

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 1744 of 2025

Sri Shyamapada Bouri & Anr.

Vs.

Coal India Limited & Ors.

For the petitioners	:	Mr. Kedareshwar Chakraborty, Advocate Mr. Saptarshi Chakraborty, Advocate Mr. Tirupati Mukherjee, Advocate
For respondent nos. 2 to 6	:	Mr. Manik Das, Advocate
Heard on	:	June 26, 2025
Judgment on :	:	June 26, 2025

Aniruddha Roy, J.

1. This is a hearing matter upon exchange of affidavits. The urgency is that the petitioner shall retire from his service on **September 24, 2025** and the issue in this writ petition may have a significant bearing on his retirement.
2. On the prayer of Mr. Manik Das, learned counsel appearing for respondent nos. 2 to 6 time to file affidavit-in-opposition stands extended till today. The affidavit-in-opposition filed in Court today, is taken on record.

3. Identically affidavit-in-reply to the affidavit-in-opposition filed on behalf of the petitioners in Court today, is also taken on record.
4. Rest of the respondents are not represented.

Facts :

5. The first petitioner is still in employment of the relevant Coal Company who shall retire on **September 24, 2025**. The second petitioner is the son of the first petitioner. The petitioners claim that the first petitioner has been permanently disabled and is not in a position to carry out his employment or to join his duty. In such circumstance, the first petitioner claims compassionate appointment in favour of the second petitioner/son in his place.

Submissions :

6. Mr. Kedareshwar Chakraborty, learned counsel appearing for the petitioners referring to **Clauses 9.3.0** which is the Provision of Employment of Dependant of the employees of the Coal Company from **Chapter IX (Social Security)** of the **Memorandum of Agreement** dated **October 10, 2017, annexure R-2** at **page 15** to the affidavit-in-opposition, submits that the son being within the age limit is eligible to receive compassionate appointment as the dependent of the father employee, who according to the petitioners is a permanently disable employee.

7. Referring to the various documents from the petition, *inter alia*, a letter dated **April 29, 2016** at **page 23** to the writ petition and the subsequent series of correspondences appended to the writ petition, learned counsel for the petitioners submits that, from time to time since 2016 the first petitioner expressed before his employer that his health condition is such he had become permanently disabled and cannot work. The documents appended to the writ petition show that on repeated occasions first petitioner was examined by the medical experts of the employer and every time he was reported to be fit to join work but continue with the treatment.

8. Learned counsel for the petitioners submits that, the parallel finding on the one hand the petitioner is fit to work and on the other hand he shall have to continue with the treatment, cannot run simultaneously. According to him, this logically means that the petitioner is permanently disabled as he has to undergo treatment continuously and hence the said Clause 9.3.0 of Wage Agreement is attracted for granting a compassionate appointment to the son of the first petitioner. He then refers to a communication of the Coal Company/employer dated **September 21, 2018, annexure P-6** at **page 30** to the writ petition in support of his submission, as recorded above. Learned counsel then refers to the documents being **annexure R-9 and annexure R-10** at **pages 39 and 40** from the affidavit-in-opposition and submits that, the petitioner upon being examined by

the relevant medical board has been advised and recommended for **Special Leave (Khoraki)** for a period of **three months** with effect from **February 7, 2024** and to continue with the treatment. The document dated **February 24, 2024** at **page 40** to the affidavit-in-opposition has also advised the petitioner to continue Special Leave as per Rule and to continue treatment and physiotherapy and also to re-appear before the board within six months. The petitioners further submit that, the first petitioner has also been assessed that he has been suffering from Locomotor disability, though nothing has been disclosed on record in support of such contention.

9. Mr. Manik Das, learned counsel appearing for the relevant Coal Company employer at the outset submits that, the petitioner is going to retire on **September 24, 2025** at the age of **60**. Therefore, when the writ petition has been filed he was already above **58 years** and similarly when the application dated **January 22, 2024** at **page 37** to the affidavit-in-opposition was submitted he was above **58 years** old. He refers to **Sub-clause (ii) to Clause 9.4.0** from the wage agreement **page 30** to the affidavit-in-opposition and submits that, in case of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit for compassionate appointment if he is up to the age of **58 years**.
10. Mr. Das, learned counsel for the Coal Company then submits that, the pre-condition to avail of the benefit under Clause 9.3.0 of the Wage

Agreement is, the employee must have lost his employment. In the instant case it would be evident from records of 2016 medical checkup that all material time till the last report dated **February 14, 2024** and **May 24, 2024, annexure R-9** and **R-10** at pages **39 and 40** to the affidavit-in-opposition, the reports suggest and recommended Special Leave for the petitioner for a period of three months and to continue treatment but never suggested the permanent physical disablement of the petitioner. The petitioner is still in employment and has been receiving his remuneration with Special Leave according to law. The petitioner has not lost his employment.

11. In the light of the above, learned counsel for the Coal Company submits that this writ petition is devoid of any merit and should be dismissed.

Decision :

12. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, during the period between 2016 to 2018, as would be evident from pages 24 to 30 to the writ petition, at all material time the petitioner was declared by the relevant medical experts of the employer upon being examined to join his duty as he was found to be fit but he was advised to continue with the treatment. None of the medical report during the said period suggested any permanent disablement of the petitioner for which he could have been classified as a permanent disabled employee.

13. In so far as the contention of the petitioners that, the first petitioner one hand was declared fit and on the other hand he was advised to continue with the treatment logically pre-supposes that the first petitioner is permanently disabled, is not accepted by this Court. The report of the medical experts of all the contemporaneous period, during the said period between 2016 to 2018, clearly mentioned that the first petitioner was found to be fit but to continue with the treatment. This can never give rise to any presumption that the first petitioner was classified as permanently disabled employee or he can be considered as such logically. Thus, this contention of the petitioners stands **rejected**.
14. Even the subsequent medical reports of 2024 at pages 39 and 40 to the affidavit-in-opposition recommended for Special Leave for a period of three months with effect from **February 7, 2024**, such period has already elapsed and to continue with treatment.
15. The provision for compassionate appointment as enumerated under Clause 9.3.0 of the Wage Agreement is a welfare policy of the State/the employer. It is true that a welfare policy has to be construed and read in a manner as liberal as possible in favour of the beneficiaries of the policy, but it is equally true that the same has to be read and construed in its true spirit and sense. The manner of reading of the policy, which may amount to misuse and/or wrong

application/interpretation of such welfare policy, which is contrary to its provisions and meaning, shall strictly be forbidden.

16. Compassionate appointment cannot be claimed as of right, it is a welfare policy. By virtue of compassionate appointment, employment cannot be generated or elongated for a family. Compassionate appointment shall be granted to the beneficiaries strictly in terms of the policy to a dependent of the employee who has suffered a permanent disablement or untimely death during employment, so that the family of the employee can survive and meet the immediate financial crisis for survival. When there is a policy for compassionate appointment, the same should be applied within its meaning and scope.
17. The law is also well settled that, Court cannot sit in appeal on a decision and opinion of experts/medical experts neither the Court can substitute an expert's opinion. The Court seldom interferes with an expert's opinion unless an *ex facie mala fide*, arbitrariness or inconsistency is there on the face of the expert's opinion. The instant writ petition is not such a case. In the instant case, the opinion of the medical experts all along was consistent and final with the finding the petitioner to be fit to work but to continue with further treatment and the last report of 2024 has suggested the petitioner for a period of Special Leave (Khoraki) and to continue with further treatment. Thus, petitioner is not to be considered as a permanently disabled employee.

18. In as much as, during 2016 and 2017 when the petitioner was below 58 years he was found to be fit but to continue with further treatment and never was found to be permanently disabled. In the year 2024 when the petitioner has further applied he was then **above 58 years**, though also not found to be permanently disabled.
19. In view of the foregoing discussions and reasons, this Court is of the firm and considered view that, the first petitioner is not eligible to get benefit of **Clause 9.3.0** of the Wage Agreement.
20. The claim of the petitioners for compassionate appointment stands **rejected**.
21. Resultantly, this writ petition is found to be devoid of any merit.
22. Accordingly, this writ petition **W.P.A. 1744 of 2025** stands **dismissed**, without any order as to costs.
23. However, dismissal of this writ petition shall not preclude the **first petitioner** to avail of further treatment by availing all the facilities to which he is entitled to in law.
24. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)