

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4074 OF 2018

1. Ku. Shimla d/o Late Satiram Rajbhar,
aged about 22 years, Occ. Nil,
Resident of Quarter No. 25/2, WCL Colony,
Sadbhavana Nagar, Post : Patansaongi,
Tahsil – Saoner, District – Nagpur.
2. Smt. Chandravati wd/o Late Satiram Rajbhar,
aged about 53 years, Occ. Nil,
Resident of Quarter No. 25/2, WCL Colony,
Sadbhavana Nagar, Post : Patansaongi,
Tahsil – Saoner, District – Nagpur.

PETITIONERS

....VERSUS.....

1. Western Coalfields Limited
(A Government of India undertaking),
Office of the Senior Manager (Mining),
Saoner Mine No.2, Post : Saoner, Nagpur – 441107,
District – Nagpur, through its Senior Manager (Mining)
and Mine Superintendent.
2. Western Coalfields Limited
(A Government of India undertaking),
Office of the Senior Manager (Mining),
Saoner Mine No.2, Post : Saoner, Nagpur – 441107,
District – Nagpur, through its Assistant Manager (Personnel).
3. Western Coalfields Limited
(A Government of India undertaking) ‘Coal Estate’,
Civil Lines, Nagpur – 440001,
through its Chairman-cum-Managing Director.
4. Coal India Limited
(A Government of India Enterprise),
10, Netaji Subhash Road, Kolkata (West Bengal),
through its Chairman.

RESPONDENTS

Shri D.S. Thakur, Advocate for the petitioners.
Shri A.M. Ghare, Advocate for respondent Nos. 1, 3 and 4.

WITH

WRIT PETITION NO. 2036 OF 2021

Miss. Sarika Shamrao Manusmare,
aged about 29 years, Occ. Nil,
R/o At Post Waighaon Ghoturli W.C.L.
Umrer (Rural), Vihirgaon, Nagpur – 441204.

PETITIONER**.....VERSUS.....**

1. Western Coal Limited,
through its Chairman-cum-Managing Director,
Coal Estate, Civil Lines, Nagpur.
2. Chief General Manager,
Western Coal Limited,
Coal Estate, Civil Lines, Nagpur.
3. Deputy Manager,
Western Coal Field Limited,
Moorpar Sub-Area, Umrer.

RESPONDENTS

Shri A.M. Sudame, Advocate for the petitioner.
Shri A.M. Ghare, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI JJ.**ARGUMENTS WERE HEARD ON : NOVEMBER 16, 2022****JUDGMENT IS PRONOUNCED ON : JANUARY 20, 2023****JUDGMENT : (PER : A.S. CHANDURKAR, J.)**

Since common issues arise in these Writ Petitions, they are being decided together by this common judgment.

2. The facts in Writ Petition No. 4074/2018 are that one Satiram Rajbhar was in employment with the Western Coalfields Limited (WCL) as a permanent non-executive employee. He expired in harness on

6/4/2009 leaving behind his widow. On his death, his daughter Vimla and Shimla along with his brother Nandkishor were eligible dependents who could seek employment on compassionate reasons from the WCL. The widow of Satiram however preferred to seek employment for her son Nandkishor. Since at the relevant time Nandkishor was minor, a request was made by the widow to keep his name on the life roster and pay her monthly monetary compensation till he attained the age of majority and was thereafter provided employment under the National Coal Wage Agreement (NCWA). This was accordingly done. On 3/5/2011, Nandkishor attained majority. After submitting all relevant documents, the WCL on 7/8/2012 provided employment to Nandkishor and stopped paying the amount of monthly monetary compensation to the widow. On completion of the period of probation, the appointment of Nandkishor was regularized from 6/2/2013. Nandkishor however died an unnatural death on 5/6/2015. At that time, the daughter of Satiram as well as the widow were residing with him and were dependent on him. In accordance with the provisions of the NCWA, the widow sought grant of compassionate appointment to her daughter vide communication dated 22/8/2015. The daughter executed an affidavit stating therein that she would take financial and medical care of her mother. On 5/9/2015, the claim for seeking compassionate appointment was rejected by the WCL on the ground that "sister" was not included in the definition of dependent

under the NCWA. A representation was thereafter made on 1/6/2018 to which there was no response. In that backdrop, the widow and daughter of Satiram have filed this Writ Petition raising challenge to the communication dated 5/9/2015 refusing to appoint the daughter on compassionate ground. In addition, a declaration is sought that Clause 9.3.3 of Chapter IX of NCWA – IX to the extent it excluded the dependent sister of the deceased from consideration is violative of Articles 14, 15, 16 and 21 of the Constitution of India.

3. The facts in Writ Petition No. 2036/2021 are that the petitioner's father Shamrao was working as Miscellaneous Majdoor – category – II with the WCL. He died in harness in the year 2010. Thereafter, the petitioner's brother Yogesh was appointed as General Majdoor – category – I (trainee) on 26/7/2010. He was thereafter made permanent on 26/4/2011. In a road accident, the said Yogesh expired on 17/5/2012. After his death, the petitioner's mother made a representation to the WCL stating therein that the petitioner – her daughter be given employment on compassionate basis. Since the representation made in that regard was not being decided, Writ Petition No. 3980/2018 was filed by the present petitioner. By the judgment dated 26/11/2019, the WCL was directed to consider the application in question within a period of eight weeks from the date of the order. Pursuant to the said order, the

said representation was considered by the WCL and by the order dated 20/1/2020 the same came to be rejected.

Being aggrieved, the petitioner has challenged the aforesaid order of rejection. In addition, a declaration has been sought that the NCWA – IX to the extent it dis-entitles female dependents from seeking employment on compassionate basis was violative of the fundamental rights guaranteed by Part III of the Constitution of India.

4. Shri D.S. Thakur, learned Counsel for the petitioners in Writ Petition No. 4074/2018 submitted that the rejection of the petitioners' claim to appoint petitioner No.1 on compassionate basis was bad in law. The reason assigned by the WCL that petitioner No.2 as the sister of the deceased was not a dependent resulted in gender discrimination and was contrary to the spirit of the NCWA – IX and especially Clause 9.3.3 thereof. The NCWA – IX was in the nature of "settlement" as contemplated by Section 2(p) of the Industrial Disputes Act, 1947 (for short "the Act of 1947"). By virtue of Section 18(3) of the Act of 1947, it had binding effect. Failure to comply with the settlement could result in penal consequences as contemplated by Section 29 of the Act of 1947. An award passed under the Act of 1947 and a settlement as contemplated by Section 2(p) of the Act of 1947 were at par. Since the NCWA – IX was

pursuant to mutual agreement between the various Labour Unions and the WCL, it was required to provide for terms in consonance with the Constitution of India. He then referred to the Employee's Compensation Act, 1923 and Section 2(d) which defines the term "dependent". The same did not indicate any gender discrimination. In that regard, he also referred to Section 5 of the Equal Remuneration Act, 1976, Section 13 of the General Clauses Act, 1897 and Section 2(d) of the Protection of Human Rights Act, 1993. It was further submitted that Clause 9.3.3 of the NCWA - IX results in gender discrimination which is violative of Article 14 of the Constitution of India and thus opposed to public policy under Section 23 of the Indian Contract Act, 1872. Since the NCWA – IX had the force of a settlement, it was binding on the WCL and the Writ Petition seeking enforcement of the terms therein was maintainable. There being no bar in the said agreement to grant employment to a dependent after the death of the concerned employee, the same could not be defeated by permitting such right to operate only in the case of a brother but excluding sister of the deceased employee. The petitioners were pursuing their claim diligently and there was no delay in seeking reliefs. It was thus submitted that the reliefs sought for in the Writ Petition deserve to be granted. In support of his submissions, the learned Counsel for the petitioners placed reliance on the decisions in i) *Mohan Mahto Vs. Central Coal Field Ltd. And Others* [(2007) 8 SCC 549]; ii) *Indian Bank*

Vs. K. Usha And Another [(1998) 2 SCC 663]; iii) Balbir Kaur And Another Vs. Steel Authority Of India Ltd. And Others [(2000) 6 SCC 493]; iv) Bharat Coking Coal Limited And Others Vs. Chhota Birsa Uranw [(2014) 12 SCC 570]; v) Koshi Project Workers Assocn. & Ors. Vs. State of Bihar & Ors. [2001(1) LLJ 1685]; vi) Madhubala Sinha and others Vs. M/s. Central Coalfields Limited, Ranchi, through its Chairman-cum-Managing Director and others [2019(4) LLJ 529]; vii) M/s. Central Coalfields Limited and ors. Vs. Anita Kumari [2022(1) J.C.R. 82]; viii) Shakila Begum (Siddiqui) w/o Late Abdul Latif Siddiqui & Anr. Vs. Northern Coal Field Ltd. thr. its Chairman Cum Managing Director & Ors. [Writ Petition No. 15841/2021 decided on 14/2/2022] at the High Court of Madhya Pradesh at Jabalpur; and ix) Sail And Another Vs. Awadhesh Singh And Others [(2001) 10 SCC 621] and submitted that reliefs as prayed for in the Writ Petition deserve to be granted.

5. Shri A.M. Sudame, learned Counsel for the petitioner in Writ Petition No. 2036/2021 in addition to the aforesaid submissions urged that Clause 9.3.3 of the NCWA – IX had been found to be violative of the provisions of Article 14 of the Constitution of India by the High Court of Madhya Pradesh in *Shakila Begum (Siddiqui) (supra)*. Though the said adjudication was challenged by the subsidiary of Coal India Limited, it was unsuccessful. Despite directions issued by this Court in

Writ Petition No. 3980/2018 decided on 26/11/2019, the WCL failed to consider the application as moved in the proper perspective thus depriving the petitioner of the beneficial provisions for grant of employment. The learned Counsel placed reliance on the decisions in i) *Miss C.B. Muthamma, I.F.S. Vs. Union Of India And Others [(1979) 4 SCC 260]*; ii) *Hamshikha Mallick Vs. Coal India Ltd. and Others [2016 Lab IC 3944]*; iii) *Smt. Gendia Debi Vs. The Central Coal Fields Limited, through its Chairman-cum-Managing Director & Ors. [LPA No. 475/2017 decided on 16/9/2019]* at the High Court of Jharkhand at Ranchi; and iv) *Shakila Begum (Siddiqui) (supra)*.

6. Shri A.M. Ghare, learned Counsel for the WCL opposed the aforesaid submissions. At the outset, he submitted that grant of compassionate appointment could not be claimed as of right since it was an exception to the mode of recruitment as contemplated under Article 16 of the Constitution of India. The rights of the petitioners were covered by the NCWA – IX. Since the said agreement was pursuant to deliberations between representatives of Coal India Limited and various Employee Unions, it was clear that non-inclusion of “sister” as beneficiary for seeking compassionate appointment could not be termed to be arbitrary. A conscious decision was taken after such deliberations and challenge to the NCWA – IX could be raised in the manner provided by Section 18 of

the Act of 1947. The petitioners were seeking deviation from the terms of NCWA – IX and the Writ Petitions seeking such relief did not deserve to be entertained since remedy under Section 18 of the Act of 1947 was available. Relying upon the decisions in i) *Anz Grindlays Bank Ltd. (Now Known As Standard Chartered Grindlays Bank Ltd.) Vs. Union Of India And Others* [(2005) 12 SCC 738]; ii) *M/s. Tata Chemicals Ltd. Vs. The Workmen Represented By Chemicals Kamdar Sangh* [(1978) 3 SCC 42]; iii) *Sail And Another Vs. Awadhesh Singh And Others* (*supra*); (iv) *State Bank Of India And Another Vs. Somvir Singh* [(2007) 4 SCC 778]; v) *Nageshwar Turi s/o Late Laldeo Turi Vs. Central Coalfields Ltd. & Ors.* [I.A. No. 2363/2019 decided on 29/6/2020]; vi) *I.G. (Karmik) And Others Vs. Prahalad Mani Tripathi* [(2007) 6 SCC 162]; vii) *National Institute Of Technology And Others Vs. Niraj Kumar Singh* [(2007) 2 SCC 481]; and viii) *Mohan Mahto* (*supra*) it was submitted that there was no legal justification for the petitioners to claim entitlement to consideration of the claim as made. He submitted that after considering all relevant aspects, the WCL had found that the respective petitioners were not entitled to any relief whatsoever. He submitted that both the Writ Petitions were liable to be dismissed.

7. We have heard the learned Counsel for the parties at length and with their assistance, we have also perused the documents placed on record. In the light of the fact that the petitioners have sought a

declaration that NCWA – IX and especially Clause 9.3.3 thereof insofar as it dis-entitles female dependents from seeking employment on compassionate basis is violative of Article 14 of the Constitution of India, it is the stand of the WCL that such declaration cannot be granted in the present proceedings in view of the provisions of Section 18(3) of the Act of 1947 as all terms of the agreement are binding on both parties. Unless NCWA – IX is suitably amended, the claim of the petitioners cannot be considered. Before going into that aspect, it would be necessary to refer to the judgment initially of the learned Single Judge of the Madhya Pradesh High Court in *Shakila Begum (Siddiqui) (supra)*. The facts therein indicate that the claim of the daughter of an employee of the Northern Coalfields Limited (NCL) for compassionate appointment came to be denied on the ground that the same was not permissible under Clause 9.3.3 of the NCWA – IX. While considering challenge to that order, the learned Single Judge referred to the judgment of the Full Bench of the said Court in *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. & Ors. [Writ Appeal No. 756/2019 decided on 2/3/2020]* wherein the Full Bench has held that Clause 9.3.3 of the NCWA – IX while referring to dependents would include married daughter/ sister. Following the judgment of the Full Bench, the learned Single Judge held that sister of an employee as dependent could not be deprived of consideration of the claim for compassionate appointment. The Writ

Petition preferred by her was allowed. This judgment of the learned Single Judge came to be challenged in *Writ Appeal No. 616/2022 (Northern Coalfields Limited Through Its Chairman Cum Managing Director Singrauli & Ors. Vs. Shakila Begum (Siddiqui) Wd/o Late Abdul Latif Siddiqui & Anr.* decided on 14/6/2022] wherein the Division Bench considered the ground raised by the NCL that Clause 9.3.3 could not be declared to be illegal without impleading the Joint Bipartite Committee For The Coal Industry (JBCCI) in the proceedings. It was held that the NCL being a party to the agreement was only an implementing authority and thus was not aggrieved by the order passed by the learned Single Judge declaring Clause 9.3.3 to be illegal. On that count and as the learned Single Judge had relied upon the judgment of the Full Bench of the said Court in *Meenakshi Dubey (supra)*, the Writ Appeal came to be dismissed.

The aforesaid judgment in Writ Appeal No. 616/2022 was challenged by the NCL before the Hon'ble Supreme Court in Special Leave Petition (C) No. 16264/2022 (*Northern Coalfields Limited & Anr. Vs. Shakila Begum (Siddiqui) & Ors.*). The Special Leave Petition came to be dismissed on 14/10/2022. Thus, in effect, the judgment of the learned Single Judge declaring Clause 9.3.3 of the NCWA – IX as unreasonable, unjustified and contrary to the view taken by the Full Bench in *Meenakshi*

Dubey (supra) stands confirmed. As a result, Clause 9.3.3 of the NCWA – IX cannot be relied upon as a ground for not considering the claim for compassionate appointment made by a sister of the dependent on the ground that reference in the said Clause is only made to a brother therein.

8. From the aforesaid, it becomes clear that insofar as the NCL which is a signatory to the NCWA – IX is concerned, it is covered by the aforesaid decisions and it cannot implement Clause 9.3.3 by excluding claim of a married sister as dependent of the deceased employee for seeking compassionate appointment. The WCL is also a signatory to the NCWA – IX being a subsidiary of the Coal India Limited. If the aforesaid declaration as granted by the Madhya Pradesh High Court and affirmed by the Hon'ble Supreme Court binds the concerned signatory to the said agreement which is a subsidiary of the Coal India Limited, there is no reason to hold that the aforesaid adjudication would not be applicable to the WCL which is another subsidiary of the Coal India Limited. Holding so would result in implementing Clause 9.3.3 of the NCWA – IX in a different manner insofar as the WCL is concerned which would not be consistent with the manner in which the NCL is now bound to interpret it in the light of the aforesaid decisions. We therefore find that for the aforesaid reasons, it would not be permissible for the WCL to re-iterate the very same contentions that were raised on behalf of the NCL only for

the reason that such contentions were raised before a different High Court. The fact that the view of the Madhya Pradesh High Court has been upheld by the Hon'ble Supreme Court is in our view a sufficient reason not to entertain the very same arguments at the behest of another subsidiary of the Coal India Limited afresh. In *Sahu Madho Das and others Vs. Mukand Ram and another* [AIR 1955 SC 481] the Hon'ble Supreme Court has held that where a document has been interpreted in an earlier decision it may not bind a person who was not a party to the said proceedings but the construction of the document would operate as a judicial precedent.

9. We may note that the Full Bench of the Madhya Pradesh High Court in *Meenakshi Dubey (supra)* has considered the aforesaid issue at length and has referred to various enactments that were relied upon by the learned Counsel for the petitioners herein. Since we agree that the view taken by the Full Bench of the Madhya Pradesh High Court in *Meenakshi Dubey (supra)* depriving a married daughter from the right of consideration for compassionate appointment cannot sustain judicial scrutiny, it is not necessary to refer to the said provisions again. Moreover, reference has been made to various decisions of other High Courts on the said point in the said decision including the judgment of this Court in *Sou. Swara Sachin Kulkarni (Kumari Deepa Ashok Kulkarni)*

Vs. Superintending Engineer, Pune Irrigation Project Circle and Another [2013 SCC OnLine Bom 1549]. Therein, the Division Bench held that refusal to consider the claim of a married daughter for compassionate appointment would amount to discrimination on the basis of gender thus violating Articles 14, 15 and 16 of the Constitution of India. We also note that the Jharkhand High Court in *Madhubala Sinha (supra)* has considered this very question and by its judgment dated 16/9/2019 directed consideration of the claim of a sister under Clause 9.3.3 of the NCWA – IX. It is noted that this judgment of the Jharkhand High Court was challenged before the Hon'ble Supreme Court in Special Leave Petition (C) No. 29678/2018 (*Central Coalfields Ltd. & Ors. Vs. Gendia Debi & Anr.*). The Special Leave Petition came to be dismissed on 12/11/2021. However, the question of law was left open for being examined in an appropriate case. It is therefore held that Clause 9.3.3 of the NCWA – IX insofar as it excludes a married daughter/ sister from being considered for appointment on compassionate basis is unreasonable and suffers from gender discrimination thus being violative of Articles 14 and 15 of the Constitution of India.

10. Coming to the decision in *Mohan Mahto (supra)* on which considerable reliance was placed by the WCL, it would be necessary to consider the facts therein. The father of the petitioner therein died in

harness on 23/2/1997. The petitioner moved an application seeking appointment on compassionate basis on 25/10/1997 but the same was rejected on the ground that at the relevant time he was a minor. He then applied for compassionate appointment after attaining the age of majority. The claim was again denied on the ground that it was made beyond the period of six months from the death of the employee. The petitioner relied upon Clause 9.5.0 of the National Coal Wage Agreement which was a settlement as contemplated by Section 18(3) of the Act of 1948. It was in that context observed that the settlement was binding on both parties and continued to remain in force unless it was altered in accordance with law. No period of limitation was prescribed in the settlement and assuming that there was jurisdiction to issue such Circular, it had to be read keeping in view the settlement between the parties. If limitation was to be provided the same ought to be reasonable. Since the initial application of the petitioner was not rejected on the ground of delay, the stand taken by the Central Coalfields Limited to that effect in its counter affidavit was not accepted. Relief was accordingly granted to the said petitioner. We do not find how the ratio of the judgment supports the stand of the WCL while opposing the Writ Petitions. It is true that the NCWA – IX is binding on both parties but if a Clause thereof is found to result in gender discrimination, the legal consequences are bound to follow. On the contrary, in *Mohan Mahto (supra)* the National Coal Wage

Agreement similar to the one in the present matters was under consideration and the challenge was considered on merits. We would therefore rely upon the decision in *Mohan Mahto (supra)* to entertain the challenge. The decision in *Sail and another (supra)* refers to a memorandum of understanding that was found to be not a statutory scheme for being enforced under Article 226 of the Constitution of India. Since the decision in *Mohan Mahto (supra)* is a later decision comprising of similar bench strength that decided *Sail and another (supra)*, we are inclined to follow the later decision.

11. In Writ Petition No. 4074/2018, the claim of petitioner No.2 has not been considered on the ground that she cannot be treated as dependent. Similar reason is also contained in the impugned communication in Writ Petition No. 2036/2021 as communicated to the petitioner. Though in the communication dated 20/1/2020 rejecting the claim of the petitioner in Writ Petition No. 2036/2021 seeks to rely upon the judgment of the Hon'ble Supreme Court in *Mohan Mahto (supra)*, for what has been stated hereinabove it would be necessary for the WCL to take into consideration Clause 9.3.3 of the NCWA – IX in the manner as interpreted by the Madhya Pradesh High Court in the decisions referred to hereinabove. We therefore find that in the light of such interpretation of Clause 9.3.3 of the NCWA – IX, the applications made by the

petitioners deserve re-consideration by the WCL on their own merits by relying upon Clause 9.3.3 of the NCWA – IX as interpreted and referred to hereinabove.

12. Hence, for the aforesaid reasons, the impugned communications dated 5/9/2015 in Writ Petition No. 4074/2018 and dated 20/1/2020 in Writ Petition 2036/2021 are set aside. The WCL shall re-consider the respective applications of the petitioners on their own merits. However, the applications shall not be rejected on the ground that the same have been made by a daughter/ married sister of the deceased employee. Necessary exercise be completed within a period of six weeks from receipt of copy of the judgment.

13. Rule is made absolute in the aforesaid terms with no order as to costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

Sumit