

**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**

**MAT 2151 of 2023  
with  
IA No.: CAN 2 of 2024  
With  
IA No.: CAN 1 of 2023**

**M/s Eastern Coalfield Limited  
Vs.  
Smt. Purnima Singh & Ors.**

For the appellant : Mr. Bijoy Kumar, Advocate

For the writ petitioner/  
Respondent no.1 : Mr. Partha Ghosh, Advocate  
Mr. Amal Kumar Datta, Advocate  
Ms. Simran Sureka, Advocate  
Mr. Debashis Das, Advocate

Heard & Judgment on : August 7, 2024

**DEBANGSU BASAK, J.:-**

1. IA No.: CAN 2 of 2024 is an application seeking condonation of delay of 300 days in preferring the appeal.

2. The department notes that, the appeal is within time.
3. **IA No.: CAN 2 of 2024** is disposed of accordingly.
4. Memorandum of appeal speaks of the appeal being directed against two orders passed by the learned Single Judge, one being dated July 28, 2023 and the other dated August 24, 2023.
5. Appeal is at the behest of the Eastern Coalfield Limited.
6. Learned Advocate appearing for the appellant draws the attention of the Court to the list of dates handed over in Court along with other documents. He submits that, the deceased employee submitted a declaration in the service record where, deceased employee stated the age of the writ petitioner to be 35 years as on April 1, 1987. Consequently, date of birth of the writ petitioner should be considered as April 1, 1952.
7. Learned Advocate appearing for the appellant submits that, the concerned employee died-in-harness on March 19, 1998. There was a Title Suit filed before the Civil Court in relation to disputes between the heirs and legal representatives of the deceased employee. A compromise decree was passed on February 12, 2001.
8. Learned Advocate appearing for the appellant draws the attention of the Court to the various applications made at the behest of the writ petitioner for grant of employment of the son of the deceased employee. He refers to the affidavit affirmed by the writ petitioner before the Notary Public in

support of such application for compassionate appointment. He submits that, various ages were stated by the writ petitioner in such affidavit. He points out that the application for compassionate appointment of the son of the writ petitioner was rejected in 2007.

9. Learned Advocate appearing for the appellant submits that, the writ petitioner never applied for 'MMCC' and, therefore, such 'MMCC' was not processed.
10. Learned Advocate for the appellant refers to the medical report and submits that, the age of the writ petitioner was fixed at 55 years as on March 14, 2023 with a margin of  $\pm 2$  years.
11. Learned Advocate appearing for the writ petitioner submits that, writ petitioner approached the High Court for the purpose of disbursement of the "Monthly Monetary Cash Compensation (MMCC)" as provided under the National Coal Wage Agreement "NCWA". He submits that, the age dispute of the writ petitioner was ultimately settled with the writ petitioner undergoing an ossification test held at the Burdwan Medical College and Hospital on March 14, 2023 pursuant to the order dated January 18, 2023 passed by the High Court. He points out that, appellant applied for review of such order before the learned Single Judge which was dismissed by an order dated July 28, 2023. An appeal was filed against the order dated July 28, 2023 being MAT 2104 of 2023 by the appellant. Such appeal was withdrawn on June 12, 2024.

Thereafter, the present appeal was filed directed against the order dated July 28, 2023 as also the order dated August 24, 2023.

12. Learned Advocate appearing for the writ petitioner submits that, the appeal as against the order dated July 28, 2023 is no longer maintainable in view of the appellant filing an appeal from such order being MAT 2104 of 2023 and withdrawing the same on June 12, 2024. Referring to the merits of the case, learned Advocate appearing for the writ petitioner submits that, entitlement of the writ petitioner to 'MMCC' under the 'NCWA' is not doubted. Writ petitioner was not granted 'MMCC' on the death of the concerned employee on the contention of dispute with regard to age. However, such age stood conclusively decided by the order dated January 18, 2023 at least. Even thereafter, no payment was made.
13. Learned Advocate for the appellant in response submits that, pursuant to the observations made in the Court, his client brought a pay order for the admitted portion of the 'MMCC', without interest, drawn in the name of the writ petitioner in Court. He produces such pay order in Court.
14. Facts admitted are as follows:
  - (i) Date of birth of the concerned employee is July 16, 1967;
  - (ii) Date of death of the concerned employee is March 19, 1998;

- (iii) Compromise decree in which appellant was a party, was passed in Title Suit No.189 of 1998 on February 12, 2001 by the Civil Judge (Junior Division), Durgapur;
  - (iv) Ossification test of the writ petitioner was held on March 14, 2023 pursuant to the order dated January 18, 2023 where, the medical opinion is that, the writ petitioner is 55 years  $\pm$  2 of age as on March 14, 2023;
  - (v) Appellant applied for review of the order dated January 18, 2023 which was dismissed by the order dated July 28, 2023; and
  - (vi) Appeal being MAT 2104 of 2023 was filed directed against the order dated July 28, 2023 and was withdrawn by the appellant on June 12, 2024.
15. Appellant preferred an appeal against the order dated July 28, 2023 and withdrew the same on June 12, 2024, unconditionally. Appellant cannot be allowed to pursue another appeal in respect of the same order ostensibly in the guise of the present appeal being directed against the final order.
16. Significantly, costs awarded by the order dated July 28, 2023 remains unpaid. There is no explanation as to why such costs awarded was not paid.

17. Learned Single Judge observed in the order dated July 28, 2023 that, the appellant was indulging in wasting valuable time of the Court. Such finding attained finality in view of the conduct of the appellant as noted above.
18. Before us also we find that the stand of the appellant is obdurate, if not anything else. An employee of the appellant died-in-harness on March 19, 1998. His heirs and legal representatives initially claimed compassionate appointment for the son of the deceased employee. Such employment was not granted on the ground of such son being a minor.
19. 'NCWA' admittedly allows 'MMCC' to be given to the female dependant. Writ petitioner before us is a female dependant and is acknowledged to be so. Her name appears in the service records of the deceased employee as the spouse.
20. All these years till today when a bank draft is produced in the Court by the appellant, 'MMCC' to the writ petitioner was denied on the ostensible ground of age dispute.
21. Service books specified an age of the writ petitioner. Appellant did not accept such age so specified in the service record of the deceased employee. It invited the learned Single Judge to direct the writ petitioner to undergo an ossification test for the purpose of determining her age. Writ petitioner undertook such test. Medical report produced before the

learned Single Judge established the age of the writ petitioner at 55 years  $\pm 2$  as on March 14, 2023. Even, thereafter, 'MMCC' was not disbursed.

22. We fail to appreciate why 'MMCC' was not disbursed to the writ petitioner all this while. Assuming that, the version of the appellant is correct, that there was an age dispute, nonetheless there was an age given in the service record on the basis of which, appellant was obliged to process the claim for 'MMCC'. Claim emanates out of the 'NCWA'. It is the obligation of the appellant to pay the 'MMCC'. 'NCWA' is a settlement within the meaning of Industrial Disputes Act, 1947 and is binding upon the appellant.
23. It is nobody's case that, the writ petitioner attained the age of 60 years. Therefore, there was no justification on the part of the appellant to deny 'MMCC' to the writ petitioner all this while.
24. Ossification test as noted above, established the age of the writ petitioner at 55 years  $\pm 2$  as on March 14, 2023. The benefit of the lower band noted in the medical opinion would enure to the benefit of the writ petitioner. Writ petitioner, is, therefore, required to be considered as 53 years of age as on March 14, 2023.
25. The conduct of the appellant was deprecated by the learned Single Judge and costs of Rs.10,000/- imposed. Such costs are yet to be paid despite the appellant preferring an appeal from the order imposing the costs and withdrawing such appeal.

26. In the writ petition, the writ petitioner prayed for disbursement of 'MMCC' along with interest at the rate of 18 per cent.
27. In the facts and circumstances of the present case, we are inclined to allow and we do allow interest at the rate of 18 per cent as prayed for.
28. We do so in view of the conduct of the appellant noted by both the learned Single Judge and by us. We impose such rate of interest considering the fact that, such rate of interest is charged by nationalized bank in respect of commercial transactions. In the facts and circumstances of the present case, the entitlement emanates out of a settlement under the Industrial Disputes Act, 1947 and such entitlement was wrongfully denied all this while by the employer. Employer is engaged in commercial activity and is, therefore, capable of paying the rate of interest so awarded by us. The money that the writ petitioner was legitimately entitled to was retained by the employer. Since the employer is engaged in commercial activity, the inference is that such money was retained by the employer as belonging to the writ petitioner was deployed commercially and, therefore, we find no impediment in awarding such rate of interest.
29. Appellant will pay interest at the rate of 18 per cent calculated from the day following the date of death being March 20, 1998 till actual disbursement of the 'MMCC'. Appellant will continue to pay 'MMCC'

month by month in terms of 'NCWA' till the writ petitioner attains the age of 60 years as prescribed by 'NCWA'.

30. Chairman of the appellant will undertake the exercise of fixing the responsibility on persons in the employment of appellant who are responsible for causing appellant to pay interest at the rate of 18 per cent per annum to the writ petitioner. Appellant on such exercise being completed will realize the interest component from the persons responsible. Such exercise be undertaken forthwith.
31. Learned Advocate appearing for the appellant makes over a pay order drawn in the name of the writ petitioner in Court to the learned Advocate appearing for the writ petitioner. Learned Advocate for the writ petitioner accepts the same wholly without prejudice to the directions contained in this order.
32. Appellant will be entitled to adjust the value of the pay order which was handed over in Court to the learned Advocate for the writ petitioner against the dues of the writ petitioner.
33. Costs awarded by the learned Single Judge on January 18, 2023 remain unpaid. We are constrained to impose further costs upon appellant for the conduct as noted herein.
34. In addition to the costs awarded by the learned Single Judge, appellant will pay costs assessed at Rs.1,00,000/- (Rupees One Lakh) to the West

Bengal State Legal Services Authority, Kolkata, within seven days from date.

35. Head of the Department, Legal Department of appellant will submit necessary documentary evidence of payment of costs with the District Magistrate, Paschim Burdwan within seven days from date. In the event of default, District Magistrate, Paschim Burdwan will initiate appropriate proceedings for recovery of such costs under the Bengal Public Money Recovery Act, against the appellant.
36. It is expected that the entirety of the dues as directed by this judgment and order is paid by appellant, forthwith.
37. **MAT 2151 of 2023** along with **IA No.: CAN 1 of 2023** are disposed of without any order as to costs.

**(Debangsu Basak, J.)**

38. I Agree.

**(Md. Shabbar Rashidi, J.)**

(AD)