

11.03.2024
Sl. No. 11.
D/L.
Mithun
Ct.No.23.

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 1336 of 2024

**Eastern Coalfields Limited & Ors.
Vs.
Union of India & Ors.**

Ms. Tanushree Dasgupta

..for the petitioner.

Mr. Ajit Kumar Mishra,
Mr. Suprovat Banerjee
Mr. Kushagra Maskara

...for respondent No.1.

Affidavit-of-service filed on behalf of the petitioners is taken on record.

The Eastern Coalfields Limited and its officials have filed this writ petition challenging an order passed by the Central Government Industrial Tribunal-cum-Labour Court, Asansol dated 17th May, 2023 passed in reference case no.20 of 2005 by which the Tribunal has directed payment of Monthly Monetary Cash Compensation (in short MMCC) to the widow of the deceased employee at the prevailing rate from the date of death of the employee till the widow of the employee being the claimant attained the age of 60 years.

The necessary facts which are required for adjudication of the issues involved are as follows:-

- (1) Kamruddin Mia, died in harness on 12th October, 1996 while serving ECL as a Pump Operator at Lachipur Colliery under Kajora area.

- (2) The widow of the employee, Marium Bibi (respondent No.5) applied for compassionate appointment on 10.11.1996 along with "no objection" from the other heirs and heiress.
- (3) On 21.11.1997 ECL has detected some physical anomaly in Marium Bibi and, as such, expressed intention to have her examined by the specialist to obtain opinion as to whether she was medically fit for employment in ECL.
- (4) By a memo dated 2nd April, 1998, the Medical Superintendent, Central Hospital, Kalla, Asansol informed the Area Medical Officer about Echocardiography.
- (5) By a memo dated 9th April, 1998, the respondent No.5 was called for Echocardiography by the Specialist Doctor for undergoing Echocardiography.
- (6) By a memo date 6th November, 1998, the case of the respondent No.5 was referred to Appex Medical Board for further decision.

Marium Bibi was held to be medically unfit for the job. On being so held Marium Bibi permitted her

brother-in-law, Nizamuddin Mia, (respondent No.6) to apply for compassionate appointment.

Compassionate appointment is not the rule but a departure from the settled rule of employment and is given in terms of the prevailing scheme, if any, of the employer.

In the instant case, ECL is governed by the National Coal Wages Agreement (in short NCWA). The NCWA in Chapter IX provides for the benefits given to the heirs/heir of the deceased employee.

The issue which appears to be the grievance of the petitioner is whether a dependent of the deceased employee is entitled to MMCC from the date of death or only for a period of 3 years immediately prior to the application for MMCC. The employer also is concerned about the direction "at the prevailing rate from the date of death" as the rate for MMCC has changed from time to time.

NCWA in Chapter IX clearly holds that a female dependent of the employee who dies in harness is entitled to compassionate appointment or MMCC in lieu thereof if she is found to be of an age more than 45 years till she attains the age of 60 years. The object of the NCWA is to safeguard the interest of the employees and has a statutory force. It is aimed to

secure the interest of the family of the deceased employee.

In the instant case, within two months from the date of death of the employee, the application for compassionate appointment was made which appears to have been ultimately rejected in the year 1998. At the time of rejection of the application for compassionate appointment ECL, the Public Sector Undertaking did not inform the respondent No.5 as to what other benefits she is entitled to though ECL was obliged to do so. The widow (respondent No.5) in the instant case, therefore, cannot be blamed for any delay or laches. She had applied for compassionate appointment immediately. At the time when she applied for the compassionate appointment, the widow did not know about her unfitness which surface later on when she was medically examined for the purpose of granting compassionate appointment. The widow, therefore, cannot be said to be not diligent in pursuing her remedies. On the other hand, ECL though obliged to but did not inform the respondent No.5 about her entitlements under the NCWA if compassionate appointment cannot be granted.

The Tribunal after considering the evidence and materials on records came to the conclusion as aforesaid.

On a meaningful reading of the order it does not allow this Court to interfere with the same. Moreover, if the terminal benefits provided under the NCWA are considered, the same is required to be done in the line with retiral benefits. The application for compassionate appointment was pending from November, 1996 which was ultimately rejected in 1998. On the prayer for compassionate appointment being refused, it was also obligation on part of ECL to inform in the rejection letter that the widow (respondent No.5) being the applicant for compassionate appointment is entitled to MMCC and ought to have invited a letter from the petitioner. Having not done so, the petitioner cannot fall back and say that the claim of MMCC since 12th October, 1996 is barred by limitation for which the widow is only entitled to get MMCC for 3 years immediately preceding the date of the application for MMCC. The claim for MMCC judged in the touchstone of retiral benefits is not barred by limitation in the instant case as from 10th November, 1996 when the application for compassionate appointment was made till its rejection

and thereafter, MMCC was receivable month by month and as such a continuing cause of action as held in **2016 (13) Supreme Court Cases 797** in the case of **Asger Ibrahim Amin Vs. Life Insurance Corporation of India** and subsequently upheld in **2022 SCC OnLine SC 641** in the case of **Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation.**

That MMCC is payable from the date of death of an employee has been also upheld in the judgment and orders passed in MAT 1007 of 2022 (M/s. Eastern Coalfield Limited vs. Smt. Dulali Majhian @ Majhan & Ors. dated 2nd September, 2022), FMA 98 of 2023 Eastern Coalfields Limited & Ors. vs. Smt. Panwa Bhuia dated 28th June, 2023) and MAT 1385 of 2023 (Eastern Coalfields Ltd. vs. Usha Kumari Bhuiya alias Bhuia & Ors. dated 28th February, 2024), MAT 915 of 2023 (Eastern Coalfields Limited vs. Kosmi Devi Bhuia & Ors. dated 21st February, 2024).

The issue as to limitation in case of granting MMCC wherein there was inordinate delay in making an application for MMCC also fell for consideration before a Division Bench of this Court in the judgment reported in 2022 SCC OnLine Cal 1580 (Eastern Coal Fields Ltd. & Ors. Vs. Dukhni Bhuiya) wherein the

Division Bench has allowed MMCC from the date of three years immediately preceding the date of filing of the writ petition.

The Special Leave Petition challenging the said order has also upheld the Division Bench owing to the facts of the said case and keeping in mind the inordinate delay. The rate does not apply to this case as there has been no delay in applying for compassionate appointment and the cause to apply arose only after rejection of such application.

The respondent no.5 in the facts and circumstances of the case is entitled to MMCC is directed by the Tribunal.

It is made clear that the words "at the prevailing rate" from the date of death of the employee shall be meant and construed as at the rate prevailing from time to time in respect of payment of MMCC by ECL to the dependents of its employees.

It is also clarified that the age of the respondent No.5 should be considered to be that provided in the application for compassionate appointment as ECL has till date not disputed the age though the respondent No.5 has been subjected to medical examination from time to time. No dispute as to the age was also raised before the Tribunal or any cogent evidence was placed

before the Tribunal inviting the Tribunal to come to a conclusion that the age provided by the respondent No.5 is not correct.

The scope of the judicial review is very limited. The Court does not sit on appeal over the order of the Tribunal in judicial review. The Tribunal is the last fact finding Court. The writ court in judicial review examine the legal correctness of the order and does not make any endeavour to collect facts.

The writ petition, therefore, fails and the same is accordingly dismissed.

Since I have not called for affidavit, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

(Arindam Mukherjee, J.)