

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

**The Hon'ble Justice Debangsu Basak
and**

The Hon'ble Justice Md. Shabbar Rashidi

MAT No. 1257 of 2024

With

I.A. No. 1 of 2024

Eastern Coalfields Limited

Vs.

Arti Murmu & Ors.

For the appellant : Mr. Manik Das, Adv.

For the respondent/

Writ Petitioner : Mr. Partha Ghosh, Adv.
: Mr. Amal Kumar Datta, Adv.
: Ms. Simran Sureka, Adv.
: Mr. Debasish Das, Adv.

Heard on : July 16, 2024

Judgement on : July 24, 2024

Md. Shabbar Rashidi, J.

1. The instant appeal is in assailment of judgment and order dated December 22, 2023 passed in WPA No. 21414 of 2021.

- 2.** By the impugned judgment the learned Single Judge allowed the writ petition directing the respondent Eastern Coalfields Limited to provide compassionate appointment to the writ petitioner and in the alternative, if the petitioner attained the age of 45 years as on the date of filing of the writ petition i.e. December 24, 2021, the respondent was directed to provide the Monthly Monetary Cash Compensation (MMCC).
- 3.** Being aggrieved, the respondent Eastern Coalfields Limited has preferred this appeal on several grounds. It is submitted that while passing the impugned judgment, learned Single Judge misconstrued the provisions of National Coal Wage Agreement (NCWA). The appellants also submitted that learned single judge erred in holding that the writ petitioner qualified as dependant of the deceased employee.
- 4.** Learned advocate for the appellant further submitted that the writ petitioner happens to be indirect dependant i.e. widow of deceased son of the employee whereas the wife of deceased employee, being his direct

dependant is still alive. The learned Trial Judge erred in directing grant of compassionate appointment or benefit of MMCC to the indirect dependant of the deceased employee.

5. It was also submitted by learned advocated for the appellant that following death of the deceased employee, compassionate appointment was offered to the dependent son of the deceased but the said son died before he could join the service. The legal obligation of the appellant to provide compassionate appointment was settled once for all when the son of the deceased employee was offered with such appointment and as such the same cannot be reopened afresh.

6. Learned advocate for the appellant also refers to several provisions of the National Coal Wage Agreement (NCWA).

7. The father-in-law of the petitioner namely Nunulal Hembram was an employee of the Eastern Coalfields Limited. The said Nunulal Hembram died in harness on June 16, 2019 leaving behind his widow and a son. The

son of the deceased Nunulal Hembram namely Krishna Kumar Hembram i.e. the husband of the writ petitioner Arti Murmu, applied for compassionate appointment in the capacity of male dependent. The application of such son of the deceased employee i.e. the husband of the writ petitioner was processed and approved. His place of posting was also notified. However, before joining, Krishna Kumar Hembram died.

8. The writ petitioner is the widowed daughter-in-law of the deceased employee Nunulal Hembram. After the death of the son of deceased employee, his wife i.e. mother-in-law of the writ petitioner applied before the Eastern Coalfields Limited authorities to grant job on compassionate ground to the writ petitioner vide her letter dated March 19, 2021.

9. The application so filed on behalf of wife of the deceased employee, was rejected by the ECL authorities by a writing dated July 31, 2021. The reasons for rejection as indicated in the writing dated July 31, 2012¹ was stated that the marital status of the petitioner was not

established as 'widowed daughter-in-law' as on the date of death of deceased employee. The authorities referred the rejection in accordance with the NCWA scheme. Upon such rejection, the writ petitioner approached the High Court through WPA No. 21414 of 2021.

10. Admittedly, the employee Nunulal Hembram died in harness on June 16, 2019. It is also not in dispute that the son of the deceased employee applied for being appointed on compassionate ground and such prayer was accorded to in terms of the letter of the Chief Manager (P&IR)/Empl. & Recrut. dated November 10, 2020. He was asked to appear for his medical examination for the purpose of his employment by a writing dated March 19, 2021. The appellant has also not disputed that the said son of deceased employee namely Krishna Kumar Hembram, who was offered an employment on compassionate grounds, died on November 27, 2020.

11. National Coal Wage Agreement (NCWA) under chapter IX governs the employment of the dependents of an employee died in harness. It also defines the dependent

of an employee died in harness for the purpose of such employment. The relevant provisions of the National Coal Wage Agreement (NCWA) is reproduced hereunder:

9.3.0 Provisional of Employment to Dependents

9.3.1 Employment would be provided to one dependant of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows.

9.3.2 Employment to one dependant of the worker who dies while in service

In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0

9.3.3 the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

9.3.4 the dependants to be considered the employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

12. Dependents for the purpose of providing compassionate appointment, has been defined in Rule 9.3.3 of the NCWA which includes widowed daughter-in-law. However, the writ petitioner being widowed daughter-in-law of the deceased employee, came under the category of indirect dependent as provided under the said provision of NCWA.

13. The deceased employee late Nunulal Hembram died in harness survived by his widow and a son late Krishna Kumar Hembram. By offering appointment to late Krishna Kumar Hembram, the ECL authorities admitted that the said son of the deceased employee, though married, was dependent upon the deceased. We are in total agreement

with the views articulated by learned single judge in the impugned judgment in paragraph 13 thereof which is as follows:

13. In the instant case, at the time of death of the employee his son being the husband of the petitioner was dependent on his father's income either wholly or in part. Only upon finding, the son to be a dependant on his father, ECL had given compassionate appointment to the son.

However, the son unfortunately died after being offered the compassionate appointment but before accepting the same by actually joining the services of ECL. The petitioner being the daughter-in-law in this analogy was dependent on her husband who in turn was dependent on his father-in-law if it is to be held that the petitioner was either wholly or partly dependent upon the income of her father-in-law. The petitioner, therefore, qualifies as a dependant of the deceased employee and as such is entitled to

the benefits provided under chapter IX of the NCWA.

14. As noted above, on the death of the employee Nunulal Hembram, an employment on compassionate ground in favour of the son of the employee was offered and approved by the authorities. His posting was notified but before he could join such appointment, the son Krishna Kumar Hembram died. The wife of the deceased employee, by a writing dated March 19, 2021, applied for appointment of the petitioner which was rejected.

15. We have already noted that on the date of death of deceased employee Nunulal Hembram, the writ petitioner was dependent upon her husband Krishna Kumar Hembram who in turn was admittedly, dependent upon his father i.e. the deceased employee. In any case, the writ petitioner was an indirect dependent of the deceased employee as defined under Clause 9.3.3 of the NCWA.

16. Employment/Monetary compensation to female dependants are regulated under clause 9.5.0 of the NCWA which is as follows:

9.5.0 Employment/Monetary compensation to female dependants.

Provision of employment /monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per clause 9.4.0 above would be regulated as under:

(i). In case of death due to mine accident,

(ii). In case of death/total permanent disablement due to cause other than mine accident, and medical unfitness under clause 9.4.0.,if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3000/- per month or employment.

In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment.

(iii). In case of death either in mine accident or for other reason or

medical fitness under clause 9.4.0, if no employment has been offered and the male dependant of concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (1) and (2) above. This will be effective from 1.1.2000.

(iv). Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.

(v). The existing rate of monetary compensation

17. The deceased employee died in harness on June 16, 2019 at the age of 55 years leaving behind his widow and a son. The son also died on November 27, 2020 after being approved for appointment on compassionate

ground survived by the writ petitioner as his widow and a child.

18. Initially, the widow of the deceased employee relinquished her claim to appointment on compassionate grounds in favor of her son who also died later on, before he could join. The writing dated July 31, 2021 issued by the authorities of Eastern Coalfields Limited, exhibits that by such writing, the widow of the deceased employee was informed about the rejection of her application for appointment of the writ petitioner. The said letter also invited the widow to claim for Monthly Monetary Compensation. However, no appointment on compassionate grounds was offered to the widow of the deceased employee, possibly in terms of clause 9.5.0 (ii) of the NCWA

19. In that view of the facts, as well, since no direct dependant was available, an indirect dependent, as widowed daughter-in-law of the deceased employee i.e. the writ petitioner, was entitled for such appointment in terms of clause 9.3.3 of the NCWA.

- 20.** In the light of discussions made hereinabove, we find no merit in the appeal. The impugned judgment and order dated December 22, 2023 passed in WPA No. 21414 of 2021 is hereby affirmed.
- 21.** Consequently, the instant appeal being **MAT No. 1257 of 2024** along with connected application, if any, are accordingly disposed of without any order as to costs.
- 22.** Urgent photo-stat certified copy of this order, if applied for, be given to the parties upon priority basis on compliance of all formalities

[MD. SHABBAR RASHIDI, J.]

- 23.** I agree.

[DEBANGSU BASAK, J.]