

15.07.2024
Sl. No.52
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1484 of 2024

Sriram Majhi
Vs.
Union of India & Ors.

Mr. Swarup Banerjee,
Mr. Sajal Kumar Ghosh
.....for the petitioner.

Mr. Swapan Kumar Nandi,
Ms. Debjani Ghoshal,
Ms. Banani Bhattacharya
.....for Union of India.

Mr. Manik Das
.....for the respondent nos.5 to 7.

The petitioner claims to be the son-in-law of Mukhodi Mejhian, an employee of Eastern Coalfields Limited (in short, ECL), who died on 13th November, 1982. The petitioner is, according to the affidavit appended to the writ petition, aged about 74 years at the present. However, in the order dated 8th August, 2017 passed in WP 13604 (W) of 2017, being a previous writ petition filed by the present writ petitioner, it is, however, recorded that the petitioner was 75 years at the time of passing the said order. The petitioner says that after the death of his mother-in-law, the petitioner applied for compassionate appointment. The ECL authorities did not consider and dispose of the petitioner's application for

compassionate appointment and as such after making several representations, the petitioner filed the previous writ petition, being WP 13604 (W) of 2017. The said writ petition was disposed of by directing the ECL authorities to decide the entitlement of the petitioner to the service benefits of the deceased employee within a time frame. The petitioner was called on for a personal hearing by the ECL authorities in terms of the said order 8th August, 2017. The petitioner could not either produce the PAN Card or the EPIC Card or the Aadhaar Card or any driving licence or passport by which he could establish his identity as Sriram Majhi, son-in-law of the deceased employee. The matter was adjourned giving opportunity to the petitioner to produce the documents. ECL authorities also directed the appearance of Bijali Mejhian, the daughter of the deceased employee and who, according to the petitioner, is his wife. The petitioner was unable to produce any document despite being afforded reasonable opportunity. In such facts and circumstances, ECL authorities disposed of the petitioner's representation by a reasoned order. There are other inconsistencies noticed in the matter. The petitioner's wife Bijali Mejhian, the daughter of the deceased employee as recorded in the order dated

8th August, 2017 as also in the reasoned order dated 4th December, 2020 passed by ECL authorities, had lodged a complaint with the ECL authorities alleging that the petitioner is not her husband and the petitioner by way of impersonification is attempting to project himself to be the husband of Bijali Mejhian to enjoy the terminal benefits of the deceased employee. The petitioner thereafter filed the second writ petition, being WPA 4438 of 2023, which was dismissed by an order dated 15th June, 2023 after taking into account the reasoned order dated 4th December, 2020 passed in terms of the order dated 8th August, 2017. The petitioner did not challenge the said order dated 15th June, 2023, but is attempting to reopen the issue by praying for his further representation to be considered by ECL authorities.

This is also the case of the petitioner that the death certificate of the employee concerned could not be produced before ECL authorities. On a perusal of the death certificate as submitted by the learned advocate for the petitioner, it will appear that the petitioner is the husband of Bijali Mejhian.

Interestingly, Bijali Mejhian as per the own statement of the petitioner was alive till 4th September, 2017. As long as Bijali Mejhian, the daughter of the deceased employee, according to the

petitioner, was alive, the petitioner does not qualify as a dependent to receive either compassionate appointment or the other benefit as the same is available only if the direct dependent of the deceased employee at the first instance and in absence thereof the second category becomes entitled to the benefits under NCWA. The daughter of the deceased employee admittedly falls under the first category and was also alive when the order dated 8th August, 2017 was passed. The petitioner, therefor, could not have claimed even the service benefits as the dependent son-in-law on that date. Moreover, the petitioner has not produced any document either before this Court in the previous two rounds of litigation or before the ELC authorities to demonstrate his dependency on his mother-in-law, the deceased employee of ECL. Unless the primary onus is discharged, the burden of proof continues to remain with the petitioner as in the instant case. The petitioner even under the Hindu Succession Act, 1956 does not qualify him as a legal heir of his mother-in-law, being the deceased employee of ECL. Thus, on both counts that is in terms of the National Coal Wage Agreement (in short, NCWA) as also under the general law that is Hindu Succession Act, 1956, the petitioner did not qualify

for maintaining a claim when the daughter of the deceased employee was alive.

The matter has also a different angle. A belated service related claim should be rejected on the ground of delay and laches if claimed by filing a writ petition as held in ***Union of India & Others vs. Tarsem Singh*** reported in **(2008) 8 SCC 648**, which has been followed subsequently in ***Asger Ibrahim Amin vs. LIC reported in 2016 (13) SCC 797*** and as late as in ***2022 SCC Online SC 641 (Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation)***. The only exception is a continuing wrong,

In the instant case, till the death of the daughter there was no right available to the petitioner to claim the service benefits of his mother-in-law. Thus, there was no occasion to inflict any wrong to the petitioner, which on the facts of the case can become a continuing wrong.

The claim made by the petitioner for compassionate appointment as recorded in the order dated 8th August, 2017 had died its natural death as

1. the petitioner did not fall under the category of first line of dependent as long as the daughter of the deceased employee was alive,
2. thirty-five years have elapsed between the death of the employee and the first time the petitioner approached this Court in 2017

seeking enforcement of his claim for compassionate appointment,

3. compassionate appointment is not a right in itself to get an employment but is a departure from the normal rule of employment made available through specific scheme to the bereaved family to tide over the immediate financial hardship arising out of the sudden loss of the sole bread-earner.

Compassionate appointment, therefor, as held by the Hon'ble Supreme Court in **2023 SCC OnLine SC 214 (State of West Bengal vs. Debabrata Tiwari)** and **2022 SCC OnLine SC 684 (Malaya Nanda Sethy v. State of Orissa)** has to be provided as early as possible so that the whole object behind offering such compassionate appointment does not become infructuous with the passage of time.

The petitioner also could not produce any document as recorded in the order dated 4th December, 2020 passed by the competent authority of ECL such as PAN card, EPIC Card, Aadhaar Card or any other document to establish his relationship with the deceased employee and that he was ordinarily residing with the deceased employee and was dependent on her.

The petitioner is at the present 74 years or more and, therefor, cannot even otherwise be employed.

The issue of compassionate appointment, therefor, has no relevance at the present time.

It is well-settled that successive writ petitions filed with the object of obtaining the desired result in favour of the petitioner should not be entertained as held in **1961 SCC OnLine SC 21 [Daryao vs. State of Uttar Pradesh]**.

Moreover, a representation even if is allowed to be considered at the belated stage, the same does not extend the period of limitation.

In the aforesaid facts and circumstances, though I am minded to dismiss the writ petition with costs being thoroughly misconceived and unmeritorious yet keeping in mind that imposition of costs may lead to further litigation, I refrain from doing so.

The writ petition, however, is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)