

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 26304 of 2018

Raju Bouri
VS
Eastern Coalfield Ltd. & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Piyush Chaturvedi,

Mr. Amit Kr. Ghosh

----- for the petitioner.

Mr. B. Kumar,

Mr. Balaram Patra

----- for the respondents.

Hearing concluded on :

07.03.2024

Judgment On :

03.04.2024

M.V. Muralidaran, J.:

The writ petition has been filed by the petitioner seeking to quash the impugned Memo dated 23/27.7.2018 and to direct the respondents to consider the claim of the petitioner for grant of employment under die-in-harness category.

2. The case of the petitioner is as follows:-

The petitioner's father Bhajahari Bouri was an employee of Eastern Coalfields Limited, MIC Jhanjra Project Colliery. While in service, his father died on 22.4.2014. In or about May, 2014, the mother of the petitioner submitted an application seeking employment to the petitioner on compassionate ground. By a memo dated 27.6.2014 issued by the General Manager(M)/Agent MIC Jhanira Project Colliery, it was informed that the application seeking grant of suitable employment to the petitioner under die-in-harness category cannot be considered in view of the fact that the petitioner crossed the age limit of 35 years. By a further memo dated 8.7.2014, it was informed that the petitioner has crossed the age of 35 years as per the available record i.e. PS3.

2.1. The petitioner's date of birth as recorded in various authenticated documents is 7.5.1983. The petitioner has made several representations enclosing the documents and being persuaded upon perusal of such documents, he was subjected to medical examination by a duly constituted Medical Board of the respondent authority. On being examined, the petitioner's age was assessed in the range of 33-38 years as on 7.10.2015 i.e. 32-36 years as in April, 2014. Thereafter, the Manager (P) of Jhanjra Project Colliery informed the petitioner's mother by a memo dated 13/14.10.2015 to submit documents as required in the said memo.

2.2. When the petitioner complied with the requirement of the aforesaid memo, a subsequent memo dated 3/4.12.2017 was issued requesting the petitioner to visit the office of the GM (P&IR), ECL on any working day with original copy of Aadhar card for processing the claim for grant of employment. Accordingly, the petitioner visited the office of GM (P&IR), ECL, Jhanjra Project Colliery with original copy of the documents as asked for and the petitioner was given to understand that his claim for grant of employment under die-in-harness category has been recommended by the competent authority.

2.3. While he was anxiously awaiting for appointment letter, a memo dated 10.4.2018 was issued by the Deputy Manager (P), Jhanjra Project Colliery asking the petitioner to appear before the Apex Medical Board. Thereafter, the Agent MIC Jhanjra Project Colliery issued a memo dated 24/27.7.2018 rejecting the claim of the petitioner for grant of employment under die-in-harness category on the ground that the Apex Medical Board has re-assessed his age and arrived at a conclusion that the petitioner is aged 40 to 45 years as on 20.6.2018. Challenging the same, the present writ petition.

3. Respondent No.6/ECL filed affidavit-in-opposition, *inter alia*, stating that the concerned workman has not declared all the particulars in the Service Excerpt, but he declared all the particulars in supplementary information. On 12.6.2014, the mother of the petitioner submitted an application to provide employment to the petitioner. As per system prevalent in the ECL, one initial medical examination was conducted to find out the physical condition and approximate age of the person concerned. The initial medical examination board has assessed the age of the petitioner as 33 to 38 years as on 7.10.2015.

3.1. It is stated that as per the declaration made by the father of the petitioner in the Provident Fund Records, the age of the petitioner has crossed 35 years of the maximum age limit. Thus, he has crossed the age bar of 35 years on the death of his father. For finalization of the appointment, the petitioner was referred to the Apex Medical Board for medical examination as per the Mines Act. The Apex Medical Board has assessed the age of the petitioner as 40-45 years as on 20.6.2018. This means the age of the petitioner is 42 ½ years on 20.6.2018 i.e. more than 35 years on the death of the concerned workman. As petitioner has crossed 35 years of age, employment cannot be provided under National Coal Wage Agreement (NCWA) and advised to apply for monthly monetary compensation in lieu of employment. Hence, prayed for dismissal of the writ petition.

4. Mr. Piush Chaturvedi, learned counsel for the petitioner submitted that after the demise of the petitioner's father, the petitioner's mother submitted an application in May, 2014 for grant of employment to the petitioner under die-in-harness category. Since the respondents have not considered the same, the petitioner has made representations enclosing all the documents. The documents produced by the petitioner as well as the service record maintained by the respondent authorities corroborate

with each other as regards the eligibility of the petitioner for making application for grant of suitable employment.

5. The learned counsel further submitted that there was no justifiable or reasonable reason to subject the petitioner to a further assessment as regards his age by the Apex Medical Board and such action of the respondents is wholly unwarranted, arbitrary and liable to be intervened by this Court.

6. The learned counsel for the petitioner urged that the petitioner is suffering from extreme penury and strapped with financial exigency upon the death of the sole bread winner of the family. The beneficial scheme envisaged by the respondent employer and assured to the documented NCWA is being frustrated by the authorities by taking recourse to frivolous pleas. The acts and conducts of the respondent authorities are wholly illegal and cannot be sustained. Further, by their illegal acts, the respondent authorities debarred the petitioner to enjoy the fruits of the scheme which was to be granted of suitable employment under die-in-harness category. In fact, the respondent authorities have infringed the right of the petitioner guaranteed under Article 14, 19 and 21 of the Constitution of India. Thus, a prayer is made to set aside the impugned

memo and also direct the respondents to provide employment to the petitioner under die-in-harness category.

7. Per contra, Mr.B.Kumar, learned counsel for the respondents submitted that for finalization of the appointment the petitioner was referred to the Apex Medical Board for medical examination. On examination, the Apex Medical Board found and assessed the age of the petitioner as 40-45 as on 20.6.2018. As per the Rule of the company mid point has been taken into consideration. This means that the age of the petitioner was more than 35 years on the date of the death of his father.

8. The learned counsel further submitted that clause 9:3:4 of the NCWA is very clear about employment to one dependent of the worker, who dies while in service. The dependents to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years.

9. The learned counsel would submit that for initiation of any appointment in the Mines, initial medical examination is very necessary to find out whether the person concerned is fit for Mining job or not. Before finalization, the Apex Medical Board has examine the person concerned. The General Manager (M)/Agent after considering the declaration made

by the workman, issued a letter dated 27.6.2014 informing that the petitioner has crossed 35 years of age and therefore employment cannot be provided under NCWA. Further, the petitioner has taken inconsistent pleas. Due to discrepancies in the recorded documents, his age was assessed by the Apex Medical Board and it has given its opinion assessing the age between 40-45 years as on 20.6.2018.

10. The learned counsel then submitted that the petitioner is not within the age of 35 years on the date of making application. The procedure of initial medical examination and the Apex Medical Examination are mandatory for anybody seeking employment in any Mines. The so called school certificate is a managed document for the purpose of employment which is not binding upon the respondents. As per the declaration made by the father of the petitioner in PS3 of the PF the age of the petitioner was more than 35 years at the time of death. Thus, a prayer has been made to dismiss the writ petition.

11. This Court considered the rival submissions and also perused the materials available on record.

12. The petitioner's father was an employee of Eastern Coalfields Limited. He died-in-harness. The petitioner applied for appointment on compassionate basis. Initially, his application was rejected on the ground that he had crossed 35 years of age. Subsequently, the petitioner persuaded the authorities by documentary evidence that he was below 35 years of age. Accordingly, the petitioner was called for medical examination and he was then asked to submit certain documents for his appointment on compassionate basis. Thereafter, he was called for further medical examination by the Apex Medical Board, which ruled that the petitioner was between 40 and 45 years of age and hence not eligible for compassionate appointment. Aggrieved by the acts of the respondents, the petitioner has filed the present writ petition.

13. It is the say of the respondent ECL that as per the declaration made by the father of the petitioner in PS-3 of the Provident Fund, the age of the petitioner was more than 35 years at the time of death of the concerned workman. As per the rule of the company, the petitioner is not entitled to any employment. According to respondent ECL, the petitioner has not produced any documents to show his date of birth. All the records are stage-managed and manufactured for the purpose of Government employment. The respondent ECL has followed the system

of initial medical examination as well as examination by the Apex Medical Board as per the policy decision of the company, which is binding upon all the persons seeking employment in any mines.

14. As could be seen from the records, the Ningha Batpara F.P. School, where the petitioner studied, has issued a bona fide certificate, wherein the date of birth of the petitioner is noted as 7.5.1983. Similarly, the PAN card, Aadhar card and the Voter ID issued in the name of the petitioner, his age is mentioned as 7.5.1983. Admittedly, the aforesaid documents are not specifically disputed by the respondent authorities.

15. The perusal of the copy of the Service Excerpt as per the New Service Book maintained in Form-B Register of the respondent company annexed to the writ petition indicates that the petitioner's age as in April, 1987 to be 7 years.

16. It is not the case of the respondents that the petitioner has not submitted all the required documents before the authorities of ECL. On 13.10.2015, the Manager (P), Jhanira Project Colliery of ECL called for the petitioner to produce certain documents after assessing the age of the petitioner between the range of 33 to 38 years. After waiting for

nearly two years, the petitioner was advised to appear before the office of the GM (P&IR) along with the original EPIC and Aadhar Card for employment. The petitioner appeared before the GM (P&IR) and complied with the requirement and he was under the fond hope that his claim for compassionate appointment under die-in-harness category has been recommended by the competent authority. However, the Deputy Manager, vide letter dated 10.4.2018, asked the petitioner to appear before the Apex Medical Board at CMS's office, CH, Kalla on 25.4.2018 at 9.30 A.M. On 23/27.7.2018, the Agent of Jhanira Project Colliery has issued the impugned memo stating as under:

"Your application along with the employment papers for your employment under death scheme was sent to the H.Q., E.C.L. Sanctoria by Ares Personnel Manager, Jhanjra Area.

Area personal Manager, Jhanjra Area, informed us vide his letter No.GM/JNR.PERS/2018.1219 dated 19.07.2018, which is exact, reproduced below:

"Employment cannot be processed because there is wide difference of age of the claimant between the age assessed by IME and age recorded in PS-3&4 of ex-employee and it is a border line case. Thus his age was again re-assessed by Apex Medical Board as 40-45 years as on 20.6.2018 and he is overage as on his date of application and not eligible for employment as per NCWA".

17. Clause 9.3.4 of NCWA provides:

"Dependent to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the said age limit in case of employment of female spouse would be 45 years as given in clause 9.5.0."

18. In the initial medical examination, the petitioner's age was assessed in the range of 33 to 38 years as on 7.10.2015 i.e. 32-36 years as in April, 2014. That is the reason, why the Manager (P) of Jhanjra Project Colliery informed the petitioner's mother by a memo dated 13/14.10.2015 to submit the documents. Accordingly, the petitioner has also produced all the required documents. In fact, pursuant to the initial medical examination when the respondents informed that the petitioner has been found fit to be appointed and within the age of 35 years as on 7.10.2014, denial of appointment to the petitioner allegedly on the plea that he has crossed the age of 35 years is unacceptable, as the age recorded in the bona fide certificate issued by the School in which the petitioner studied corroborates the age mentioned in the Aadhar card, PAN card and Voter ID card.

19. The procedure for determination/verification of age as stated in Implementation/Instruction No.76 provides that in respect of non-matriculate appointees, who have pursued studies in recognized educational institution, the date of birth recorded in the School Leaving Certificate shall be his correct date of birth and the same will not be altered under any circumstances. Though the respondent authorities contended that the initial medical examination was confined only to ascertain the physical condition of the petitioner, nothing has been produced by the respondents to substantiate the same.

20. The report of the initial medical examination would indicate that the petitioner was medically examined and a definite finding has been arrived at by the Medical Board. As rightly pointed out by the learned counsel for the petitioner, since the said medical report did not suit the convenience of the respondents to declare grant of appointment to the petitioner, a witch hunt was commenced, in consequence whereof the petitioner was unauthorisedly subjected to further medical examination wherein he is allegedly found to have possibly crossed the age of 35 years and/or is a border in line case. Thus, this Court is of the view that

the entire exercise of referring the petitioner to an Apex Medical Board was without jurisdiction.

21. As stated supra, as per the Aadhar card, PAN Card and the Voter ID, the date of birth of the petitioner is 7.5.1983. The petitioner's father died on 22.4.2014. If we calculate the age of the petitioner related to the date of death of the father of the petitioner, the petitioner was aged 30 years, 11 months and 15 days. The initial medical board also assessed the age of the petitioner between 32-36 years as on April, 2014. If we take into account the assessment of the Apex Medical Board that the petitioner was aged 42 ½ years at the relevant point of time, the mentioning of date of birth of the petitioner as 7.5.1983 in the Aadhar card, Voter ID and PAN card are meaningless. The details qua name, age and address mentioned in the Aadhar card play a vital role. Though it is the say of the respondents that the aforesaid documents are fabricated/concocted, nothing has been produced by the respondents to show any fabrication done by the petitioner. In the absence of any proof, the plea of the respondents cannot be accepted.

22. On the whole, the conclusion arrived at by the Area Personnel Manager, Jhanjra Area that the employment to the petitioner cannot be

processed as there is wide difference of age of the petitioner between the age assessed by initial medical board and age recorded in PS-3&4 of the ex-employee and it is a border line case and the assessment of age again by the Apex Medical Board as 40-45 years as on 20.6.2018 and the petitioner is overage as on his date of application and not eligible for employment as per NCWA is unsustainable in the eye of law.

23. Assuming that the petitioner can be subjected to medical examination, the age of the petitioner assessed by the Apex Medical Board with width of age taken to be 5 years has arrived at 36 years and in the words of the respondents termed as a border line case, the scheme for grant of compassionate appointment being a beneficial scheme, the benefit of doubt in such cases ought to be extended to the applicant seeking benefit of the scheme to enable the family to tide over the financial exigencies.

24. Though the application seeking compassionate appointment to the petitioner was submitted in May, 2014, the petitioner was dragged pillar to post and subjected to medical examination by the Apex Medical Board in the year 2018 ignoring the report of the initial medical

examination done by the Medical Board, which assessed the age of the petitioner at the relevant point of time as 32-36 years.

25. The authenticated documents issued by the Government to the petitioner *prima facie* show that the date of birth of the petitioner is 7.5.1983 and further, the service record excerpt in respect of the deceased employee shows that the petitioner's age in April, 1987 as 7 years. As stated *supra*, those documents cannot be brushed aside. Therefore, this Court is of the view that the petitioner was well within the age of 35 years on the date of making application in May, 2014. As rightly argued by the learned counsel for the petitioner the beneficial scheme envisaged by the respondent employer and assured to the documented NCWA is being frustrated by the authorities by taking recourse to frivolous pleas. Without proper appreciation, the respondent authorities have refused to grant employment to the petitioner under die-in-harness scheme. The respondent authorities are bound to review their decision in rejecting the claim of the petitioner, for which, it would be appropriate to remit the matter back to the respondent authorities.

26. In the result,

- (i) The writ petition is allowed. The impugned Memo dated 23/27.7.2018 is quashed.
- (ii) The matter is remanded back to the respondent authorities for consideration of the claim of the petitioner for grant of employment under die-in-harness category in the light of the discussions held supra.
- (iii) The said exercise is directed to be completed within a period of twelve weeks from the date of receipt of a copy of this order.
- (iv) No costs.

(M. V. Muralidaran, J.)