

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1056/2023
SRIMOTI MURMU
VS
M/S EASTERN COAL FIELDS LTD AND ORS

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
Date : 30th January, 2024.

Appearance :
Mr. P. ghosh, Adv.; Mr. A.K. Datta, Adv.; Ms. S. Sureka, Adv.; Mr. D. Das, Adv., for
petitioner.
Mr. M. Das, Adv. For respondents.

The Court: 1. The question that comes for consideration is as to whether the petitioner is entitled to Monthly Monetary Cash Compensation (MMCC) from the date of death of her husband who was Group-D employee of M/s. ECL Ltd.

2. The Petitioner's husband, Sunil Murmu died on April 23, 2001. She immediately approached the respondents on April 26, 2001, i.e. three days after the death of her husband, seeking compassionate employment and payment of dues.

3. The said intimation and request from the writ petitioner has been recorded by the ECL in an internal office order dated May 15, 2001, being Annexure P-3 to the writ petition and also in a letter dated April 6, 2014 issued by the Assistant Manager, HR, Sankarpur Colliery, to the Chief Manager(P), Bankura area of ECL.

4. The petitioner has received all terminal benefits on account of her husband's employment.

5. The request for compassionate employment continued to be processed by the respondents. The prayer for MMC, however, remained unfulfilled.

6. By communication dated March 10, 2019, the Assistant Manager, HR informed the petitioner that her claim for compassionate employment had been manufactured and invented 14 years after the death of her husband and must be rejected.

7. The writ petition was filed thereafter on April 26, 2023.

8. Learned counsel for the petitioner would rely upon several decisions of the Division Benches of this Court upheld by the Supreme Court, namely the cases of **ECL –vs- Bimal Majhia, APOT/151/2016; ECL –vs- Panchal Begum & Ors., APOT/149/2016; ECL –vs- Smt. Panwa Bhunia, FMA/98/2023**. The decision in **Panwa Bhunia (supra)** has been affirmed by the Supreme Court and the SLP dismissed thereagainst. The decision of a DB of this Court in **ECL –vs- Dulal Majhia, MAT/1007/2022**, was again affirmed by the Supreme Court. Several other decisions including a Full Court decision including in **Putul Rabidas –vs- ECL, FMA/4401/2016** as affirmed by the Supreme Court in Diary No.3590/2018. Particular reference is made to the decision of the Supreme Court in the case of **Subhadra –vs- Ministry of Coal**, reported in **(2018) 11 SCC 201**.

9. In each of the aforesaid decisions, the following principles have been recognized, approved, and followed.

- a) A right of compassionate employment and/or MMC is a creature of the National Coal Wage Agreement (NCWA). It accrues as a matter of right from the date of death of the employee concerned to the family.
- b) The delay in approaching the employer or the Court for such compassionate employment and/or MMC cannot stand in the way of such entitlement since it accrues from the date of death of the concerned employee.

- c) The general principles of delay and laches or that compassionate employment being an exception to the general rule of employment, have no manner of application to a case for such compassionate employment and/or for MMC under the NCWA since it is a statutory “Settlement”, within the meaning of the Industrial Disputes Act, 1947.
- d) It is the duty of the employer ECL/CIL under the NCWA to make available the said “Beneficial Provision” to the employee or their legal heirs. The employee can in no way be faulted for any delay in approaching the employer or the Court to avail such remedy. The onus lies on the employer to make available such remedies to the employees.

10. In the backdrop of the above, the decisions relied upon by counsel for the ECL opposing the petition, i.e. **Union of India –vs- Tarsem Singh** reported in **2008 (8) SCC 648 (paragraph 8)** and the decision of the Supreme Court in the case of **ECL –vs- Dukhini Bhunia, CA/6730/2023**, being an appeal from a decision of the Division Bench of this Court have no manner of application.

11. The said decisions otherwise need not be relied upon since the petitioner applied for MMC as well as employment on compassionate ground within three days of her husband’s death. It is, however, true that the respondents commenced processing the application only in the year 2014. The admission of the respondents in having received the petitioner’s letter intimating the death of her husband and seeking compensation and employment have been unequivocally admitted by the respondent ECL.

12. In the backdrop of the above, this Court has no hesitation to direct that the petitioner shall be entitled to both MMCC as well as compassionate employment for herself or for any of her family members found eligible in terms of the rules.

13. The MMC shall be payable to the petitioner from the date of death of the petitioner's husband. This Court is not inclined to award interest on the MMC from the date of death of her husband, since the writ petition has been filed only in the year 2023.

Interest on the MMC shall be payable from the 1st January 2010.

14. To make it clear, the principal quantum of MMC from the date of death of the petitioner's husband till 31st December 2009 payable to the petitioner shall not carry any interest. The sum arrears of MMC calculated from 01.01.2010 till the date of actual payment shall carry a simple rate of interest @ 8% per annum. The respondents shall pay the aforesaid sum within one month from date.

15. It appears that the petitioner has crossed the age of 45 years. Given the fact that this Court has held above that the petitioner's case for compassionate employment is lawful and sustainable, this Court is of the view that the prayer made across the Bar for compassionate employment in favour of her son, maybe agitated in a separate writ petition. The interim observations made by co-ordinate Bench on August 18, 2023 cannot be deemed as conclusive and are subject to the aforesaid final findings.

16. With the above directions, the writ petition stands disposed of.

(RAJASEKHAR MANTHA, J.)