01.10.2024
Sl. No. 04
Ct. No. 23
Srimanta

WPA/23601/2024

Shri Dinesh Roy
-Vs.-
Eastern Coalfields Limited & Ors.

Mr. Shamik Chatterjee,
Mr. Aditya Bikram Mahata,
Mr. Sahil Kabir
…for the petitioner.
Mr. Krishnendu Bhattacharya,
Mr. Rounak Majumdar
…for the respondent nos. 1 to 7.
Mr. Kallol Guha Thakurta,
Mr. Amit Nandi
…for the respondent no. 10.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner claims that his father, Suresh Roy, an employee of Eastern Coalfields Limited (in short, ECL) died in harness on 22nd April, 2015. The petitioner says that the petitioner's brother, Dilip Ray died on 20th August, 1999 and petitioner's mother, Girijawa Devi @ Girjwa Devi died on 18th May, 2002. The petitioner has annexed to this writ petition the death certificate of his brother and his mother. The petitioner says that in the service book of his father it has been clearly stated that in case of premature death of the employee the petitioner is the nominee for employment. The petitioner had applied for compassionate appointment on 7th April, 2016. The petitioner claims that by a letter dated 16th May, 2016 the respondent authorities had directed the petitioner to meet the Senior Manager at Dalurband Colliery, Pandaveswar Area along with all his original documents and testimonials. The said letter is also annexed to the writ petition. The petitioner says that subsequently medical screening and verification of documents for compassionate appointment has taken place respectively on 21st January, 2017 and 4th February, 2017. However, thereafter nothing has happened as to the compassionate appointment. The petitioner says that ECL should be directed to forthwith provide compassionate appointment to the petitioner in terms of the provisions of National Coal Wages Agreement (in short, NCWA). The petitioner further says that the terminal benefits of the petitioner’s father has also not been paid till date by ECL without any cogent reason. The petitioner, therefor, also seeks a direction upon ECL to disburse the retiral benefits to the petitioner. The petitioner has produced a genealogical table of the deceased employee which shows that apart from the predeceased wife and predeceased son the employee has three children. The petitioner is one of them. There are two daughters who are presently married. The petitioner says that no money on account of terminal benefit or any other solatium available under the NCWA has been paid to the petitioner or his two sisters.

On behalf of ECL it is submitted that the whole issue has remained pending in view of cross claims having been received by the ECL. It is submitted by ECL that in 2017 ECL had received a letter from a lady claiming to be Girijwa Devi, the wife of the deceased employee on 14.02.2017. Since such claim created a doubt with regard to petitioner's claim that his mother died on 18th May, 2002. The benefits receivable by the heir/heiresses of the deceased employee through the nominee was withheld. The ECL also says that there is a dispute as to the age of the petitioner.

Having heard the parties and considering the materials-in-record, I find that the discrepancy in the date of birth or the age of the petitioner may be relevant for the purpose of considering the petitioner's case for compassionate appointment. The same is, however, no way relevant for a legal heir to receive the terminal benefit of his/her deceased father who was an employee of ECL and died in harness. The submission made by ECL that some other person has claimed to be the second wife of the deceased employee and that there are two children from the second wife is standing in the way of disbursing the terminal benefits is also insignificant in the facts of the instant case. It has been clarified by a Division Bench of this Court in a judgment and order dated 15th January, 2019 passed in MAT 130 of 2018 that in case of service matters weightage should be given to the recording in the service book. In the instant case from the service book it is clear that the petitioner is the only surviving son of the deceased employee. The persons claiming to be the children of the deceased employee from the second wife which neither named in the service book nor has been declared to be the children by the deceased employee during his lifetime before his employer, ECL. The petitioner has admitted that he has two sisters. The terminal benefits receivable on the death of the employee concerned form part of the estate left behind by him. In accordance with the provisions of Hindu Succession Act, 1956 the Class – 1 heir of a male Hindu under the provisions of Section 8 of the said Act read with schedule 1 thereto leaves no doubt that each of the class – 1 heir living at the time of death of such employee is entitled to one share each in the estate. Going by such provisions the petitioner is entitled to 1/3rd of the terminal benefits receivable by the legal heir/heiresses on the death of the employee. The petitioner, therefor, is entitled to 1/3rd share of the terminal benefits receivable by his father upon his death. Moreover, death certificates issued by government department from records maintained in the register is a public document as under Sections 75, 76 and 77 of Bhartiya Sakshya Adhiniyam, 2023 and is proved on production of a digital print out thereof. So there can be no dispute as to the death of the mother and other brother of the petitioner in absence of such documents being declared forged or fabricated by a Competent Court.

In the aforesaid facts and circumstances, the respondents, in particular ECL is directed to compute the terminal benefits available to the deceased employee immediately upon his death. The computation should be completed by 30th October, 2024 and a copy of such calculation should be forthwith made over to the petitioner for his consideration. 1/3rd share of such benefit should be given to the petitioner with accrued interest @ 6% simple interest per annum from 23rd April, 2015 (date of death of the employee) till actual payment. The interest is allowed as the petitioner was deprived of the benefit of the money while ECL earned benefit thereon for the said period. The entire exercise of paying the 1/3rd share along with accrued interest from the date of death of the employee (22th April, 2015) shall be complete by 30th November, 2024.

On behalf of respondent no. 10 being the Assistant Commissioner of Coal Mines Provident Fund Organization (CMPF) acknowledged that there is an account maintained with them in the name of the deceased employee. The particulars of such account as provided by the learned Advocate representing CMPF Organization is as follows:-

"CMPF Account No. - RNJ/2/B/1007 of Dalurbandh colliery, Pandaveswar Area, ECL,".

The petitioner shall furnish his Bank account details to ECL immediately upon receiving the figures regarding the computation to be supplied by ECL to the petitioner. The payment by ECL should be through such Bank account being PNB Account No. 4736000400055677. So far as the issue of compassionate appointment is concerned, ECL shall within a period of three months from date take a specific decision as to whether the petitioner is entitled to compassionate appointment and if so shall provide the same within two months thereafter. The direction with regard to compassionate appointment is to be carried out within the time provided keeping in mind that the whole object of the scheme for providing compassionate appointment will be frustrated in case of delay.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of the Court without insisting upon the production of the certified copy thereof.

Since I have not called for affidavit, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

(Arindam Mukherjee, J.)