

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

WRIT PETITION 8238 OF 2022

Petitioner : Harindra Shardaprasad Yadav,
 Aged 32 Years, Occu.: Nil,
 R/o New Majri Callery, Shanti Colony,
 Quart No.S/155, P.O. Shivjinagar,
 Tah. Bhadrawati, Dist. Chandrapur – 442503.
 – Versus –

Respondents : 1. Western Coal Fields Limited,
 through its Chairman-cum-Managing Director,
 Coal Estate, Civil Lines, Nagpur-02.
 2. Area General Manager,
 Western Coal Fields Ltd., Majri, Dist. Nagpur.

 Mr. I.A. Fidvi, Advocate for the Petitioner.
 Mr. P.V. Ghare, Advocate for Respondent 2.

CORAM: **ROHIT B. DEO AND M.W. CHANDWANI, JJ.**
DATE : **28th JUNE, 2023.**

J U D G M E N T : (Per Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

02] The petitioner is the owner of agricultural land admeasuring 0.89 HR, assigned Gut 18/1, situated at Naydev, Warora having purchased the same vide registered sale-deed dated 27/06/2017 (subject land).

03] The respondents issued notification dated 29/08/2020 under Section 9(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred to as “Act” for short) expressing intention to acquire several lands including the subject land for the purpose of Amalgamated Yekona I & II Opencast Coal Mines.

04] It is a common ground that the holding company Coal India Limited formulated rehabilitation policy in the year 2008, which was revised by the Rehabilitation and Resettlement Policy of Coal India Ltd, 2012 (hereinafter referred to as “R&R Policy” for short), and the said Policy binds the Western Coalfields Limited (‘WCL for short), which is a subsidiary company of Coal India Limited.

05] We may extract the provision, which is relevant for the purpose of adjudication of the grievance of the petitioner, which is that the benefit of the employment provision is denied illegally. Sub-clause (B) of Clause 8.1 of the R&R Policy reads thus :

(B): Employment Provision: Apart from payment of the land compensation, employment may be given in the following manner-

1) The maximum total number of employments that may be provided to the land losers would be limited to the total no

of acres of land acquired divided by two. However, employments will be released in proportion to the land possessed.

- 2) For every two acres of land one employment can be considered.*
- 3) Subsidiaries of CIL may give an option to the Land losers having less than two acres of land to club together their land to the extent of two acres and nominate one of the land losers among the groups or their dependent for employment under package deal or employment under Descending order system by preparing the list of eligible land oustees in the descending order of land lost subject to the cut off equivalent to the total number of permissible employments or any other method with the approval of the respective Board of the subsidiary.*
- 4) The land loser must be a domiciled resident/Mool Niwasi and the certificate to this effect shall be issued by the concerned State Authority.*
- 5) The modalities for offering employment shall be such as may be approved by the Board of the Subsidiary companies as per the unique conditions of the subsidiary provided that -*
 - a) The initial employment shall be given with pay of Category-I pay scale of NCWA, with training period of 6 months.*
 - b) In the seniority list, the seniority of the appointee should be reflected in appropriate manner in order to keep the senior most as senior.*
 - c) The land loser trainees shall be posted as per requirement, including underground duties.*

06] The petitioner asserts, that inasmuch as the R&R Policy envisages that if the area of the land acquired is two acres, one employment can be considered, and the area of the subject land is more than two acres, the petitioner is entitled to employment in addition to the payment of compensation for the land acquired.

07] Learned Counsel Mr. Ghare, who appears on behalf of WCL fairly does not dispute that the petitioner satisfies the eligibility conditions spelt out in sub-clause (B) *supra*. However, Mr. Ghare would submit that the petitioner is not entitled for employment, for reasons articulated in affidavit in response dated 26/06/2023.

08] We may straight away consider the stand of WCL as is discernible from reading of paragraphs 5 and 6 of the affidavit in response dated 26/06/2023.

“5. It is not in dispute that, the land of the petitioner was acquired towards amalgamated Yekona 1 and Yekona 2 opencast mine under the provisions of the Coal Bearing Act, 1957. It is categorically submitted that, approval for the appointment of the petitioner against land acquisition is subject to the detailed verification, compliance of guidelines after ascertaining the eligibility and fulfillment of other

conditions as is evident from the order dated 27/04/2022 enclosed with the petition. Thus, mere approval by the competent authority does not create any vested legal right in favour of the petitioner so as to claim the relief of appointment against acquired land. For this reason alone, the present petition is not maintainable as there is no right accrued to the petitioner.

6. *It is submitted that during the course of detailed verification, it was found that the petitioner is the real brother of Shri Ravindra Yadav and the real name of his father is Bankaprasad Yadav and not Shardaprasad Yadav. At the cost of repetition, it is submitted that the genuineness and correctness of the landowners is once again required to be ascertained for releasing the employment. It is also submitted that even if the employment is released to the petitioner with name of father as Shardaprasad which is proved in the departmental enquiry against his elder brother as forged, it will also attract misconduct under clause 26.09 of the certified standing orders for which the petitioner if gets employed is liable for departmental enquiry. In other words, respondent company is under no obligation to release employment to a person whose father's name is found to be false and bogus."*

09] We note from the affidavit in response that the petitioner was held entitled to employment by the competent authority. However, WCL contends

that during the course of verification, it was found that the petitioner is the blood brother of Mr. Ravindra Yadav and the name of the father of the petitioner is Bankaprasad Yadav and not Shardaprasad Yadav, as is claimed.

10] WCL claims, in paragraphs preceding paragraphs 5 and 6 that Mr. Shardaprasad Yadav was working in WCL and he died in harness on 08/07/2014. His son Mr. Ravindra Shardaprasad Yadav was appointed on compassionate ground vide appointment order dated 05/11/2016. WCL then refers to communication dated 15/02/2020 received from the Majri Police Station stating that Mr. Ravindra Shardaprasad Yadav has obtained employment by using fake identity. The said communication states that the real name of the father of Mr. Ravindra was Bankaprasad Yadav. WCL then states that Mr. Ravindra Yadav is served with 'show cause notice', the reply was not satisfactory and charge-sheet dated 11/03/2021 was served on Mr. Ravindra Yadav, was found guilty in the departmental enquiry and came to be dismissed vide order dated 07/09/2021.

11] We have given due consideration to the affidavit in response. In our considered view, we see in the affidavit in the response an attempt to defend the indefensible. We are not making any further observation in the interest of observing restraint.

12] It is absolutely irrelevant, whether the brother of the petitioner Mr. Ravindra secured employment on compassionate ground by misrepresentation and came to be dismissed. The entitlement of the petitioner has nothing to do with the appointment of his brother on compassionate ground. The entitlement of the petitioner is on the basis of the R&R Policy and we find that there is nothing in the said Policy as would disentitle the petitioner to employment in addition to the compensation for the land acquired. It is not even the case of WCL that the petitioner is not the owner of the subject land or that the minimum threshold of area specified is not fulfilled. We are further not inclined to accept the submission of Mr. Ghare that in view of the enquiry findings as regards the brother of the petitioner, it will have to be assumed that the petitioner furnished incorrect information while applying under the R&R Policy.

13] WCL is doing no favour to the land owners, whose land is acquired. WCL is bound to act fairly as an instrumentality of the State. Unfortunately, despite not disputing that the petitioner is entitled to employment in terms of sub-clause (B) of Clause 8.1 of the R&R Policy, an attempt is made to deny employment on flimsy, untenable and speculative grounds. Inasmuch as the ownership of the petitioner *qua* the subject land is not disputed, it is beyond comprehension as to how the alleged incorrect information would *ipso facto*

dislodge the claim of the petitioner, which stands crystallized under the R&R Policy.

14] The documents, which may have been submitted by the petitioner in support of the claim to employment under the R&R Policy are on record. It does appear that the petitioner disclosed the name of his father as “Shardaprasad”. WCL contends that in the departmental enquiry held against the blood brother of the petitioner, a finding is recorded that the name of the father is “Bankaprasad” and not “Shardaprasad”. The findings recorded in the departmental enquiry and the order of punishment are assailed before the Central Government Industrial Tribunal. Be that as it may, while the alleged use of incorrect name may, or may not, have any relevance in the case of the petitioner’s brother, who secured appointment on compassionate ground, the same is absolutely of no relevance or significance in the present matter. As long as the title of the petitioner to the land acquired is not in dispute, whether the petitioner refers to his father as “Shardaprasad” or “Bankaprasad” does not really matter.

15] We, therefore, find that the denial of employment to the petitioner is manifestly illegal. We direct WCL to issue an appointment order to the petitioner within the next three months.

16] The petitioner shall be entitled to notional date of appointment from the date, on which the land owners covered by the same notification are issued appointment orders. While the petitioner shall be entitled to the benefit of the notional date of appointment for the purpose of seniority and pay fixation, the petitioner shall not be entitled to arrears of salary.

17] The petition is disposed of in the aforestated terms. Rule accordingly with no order as to costs.

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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