

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26573 of 2023

Milu Acharjee
Vs.
Eastern Coalfields Limited & Ors.

Mr. Suchindram Bhattacharjee
... For the petitioner

Mr. Manik Das
... For the respondents

1. The petitioner prays for arrears of Monthly Monetary Cash Compensation (in short, MMCC). The petitioner is receiving MMCC from 14th September, 2022. The petitioner's husband died on 16th April, 2021. The petitioner, however, claims arrears MMCC from 17th April, 2021 till August, 2022.

2. Learned counsel for the Eastern Coalfields Limited (in short, ECL) urges the point of maintainability. It is submitted that the earlier writ petition on the selfsame cause of action, being WPA 23868 of 2023, was dismissed as withdrawn on written instructions of the writ petitioner. No leave has been reserved to the petitioner to file a fresh writ petition on the selfsame cause of action. Learned counsel relies upon Order XXIII Rule 1 sub-rules (3) and (4) of the Code of Civil Procedure in this regard.

3. Having heard learned counsel for the parties, this Court is of the view that it is well settled principle under Article 226 of the Constitution of India that the Civil Procedure Code does not apply in word, letter and spirit. It is only the principles of the Code of Civil Procedure that apply.

4. This Court is of the view that the bar under Order XXIII in writ petitions, would not apply ipso facto and must depend on the facts and circumstances of each case.

5. The writ petitioner has mentioned the earlier writ petition in the instant writ petition at paragraph 26. Secondly, the prayer for MMC has been made by a widow of a deceased workman.

6. MMC is considered the only source of sustenance of the family of a deceased employee and is otherwise binding in terms of the National Coal Wages Agreement.

7. A special bench of this Court in **Putul Rabidas Vs. ECL & Ors.** reported in **2017 SCC OnLine Cal 13128** that MMC is an automatic right which accrues after the death of a workman and does not require an application from the beneficiary. It has also been held that it is a beneficial provision for the workman.

8. This Court is therefore inclined to entertain the instant writ petition notwithstanding leave not having been reserved to the petitioner to file afresh on the selfsame

cause of action in WPA 23868 of 2023 (since dismissed as withdrawn).

9. In the above circumstances, this Court directs the respondents to release arrears of MMCC from 17th April, 2021 till August, 2022 to the petitioner within a period of two months from date. In the facts and circumstances of the case, however, this Court is not inclined to award any interest on such arrears.

10. With the above observation and direction, the writ petition, being WPA 26573 of 2023, stands disposed of.

11. Since no affidavits have been called for from the respondents, the allegations made in the writ petition, except to the extent decided above, shall not be deemed to be admitted.

12. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Rajasekhar Mantha, J.)