

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice TAPABRATA CHAKRABORTY

And

The Hon'ble Justice PARTHA SARATHI SEN

MAT 609 of 2024

Smt. Tumpa Muchi And Anr.

Vs

Coal India Limited and Ors.

For the writ petitioner: Mr.Praloy Bhattacharjee, Adv.,
 Ms. Sarbani Chakraborty, Adv.,
 Mr. Koushik Ray, Adv.

For the respondents/ ECL: Ms. Tanushree Das Gupta, Adv.

Hearing concluded on: 30.01.2025.

Judgment on: 06.02.2025.

PARTHA SARATHI SEN, J. : –

1. In this appeal the judgement and order dated 01.12.2023 as passed in WPA 6043 of 2022 by the learned Single Bench of this Court is impugned. By the said order and judgement the learned Single Bench dismissed the said writ petition. The writ petitioners felt aggrieved and thus preferred the instant appeal.

2. For effective adjudication of the instant appeal the facts leading to filing of WPA 6043 of 2022 are required to be discussed in a nutshell and those are as follows:-

- i. One Habu Muchi was an employee under the respondent no.2/ company.
- ii. The said Habu Muchi died in harness on 24.01.1996.
- iii. The appellant no.1/writ petitioner no.1 is admittedly the daughter of the said Habu Muchi from his second wife.
- iv. The marriage between the appellant no.1/writ petitioner no. 1 and the appellant no.2/writ petitioner no.2 was solemnized on 17.01.1996 i.e. seven days prior to the death of Habu Muchi.
- v. The appellant no.2/writ petitioner no.2, the son-in-law of the deceased Habu Muchi approached this Court by filing WP no. 8901 (W) of 2012 with a prayer for issuance of appropriate writ upon the respondents/authorities herein for providing him an employment under die-in-harness scheme.
- vi. By an order dated 11.09.2012 WP no. 8901(W) of 2012 was disposed of by a Single Bench of this Court directing the respondent/authorities herein to consider the said writ petition as a representation of the appellant no.2 herein and to pass a reasoned order thereon.
- vii. By a reasoned order dated 12.11.2012 the respondent/authorities however rejected such representation of the appellant no.2.

- viii. On 06.01.2021 the appellant no.1 being the daughter of the said Habu Muchi submitted a fresh representation to the respondent no.3 herein.
- ix. Since such representation was not considered by the respondents, the present appellants on 17.03.2022 filed WPA no.6043 of 2022 with a prayer for issuance of Writ of Mandamus upon the respondent/authorities to give appointment either to the writ petitioner no.1 or to the writ petitioner no.2 in die-in-harness scheme alternately; for disbursement of monthly monetary compensation (hereinafter referred to as 'the MMC' in short) in lieu of employment from the date of death of the said Habu Muchi.
- x. On 01.12.2023, WPA 6043 of 2022 was dismissed by the Ld. Single Judge of this Court.

3. In course his submission Mr. Bhattacharjee, learned advocate appearing on behalf of the appellants draws attention of this Court to the order and judgement which is impugned in the instant appeal. It is submitted that the Single Bench is not at all justified in rejecting the writ petition of the present appellants merely on the ground of delay.

4. In course of his submission Mr. Bhattacharjee draws our attention to page no.32 as well as to page no.70 of the paper book being the copies of the report and the additional report as submitted on behalf of the respondent/authorities. Attention of ours is also drawn to the orders dated 24.08.2022, 02.08.2023 and 03.10.2023 as passed in connection

with WPA 6043 of 2022. It is submitted by Mr. Bhattacharjee that from the order dated 02.05.2023 as passed in WPA 6043 of 2022 it would reveal that a Single Bench of this Court even after perusing the first report of the respondents/authorities as affirmed on 08.08.2022 further directed the respondents/authorities to conduct a screening test and enquiry with regard to the dependency of the appellant no.1 upon her father Habu Muchi. It is submitted that pursuant to such direction as passed on 02.05.2023 the respondents/authorities filed an additional report which was affirmed on 12.07.2023.

5. It is argued by Mr. Bhattacharjee that from the order dated 03.10.2023 as passed in WPA no.6043 of 2022 it would reveal further that the learned Single Bench was not satisfied with the said reports of the respondent/authorities and thus directed the respondent/authorities to ascertain the family income of the present appellants.

6. It is submitted on behalf of the appellants that the learned Single Bench while passing the impugned judgement and order dated 01.12.2023 did not consider the earlier orders as passed by different Single Benches of this Court and without waiting for the report regarding family income of the appellants proceeded with the hearing of WPA 6043 of 2022 and dismissed the same by passing the impugned judgement causing serious miscarriage of justice which are required to be interfered with in the instant appeal.

7. In course of his submission Mr. Bhattacharjee further submits that while passing the impugned judgment the learned Single Bench has failed

to consider that both the appellants were 'dependent' upon the deceased employee, Habu Muchi and thus either the appellant no.1 or the appellant no.2 is entitled to get benefit of MMC. Mr. Bhattacharjee thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned judgement and order thereby directing the respondents/authorities to disburse payment to the appellant no.1 pursuant to the prayer made in the writ petition. In course of his submission Mr. Bhattacharjee places his reliance upon the judgement dated 21.2.2022 as passed by a Co-ordinate Bench in ***MAT 86 of 2022; M/s Eastern Coal Fields Ltd. and Ors vs. Smt Dukhni Bhuiya.***

8. Per contra Ms. Das Gupta, learned advocate appearing on behalf of the respondents/authorities and its functionaries in course of her argument draws attention of this Court to the bipartite agreement between the representatives of the management of respondents/authorities and representative of the workmen of the respondent no.1/company. In course of her submission she draws our attention to para no.9.3.3 read with paras 9.3.2 and 9.5 of the said agreement.

9. Drawing attention to page no.32 of the paper book being a copy of the report as submitted by respondent/authorities before the learned Single Bench as affirmed on 08.08.2022 it is submitted by Ms. Das Gupta that considering the provisions of the aforementioned agreement the respondent/authorities have noticed that the appellant no.1 does not come under the purview of dependent as per para 9.3.3 of the said

agreement since at the time of death of the said Habu Muchi, she was married and was residing with her husband. It is further submitted by Ms. Das Gupta that though the respondent no.2 being the son-in-law comes under the purview of the para 9.3.3 but neither he is entitled to get employment on compassionate ground nor he is entitled to MMC since the appellant no.2 was not at all 'dependant' on the earning of the deceased prior to his death.

10. In her next fold of submission Ms. Das Gupta draws attention of this Court to page no.70 of the paper book i.e. copy of the additional report as affirmed on 12.08.2023 and as filed on behalf of the respondent/authorities along with its annexure and page no.94 being a copy of the committee report dated 26.06.2023. It is submitted by Ms. Das Gupta that on conjoint perusal of the said additional report and the committee report it would reveal that none of the appellants were 'dependent' upon the deceased employee and on the contrary it has been found that the mother of the appellant no.1 was 'dependent' upon her daughter and son-in-law who are the appellants before this Court.

11. It is further submitted that in course of enquiry it revealed further that the mother of the appellant no.1 after death of her husband started living with the present appellants.

12. Ms. Das Gupta thus submits that the learned Single Bench while sitting in a judicial review rightly declined to interfere with the factual finding of the said committee in absence of any illegality and/or irregularity in the decision making process.

13. Ms. Das Gupta, learned advocate for the respondent/authorities thus submits that it is a fit case for dismissal of the instant appeal.

14. In course of her argument Ms. Das Gupta places her reliance upon a judgement dated 13.09.2017 as passed in **FMA 4401 of 2016; Putul Rabidas vs. Eastern Coalfields Ltd. and Ors** by a Larger Bench of this Court.

15. Since before the Ld. Single Bench reliance was placed upon the various paragraphs of the bipartite agreement we propose to look to the some of the relevant paragraphs of the said bipartite agreement for effective adjudication of the instant appeal and those are as under:-

“9.3.3 Provision of Employment to Dependants

9.3.1.....

9.3.2.....

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.....

9.4.0.....

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:-

i.....

ii. In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under Clause 9.4.0, if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs.3,000/- per month or employment.

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

16. Keeping in mind the provisions of the aforementioned paragraphs of the said bipartite agreement if we look to the factual aspects of this case it appears that challenging the reasoned order as passed on 12.11.2012 by the respondent/authorities thereby declining to grant compassionate appointment to the appellant no.2, the appellant no.2 has not challenged the said order in any legal forum. It thus appears to us that the appellant no.2 has practically accepted the said reasoned order dated 12.11.2012.

17. So far as the entitlement of appellant no.1 to get appointment on compassionate ground or to get MMC is concerned it appears to us that the appellant no.1 does not come under the purview of the ‘dependant’ as per para 9.3.3 of the said bipartite agreement since at the time of death of her father, Habu Muchi she was also married and was residing with husband, the appellant no.2 herein.

18. On close scrutiny of the aforementioned two reports as submitted by the respondent/authorities based on the committee report dated 23.06.2023 it appears that the said screening committee on consideration of the entire materials as placed before it came to a factual finding that at the time of death of the deceased employee; Habu Muchi

the appellants were not permanently residing with the said deceased employee and they were not 'dependant' on him. As rightly submitted by Ms. Das Gupta that a writ court being not an appellate court is not expected to interfere with the factual finding of the said committee unless it is shown that such finding is either perverse and/or a gross error occurred in the decision making process while submitting the said report.

19. In the reported decision of ***Putul Rabidas (supra)*** as cited from the side of the respondent/authorities it appears to us that a Larger Bench of this Court while considering the true implication of words 'unmarried daughter' in connection with extending benefit of compassionate appointment/monetary compensation to a 'dependant' of a deceased worker held that words 'unmarried daughter' are wide enough to take within its fold one who does not have a husband on the material date. It has been held further that keeping in mind the benevolent scheme of compassionate appointment an 'unmarried daughter' includes a daughter who has never been married but also a daughter who was once married but her marriage has been dissolved by a decree of divorce and she remains not married on the date of death of her father/mother (worker).

20. In the instant appeal however the case is not such and by no stretch of imagination it can be said that the appellant no.1 is an unmarried daughter of the deceased employee, Habu Muchi.

21. As discussed earlier we have noticed that the learned Single Judge while passing the impugned judgement came to a finding that the writ petitioners are not entitled to any relief on account of inordinate delay in

approaching the court. As discussed earlier that the said deceased employee died on 24.01.1996 and the appellant no.2 made an unsuccessful attempt in the year 2012 by filing WP no. 8901(W) of 2012.

22. Record reveals further that on 06.01.2021 the appellant no.1 made a fresh representation for providing her employment on compassionate scheme or in the alternative to disburse MMC and ultimately on 17.03.2022 both the appellants approached the learned Single Bench by filing WPA 6043 of 2022. Within the four corners of the said writ petition we do not find any cogent explanation on the part of the appellants as to what prevented them to knock the door of the court at the earliest especially when it is the case of the appellants that they were dependents upon the deceased employee, Habu Muchi.

23. At this juncture, we propose to look to the decision of ***Mrinmoy Maity vs. Chhanda Koley and Others*** reported in **2024 SCC OnLine 551** wherein the Hon'ble Apex Court while dealing with the subject of delay and laches in filing a writ petition expressed the following view:-

“11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as

much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of Tridip Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768 has held to the following effect:

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.”

24. The proposition of law as discussed in the reported decision of **Mrinmoy Maity (supra)** if applied to the facts and circumstances of the instant appeal, it appears to us that the appellants before us are guilty of delay and laches as rightly observed by the learned Single Bench while passing the impugned judgement and in absence of any justifiable cause to condone such delay the appellants are not entitled to any relief by exercising discretionary jurisdiction under Article 226 of the Constitution of India.

25. The decision of **Dhukni Bhuiya (supra)** as cited from the side of the appellants is distinguishable from the facts and circumstances as

involved in the instant appeal since in the said decision delay and laches were not subject matter for consideration.

26. We thus find that the instant appeal is devoid of any merit and is thus dismissed.

27. There shall be however no order as to costs.

28. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)

(TAPABRATA CHAKRABORTY, J)