

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1890/2023
BINA BOURI AND ANR
-VS-
M/S. EASTERN COALFIELDS LTD AND ORS

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 14th March, 2024.

Mr. P. Ghosh, Adv.; Mr. A.K. Datta, Adv.; Ms. S. Sureka, Adv.; Mr. D. Das, Adv., for
petitioner.
Ms. P. banerjee, Adv., for respondents.

The Court: 1. The writ petitioner is the wife of Mantu Bouri who died in harness
in the service of ECL on August 10, 2015.

2. Immediately thereafter, the petitioner sought compassionate employment in
favour of her middle son Ramkrishna Bouri. The said application remained unprocessed
at the end of the respondents. The petitioner was, therefore, deprived of an opportunity
to switch over to the monthly monetary compensation (MMC) within a reasonable time
after making the application for compassionate employment. Such reasonable time is
for the employer to take a decision to accept the request of compassionate employment
or otherwise.

3. On January 12, 2022, the petitioner, due to family disputes, sought to change
the beneficiary of compassionate employment from her middle son Ramkrishna Bouri to

the elder son Rajesh Bouri. The petitioner went on to remind the respondents in this regard from time to time. The ECL, however, finally rejected the application of Rajesh Bouri on March 16, 2022 on the ground of delay.

4. The petitioner now seeks MMC from the next month after the date of death of her husband together with interest.

5. Learned counsel for the ECL submits that while it is true that it does not have any document to indicate or explain the delay in processing the petitioner's first application for compassionate appointment in favour of her middle son Ramkrishna Bouri, the petitioner cannot claim any MMC from the date of death of her husband since she had already applied for compassionate employment for her son at the relevant point of time.

6. Learned counsel for ECL submits that there had been verbal communications with the petitioner and her son to submit documents which has been denied by the learned counsel for the petitioner.

7. The issue of entitlement of MMC under the NCWA 6 had come for consideration before this Bench, Division Benches of this Court and the Supreme Court in several cases.

8. In an unreported decision in the case **Kajola Bouri –vs- Coal India Ltd., being WP/4/2014, dated January 4, 2014**, it was held that clause 9.5.0 of the NCWA casts an obligation on the part of the employer ECL to make available MMC immediately after the death of the employee concerned.

9. The employer is obliged to take the initiative to explain to the widow of the employee, who in most cases is illiterate and unaware the interplay and rights and benefits between compassionate employment and MMC.

10. The relevant paragraph in page 3 of the judgment dated January 7, 2014 is quoted as under:

“It is evident from the provision that there is a financial security which is afforded to the female dependant of a deceased workman and the right crystallises instantaneously upon the death of the workman. The immediacy has per force to be inferred upon recognising the provision to ensure that the femal dependant of the deceased workman or the bereaved family is not washed away by the calamitous loss of the bread-earner. In the event the female dependant opts for employment and it is possible to offer employment, the employment has to be given within reasonable time of the application being made. If the female dependant entitled to apply for an appointment does not apply for the employment within reasonable time after the death of the workman, she would be deemed to have exercised the option to receive compensation which would be payable from the date of death or the month following the date of death of the workman. The right that inheres in the female dependant of the deceased workman gives rise to a corresponding obligation or duty on the part of the coal company to offer and reach the monthly compensation to the female dependant. The right to the compensation is unconditionally immediate and is not dependant on any application for the purpose. Indeed, given the rationale behind the provision, it is the duty of the concerned coal company to both advise the dependant female member of a deceased workman of her rights and guide her to the appropriate optpion. A government company as an employer cannot be heard to say that a distressed family would be deprived of the benefit by reason of any belated application therefor. The appointment sought on compassionate grounds may be declined on account of delay or other cogent grounds; but the monthly compensation has to be paid with effect from the date of death of the workman or the month following the death.”

11. The said judgment was upheld by a Division Bench of this Court on June 25, 2014 in APOT/269/2014.

12. In yet another decision in the case of **Smt. Santa Devi –vs- Eastern Coalfields Ltd., being WPA/2243/2022, decided on April 6, 2022**, it was again held that MMC is liable to be paid to the widow at the prevailing rates immediately after the death of the employee concerned. Clause 9.5.0 of the NCWA was once again addressed. The said decision of the Single Bench came to be upheld by a Division Bench on **February 8, 2024 in MAT/1294/2022**.

13. In another decision dated **January 29, 2024**, a Division Bench of this Court in the case of **Jayshree Mukherjee & Anr. –vs- ECL, being MAT/2007/2022**, once again upheld the right of the widow of the employee to receive MMCC from the date of death of the husband.

14. In yet another decision being **ECL –vs- Smt. Chapala Kora**, a Division Bench of this Court in **MAT/1489/2020** by judgment dated **June 27, 2023**, went on to hold that MMC is payable immediately after the death of the employee concerned in terms of the NCWA. The said decision has been upheld by the Supreme Court in **SLP(Civil)/27524/2023** by order dated **November 28, 2023**.

15. In another decision in the case of **ECL –vs- Dulali Majihan alias Majhan** reported in **AIR Online 2022 Calcutta 243** being **MAT/1007/2022**, decided on **September 2, 2022**, it was held by the Division Bench of this Court, that the delay in process of an application for compassionate employment cannot be a ground for denying MMC to a widow after the death of her husband/ the employee. The court went on to award interest on the arrears of MMC payable after the death of the employee till the date of rejection of the application for compassionate employee at the rate of 6% per annum.

16. The said decision has not been interfered with by the Supreme Court and the **SLP No.34579/2022** of the ECL was dismissed on **January 3, 2023**.

17. The same position was reiterated and followed by another Division Bench of this Court in **MAT/915/2023 (ECL –vs- Kosmi Devi Bhuiya & Ors.)** delivered on **February 21, 2024**, and the decision in **Dulali Majihan (supra)** was followed.

18. In the next decision also following the aforesaid line of cases, MMC was again ordered to be paid to the widow from the date after the death of the employee

concerned together with interest at the rate of 6% per annum on February 28, 2024 in MT/1385/2023 (ECL –vs- Usha Kumari Bhuiya alia Bhunia).

19. This Court had in the case of **Smt. Murmu –vs- ECL & Ors.**, being **WPO/1056/2023** on **January 30, 2024** summarised the principles in the decisions of the Supreme Court and those followed above holding that MMC would become payable being a beneficial piece of legislation after the death of the employee together with interest.

- “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.”

20. Learned counsel for the ECL would rely upon the decision in the case of **ECL –vs- Dukni Bhuiya** being **Civil Appeal No.6370/2023**, decided on **October 13, 2023**. The Court having regard to the fact that the petitioner approached the Court after 21 years of death of her husband for MMC had allowed the MMC three years prior to the filing of the writ petition. The said decision has been distinguished by a Division Bench of this Court in the case of **Kosmi Devi (supra)**.

21. The decision of the Supreme Court in **Dukni Bhuiya (supra)** was referred to and considered in the **Chapala Kora (supra)** decision of the Supreme Court, notwithstanding whereof in **Chapala Kora (supra)**, the decision of the Division Bench of the High Court was not interfered with.

22. It follows from the above that unless there is a deliberate and willful failure on the part of the widow of the employee, in approaching the Court to seek remedy and certain additional facts demonstrate wilful negligence and corresponding vigilance on the part of the employer, MMC would normally be ordered from the date of death after the death of the employee concerned.

23. Coming to the facts of the instant case, this Court is of the view that the petitioner had indeed received other terminal benefits on account of the death of her husband within time. She had consciously applied for compassionate employment in favour of her middle son also immediately after the death of her husband. The respondents kept the applications pending without any response. This Court is unable to countenance the argument that oral communications were made to the petitioner and her son to supply documents.

24. It was only in January 2022 that the petitioner changed the application for compassionate employment in favour of her middle son Ramkrishna Bouri to her elder son Rajesh Bouri.

25. In the facts of the cases, this Court is of the view that the petitioner was consciously pursuing an application for compassionate employment. Rajesh Bouri's application was rejected shortly within two months thereof of it having been made. The respondents must have realised that this was an opportune moment to cover up their failure to process the application of Ramkrishna Bouri in time.

26. In the peculiar facts and circumstances of the case, this Court directs the ECL to pay the MMC to the petitioner from September 1, 2015 month to month at the applicable rate till date and continue to pay at the current rate to the petitioner till her entitlement under NCWA.

27. The ECL shall pay interest on accrued arrears of MMC from January 2022 till February 2024 at the rate of 7% per annum within a period of one month from date. In default of payment of arrears and interest as directed hereinabove, the rate of interest shall increase to 9% per annum.

28. The writ petition accordingly allowed and disposed of.

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

(RAJASEKHAR MANTHA, J.)

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