

Item-43. 30-01-2024

MAT 1434 of 2023
CAN 1 of 2023

sg Ct. 8

Chief Medical Officer (Administration),
Central Hospital Kalla, Eastern Coalfields Ltd.
Versus
Goutam Hari & Ors.

Mr. Manik Das, Adv.

...for the appellant

Mr. Samiran Mandal, Adv.

Mr. Abhinaba Dan, Adv.

Ms. Ankita Mukherjee, Adv.

...for respondent no.1/writ petitioner

1. By consent of the parties, the appeal and the application are taken up together for consideration and disposed of by this common order.
2. The petitioner has disclosed the School Leaving Certified, Voter Identity Card and Aadhaar Card to show that he is eligible and the age bar would not be applicable to him. The learned Single Judge passed an order on 1st March, 2023 directing the Superintendent of SSKS Hospital & IPGMER to constitute a board for assessment of the age of the petitioner by way of ossification test.
3. The dispute is with regard to appointment of the petitioner in died-in-harness category. The father of the petitioner was an employee of Eastern Coalfields Limited (in short "ECL"). He died on 14th January, 2021. Thereafter, the writ petitioner was required to go through an initial medial examination by the Medical Board of ECL. The petitioner was found unfit for employment due to low vision and due to muscular scar in right eye. The age of

the petitioner was assessed between 35 and 40 years. Thereafter, the petitioner was reviewed by the Apex Medical Board of ECL where the vision in both the eyes was held to be normal and the age was assessed between 34 and 40 years.

4. On behalf of the ECL it was contended that the mean age between 35 and 40 years is to be taken for assessment of age. Since the petitioner was assessed to be around 37 and half years, he was held unfit for service/appointment on compassionate ground.
5. On the other hand, the learned Counsel for the writ petitioner contended that the upper age limit for appointment on compassionate ground is 35 years. Since the age of the petitioner has been assessed between 35 and 40 years by the Apex Medical Board, there was no reason for ECL to hold that the petitioner was over-aged and terminate his services on that ground.
6. It was on such consideration, the direction was passed for ossification test by an independent specialized government agency. This initial order of 1st March, 2023 was attempted to be recalled by filing a review application being CAN 1 of 2023 in which the impugned order was passed.
7. The contention of the petitioner in the said proceeding was that the age assessment of the candidate below 20 years should be in the range of 2 to 3 years and above 20 years should be in the range of 5 years. The mid point of the said point of the said range will be taken as the

authenticated date of birth of the claimant and for the purpose of decision in the matter of computation, the date of medical examination will be the date to reckon with.

8. The learned Single Judge, however, did not accept the said submission on the ground that the modalities as referred to are in force for the purpose of facilitating the grant of social benefits to the petitioner. National Coal Wage Agreement (NCWA) is a beneficial piece of legislation when the petitioner is otherwise eligible for compassionate appointment and there is a doubt with regard to the age. No injustice should be caused to the employer/ECL if the ossification test is conducted.
9. We are in agreement with the observation made by the learned Single Judge in reiterating the earlier views. The learned Single Judge was also correct that the application is of an alleged misconduct as there was no error on the face of the records. We are also in agreement with the observation made by the learned Single Judge as there was no error on the face of the order dated 1st March, 2023. The recalling of an order is not a proper remedy or procedure prescribed under the law. Once a decision is taken after hearing the parties, unless it comes within the purview of any of the grounds mentioned under Order 47 Rule 1 of the Code of Civil Procedure, under the garb of recalling, a matter cannot be reviewed. There was no fraud committed by the petitioner either.
10. On such consideration, the appeal and the application are dismissed. However, there shall be no order as to costs.

11. We direct immediate compliance of the order passed by the learned Single Judge on 1st March, 2023.
12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)