

Form No. -J(2)
Item No. 5
Court No. 26

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi**

**M.A.T. 1280 of 2023
With
I.A. No. CAN 1 of 2023**

**Eastern Coalfields Limited
VS.
Rabindra Das & ors.**

For the Appellant : Mr. Manik Das

For the Respondent/
Writ Petitioner : Mr. Tarapada Das
Mr. Chandan Dutta

For the Union of India: Mr. Subit Majumdar

Hearing on : 12.06.2024

Judgment on : 12.06.2024

DEBANGSU BASAK, J.:-

1. By consent of the parties, the appeal is taken up for final hearing.
2. Appeal is directed against an order dated March 16, 2023 passed in W.P.A. 17555 of 2021.

3. By the order impugned, the learned Single Judge allowed the writ petition. The learned Single Judge held that, there was no impediment in granting appointment to the writ petitioner on compassionate ground. The learned Single Judge set aside the order of rejection dated June 24, 2020 of the appellant.
4. Learned advocate appearing for the appellant submits that, the appellant was denied a reasonable opportunity to contest the writ petition. The appellant was not allowed to file an affidavit contesting the merits of the writ petition. Rather, a report was called for from the appellant, by the learned Single Judge limited to requirement of pre-employment medical examination. He submits that, an opportunity should be granted to the appellant to contest the writ petition on merits.
5. The respondent/writ petitioner is represented.
6. We find from the impugned order that, the writ petitioner applied for compassionate appointment on the ground of his deceased father dying in harness on September 28, 2018 while working as an employee of Eastern Coalfields Limited. Such application was rejected by the authorities

by its order dated June 24, 2020 on the ground that, the writ petitioner was over-aged as on the date of application for compassionate appointment.

7. The age of the writ petitioner was being contested by the appellant. In respect of the age of the writ petitioner, documents relating to the educational qualification of the writ petitioner was sought to be relied upon in the writ petition. The appellant was denied an opportunity to use an affidavit dealing with such documents by the learned Single Judge.
8. The learned Single Judge in course of hearing of the writ petition, directed ossification test to be undertaken of the writ petitioner to determine his age at the specified Government Hospital. However, the learned Single Judge failed to take into consideration that, the writ petitioner was canvassing his age on the basis of documentary evidence. Such documentary evidence of age was required to be assessed prior to directing the ossification test to be undertaken. There is no finding by the learned Single Judge that, the documents relied on in support of the age of the writ petitioner, was unreliable or that, such

documents did not speak about the age of the writ petitioner. Moreover, no opportunity was afforded to the appellant to deal with such documents.

9. In such circumstances, we set aside the impugned order dated March 16, 2023. We remand the writ petition for fresh adjudication on merits.
10. Affidavit in opposition to the writ petition will be filed within three weeks from date, peremptorily. Reply, within two weeks thereafter.
11. Liberty to the parties to mention before the learned Single Judge for early hearing.
12. M.A.T. 1280 of 2023 along with connected application is disposed of accordingly.
13. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

14. I agree.

(Md. Shabbar Rashidi, J.)