



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8110 OF 2018

- 1) Smt. Suman wd/o Namdeo Waghmare,
Aged about 56 years, Occupation – Nil,
Education – Nil.

- 2) Dharmendra s/o Late Shri Namdeo
Waghmare, Aged about 38 years,
Occupation – Temporary Work,
Education – 7th Pass,
Both residents of Quarter No.19/2,
Ward No.2, Bajaj Colony, WCL,
At & Post – Wathoda, Tahsil – Saoner,
District Nagpur – 441 107.

.... PETITIONERS

VERSUS

The Superintendent of Mines And
Mine Manager, Western Coalfields Limited,
(A Government of India Undertaking)
Saoner Mine No.3, At and Post Saoner,
Tahsil – Saoner, Nagpur – 441 102,
District Nagpur.

.... RESPONDENT

Mr. D.S. Thakur, Counsel for the petitioners,
Mr. A.M. Ghare, Counsel for the respondent.

CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.
DATED : 8th APRIL, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Rule.** Rule is made returnable forthwith.

2. The petitioners being disgruntled by the orders dated 20-05-2016, 13-02-2017, and 26-02-2017 issued by the respondent, thereby rejecting the claim of petitioner No.2 for grant of employment on compassionate ground, have approached this Court.

3. Succinctly, the facts of the case are as under:

- (a) The father of petitioner No.2 Shri Namdeorao Raghunath Waghmare was a permanent employee of the respondent coal establishment. While he was in service unfortunately died on 13-04-2015 leaving behind his widow-Suman, two sons, and one daughter.
- (b) Petitioner No. 1-Widow is an illiterate lady. Her two sons Jitendra and Dharmendra completed education up to 9th Standard. They are socially, economically, and educationally backward. Due to illiteracy and lack of knowledge, the petitioners were not aware of the provisions of the law as well as the guidelines of the respondent company in respect of appointment on compassionate ground.
- (c) After the demise of Namdeo, on 22-06-2015 petitioner No.1 moved an application for employment on compassionate ground for her elder son Jitendra. Said application was rejected

on the ground that he was 37 years of age. Therefore, immediately on 28-01-2016 petitioner No.1 applied for employment on compassionate ground for her younger son Dharmendra i.e. petitioner No.2. At the time of death of Namdeo, his age was 34 years 10 months and 3 days i.e. below the age of 35 years. However, the said application came to be rejected vide order dated 20-05-2016 on the ground that he is over the age of 35 years and, therefore, not entitled to employment.

- (d) Then on 25-01-2017 the petitioners again moved an application for a grant of employment on compassionate ground. Said application was rejected vide communication dated 13-2-2017. Also, the petitioners encored an application on 18-02-2017 for a grant of employment on compassionate ground. However, the said application was rejected on 26-02-2017 mentioning the same reason. Therefore, the petitioners have preferred this petition.

4. Mr. D.S. Thakur, learned Counsel for the petitioners, has vehemently contended that the petitioners were illiterate and not aware of the provisions of the National Coal Wage Agreement-IX (for short "NCWA"). The respondent Coal Company Management has

neither offered any assistance nor given proper advice to the petitioners. Due to a lack of knowledge, they could not move an application in time i.e. immediately after the death of Namdeo. However, the learned Counsel has drawn our attention to the fact that at the time of the death of Namdeo, Jitendra was below the age of 35 years. As such, he submitted that, as per the guidelines of the *NCWA*, Jitendra was eligible to apply for employment on compassionate ground. Despite knowing the *NCWA*'s provisions, the respondent deliberately and purposefully did not accept the application of Jitendra. Hence, he submitted that petitioner No.2 is entitled to employment on compassionate ground. Secondly, the learned Counsel has canvassed that the object and purpose of compassionate employment is to enable the family of the deceased employee to tide over the sudden crises due to the death of the bread-earner which has left the family in penury and without any means of livelihood. In such an eventuality, it was incumbent on the respondent company to make aware of the provisions of the *NCWA* Scheme to the dependents of the deceased. Due to a lack of knowledge by the petitioners and willful non-providing information about the scheme to the petitioners, the respondent has deprived them of their rights. Therefore, he has urged that the petitioners are eligible for employment on compassionate ground.

5. The learned Counsel has further propounded that, the facts in the case of L.P.A. No.307 of 2018 in *Fulmatia Devi and others*. (*cited infra*) are similar to the facts in the case at hand. In the said case after considering the provisions of the NCWA, the Court has held that being the benevolent provision, the petitioner therein is entitled to grant of compassionate appointment and passed the order accordingly. The said order was challenged by Central Coalfields Limited before the Apex Court. The Apex Court has summarily dismissed the said Special Leave Petition. Therefore, he submitted that in view of the dictum laid down in the above-cited authority, the petitioners are entitled to the relief as claimed. Hence, prayed for setting aside the impugned orders.

6. To buttress his submissions, he further relied upon the following judgments.

- (a) M/s. Eastern Coalfields Ltd. v. Dewanti Kumari and Ors., 2016(2) LLJ 671.
- (b) L.P.A. No. 307 of 2018 (The Central Coalfields Limited and others v. Fulmatia Devi w/o Late Atwa Oraon and others) decided by the Division Bench of the High Court of Jharkhand at Ranchi.
- (c) Petition for Special Leave to Appeal No. 12648/2021 (The Central Coalfields Limited and another v. Fulmatia Devi and others) decided by the Apex Court on 23-8-2021.
- (d) Syed Khadim Hussain v. State of Bihar and others (2006) 9 SCC 195.

7. *As against above*, Mr. A.M. Ghare, learned Counsel for the respondent has strenuously argued that the petition is not maintainable as the recitals in the NCWA is a Bipartite Agreement. Also, the challenge of an action arising out of the terms of the settlement would

lie elsewhere and not before this Court in writ jurisdiction. Alternatively, it is propounded that petitioner No.2 was more than 35 years old. Therefore, he is not entitled to employment on compassionate ground. As per Clause 9.3 of the *NCWA*, the petitioners have crossed the age of 35 years. The belated approach disentitled the petitioners from any discretionary consideration and, therefore, were not eligible for the relief as claimed. Lastly, he submitted that the petition is bad in the eyes of the law for non-joinder of necessary parties. Hence, he has urged for the rejection of the petition.

8. We have appreciated the submissions of both parties. We have also given our anxious consideration of the points raised in the matter. We have also gone through the provisions of the *NCWA* and authorities relied on by the learned Counsel for the petitioners.

9. It is pertinent to note that vide orders dated 06-12-2022 and 17-01-2023 this Court has formulated the following important questions in the matter.

- (i) Whether the date of death of the employee is to be taken into consideration while granting benefits under clause 9.3.4 of the *NCWA* or whether the rights could be determined on the date when the application is made by the dependents for seeking such benefits.

- (ii) Whether is it the duty of the employer to communicate to the dependents of the employee immediately that certain benefits are available under the scheme for a compassionate appointment or similar schemes which are welfare measures brought in place with the salutary purpose of providing succor to distressed families.
- (iii) Whether the employer has any discretion in the matter.
- (iv) Whether the employer can refuse every case on the ground of want of power to relax the age limit, which is prescribed in the interest of the employee.

10. While considering the above questions, we are sensitive to the fact that this is a case in which the petitioners are seeking employment on compassionate ground as the husband of petitioner No.1/father of petitioner No.2 died while he was in service. Therefore, it is necessary to take into consideration the object underlying the provision for the grant of employment on compassionate ground is to enable the family of the deceased to tide over the sudden crises due to the death of the bread-earner which has left the family in penury and without any means of livelihood. *Likewise*, out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving a gainful appointment to one of the dependents of the deceased who may be eligible for such appointment.

11. While determining the legality of the above questions, we would like to refer to the relevant provisions of the memorandum of agreement i.e. NCWA Chapter-IX which deals with '***Social Security***'.

- a) Clause 9.1.0 deals with the '*Life Cover Scheme*.'
- b) Clause 9.2.0 deals with '*Workmen's Compensation Benefits*'.
- c) Clause 9.3.0 deals with the '***Provision of Employment to dependents***.'
- d) Clause 9.3.1 is the relevant provision reads thus:

"9.3.1. - Employment would be provided to one dependent of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows :

9.3.2 - Employment to one dependent of the worker who dies while in service

In so far as female dependents are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0

9.3.3 - The dependent for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependent is available for employment, brother, widowed daughter/widowed daughter-in-law, or son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased may be considered to be the dependent of the deceased.

9.3.4 - The dependents to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of a female spouse would be 45 years as given in Clause 9.5.0. In so far as a male spouse is concerned, there would be no age limit regarding provision of employment."

12. Bare perusal of the aforesaid clauses, it is clear that in case an employee dies in harness either in an accident or for any other reason,

the dependents of the said deceased employee are entitled to employment on compassionate ground from the date of death of the employee and not from the date of application for compassionate appointment. It is pertinent to note that Clause **9.3.4** does not disclose which date is to be considered to calculate the age of the dependent while considering his employment claim rather it simply depicts that on the death of an employee, employment has to be offered to the person who has not crossed the age of 35 years.

13. Apart from the above, let it be noted that the agreement has a statutory fervor as it is either under Section 18(1) or 18(3) of the Industrial Disputes Act and it is a benevolent or beneficial provision. In such a situation, when the goal is benevolent, when the provision is beneficial, any other interpretation would destroy the very foundation of such provision. In such an eventuality, it is incumbent on the employer to make aware of the beneficial legislation to the dependents of the deceased.

14. Clause **9.5.0** deals with employment/monetary compensation to female dependents of workmen, who die while in service. The said clause/provision itself clarifies that on the date of death of the employee, his/her dependents are entitled to employment or compensation. The said provision itself denotes that on the date of

death of the employee, the right accrues in favour of the dependents of the deceased to claim employment or compensation. The combined reading of the aforesaid provisions/clauses itself shows that on the date of death of the employee his/her dependents are eligible to claim the employment or compensation.

15. It further reveals from the record that Namdeo died on 13-4-2015 while in service. Undisputedly, after the death of Namdeo, the respondent did not inform the dependents of the deceased about the beneficial scheme of compassionate appointment or compensation. In fact, it was incumbent on the respondent to make them aware of the beneficial legislation of the *NCWA* as per **Chapter-IX** titled '**Social Security**', but they failed to discharge their duties. In reply, the respondent has not averred that they have been informed about the beneficial scheme of compassionate appointment to the dependents of the deceased. It further seems that immediately after the death of Namdeo, on 22-06-2015 petitioner No.1 i.e. widow applied for compassionate employment of her elder son Jitendra. However, said application was rejected by the respondent by communication/order dated 4/10-01-2016 on the ground that he has completed 37 years of age. In the said communication/order the respondent has not stated that Jitendra has crossed the age of 35 years as prescribed in Clause 9.3.4 of the *NCWA*. Therefore, he was not entitled to claim

employment on compassionate ground. That being so, the petitioners were unaware of the criteria to apply for employment on compassionate ground to the respondent. As a sequel of the above, petitioner No.1 immediately after receipt of the communication, on 24-01-2016 applied for employment on compassionate ground of her younger son Dharmendra i.e. petitioner No.2, but the said application was also rejected on the ground that he has crossed the age of 35 years.

16. It is to be noted that Chapter IX of the *NCWA* is a benevolent or beneficial legislation for the social security of the family of the deceased employee. The basic features of the said Chapter and other clauses stated in the *NCWA* are meant for the welfare of the employees. The reason for making such a benevolent scheme by the State of Public Sector undertaking is to see that the dependents of the deceased are not deprived of the means of livelihood or their rights to seek compassionate appointment. *Merely* incorporating clauses, and conditions and making rules to the benefit of the employees would not be beneficial to the employees or their dependents, if they are not being made aware of them, as most of them are illiterate. In such an eventuality, it goes in vain as the same is not helpful to them. Thus, after the death of the deceased employee, it was the duty of the employer/respondent to make aware of the provisions of Chapter-IX, more particularly Clauses 9.3.3 and 9.3.4 to the dependents of the

deceased employee. So as to apply in time for getting employment on compassionate ground. It has also come on record that petitioner No.1 is illiterate and petitioner No.2 is educated up to 9th Standard and not aware of the provisions/clauses of the NCWA and, therefore, he could not apply for employment immediately.

17. In the case of *Fulmatia Devi and others* (cited *supra*) the High Court of Jharkhand at Ranchi after considering the provisions of Clauses **9.3.0** to **9.5.0** observed that “*in case a person was 35 years of age or less than 35 years of age on the date of death of the employee, then even if he had crossed the age barrier of 35 years on the date of application but of 35 years or less in age on the date when the period of limitation of 18 months commenced on account of the death of worker, in such case the benefit would again have to be given to him.*” As such, allowed the said petition. Said judgment was challenged by the Central Coalfields Limited before the Apex Court in a Special Leave Petition. The said Special Leave Petition was dismissed summarily observing that “*We do not find any ground to interfere with the said order.*” The observations made in the afore-cited judgment are squarely applicable to the case at hand.

18. Moreover, Clause **9.5.0** of NCWA must be read to mean that compensation and employment are to be available on the date of death of the employee. Besides, when the goal is benevolent, when the

provisions are beneficial, any other interpretation would destroy the very foundation of such provisions.

19. Having considered the aforesaid discussion and position of law, we are of the opinion that on the date of death of the employee cause of action accrues to claim the rights and, therefore, the date of death of the employee is to be taken into consideration while granting benefit under the said clause instead of on the date when the application was made by the dependents of the said employee. *Accordingly, we answer question No.1.*

20. With regard to question No.2, in our opinion, the NCWA Scheme of which Chapter-IX deals with '**Social Security**' means the objects underlying the said provision are benevolent or beneficial. Likewise, the purpose of providing an appointment on compassionate ground is to mitigate the hardship due to the death of bread earners in the family. Such an appointment should, therefore, be provided immediately to redeem the family in distress. On failure to do so, the object of the scheme of compassion would be frustrated. Therefore, in our opinion, it is the bounden duty of every employer to communicate to the dependents of the deceased employee about their rights under the welfare scheme. *Accordingly, we answer question No.2 in the affirmative.*

21. Having regard to the benevolent object of the scheme as discussed above, in our considered view, the employer has no discretion to refuse the claim in the afore-stated facts or it would not be proper on the part of the employer to refuse the claim on the ground of want of power to relax the age limit prescribed in the scheme. *Rather*, the employer has to take into consideration the benevolent aim and object of the scheme while determining the claim of the petitioners. As a result, we answer questions No. 3 and 4 in the Negative.

22. *Consequently*, we must express our disapproval of how the respondent WCL has behaved in this pitiable case and denied the rights of the parties. It emerged from the orders that only on the ground of crossover of 35 years of age by petitioner No.2, his application for employment on compassionate ground was rejected. In such an eventuality, we are unable to satisfy ourselves as to how petitioner No. 2 was deprived of the beneficial object of the scheme that is not entitled to claim compassionate appointment. That being so, the orders impugned are liable to be set aside as on the date of death of the deceased employee i.e. on the date of accrual of cause of action, petitioner No.2 was eligible and entitled to claim the benefit under the Scheme. Therefore, we do not find any substance in the objection raised by the respondent that the petition is not maintainable as a remedy is elsewhere lies or petitioner No.2 is age barred.

23. In the aforesaid background, we deem it appropriate to allow the petition.

24. The petition stands allowed. The impugned orders dated 20-5-2016 (Annexure-2), 13-2-2017 (Annexure-3), and 26-2-2017 (Annexure-5) are hereby quashed and set aside. The respondent is directed to grant employment to petitioner No.2 on compassionate ground within a period of eight weeks from the date of production of a copy of this judgment.

25. Rule is made absolute in the aforesaid terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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