

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

**MAT 332 of 2024
IA No. CAN 2 of 2024

DIPALI MITRA & ORS.
Vs.
COAL INDIA LIMITED & ORS.**

Appearance:

For the Appellants	: Mr. Partha Ghosh, Adv. Mr. Amal Kumar Datta, Adv. Ms. Simran Sureka, Adv. Mr. Debashis Das, Adv. Mr. Bratin Suin, Adv.
For the Respondent	: Mr. Shiv Shankar Banerjee, Adv. Ms. Sanchita Barman Roy, Adv.
Heard On	: 23.07.2025
Judgment On	: 28.07.2025

Sujoy Paul, J.:

1. This *intra* Court appeal takes exception to the order dated 17th September, 2023 passed in WPA 14349 of 2018.
2. The admitted facts between the parties are that Shri Shib Das Mitra an employee of ECL died in harness on 26th May, 2010 leaving behind

petitioner nos. 1, 2, 3 and 4 who are deceased's wife, son-in-law, married daughter and son respectively. The deceased employee's son namely, Suman Mitra resides out of country and petitioner nos. 2 and 3 were married on 11.05.2004.

3. The petitioner nos. 2 and 3 claimed compassionate appointment as per Chapter IX of National Coal Wage Agreement from the employer. Respondent dismissed their application by order dated 29th January, 2015. Assailing this order, WP 306 of 2015 was filed by the petitioners. The said petition was decided by this Court on 10th March, 2017. This Court while setting aside the impugned order dated 29th January, 2015 directed the Chairman, Coal India Ltd. to take a decision on the issue within 3 months from the date of communication of the order. A review application no. RVWO 20 of 2017 was filed which came to be disposed of by order dated 1st December, 2017. The only modification was that the claim of petitioners needs to be considered by the Chairman of Eastern Coal Field Ltd. (ECL).
4. In turn, a 'reasoned order' dated 21.02.2018 was passed whereby the claim of all the petitioners was rejected by the ECL. The petitioners unsuccessfully challenged it by preferring an appeal dated 03.03.2018 although admittedly there exists no express provision of filing appeal.
5. The instant WP 1434 of 2018 was filed assailing the reasoned order dated 21.02.2018. The learned Single Judge after hearing both the parties issued orders and directions and opined that in the rejection

order dated 21.02.2018 there exists no infirmity which warrants interference by the Court. However, the Clause 9.3.3 of NCWA-VI was declared as *ultra vires*. Interestingly, while declaring the provision as *ultra vires*, the Court in specific directed that the respondents shall not discriminate married women and treat them under the first category of dependents *in future*.

Contention of appellant:

6. Learned counsel for the appellant submits that offending Clause 9.3.3 of NCWA-VI which was coming in his way was rightly declared as *ultra vires* by learned Single Judge. However, learned Single Judge erred in giving it a prospective effect. In all fairness, the appellants who have fought a long drawn battle are entitled to get the fruits of the litigation.
7. To elaborate, learned counsel for the appellant urged that in the first round of litigation, this Court made it clear that married daughter cannot be discriminated and in this view of the matter, the claim of married daughter was required to be considered in proper perspective. It was to be ascertained whether the daughter and/or the son-in-law are wholly dependent on the deceased for their livelihood and had no significant income of their own. It hardly matters whether daughter is married or unmarried because married daughter can also be part of deceased's family and a dependent on his income.
8. It was further argued that the appellants were dependent of the deceased employee and were residing with the deceased employee.

9. Criticizing the rejection order dated 21.02.2018, learned counsel for the appellant submits that there is no independent application of mind by the learned authority on the claim of the married daughter. The discussion in the impugned order is related to the claim of widow and son-in-law. Thus, the directions issued in the first round of litigation are not complied with. In this view of the matter, the learned Single Judge was not justified in affirming the rejection order dated 21.02.2018.
10. In support of his submission, the learned counsel for the appellant placed reliance on a recent Division Bench judgment of this Court in ***Sukumoni Hembram vs. Union of India and Others*** reported in **2024 SCC Online Cal 7361** and the order of Supreme Court whereby SLP filed by Coal India Ltd. against this order was dismissed. Further reliance is placed on the judgment of the Supreme Court in case of ***Subhadra vs. Ministry of Coal*** reported in **(2018) 11 SCC 201**. Lastly reliance is placed on **(2018) SCC OnLine Jharkhand 918, CCL vs. Hemanti Devi**. On the basis of these judgments, it is urged that the marital status of daughter will not deprive her from right of consideration for compassionate appointment as per relevant Clauses of the NCWA. Once offending Clause of NCWA is declared as *ultra vires*, there exists no justification in not extending the benefit arising out of this Clause to the appellants. The married daughter in the instant case is entitled for compassionate appointment. Heavy reliance is placed on the judgment of

Subhadra (supra) to contend that if female dependant opts for employment, there is no further discretion left to the employer, unless she is otherwise ineligible. The contention is based on Para 9.5.0 (iii) of NCWA. For the same purpose, the judgment of this Court in **Sukumoni (supra)** and judgment of Jharkhand High Court in **CCL (Supra)** were cited.

Contention of respondents:

11. Learned Counsel for respondent supported the impugned order of learned Single Judge and fairly urged that the employer has not filed any further proceeding assailing the order of learned Single Judge whereby Clause 9.3.3 of NCWA-VI is declared as unconstitutional. Sri Banerjee contended that the rejection order dated 21st February, 2018 is a reasoned and speaking order. The relevant factors were duly considered by the competent authority and he rightly came to hold that the petitioner Nos. 2 and 3 are not entitled to get compassionate appointment. The widow of deceased was admittedly, aged more than 45 years of age and, therefore, as per the NCWA-IV she was not entitled to get compassionate appointment. At best, she is entitled to get monetary compensation but, as recorded in Para 6.2 of rejection order dated 21.2.2018, she refused to accept monetary compensation in lieu of employment. The son of deceased who is second direct dependent is living abroad and informed that he has no interest for employment in ECL. Thus, both the direct dependents were reluctant to accept the

compensation/employment arising out of the death of the employee. It is strenuously contended that even if one Clause of NCWA is struck down by this Court, fact remains that as per remaining provisions for grant of compassionate appointment, one has to be the dependent on the deceased employee on the date of his death. In the instant case, neither daughter nor son-in-law could produce any material whatsoever to show that they were residing with the deceased and were dependent on him. Ample opportunity were granted to the petitioner to file documents but they could not satisfy the requirement relating to dependency on the deceased employee. In addition, Mr. Banerjee, learned Counsel for the respondents submits that the impugned rejection order dated 21st February, 2018 is elaborate and makes it clear that petitioner no. 3 having an agency of LIC and also has income from paternal property. He is also a member of CMS Club for the year 2016-17 of Life Insurance Corporation of India. The competent authority rightly opined that widow and son-in-law have not approached him with clean hands and did not produce unclenched evidence to satisfy the provisions of compassionate appointment.

12. The parties confined their arguments to the extent indicated above. We have heard the parties and perused the record.

Findings:

13. Before dealing with rival contention raised at the bar, it is apposite to refer the relevant portion of the order passed in WP No.360 of 2015, it reads thus:-

*“The principles, relevant to this, enunciated by these decisions are these. It does not matter whether a daughter is married or unmarried **but if a married daughter was part of the deceased’s family and was dependent on his income for his livelihood she had to be taken as his dependent. If the son-in-law was part of the father-in-law’s family, had no income of his own and was dependent on his income for his livelihood, he in the absence of a eligible claimant, would also be considered as a dependent for the purpose of obtaining compassionate appointment.***

In this case certain factual issues have to be investigated before the job can be offered to the daughter or son-in-law.

First, the son has to be contacted and it has to be ruled out that he is not interested in the appointment.

*Secondly, the income of the married daughter including the income of her husband has to be investigated. **It is to be ascertained whether the daughter and/or the son-in-law were wholly dependent on the deceased for their livelihood and had no significant income of their own.***

On the basis of the findings arrived at on these facts, the request of the second and third petitioners for employment had to be considered.

Unfortunately, the impugned decision dated 29th January, 2015 does not make any analysis of these factors.

For these reasons, the said decision is set aside with a direction upon the Chairman, Coal India Ltd. to take a decision on this issue because this issue would govern the fate of many more person, at present and in future, by giving a short hearing to the petitioner or his lawyer not exceeding 30 minutes and by passing a reasoned order within three months of communication of this order following the above decisions of this Court and the observation of this Court made above.”
(Emphasis added)

14. A plain reading of this order makes it clear that marital status of daughter is immaterial for the purpose of consideration for grant of compassionate appointment. In other words, the claim of the married daughter cannot be rejected on the ground that she has already been married. However, this Court in clear terms opined that although marital status does not matter, what matters is whether married daughter was part of deceased's family and was dependent on the income of deceased for livelihood. Same principle is applicable to son-in-law who is part of father-in-laws' family and had no income of his own and was dependent on the father-in-law. Thus, we find substance in the arguments of Sri Banerjee, learned Counsel for the respondents that despite the fact that marital status is not the decisive factors, what was important is to established by the claimants is the dependency on the deceased employee before his death.

15. We find substance in this argument for yet another reason. Apart from the categorical finding given in the first round by this Court and reproduced hereinbefore, the provisions of NCWA are very clear. The relevant portion is reproduced for ready reference:-

*“9.3.0 Provision of **Employment of Dependant***

*9.3.1 Employment would be provided to one **dependant of workers** who are disable permanently and also those who die while in service. The provision will be implemented as follows.*

*9.3.2 Employment to one **dependant** of the worker who dies while in service. In so far as female dependants are*

concerned, their employment/payment of monetary compensation would be governed by para 9.5.0

9.3.3 The **dependant** for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant 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 dependant of the deceased.

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

9.5.0 Employment/Monetary compensation to female **dependant**. Provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

*In case the female **dependant** is above 45 years of age she will be entitled only to monetary compensation and not to employment.”*

16.A microscopic reading of the above provisions makes it clear like cloudless sky that the provision of employment is made for “dependents”. Although Clause 9.3.3 is declared as unconstitutional, the other Clauses namely, 9.3.0, 9.3.1, 9.3.2, 9.3.4 and 9.5.0 are still part of NCWA. All these provisions, in no uncertain terms, make it clear that the intention was to provide employment/compensation to ‘dependents’. Thus, petitioners were required to establish that they were dependents of the deceased employee on the date of his death.

17. So far, petitioner no. 1 widow is concerned, admittedly, she was dependent of the deceased and is entitled to get monetary compensation but it has been declined by her. Since she crossed the age of 45 years, admittedly, she was not entitled to get the employment. So far, impugned rejection order dated 21.2.2018 is concerned, the competent authority has considered the relevant aspects and recorded that:-

“I have gone through aforesaid Order(s) of the Hon’ble Calcutta High Court, employment file, material on record, other connected documents, rule of the Company in this context, submission of the petitioners and independently applied my mind and observe that”

7.1 In the deposition before the undersigned, Smt. Depali Mitra stated that her daughter married to Shri Partha Pratim Baksi who is a non-matriculate of village Khandra. Her daughter is a Madhyamik pass from Gandhi Memorial Girls School, Raniganj, and her daughter got married in 2004. Her son Shri Suman Mitra is presently posted in Sweden after his Ph.D. Shri Partha Pratim Baksi stated that he does petty jobs and occasionally visits his mother at Ukhra. They could not produce any identity card on the date of hearing i.e. on 29.0-1.2018 and sought 15 days time to submit the same. On 18.02.2018, the documents submitted by Smt. Dipali Mitra and Shri Partha Pratim Baksi was forwarded by Area Personnel Manager, Kunustoria Area, vide letter No. A-KNT/P&IR/25(1)/4931.

7.2 From the voter card submitted by the petitioners, it is found that:

(a) In the Voter Card (issued on 03.01.2018) produced by Shri Partha Pratim Baksi having No. WB/38/263/510664, his address is written as BAKSI, THAKUR, DATT, NAG, NANDI, GHOSH, GHATAK, MITR, KARM, KHANDRA, ANDAL, PACHIM BARDHMAN, 713363 (copy enclosed). In the AADHAR Card his address is written as P.O.- Khandra, Khandra Bakshi Para, Khandra (ct). Ukhra, Barddhaman, West Bengal, 713363 (copy enclosed).

(b) In the voter card of Smt. Sayani Baksi w/o Shri Partha Pratim Bakshi (issued on 03.01.2018) having No.

ZQP0513440, her address is written as BAKSI, THAKUR, DATT, NAG, NANDI, GHOSH, GHATAK, MITR, KARM, KHANDRA, ANDAL, PACHIM BARDHAMAN, 71363 (copy enclosed). In the AADHAR Card her address is written as VIII,-Khandra, Post- Khandra, Thana Block Andal, Ukhra Andal Road, Amlauka, Barddhaman, West Bengal, 713363 (copy enclosed).

(c) In the voter card of Smt. Dipali Mitra (issued on 29.12.2016) having No. WB/38/261/348341 the address is written as ATC Lane, Assansol (M Corp.Raniganj), Burdwan-713347 (copy enclose). In the AADHAR Card her address is written as 24/1, ATC Lane, AMC Raniganj, Raniganj (M), Barddhaman-713347 (copy enclosed)

From the above, two things are made clear that they deliberately suppressed contemporaneous EPIC and issued by the Election Commission of India at relevant time and arranged new documents recently. Thus, they wanted to suppress the truth. Even in the said documents the address varies. Hence, it is proved that Smt. Dipali Mitra and her son-in-law & married daughter **are not staying together.** The son-in-law & his wife were living separately and not with the family of the deceased employee. So one of the conditions for employment to son-in-law is defeated”

18.A plain reading of this portion of rejection order shows that the petitioner no. 2 and 3 could not furnish any proof regarding their dependency on the deceased employee by furnishing any documentary evidence. During the course of hearing, on a specific query from the bench, learned counsel for the appellants could not show any document to establish that petitioner nos. 2 and 3 were dependent on the deceased employee.

19.The petitioners placed heavy reliance on the Judgment of **Sukumoni Hembram vs. Union of India** and **Others and Subhadra vs. Ministry of Coal**. A perusal of facts of those cases makes it clear that the appellants therein were unmarried daughters of the deceased employees

and were admittedly residing with them and were dependent on them. Thus there was no occasion for this Court or for the Supreme Court to consider the aspect of existence of dependency on the deceased employee. Putting it differently, in ***Sukumoni Hembram (Supra)*** and ***Subhadra (Supra)***, the petitioners were admittedly dependent on the deceased employees and, therefore, in this backdrop, the courts opined that as per Para 9.5.0 (ii) of NCWA, if the “female dependents opts for employment, there is no further discretion left with the employer, unless she was otherwise ineligible. A careful reading of the language employed in Para 7 by the Supreme Court in ***Subhadra (Supra)*** makes it clear that **Court gave opinion in relation to female ‘dependent’**. At the cost of repetition, in view of the fact that petitioner nos. 2 and 3 have miserably failed to produce any documentary evidence to show that they were dependents of deceased at the time of his death, both the judgments in ***Sukumoni Hembram (Supra)*** and ***Subhadra (Supra)*** are of no assistance to the petitioners.

20. This is trite that the judgment of a Court is precedent for what has been actually decided and not for what is logically flowing from it. **(see Union of India vs. Major Bahadur Singh reported in 2006 (1) SCC 368)**

21. It is equally well-settled that a singular different fact may change the precedential value of a judgment. **(see Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. & Ors reported in 2003 (2) SCC 111)**

22. In nutshell, in our view, although the petitioner no. 2 the married daughter could not have been deprived to be considered for compassionate appointment because of marital status only it could not be established that she or her husband were dependent on the income of the deceased on the date of his death. A conjoint reading of the order of this Court in WP no. 306 of 2015 and relevant clauses of NCWA leaves no room for any doubt that establishing 'dependency' is a condition precedent for the person claiming compassionate appointment under the agreement. The petitioner nos. 2 and 3 herein could not establish by filing a single scrap of paper before the respondent or before the court that they fall within the ambit of '**dependent on the date of the death of the deceased**'. In absence thereof, no fault can be found in the rejection order dated 21.02.2018.

23. We find support in our view from a full Bench of this Court in **State of West Bengal and Ors. Vs. Purnima Das and Ors. reported in (2017) 4 CHN 362** wherein it was poignantly held as under:

*"It is axiomatic that although the financial distress of the family may be pronounced, **compassionate appointment cannot be offered to anyone in the family who was not dependent on the earnings of the employee**, who is either dead or physically incapacitated, in the real sense of the term. A person dependent would be one who for his survival was entirely dependent on the earnings of the Government employee and should he/she be appointed, is likely to take care of the other family members by his/her earning."*

It was further held in the said judgment:-

“we are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his/her survival must be considered to belong to ‘a class’. Exclusion of any member of a family on the ground that he/she is not so dependent would be justified, but certainly not on the grounds of gender or marital status.” (Emphasis added)

24. Pertinently, the Jharkhand High Court in the case of **Central Coal Fields Ltd. (Supra)** in Para 8 of Judgment made it clear that the writ petitioner needs to prove that she was dependent of her mother’s income at the time of her mother’s death and at present does not have sufficient means to run her household.
25. The learned Single Judge after considering the said full Bench judgment and referring to dictionary meaning of “dependent” rightly opined that dependency of the claimant is a relevant factor which has not been established. The learned Single Judge opined as under:

“It is essential that this Court considers whether petitioner no. 3 was financially dependent upon the deceased employee at the time of his death. While this Court does not dispute the findings of the petitioners that the impugned order dated February 21, 2018, despite specific instructions as per the order of a co-ordinate bench of this High Court dated March 10, 2017, did not directly consider the income of petitioner no. 3, it is also pertinent to note that the petitioners have not submitted anything to show how petitioner no. 3 was financially dependent upon the deceased. In fact, the petitioners have attempted to deceive this Court by filing false affidavits that state that petitioner no.3 had been residing with the deceased even though the voter cards submitted by them have proven otherwise.

Ergo, even though the impugned order does not directly consider petitioner no. 3’s financial dependency, it is to be noted, that the petitioners have not shown anything to prove financial dependency of petitioner no.3 upon the deceased.

Furthermore, her husband, that is, petitioner no. 2 is earning Rs. 50,000/- (Rupees Fifty Thousand only) per month and she did not reside with the deceased employee. The obvious implication that emerges from the above factual matrix is that petitioner no. 3 was independent from the deceased and was in fact dependent on her husband, that is, petitioner no.2. Once the aforementioned findings have been reached by this Court, I find it an absolute fruitless exercise to once again direct the authorities to consider petitioner no.3's case again.

In light of the aforementioned discussion, this court does not find any merit in the argument of the petitioners that petitioner no.3 was dependent upon the deceased employee, and therefore, I hold that she is not eligible for compassionate appointment.”
(Emphasis Supplied)

26. In our considered judgment, learned Single Judge has rightly gave his stamp of approval to the “reasoned order” dated 21.02.2018”.

27. The only relief which is due is in favour of petitioner no.1. The petitioner no. 1 being widow of more than 45 years of age became entitled to get only monetary compensation. Respondent did not dispute the said entitlement of the widow. In Para 6.2 of the reasoned order dated 21.2.2018, it is recorded that the petitioner no. 1 did not accept monetary compensation in lieu of employment. In this backdrop, we are only inclined to direct that if petitioner no. 1 (widow) prefers an application before competent authority for grant of monetary compensation in lieu of employment as per NCWA within 30 days from today, the said authority shall grant the monetary compensation to the petitioner no. 1 from due date with arrears within 90 days therefrom. Needless to emphasise that petitioner no. 1 shall continue to get the monetary compensation as per NCWA till her survival. The appeal is **partly allowed** to the extent indicated above.

28. There shall be no order as to costs.

29. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Sujoy Paul, J.)

I agree.

(Smita Das De, J.)