January 19, 1996, the implementation circular was issued in February 1996. The fact that the implementation circular was issued in February 1996 did not in any way alter or modify the date of implementation of NCWA-V which was a bipartite settlement between the employer/coal company and the unions of the workmen/employees. The date of implementation of NCWA-V unequivocally appears from clause 13.1.1 of the agreement. The impugned order suffers from error of law/facts on the face of records.

In the light of the discussion above, WPO 3354 of 2022 is disposed of with the direction that the arrears of 'MMCC' be paid to the petitioner with effect from November 5, 1993 (the date subsequent to the date of death of her husband) within a period of three months from date. Interest on arrears will be paid at the rate of 6% per annum from November 5, 1993 till the date the entire amount of arrears is disbursed to the petitioner. In the event the petitioner has not reached at the age of 60, the MMCC will be paid month by month starting August 10, 2023, upon compliance of the necessary formalities, if any.

All parties to act on a server copy of this order downloaded from the official website of this Court.

(LAPITA BANERJI, J.)

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