

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

WRIT PETITION NO. 1177 OF 2022

(1) Ku. Minakshi D/o. Prabhakar Dethe,
Aged about 27 years, Occ. Student.

(2) Smt. Shakuntala W/o. Late
Prabhakar Dethe, Aged about 53
years, Occupation : Household,

Both R/o. Shree Nagar, Pandav ward,
Bhadravati, District Chandrapur.

..... **PETITIONERS**

...V E R S U S...

(1) Western Coal Fields, Coal Estate,
Civil Lines, Nagpur, Through its
Managing Director

(2) Deputy Manager, (Personnel), Ukni
Open Caste Mine, Office of the Sub
Area Manager, Ukni Junaad, Sub
Area Wani, North Area, At Post Ukni,
Tahsil Wani, District Yavatmal.

(3) The Sub Area Manager, Ukni Junaad,
Sub Area, Wani, North Area, At Post
Ukni, Tahsil Wani, District Yavatmal.

..... **RESPONDENTS**

Ms. Aarti Singh, Advocate for the petitioners
Mr. O. A. Ghare, Advocate for respondent 1

CORAM : ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 01-03-2023

JUDGMENT (PER : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. It is common ground that the controversy is covered by the decision of the Coordinate Bench in *Writ Petition 4074/2018 (Ku. Shimla d/o. Late Satiram Rajbhar & Ors. vs. Western Coalfields Limited and Others.)* (“*Ku. Shimla Rajbhar*”).

3. The claim of petitioner 1 to compassionate appointment in view of the death in harness of her brother, is rejected on the ground that the extent policy *inter alia* the National Coal Wage Agreement – VI and the instructions issued, do not envisage appointment on compassionate ground to sister.

4. Identical issue is considered by the Coordinate Bench. We extract reasoning of the Coordinate Bench in *Ku.Shimla Rajbhar*.

“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”.

5. We respectfully agree with the reasons recorded by the Coordinate Bench, and are inclined to fall in line with the reasons.

6. In so far as relief is concerned, the relevant paragraphs in ***Ku.Shimla Rajbhar*** read thus:

“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 reconsider 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”.

7. We are inclined to allow the petition, for reasons recorded by the Coordinate Bench and in terms of the relief granted vide paragraphs 11 and 12 extracted supra.

8. We clarify that the exercise, even in the present matter, shall be completed within six weeks.

9. The order impugned dated 11.10.2020, issued by respondent 2 is quashed.

10. We allow the petition in terms of paragraphs 11 and 12.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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