

21
28.02.2024
Ct. No. 8
SB

MAT 1857 of 2023
CAN 1 of 2023
CAN 2 of 2023

M/S. Eastern Coal Fields Ltd.
Vs.
Sudip Banerjee & Ors.

Mr. Manik Das
... for the appellant

Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debashis Das
... for the respondents

1. The affidavit of service filed in Court today is kept with the record.

In Re : CAN 1 of 2023

2. There is a delay of 42 days in filing the memorandum of appeal.
3. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
4. The delay of 42 days in filing the memorandum of appeal is condoned.
5. Accordingly, the application for condonation of delay is allowed and disposed of.
6. Since no affidavit-in-opposition is filed, all allegations are deemed to have been denied.

In Re: MAT 1857 of 2023

With

CAN 2 of 2023

1. The appeal is arising out of an order dated 06.6.2023 in a writ petition, the writ petitioner has prayed

compassionate appointment in terms of National Coal Wage Agreement (NCWA –IX). The father of the writ petitioner was an employee of Eastern Coal Fields Limited (ECL).

2. The father of the writ petitioner appeared before the apex medical board on 18.5.2017 for voluntary retirement on medical ground under Clause 9.3.0 / 9.4.0 of NCWA–IX. The apex medical board examined the father of the writ petitioner on 18.5.2017 for the purpose of providing employment on compassionate ground or Monthly Monetary Cash Compensation (MMCC) to the defendant in terms of Clause 9.4.0 of NCWA – IX and after medically examining the said employee he was declared unfit for duty on that date. Thereafter, the Functional Director of ECL on 03.8.2018 on careful examination of the report has accepted the said recommendation and declared the father of the petitioner unfit for duty and his service was terminated on and from 21.11.2018. The writ petitioner applied for compassionate appointment in 2019. The medical examination of the petitioner was concluded. The Area Personal Manager Jhanjra area vide his letter dated 24.9.2019 recommended the name of the writ petitioner for appointment.
3. Thereafter in spite of several reminders and requests he was not granted any appointment by the authorities concerned.
4. The learned Single Judge after hearing the learned advocates for the parties allowed the writ petition by

directing the authorities concerned to consider the application for compassionate appointment in terms of NCWA – IX.

5. This order is under challenge.
6. Learned counsel appearing on behalf of the appellant has submitted that at the time when the service of the father of the writ petitioner was terminated on 21.11.2018 NCWA-X had come into operation and the issue with regard to appointment on compassionate ground although provided therein was not settled and had remained undecided.
7. However, when the father of the writ petitioner was declared unfit, NCWA – IX, was in existence. Subsequently, NCWA – XI provides for compassionate appointment. However, it was restricted to CIL and SCCL and not extended to other coal companies.
8. It is in view thereof that the application for compassionate appointment under NCWA – IX could not be considered.
9. Mr. Ghosh, learned counsel appearing on behalf of the writ petitioner submits that since father of the writ petitioner was declared unfit under Clauses 9.3.0 and 9.4.0 the writ petitioner should be considered for compassionate appointment under NCWA-IX. Moreover, NCWA-XI does not totally exclude compassionate appointment of persons similarly situated as in Clause 9.4.0, it was stated that the sub-committee shall submit its report to the standardization committee of JBCCI –XI and till then *status quo* shall be maintained.

10. There cannot be any doubt that the father of the petitioner was directed to appear before the medical board in terms of Clause 9.3.0 /9.4.0 of NCWA – IX for the purpose of voluntary retirement on medical ground. The said Clauses 9.3.0, 9.4.0 and 9.5.0 deals with employment / appointment of monthly monetary compensation to the defendant. The said clauses are operative till a revised scheme is jointly prepared keeping in view the various verdict of the Hon'ble Supreme Court. When the father of the petitioner was declared unfit no scheme as such was prepared and the coal companies had proceeded on the basis of Clauses 9.3.0, 9.4.0 and 9.5.0. The said memorandum of agreement is binding between the parties. It cast an obligation to the employer either to offer employment or payment of monthly monetary compensation to the dependant. When the coal company was considering the case of the father of the petitioner undoubtedly NCWA – IX was in existence and invoked and in pursuance thereof steps were taken to declare the father of the writ petitioner unfit. It thus gives right to the petitioner to claim compassionate appointment on the basis of the process that was initiated under Clause 9.4.0 of NCWA – XI.

11. The NCWA – XI also contemplates similar clause with the exclusion of other coal companies for the time being but in Clause 9.4.0 it says that status quo should continue meaning thereby the position that was existing earlier should continue.

12. In view of the fact that the case of the petitioner was considered under Clause 9.4.0 of NCWA – IX and the process was initiated under NCWA – IX it has come to a logical conclusion following the provisions of NCWA-IX.

13. Under such circumstances, we are in agreement with the views expressed by the learned Single Judge.

14. Accordingly, we extend the time to carry out the order of the learned Single Judge by two months from date.

15. The appeal and applications are disposed of.

16. All parties are to act on server copy of this order duly downloaded from the official website of this Court.

(Uday Kumar, J.)

(Soumen Sen, J.)