

21.02.2024
SI No.33
Court No.8
(gc)

MAT 915 of 2023
CAN 1 of 2023

Eastern Coalfields Ltd.
Vs.
Kosmi Devi Bhuia & Ors.

Mr. Manik Das
...for the Appellant.
Mr. Gobinda Kar
...for the Respondent No.1.

1. The appeal is at the instance of the Eastern Coalfields Ltd (ECL).
2. The appellant is aggrieved by an order dated 4th April, 2023 in which the learned Single Judge relying upon the decision of a Division Bench in **Eastern Coalfields Limited Vs. Smt. Dulali Majhian @ Majhan & Ors.) (MAT 1007 of 2022)** awarded arrears of Monthly Monetary Cash Compensation (MMCC) to the petitioner from 5th April, 2005 (the date subsequent to the date of death of the petitioner's husband) till May 9, 2023.
3. The writ petitioner is the widow. Immediately on the death of her husband she made an application for appointment on compassionate ground but no steps were taken by the respondent authorities.

The writ petitioner has claimed that the application in the proforma form filed along with required documents have been kept pending by the authority concerned.

4. The learned Counsel for the writ petitioner relying upon a colour photocopy of the recommendation annexed to the supplementary affidavit argued that the writ petitioner was never informed by the appellant that her case was recommended for appointment, but, in fact, no appointment was given to the writ petitioner. The writ petitioner at the relevant point of time proceeded on the basis that the authority did not recommend her case and since she was unaware of the said recommendation she made an application for compassionate appointment of her son on October 19, 2012. The son of the petitioner was more than 12 years of age on the date of death of her husband. The prayer of the petitioner's son for compassionate appointment was also not considered by the ECL.
5. Under the National Coal Wage Agreement Clause 5, female dependant of a deceased employee was either eligible for

compassionate appointment or entitled to Monthly Monetary Cash Compensation, in short, MMCC. It is not disputed by the ECL that in order to assist the widow of the deceased working in the Colliery, a Welfare Officer is the appropriate person who is required to advise and assist the legal heirs of the deceased to make them aware of the choices available to them on the death of the sole bread earner. Although, there is an attempt to deny that the colored xerox photocopy of the document is not the recommendation but nothing has been disclosed by the ECL to show that the said application was processed or any communication was made to the wife of the deceased seeking clarifications or documents. Indubitably, the writ petitioner is an illiterate poor lady fully and the entire family was dependent upon the income of her husband. The welfare officer had miserably failed in advising and assisting the writ petitioner in making a conscious decision on the options available at the time of the death of her husband or even subsequently.

6. Curiously and surprisingly the claim of the appellant was sought to be defeated on the

ground of delay and laches. Although, we do not find that the poor lady was in any way responsible for the delay and laches as she did not receive the proper guidance from the employer, she in fact, made an application in or about 3rd October, 2011 this time for consideration of her son which according to the employer could not be considered as the petitioner and the son did not appear before the Screening Committee on 15th September, 2012. This, however, is disputed by the writ petitioner as it is the contention of the writ petitioner that she along with her son appeared before the Screening Committee. In fact, on 15th December, 2012, the Deputy CME Agent of the Colliery directed the four daughters and one son to appear before the Screening Committee and pursuant thereto on 5th January, 2013 the authority concerned was intimated that one of her four daughters, namely, Runti Kumari died on 14th December, 2007. Thereafter, another daughter namely Kunti Devi died on 19th August, 2013 and all the required documents and information were provided to the said Committee.

7. Be that as it may, the fact remains that the son was not given any appointment. It appears from the impugned order that the learned Single Judge directed the learned Counsel for the writ petitioner to take instruction whether the writ petitioner is willing to give up her right for being considered for compassionate appointment and was willing to accept MMCC due to long passage of time since the death of her husband. On the date when the impugned order was passed, the writ petitioner informed that she is willing to accept MMCC in lieu of compassionate appointment.
8. The learned Counsel for the appellant submits that the MMCC is only applicable in terms of Clause 5 to the female dependant of a deceased employee and once she exercised the option for compassionate appointment in favour of her son then she is not entitled to benefit of MMCC. Alternatively, it is submitted that in the event the MMCC is allowed at all it should be for the period commencing from 3 years prior to the date of filing of the writ petition in the High Court till the date of payment. The learned Counsel in

this regard has relied upon an order of the Hon'ble Supreme Court in ***M/s. Eastern Coal Fields Ltd. & Ors. Vs. Dukhni Bhuiya*** on **14th October, 2022** and **13th October, 2023** respectively.

9. The learned Counsel for the writ petitioner, however, has supported the judgment and submits that the wife cannot be deprived of the benefit of MMCC from the date of death as she was not given the employment. The learned Counsel has referred to the decision of the Coordinate Bench in ***M/s. Eastern Coalfield Limited Vs. Smt. Dulali Majhian*** (Supra) and submits that in an identical situation, the Coordinate Bench did not interfere with the order passed by the learned Single Judge.
10. In ***Dulali Majhian*** (supra), the application filed by the widow for MMCC was kept pending since 2004 and on such facts, the Division Bench did not interfere with the order passed by the learned Single Judge taking into consideration that between 2004 and 2021 compassionate appointment was not given to the petitioner when Dulali Majhian applied for compassionate appointment on 1st December, 2004 in which she herself

declared her age as 31 years, that is, much below the age of 45 years and presently she is below 49 years.

11. In the instant case, the ECL has failed to disclose the reason for keeping the application for compassionate appointment pending for almost seven years. The illiterate poor lady was not assisted by the Welfare Officer to file any other required document for completion of record and nor ECL could produce any document or communication seeking further document or information. The appellant has failed to justify non-consideration of the application for compassionate appointment before the exasperated writ petitioner was compelled to make an application for compassionate appointment of her son which was also kept pending on the ground they did not participate before the Screening Committee. However, it has been stated in the affidavit that they were before the Screening Committee and all required documents were disclosed before the Screening Committee. In any event, the fact remains that neither the writ petitioner was given any compassionate appointment nor compensation in terms of Clause 9.5.0

(ii) of the NCWA nor his son was given appointment in the died-in-harness category. Even if it is assumed for the sake of argument that in 2012 she has requested the authority concerned to consider her son for compassionate appointment at the highest her claim for abandonment to her compassionate appointment can be treated as effective from that date and for the purpose of MMCC, the said date may be taken into consideration instead of the date of death of the husband. A litigant who belongs to the marginalised section of the society and is illiterate, the phrase “ignorance of law is no excuse” may not be applicable. The concept of delay and laches to deny the relief to a litigant has to be considered contextually after taking into consideration her social and economic background. The writ petitioner is entitled to a decent and dignified living. Under the bipartite settlement, the petitioner as widow is entitled to MMCC. The said settlement is binding on the parties. The doctrine of election cannot apply as she is incapable of understanding the benefit of either of the options. At the end of the day she has

neither received the compensation nor employment. The clause in the bipartite settlement has to be interpreted in favour of the writ petitioner who is the widow of an underground labour who died due to an accident leaving behind a widow and four children. Surprisingly, the appellant instead of coming to the rescue of family in distress kept the application of the widow pending without appreciating the financial and emotional distress the family of the deceased was passing through. The concept of social justice would be a far cry and a casualty if the compensation is denied merely on the ground of delay and laches and restricted for a period of three years prior to the date of filing of the writ petition.

12. We are unable to agree with the submission of the appellant that the writ petitioner has abandoned her right to claim compensation as she subsequently made an application for compassionate appointment of her son. The lady is illiterate and there is nothing on record to show that she has voluntarily relinquished her known right. She was not even assisted by the welfare officer to make a

conscious choice of the options available to her.

13. Under such circumstances, we cannot say that there has been a voluntary and conscious relinquishment of known right for which her decision to claim compensation under MMCC could be denied.
14. However, we modify the impugned order only to the extent that the petitioner will be granted interest at the rate of 6% per annum from November, 2012 till the actual date of payment of arrears of MMCC.
15. The petitioner shall be paid MMCC from 10th March, 2024 month by month. The arrears on account of MMCC will be paid by ECL within two months from the date of this order.
16. The appeal and the application, accordingly, stand disposed of.
17. However, there shall be no order as to costs.
18. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)