

\$~129

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 14th March, 2023*

+ W.P.(C) 8231/2021 & CM APPL. 29404/2022

PUROBEE LATA BISWAS Petitioner

Through: Mr. Apurb Lal and
Ms. Kamalika Samadder, Advocates

versus

UNION OF INDIA MINISTRY OF COAL, THROUGH ITS
SECRETARY & ORS. Respondents

Through: Ms. Nidhi Raman, Central
Government Standing Counsel with
Mr. Zubin Singh, Advocate for R-1.
Mr. Vishal Bhatnagar, Ms. Lata Walia and
Mr. Karan Arora, Advocates for R-2 & 3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

“a) Direct the Respondents to release the monthly monetary compensation without insisting to furnish the signatures of two permanent employees who have 10 years service left to retire as witnesses.

b) or pass any such other/further order as may be deem fit and proper to meet the ends of justice.”

2. Husband of the Petitioner Late Shri Gopal Biswas was employed with Respondent No.3 as a Grade-I Clerk. After his untimely death on 12.01.2017, Petitioner requested the concerned Authorities on 15.02.2017 to release the life cover/Gratuity/Leave

Encashment benefits, to which her deceased husband was entitled. Getting no relief, Petitioner filed a writ petition being W.P. (C) 13287/2018, in which the Regional Commissioner, Coal Mines Provident Fund Organization filed an affidavit that the amount lying in the account of her husband would be released.

3. On 15.05.2018, Petitioner applied for 'monthly monetary compensation' in lieu of compassionate appointment in terms of provisions of National Coal Wages Agreement (NCWA) applicable to the employees of Respondent No. 3. Petitioner received a letter dated 01.04.2020, from the Office of Respondent No. 2 asking her to furnish the requisite documents with signatures of two permanent employees with 10 years residual service to retire, as witnesses, for grant of monthly monetary compensation.

4. It is the case of the Petitioner that she informed the Office of Respondent No. 2 that none of the employees were willing to come forward and witness the documents and therefore the compensation be sanctioned to her without insisting on the said formalities. Respondent No. 2, however, continued to insist on furnishing of the documents with the signatures of the witnesses and refused to indulge the Petitioner, compelling her to file the present petition. Petitioner has sought a direction in the petition to Respondents No.2 and 3 to release the monetary benefits without restriction of signatures of two employees as witnesses with 10 years of residual service in the required format.

5. During the pendency of the petition, a significant development took place, which led to the Petitioner filing an application being CM No. 29404/2022. It is stated in the application that the Office of Respondents No. 2 and 3 had themselves arranged for witnesses to

sign the genetic certificate and therefore the deficiency pointed out earlier, no longer exists. Along with the application, Petitioner has appended the genetic certificate, duly signed by two witnesses as required by the Respondents as well as copy of the Birth Certificate of the Petitioner, issued on 23.01.2020, reflecting her Date of Birth as 10.02.1968. It is therefore the contention of the counsel for the Petitioner that since the requisite conditions for release of monthly monetary compensation now stand fulfilled, there is no impediment in release of the said benefit to her.

6. Reply has been filed by Respondents No. 2 and 3 to the application, opposing the claim of the Petitioner. It is stated that Petitioner has deliberately failed to disclose that vide letter dated 25.01.2022, the answering Respondents required the Petitioner to submit her educational qualification certificates/school leaving certificate as age proof for assessment of the age. This is in view of the fact that as per manual NCWA-VI read with clause 9.5.0, monthly monetary compensation can be granted till the female dependent attains the age of 60 years and therefore the pre-condition is to ascertain the actual age of the Petitioner. It is further stated in the reply that there is discrepancy in the age of the Petitioner mentioned in the different documents filled by Petitioner's husband during his service with the answering Respondents. In support thereof, a tabular representation has been given in para 2 of the reply with a view to demonstrate that different ages are mentioned in Form-F, PS-3 and PS-4, Addendum and LTC forms.

7. Learned counsel for Respondents No. 2 and 3 vehemently opposes the claim of the Petitioner and submits that until she furnishes the age proof, the monthly monetary compensation cannot be

sanctioned to her. He further submits that in order to streamline the procedure for submitting age proofs, a proforma/check list has been issued on 29.07.2016, for processing cases of employment to dependents/monetary compensation as per NCWA and in clause 12 thereof it is mentioned that where the claimant is illiterate and is unable to furnish the matriculation certificate/marksheet or in case of variance in the Date of Birth in the official record, the age of the claimant is to be determined as per Implementation Instruction No. 76 (II No.76) of NCWA-III. It is further submitted as per clause (h) of II-No.76, the date of birth is to be determined by the Colliery Medical Officer, keeping in view any document/evidence produced by the Appointee. In a nutshell, the submission is that *albeit* there is no dispute on the genuineness of the Birth Certificate appended to the application, however, it is not possible to accept the same till the laid down procedure in the check list/II No.76 is followed by the Petitioner.

8. Learned counsel for the Petitioner, on the other hand, submits that the stand of Respondents No. 2 and 3 that the documents contained in the service record of Petitioner's husband show different ages of the Petitioner is false and belied by a mere perusal of the scanned copies of the various Forms handed over in Court. It is pointed out that in the Addendum the age of the Petitioner is shown as 21 years as on 11.09.1986 and in Forms PS-3/PS-4 it is 33 years as on 20.05.1998. Petitioner has placed on record the Birth Certificate as per which her Date of Birth is 10.02.1968 and by a pure mathematical calculation there is no error or discrepancy. Insofar as Form-F is concerned, the age is wrongly mentioned and the Form was filled at the initial stage of Petitioner's husband's employment and at this stage

after his death, it is impossible to ascertain whether it is in his handwriting or filled by the Office. In any event, the most authentic evidence of the date of birth is the Birth Certificate, which in this case is duly signed by the Chief Municipal Officer on the basis of original records and bears the original registration number. It is further submitted that the Birth Certificate was submitted in the office of Respondents No. 2 and 3 in the year 2021 itself and there is no reason why the same should not be accepted and monthly monetary compensation be released to the Petitioner.

9. I have heard learned counsels for the parties and examined their contentions.

10. It is undisputed that in order to claim monthly monetary compensation, Petitioner was required to submit documents duly signed by two witnesses having 10 years of residual service prior to retirement as also furnish the age proof as the maximum age upto which the said benefit is available in case of a female dependent is 60 years. Insofar as the first impediment is concerned, the genetic certificate, duly signed by two witnesses has been furnished by the Petitioner, with the assistance of Respondents No. 2 and 3. The only issue that remains to be examined is the age proof of the Petitioner.

11. Petitioner has placed on record a Birth Certificate issued on 23.01.2020, from the Office of the Town Panchayat Mana Camp Raipur, Chhattisgarh and duly signed by the Chief Municipal Officer. On a repeated query by the Court, learned counsel for the answering Respondents candidly submitted that he has no reason to dispute the genuineness/authenticity of the Birth Certificate. The insistence, however, is on providing a Matriculation Certificate or in the alternative for submitting the Birth Certificate for examination before

the Colliery Medical Officer who would submit a report thereafter.

12. First and foremost, it needs a mention that a serious objection is taken in the reply filed to CM No. 29404/2022, that Petitioner has concealed that Petitioner's husband, while filling up various Forms during his service, has mentioned different ages of the Petitioner and which are also at variance with the Birth Certificate. I am afraid this stand of Respondents No. 2 and 3 is not wholly correct and to say the least, an argument of prejudice. Save and except, Form-F, all other Forms i.e. PS-3/PS-4, Addendum and LTC reflect the correct age when calculated with the date of birth mentioned in the Birth Certificate. Be that as it may be, the Birth Certificate is the best evidence as age proof and as mentioned above, there is no dispute on its genuineness.

13. Insofar as the requirement of furnishing the Matriculation Certificate is concerned, during the hearing, it is conceded by learned counsel for Respondents No. 2 and 3 that since the Petitioner is illiterate, she is only required to furnish the Birth Certificate before the Colliery Medical Officer as per the procedure laid down in the proforma/check list read with II No. 76. While it is strange that Respondents No. 2 and 3 are requiring the Petitioner to fulfil conditions which are otherwise applicable for 'appointment' under II No. 76, however, in the absence of challenge to the said instructions/check list, Petitioner has no choice but to comply with them.

14. It is accordingly directed that the Petitioner shall furnish the Birth Certificate in the concerned office of Respondents No. 2, within a period of one week from today under acknowledgement. Respondents No. 2 and 3 shall refer the Certificate to the Colliery

Medical Officer, who shall examine the same in accordance with the laid down procedure and take a decision. This exercise shall be completed within two weeks from the receipt of the Birth Certificate from the Petitioner.

15. Needless to state that if the Birth Certificate is compliant with the required conditions under the check list, monthly monetary compensation shall be released to the Petitioner within two weeks thereafter along with complete arrears and interest @ 12 % per annum from the date it became due till actual payment.

16. Writ petition along with the pending application is disposed of with the aforesaid directions.

MARCH 14, 2023/kks/shivam

JYOTI SINGH, J