

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 27 of 2024
With
IA No. CAN 1 of 2024
With
IA No. CAN 2 of 2024

Sukumoni Hembram Alias Sukumoni Mejhan
Vs.
The Union of India & Ors.

For the Appellant : Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.

For the Respondents : Mr. L.K. Gupta, Sr. Adv.
ECL Authority : Mr. Syed Nurul Arefin, Adv.
Mr. Rahul Singh, Adv.
Mr. Syed Moyeenul Arefin, Adv.
Ms. Rashmi Binayak, Adv.

Hearing Concluded on : July 31, 2024

Judgement on : August 07, 2024

DEBANGSU BASAK, J.:-

1. Appellant has preferred this appeal against the order dated June 20, 2023 passed in her writ petition being WPA 13064 of 2023.

2. By the impugned order, learned single judge has rejected the claim for compassionate appointment so far as the writ petitioner is concerned but directed payment of

Monthly Monetary Cash Compensation (MMCC) under Clause 9.5.0 of National Coal Wage Agreement (NCWA).

3. Learned advocate appearing for the appellant has submitted that, appellant is the daughter of the deceased employee. Deceased employee had died in harness on May 12, 2015. Appellant had been included as a dependent of the deceased employee in the service book of the deceased employee. Mother of the appellant had applied for employment of the appellant by a writing received by the respondent authorities on March 4, 2022. Appellant had been medically examined on March 7, 2022. Appellant had appeared before the Area Screening Committee under the NCWA as directed by the letter dated March 26, 2022. Since the appellant did not receive any information with regard to the request for compassionate appointment, appellant applied under the Right to Information Act, 2005 to which appellant had received a reply dated September 20, 2022. She had made a representation through her advocate on December 19, 2022. Thereafter, appellant had applied by way of the writ petition for grant of compassionate appointment which resulted in the impugned order.

4. Learned advocate appearing for the appellant has drawn the attention of the Court to clause 9.3.0 to 9.5.0 of the NCWA. He has contended that, when the respondent authorities rejected the claim of compassionate appointment of the appellant on the ground of the appellant being a minor, at that point of time, the appellant was an adult. He has contended that, the date of birth of the appellant is October 1, 1999. The authorities had rejected the prayer for compassionate appointment in 2022 when the appellant was an adult.

5. Learned advocate appearing for the appellant has contended that, appellant is entitled to compassionate appointment in terms of the NCWA. In support of such contention, he has relied upon **2017 Volume 6 West Bengal Law Reporter (Cal) 255 (Putul Rabidas Vs. Eastern Coalfields Ltd and Others)**, **2018 Volume 11 Supreme Court Cases 210 (Subhadra Vs. Ministry of Coal and Another)**, **2010 Volume 2 Calcutta High Court Notes 327 (Santi Ruidas Vs. Coal India Ltd)** and **2017 Volume 4 Calcutta High Court Notes 362 (The State of West Bengal and Others Vs. Purnima Das and Others)**.

6. Learned senior advocate appearing for the respondents has contended that, the appellant is not entitled to compassionate appointment but is entitled to MMCC. He has pointed out that, on the date of death of the employee, the appellant was a minor though a daughter of the deceased employee.

7. Learned senior advocate appearing for the respondents has referred to the NCWA and particularly to clauses 9.3.0 to 9.5.0 thereof. He has contended that, no interpretation should be advance which renders clause 9.5.0 (iii) otiose. He has pointed out that, clause 9.5.0 (ii) is restricted to a female dependent. Referring to clause 9.5.0 (iii) he has contended that, the first part thereof is restricted to male dependent and does not deal with the female dependent. However, the latter half of such clause has prescribed benefits for the female dependent.

8. Learned senior advocate appearing for the respondents has contended that, clauses 9.5.0 (ii) and (iii) cannot be mixed up. Clause 9.5.0 (ii) has not provided for a live roaster to be maintained in respect of a female dependent. Therefore, there is no requirement to give employment to a female on such female dependent attaining the age of an adult. Doing so,

according to him, would be deviating from the intention of the parties to the settlement which has been transcribed in the NCWA.

9. Learned senior advocate appearing for the respondents has contended that, the provisions of the General Clauses Act cannot be applied to read female in place of male and vice versa in the NCWA. According to him, clause 9.5.0 (ii) and (iii) deals with different situations and have therefore provided for different measures. According to him, gender equality should not be considered in view of the settlement arrived at. He has pointed out that the settlement is a product of collective bargaining and arrived at through such process of collective bargaining.

10. Learned senior advocate appearing for the respondents has relied upon the expressions “*expressio unius est exclusio alterius*” and “*expressum facit cessare tacitum*” in support of his contention is that, when one clause has excluded a minor female dependent from the live roaster and in fact when a live roaster is required to be maintained for a male minor dependent then, it should be inferred that, live roaster for a minor female dependent stood excluded.

11. Learned senior advocate appearing for the respondents has relied upon **2019 Volume 1 Calcutta Law Times 130 (Eastern Coalfields Ltd versus Kumari Kiran Singh and others)** and contended that, similar issue fell for consideration before the division bench and such issue was answered in favour of the respondents and against the appellant.

12. The appellant has claimed compassionate appointment. Father of the appellant had died in harness on May 12, 2015. The family of the deceased employee had consisted of his widow, his son and daughter at the time of his death. Son of the deceased employee had expired on October 9, 2017. The widow of the deceased employee had applied on May 31, 2019 for keeping the appellant in the live roaster for appointment as the appellant was a minor then, and for MMCC for herself. On the date of such application, the family of the deceased employee had consisted of his widow and the appellant as his daughter. The date of birth of the appellant is October 1, 1999. She was a minor on the date of death of the deceased employee.

13. Mother of the appellant had nominated the appellant for employment in the died in harness category in terms of the

NCWA then prevailing by a writing dated March 4, 2022. The respondent authorities had processed such application up to a given level. By the letter dated March 7, 2022 appellant had been called for initial medical examination. By a letter dated March 26, 2022 appellant had been requested to appear before the Area Screening Committee. Appellant had undertaken the medical examination and appeared before the Area Screening Committee. No progress having been made by the authorities with regard to the claim for compassionate appointment, the appellant had filed a writ petition resulting in the impugned order.

14. NCWA governs the right of compassionate appointment of the specified dependents of the deceased employee.

Relevant provisions of the NCWA are as follows: –

“9.3.0 Provision of Employment to Dependants

9.3.1 Employment would be provided to one dependant of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows.

9.3.2 Employment to one dependant of the worker who dies while in service.

In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.

9.3.3 the dependant for this purpose means the wife/husband as the case may be, unmarried daughter,

son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

9.3.4 the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

9.4.0 Employment to one dependant of a worker who is permanently disable in his place

(i) The disablement of the worker concerned should arise from injury or diseased, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) In case of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/she is upto the age of 58 years.

The term 'general physical debility' would mean deficiency of a workman due to any disease or other health reason leading to his/her disablement to perform his/her duties regularly and/or efficiently.

(iii) The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependent on the earning of the employee may be considered.

In so far as female dependants are concerned, their employment would be governed by the provisions of clause 9.5.0.

(iv) The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

9.5.0 Employment/Monetary compensation to female dependant.

Provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

i) In case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.

ii) In case of death/total permanent disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0., if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment.

In case of female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment

iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0, if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided

employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.

(iv) Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.

(v) the existing rate of monetary compensation will continue. The matter will be further discussed in the Standardisation committee and finalised.

Note: In the case of TISCO, the matter would be settled at bipartite level.”

15. Out of the authorities cited during the course of hearing of the appeal, such clauses of NCWA have been considered by the Supreme Court in ***Subhadra (supra)***, the Special Bench of this High Court in ***Putul Rabidas (supra)*** and the division bench in ***Santi Ruidas (supra)*** and ***Kumari Kiran Singh (supra)***.

16. ***Santi Ruidas (supra)*** has read the relevant clauses of the NCWA in light of Articles 14 and 16 of the Constitution of India as well as provisions of the Protection of Human Rights Act, 1993 and the Convention on the Elimination of All Forms of Discrimination against Women, 1979 along with authorities of the Supreme Court cited before it. It has held that, a female who completed 15 years of age but not 18 years of age on the death of the deceased employee was entitled to have her name

kept on the live register for employment upon completion of 18 years of age.

17. The special bench in ***Putul Rabidas (supra)*** has held that, since NCWA is a settlement arrived at between the parties after protracted deliberations, the same is binding on the parties governed thereby in view of section 18 of the Industrial Disputes Act, 1947. No departure from whatever is provided in NCWA is warranted and that, various terms of the NCWA have to be read and the meaning of the words used herein gathered from the context. It has also held that, employer cannot repudiate a claim for compassionate appointment or monetary compensation on the ground that the family having received substantial death benefits, is not in need thereof. It has gone on to hold that, a divorced daughter was falling within the category of unmarried daughter as provided in NCWA.

18. The division bench in ***Kumari Kiran Singh (supra)*** has considered ***Putul Rabidas (supra)*** and ***Santi Ruidas (supra)*** cited before us and other authorities cited before it. It has observed that ***Putul Rabidas (supra)*** held about the binding nature of clause 9.5.0 (iii) and that ***Santi Ruidas***

(supra) did not consider the binding nature of a settlement under Section 18 of the Act of 1947.

19. Kumari Kiran Singh and others (supra) has held that, both clauses 9.5.0 (i) and (ii) of the NCWA allows female dependent below 45 years to claim either employment or MMCC. It has also held that, such clauses allow monetary compensation to be given to female dependents irrespective of their age and includes a minor. In the facts of the 3 cases before it, the claim for compassionate appointment was denied since almost 14 years had elapsed since the death of the deceased and the family had managed to tide over the immediate financial crisis.

20. Subhadra (supra) has held that, in terms clause 9.5.0 (ii) option to either accept monetary compensation or employment is vested in the employee and not with the employer. It has held that, if a female dependent opts for employment there is no further discretion left with the employer unless she is otherwise ineligible.

21. NCWA is a negotiated agreement that has been arrived at between the employer and the employees. It is a settlement under section 2 (p) of the Industrial Disputes Act, 1947 and has binding effect on the parties thereto under section 18 (3)

of the Act of 1947. NCWA has made provisions for compassionate appointment for the dependents of the deceased employee.

22. Compassionate appointment is an exception to the general rule of merit-based recruitment under Article 14 of the Constitution of India. It is provided to the family of the deceased in order to tide over the immediate financial penury that the family of the deceased employee upon death or medical incapacitation of the employee. Compassionate appointment is governed by the terms of employment of the deceased employee. Compassionate appointment is not a matter of right unless emanating out of the terms of employment of the deceased employee. Compassionate appointment is a contingency provided for in the context of employment of concerned employee, the happening of which triggers a right to receive employment on fulfilment of the specified criteria. Right to receive compassionate appointment vests the right to receive employment with the specified dependent on the happening of the pre-identified contingencies.

23. Terms and conditions of employment of the deceased employee may in a given case vest discretion upon the

employer with regard to grant of compassionate appointment. Usually, the terms of employment of the deceased employee for the grant of compassionate appointment takes into consideration the financial condition of the family of the deceased employee. It usually prescribes a time limit within which an application for compassionate appointment is required to be made by the family member of the deceased employee for successful consideration thereof.

24. In absence of any stipulation to the contrary an employer cannot choose which of the beneficiaries of the concerned employee should opt for the compassionate appointment when it is provided for in the terms of employment.

25. Terms of compassionate appointment have to be strictly construed. Both the employer and the employee are bound by the terms and conditions governing the employment of the deceased employee, at the time of his death. On a true and proper construction of the terms and conditions of the settlement under the Act of 1947 governing the employment of the deceased employee where such terms allow more than one interpretation, then the one which is beneficial to the employee, (as an employee is considered a weaker section in

the collective bargaining resulting in the settlement), is to be opted. In the facts of the present case, the terms of employment of the deceased employee are governed inter alia by clauses 9.3.0 to 9.5.0 of the NCWA which is a settlement within the meaning of the Act of 1947.

26. Clauses 9.3.0 to 9.5.0 both inclusive of the NCWA which are the relevant clauses prescribing compassionate appointment, require consideration in light of the law relating to compassionate appointment as discussed above.

27. Clause 9.3.0 is placed under chapter IX under the heading Social Security in the NCWA. Clause 9.3.0 makes provision for employment to dependents. Clause 9.3.1 prescribes grant of employment to a dependent of the employee in the case of his permanent disability or death, while in service.

28. Clause 9.3.2 deals with compassionate appointment in case of death while in service. It prescribes that insofar as female dependents are concerned, their employment/payment of monetary compensation would be governed by clause 9.5.0. Clause 9.3.3 specifies the dependent for the purpose of compassionate appointment. It prescribes that, spouse, unmarried daughter, son and legally adopted son would be

considered dependent of the deceased employee for the purpose of grant of compassionate appointment. It goes on to say that, if no such direct dependent is available for employment, then brother, widowed daughter/without daughter-in-law or son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased may be considered to be dependent of the deceased.

29. Clause 9.3.4 prescribes the qualification for the grant of compassionate appointment. The qualification prescribed are physical fitness and being suitable for employment with age not more than 35 years. In case of female spouse upper age limit prescribed is 45 years and for male spouse no upper age limit is prescribed.

30. Clause 9.4.0 deals with grant of employment to the dependent of a worker who is permanently disabled. Since the subject matter of the appeal does not involve appointment on the ground of permanent disability, we are not dealing with the entirety of clause 9.4.0 of the NCWA.

31. Clause 9.5.0 deals with employment/monetary compensation to female dependent of the deceased employee. It makes provision for employment/monetary compensation to female dependents of workmen who died while in service or

were declared medically unfit as per clause 9.4.0. Grant of employment to female dependent of the workmen is regulated by the sub-clauses following thereafter.

32. Sub-clause (i) states that in case of death due to mine accident, the female dependent would have the option to either accept the monetary compensation or employment irrespective of age. Such is not the scenario herein. The deceased employee did not die in a mine accident.

33. Sub-clause (ii) states that in case of death/total permanent disablement due to cause other than mine accident and medical unfitness under clause 9.4.0 if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation or employment. It goes on to say that, in case the female dependent is above 45 years she will be entitled only to monetary compensation and not to employment.

34. Sub-clause (iii) states that in case of death whether by way of mine accident or otherwise or medical unfitness under clause 9.4.0, if no employment is offered and the male dependent of the concerned worker is 12 years and above, he will be kept in a live rooster and would be provided employment commensurate with the skill and qualification

when he attains the age of 18 years. It goes on to say that, during the period the male dependent is on live rooster, the female dependent will be paid monetary compensation.

35. Sub-clause (iv) provides that monetary compensation wherever applicable would be paid till the female dependent attains the age of 60 years. Sub-clause (v) states that the existing rate of money or compensation will continue and that, the matter would be further discussed in the Standardisation Committee and finalised.

36. None of the clauses 9.3.0 to 9.5.0 of NCWA provide any time limit for applying or prescribe any financial solvency of the family as a disqualification. It does not allow the employer to choose between the dependents as to who it would grant the employment or the MMCC.

37. As noted above, the deceased employee died in harness other than by way of a mine accident. At the time of his death he was survived by his widow, his son and the appellant. His son died shortly after the death of the deceased employee. On the date of the application on March 4, 2022 the deceased employee was survived by his widow and the appellant.

38. Clause 9.5.0 (ii) which is the relevant clause in the facts and circumstances of the present case, allows either

employment or money compensation to a female dependent, in case of death while in service. Appellant herein falls within the definition of a female dependent of the deceased employee. Respondents do not dispute such fact.

39. Clause 9.5.0 (ii) prescribes an age limit of 45 years for a female dependant to be vested with the option of opting either for employment or monetary compensation. A female dependent above the prescribed age of 45 years is vested with the right to receive monetary compensation only. She does not have a right of employment. Again it is not being disputed that, appellant is below 45 years of age.

40. It is contended on behalf of the respondents that, since the appellant was a minor at the time of death of the deceased, she is not entitled to appointment but only to monetary compensation in terms of clause 9.5.0 (ii). It is also contended that, since appellant was a minor on the date of death, no employment can be given to the appellant in view of section 45 of the Mines Act, 1952. Moreover, there is no provision of a live roaster for a female dependent as available to a male dependent under clause 9.5.0 (iii).

41. Clause 9.5.0 (ii) vests the right of exercising an option between employment and monetary compensation with a

female dependent below 45 years. Once a right stand vested it can be taken away by a process approved by law. In a given case, when the female dependent is below 45 years but above 18 years she can opt for either grant of employment or monetary compensation. If she opts for employment employer has no choice but grant her the employment. However, if such female dependent is a minor on the date of death of the deceased employee, she cannot be denied the right of exercising the option between employment and monetary compensation in terms of clause 9.5.0 (ii) on the plea of the Mines Act, or otherwise. Right to employment or monetary compensation stood vested in the female dependant under clause 9.5.0 (ii) notwithstanding she being a minor on the date of death. This vested right can be taken from her only by a process approved by law.

42. Section 45 of the Mines Act, 1952 prohibits engagement of a person below the age of 18 years in a mine. It is gender neutral. Any person below the age of 18 years cannot be engaged for any work in a mine. Employment of women in a mine is governed by Section 46 of the Act of 1952. It does not prohibit engagement of females in a mine above ground but regulates it.

43. The legal impediment on the employer to engage a person below 18 years of age, under Section 45 of the Mines Act, 1952 does not militate against the right of a female dependent, albeit a minor, at the time of the death of the deceased employee, to exercise her right which stands vested in her in terms of clause 9.5.0 (ii) upon such female dependent attaining the age of an adult. Section 45 of the Mines Act, 1952 at best postpones the enjoyment of the usufructs of the rights vested under clause 9.5.0 (ii) till she attains the age of an adult. Right vested in the female dependent of the deceased employee either for employment or monetary compensation under clause 9.5.0 (ii) cannot be taken away under the shelter of Section 50 of the Mines Act, 1952.

44. Clause 9.5.0 (iii) of the NCWA provides for a scenario where there is a minor male dependent in the family of the deceased employee and such family seeks to preserve the right of such male dependent to receive employment on his attaining the age of an adult. Clause 9.5.0 (iii) does not govern the right of a female dependent, in a family of the deceased employee, where there is no male dependent, to receive employment or monetary compensation.

45. Unlike other schemes for compassionate appointment which usually provides for negation of the claim of appointment on the grounds of financial solvency or delay, clauses 9.3.0 to 9.5.0 of the NCWA does not specify financial solvency or delay to be disqualifications for receipt of compassionate appointment or monetary compensation. As noted above, provisions of the NCWA which is a settlement within the meaning of the Act of 1947 are required to be strictly construed.

46. *Putul Rabidas (supra)* has noted that, financial solvency is no ground for denial of a claim for compassionate appointment in the light of the provisions of the NCWA.

47. In view of the discussions above, the impugned order is set aside. Respondent authorities are directed to grant compassionate appointment to the appellant as expeditiously as possible, and preferably within a period of 4 weeks from date, upon compliance with necessary formalities.

48. MAT 27 of 2024 along with all connected applications are disposed of without any orders to costs.

[DEBANGSU BASAK, J.]

49. I agree.

[MD. SHABBAR RASHIDI, J.]