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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7234 of 2012

With
CAN 3 of 2023

Kabutri Devi
Vs.
M/s Eastern Coalfields Ltd. & Ors.

Mr. S. S. Arefin
... For the petitioner

Mr. Manik Das
... For the respondent nos. 1 to 6.

1. The present writ petition has been filed, *inter alia*, praying for a direction upon the respondents to provide employment in favour of the legal heirs of Ramdeo Shaw in terms of the provisions of Clause 9.3.4 of the National Coal Wage Agreement. The widow of Ramdeo Shaw is the petitioner.
2. It is her contention that Ramdeo Shaw, was an ex-employee of Khottadih Colliery in Pandaveswar area and was discharging his duties as Boilor Mazdoor since, the date of his appointment in the year 1983. According to the petitioner, Ramdeo Shaw had went missing since 18th December, 2003. A missing diary was duly lodged with the Officer-in-Charge of Pandaveswar Police Station under GD Entry No. 1027 dated 20th December, 2003. The factum of such lodging of the missing diary was also brought

to the notice of the Manager, Khottadih Colliery on 19th May, 2010.

3. Subsequently, at the instance of the petitioner and her minor sons and daughter on the basis of a declaratory suit filed before the Court of the Civil Judge (Junior Division), 1st Court at Durgapur, a decree dated 29th October 2011 was passed thereby, declaring Ramdeo Shaw, the husband of the plaintiff no. 1 and the father of plaintiff nos. 2 to 6 as dead in the eye of law. In the interregnum, however, on 4th/7th February 2008 on the basis of an ex parte enquiry conducted by the respondents in connection with unauthorized absence of said Ramdeo Shaw an order of dismissal was passed. The said order of dismissal, however, does not form the subject matter of challenge in the present writ petition.

4. It may be noticed that this Court taking note of the failure on the part of the coal company to disburse gratuity and other terminal benefits in favour of the legal heirs of Ramdeo Shaw had directed the respondents to take instructions in this matter and had further directed the respondents to file a report in the form of an affidavit. Pursuant to and in terms of the said order, the respondent no. 1 had filed an affidavit on 16th October 2023. In consideration of the said report, by an order dated 16th October 2023

this Court was, inter alia, pleased to direct as follows:-

1. Pursuant to the order dated 6th October, 2023, a report in the form of an affidavit has been filed on behalf of the respondent no.1. Let the same be taken on record.
2. Mr. Das, learned advocate representing the respondent no.1, by drawing attention of this Court to a letter dated 25th August, 2016 submits that by cover of such letter, the respondent no.1 had deposited a sum of Rs.1,27,995/- with the Controlling Authority towards the gratuity payable in respect of Ramdeo Shaw of Khottadih Colliery. Mr. Das, however, could not demonstrate before this Court whether any attempt was made by the respondent no.1 to offer the aforesaid gratuity to Ramdeo Shaw immediately after the order of termination.
3. Independent of the above on the basis of the disclosure made by the respondent no.1, in the aforesaid affidavit, admittedly a sum of Rs.40,000/- is payable on account of the life cover scheme.
4. Mr. Arefin, learned advocate representing the petitioner by drawing attention of this Court to the judgment and order dated 29th October, 2011 submits that since, Ramdeb Shaw who is also known as Ramdeo Shaw had been missing since 18th December, 2003, a competent civil Court in T.S. No. 17 of 2011 has at the instance of the petitioner and other legal heirs of Ramdeo Shaw declared that the said Ramdeb Shaw, being the husband of the petitioner and the father of the plaintiff nos. 2 to 6 in the said suit, to be dead in the eye of law. By referring to a communication dated 13th March, 2012 he submits, that the petitioner had subsequently applied to the agent of the colliery for disbursal of monetary benefits in her favour, enclosing therewith the aforesaid decree.
5. Heard the learned advocates for the respective parties. Since, the petitioner is armed with the decree passed by the competent civil Court, I am of the view that the respondent no.1 should, at this stage, disburse the admitted amount of gratuity payable to

Ramdeb Shaw @ Ramdeo Shaw unto and in favour of the petitioner and other legal heirs on/or before the returnable date, subject to verification of their identity by the respondent no.1.

6. *The aforesaid payment shall be made without prejudice to the rights and contention of the respondent no.1 as regards the deposit of the said amount with the Controlling Authority. In addition to the aforesaid amount, the respondent no.1 shall also make payment of Rs.40,000/- towards life cover scheme in favour of the legal heirs Ramdeo Shaw.*

7. *At this stage, Mr. Das, learned advocate representing the respondent no.1 seeks leave to withdraw the amount deposited by the respondent no.1 with the Controlling Authority. I am of the view, that no such leave is necessary since, the gratuity is being disbursed directly by the respondent no.1 in favour of the legal heirs of Ramdeo Shaw since, declared as deceased. It shall, however, be open to the respondent no.1 to make appropriate application seeking refund of the deposit from the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act), if so advised.*

8. *The petitioner and other legal heirs of Ramdeo Shaw shall also accept the aforesaid amount without prejudice to their rights and contentions as regards their entitlement to seek determination of the differential amount of gratuity.*

9. *In the event, the petitioner or the other legal heirs claim any differential amount, it shall be open to the petitioner and the other legal heirs to make appropriate application before the Controlling Authority under the provisions of the said Act.*

10. *List this matter under the heading, "To Be Mentioned" two weeks after the puja vacation."*

5. The parties have since submitted that in terms of the direction passed by this Court on 16th October 2023 admitted amount of gratuity has duly been

disbursed in favour of the legal heirs of the deceased Ramdeo Shaw.

6. Since, then the respondent no. 1 has taken out an application being CAN 3 of 2023, *inter alia*, praying therein for recalling of the order dated 16th October 2023, insofar as the same directs payment of Rs.40,000/- on account of life cover scheme.
7. Mr. Das, learned advocate appearing for the applicant/respondent no.1 submits that life cover scheme is only applicable in respect of an employee who dies in harness and not in respect of a dismissed employee. Having regard to the aforesaid he submits that the legal heirs of Ramdeo Shaw are not entitled to the benefits of the aforesaid life cover scheme. He further submits that in terms of Section 108 of the Indian Evidence Act, 1872 (hereinafter referred to as the "said Act") the Civil Court had, by drawing a presumption, declared the petitioner's husband dead in the eye of law. The decree was passed on 29th October, 2011. According to him the petitioner, thus, must have been alive on the date when the order of dismissal was passed. Having regard to the aforesaid, since the life cover scheme can only be made applicable to an employee who had died in harness, Ramdeo Shaw being a dismissed employee no benefit thereunder could be

awarded in favour of the legal heirs of such deceased employee. The order dated 16th October, 2023, thus, should be suitably modified

8. Mr. Arefin, learned advocate representing the petitioner submits that this Court had passed the order dated 16th October 2023 and on the basis of the report filed by the respondent no. 1. The said order has already been partly complied with. At this stage, the respondents should not be permitted to seek for recall of the said order.
9. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case it is noticed that Ramdeo Shaw went missing since 18th December 2003. On the basis of the missing diary lodged a presumption was drawn under Section 108 of the said Act. To morefully appreciate the same, the said provision is extracted hereinbelow:-

“108. Burden of proving that person is alive who has not been heard of for seven years.- [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it.”

10. As would appear from the above, the burden of proving that a person is alive once, a presumption is drawn lies on the person who affirms it. I find no

document has been disclosed by the respondent no.1 to demonstrate that the Ramdeo Shaw was alive on the date when the order of dismissal was passed. Admittedly, the respondents were aware with regard to the factum of missing diary being lodged. There is no reference to the same in the enquiry proceeding. Be that as it may, I find that in the report filed by the respondent no.1 on 13th October 2023 in paragraph 7 thereof, the deponent had specifically stated as follows:

“7. I say that thus there remains no terminal dues payable to the petitioner on account of gratuity and it is only a sum of Rs.40,000/- (Rupees forty thousand only) is payable on account of Life Cover Scheme for which no claim with the ECL has till date been raised by the petitioner whereas the amount of Leave Encashment, even though not yet raised with ECL, can be calculated only upon the petitioner supplying a copy of the last drawn pay slip of her husband.”

11. It is well settled that an admission cannot be permitted to be withdrawn. By the aforesaid application the respondent no.1 is attempting to withdraw its own admission as regards grant of benefits under the social security clause to the legal heirs of Ramdeo Shaw. The aforesaid report was affirmed by Assistant Manager Personal of Eastern Coal Field Limited on 13th October, 2023.
12. Having regard to the aforesaid and for reasons morefully indicated hereinabove, I do not find any

reason to interfere with the order dated 16th October 2023. The application being CAN 3 of 2023 accordingly fails and the same is dismissed.

13. I may, however, note that the petitioner has failed to make out any case for grant of employment and / or family pension in her favour in as much as the petitioner has also failed identify the date of death of Ramdeo Shaw. Having regard to the aforesaid no further relief can be afforded to the petitioner save and except leave encashment, if any. The petitioner shall be at liberty to make necessary application with the respondents. If such application is made the respondents shall process the same and disburse leave salary if found due. The writ petition accordingly stands disposed of.
14. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)