

14 20.03.2024

Ct-08

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MAT 149 of 2024

with

IA No. CAN 1 of 2024

CAN 2 of 2024

Jagadish Bouri @ Madhu Bouri

Vs.

Union of India & Ors.

Mr. Gobinda Kar

... For the Appellant

Mr. Manik Das

... For the Respondent nos. 2 to 6

Re: CAN 1 of 2024(Section 5)

1. There is a delay of 77 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 1 of 2024 is thus disposed of.

Re: MAT 149 of 2024

1. We have heard the learned counsel appearing for the parties.
2. The appellant is aggrieved by the order dated 4th October, 2023 in connection with a writ petition for compassionate appointment. The

father of the petitioner died-in-harness on 5th January, 2001. The mother of the petitioner purportedly made an application for appointment of the petitioner on compassionate ground on 15th February, 2001. The prayer for compassionate appointment was made for her elder son Madhu Bouri. The writ petitioner also made a separate application for compassionate appointment on 15th February, 2001. The writ petitioner also affirmed an affidavit on or about June 2001 stating that Madhu Bouri and Jagdish Bouri are one and the same person. The petitioner was called for pre-employment medical examination. The age of the petitioner was determined by the medical board to be between 20 to 25 years. Thereafter the employment of the petitioner was rejected by ECL on 1st November, 2004 on the ground that the name of Madhu Bouri does not appear in the service record or any other official record of the deceased employee.

3. Thereafter, the petitioner filed an application on 6th May, 2005 before the appropriate authority stating that Jagdish Bouri and Madhu Bouri are one and the same person. The petitioner was called for a pre-employment medical examination on 12th May, 2008. There the age of the petitioner

was determined to be between 35 to 40 years. Since it was held by the authorities on 29th October, 2009 that the petitioner has crossed the age of 35 years, he could not be given employment as per National Coal Wage Agreement. However, the writ petitioner was advised to explore the possibility of payment of Monthly Monetary Cash Compensation (MMCC) to any other eligible dependant. Thereafter, in 2016 the writ petitioner made an application under the Right to Information Act. The appropriate authority of the ECL gave a reply dated 17th December, 2016 to the RTI application in which the age of the petitioner mentioned was more than the permissible limit for employment and, therefore, the same was rejected.

4. Learned Single Judge on the basis of the aforesaid facts was of the opinion that the said decision of the authority was arbitrary as in 2002, if the petitioner was held to be aged between 20 to 25 years, there could have been no possibility of him being assessed between 35 to 40 years in 2008. Mr. Manik Das, learned counsel representing the E.C.L, could not offer any explanation for such arbitrary action on the part of the E.C.L but has opposed the prayer for compassionate appointment of the petitioner on

the ground that there has been inordinate delay for almost 8 years in filing the writ petition and in the mean time the writ petitioner was over age. Learned Single Judge although had noticed the aforesaid facts declined to grant any relief to the petitioner on the ground that for providing compassionate appointment is to provide immediate financial assistance to the bereaved family of the sole earning member of the family who passed away due to a sudden mishap and the delay in agitating the grievance for compassionate appointment defeats such claim. In this regard learned Single Judge has relied upon the decision of the Hon'ble Supreme Court in the case of ***State of West Bengal Vs. Debabrata Tiwari & Ors.***, reported in ***2023 SCC Online 219***.

5. Learned counsel representing the appellant submits that the said decision may not be applicable to the writ petitioner as he belonged to a backward society, he is illiterate and he was not aware of the legal provision.

6. It is revealed from record that ECL had rejected the application of the petitioner arbitrarily. The case of the petitioner ought to have been considered for compassionate appointment as the petitioner conformed to all requisite. Admittedly,

the writ petitioner is the victim of an ex-facie arbitrary decision of the ECL. His statutory right to claim appointment accrued in 2001 itself, which was arbitrarily denied finally in 2009.

7. Considering the manifest injustice caused to the writ petitioner by reason of not considering his appointment in spite of his eligibility and that the writ petitioner is now crossed the age bar we modify the order passed by the learned Single Judge by directing the respondent authorities to pay a sum of Rs.5,00,000/-(Five Lakhs) to the petitioner towards compensation for depriving him compassionate appointment to which he was otherwise entitled to in law within a period of five weeks from date considering his social and financial condition, failing which, the petitioner is entitled to 9% p.a on the said sum. We find support from the decision of the Hon'ble Supreme Court in the case of **Chief General Manager, Telecommunication, BSNL and Others Vs. Vidya Prasad**, reported in **(2021)13 SCC 212** in which compensation was granted to the writ petitioner in view of the rejection of the candidature under the New Scheme due to the delay on the part of the department in processing the application and when the decision was taken

by the time the dependant petitioner was over aged.

8. In view of the fact that no compassionate appointment was given to the writ petitioner, the widow was entitled to MMCC from the date of death of his husband irrespective of any application being made by her and in any event if it is construed that her eligibility to the said compensation is dependent upon the final decision for compassionate appointment, the same would commence from November 2009. Although the widow is not before us but having regard to the beneficial scheme and the social security measure envisaged in the NCWA, the appellant shall pay MMCC to the widow from November 2009 till she attains the age of 60 years without interest, if paid within four weeks, in default, interest at 6% per annum on the said sum. However, in the event the ECL decides to consider the application of the petitioner afresh by taking into consideration that he was eligible at the relevant point of time and on considering the financial issue of the writ petitioner decides to give a suitable employment and gives suitable employment to the writ petitioner notwithstanding the age bar within three weeks from date, the directions for payment

of cost and MMCC given above shall be ignored and not required to be followed.

9. In large number of matters we find that there is lack of transparency with regard to extending the social security benefit of MMCC and to give compassionate appointment by ECL. It appears that the procedure adopted by ECL, is unusually lengthy and opaque and necessary assistance is not being provided to the illiterate, impoverished, financially weak dependants of the deceased employee. We are of the view that the welfare measures sought to be achieved by the NCWA has been followed more in breach than in observance. We have also noticed that the necessary assistance is not being provided to the family of the deceased by the welfare officer and the dependants who are largely illiterate and belong to socially backward classes are not providing with proper assistance and are not informed of their rights. It shall be the duty of ECL to hold weekly camp in each of the collieries in order to make the dependants of such deceased employers aware of their legal rights and decide on the benefits or compassionate appointment to which the legal heirs of a deceased employee would be entitled, under the NCWA, as expeditiously as possible and preferably

within a period of three months from the date of death of the deceased by providing all necessary assistance. The early disposal by ECL of such applications is the moral, social and statutory obligation on the part of the ECL to extend such benefit under the NCWA instead of rendering it otiose.

10. We request Mr. Das to forward a copy of this order to the Chairman, ECL for information and doing the needful. This order shall be communicated to all the collieries under ECL.

11. In view of the above, the appeal stands disposed of.

12. In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 2 of 2024 and the same is accordingly disposed of.

13. However, there shall be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

