

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 19240 of 2016

Smt. Bitania Hela

-Vs-

The Eastern Coalfields Ltd. & Ors.

For the Petitioner : Mr. Tapas Kumar Ghosh
Mr. Tanmay Chowdhury

For the Respondents : Mr. Bijoy Kumar

Heard on : 07.08.2024, 04.09.2024, 30.09.2024

Judgment on : 22.04.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner has prayed for a writ in the nature of mandamus commanding the respondent authorities concerned, each one of them, their men, agents, servants and/or assignees to forthwith give an appointment to the younger son of the petitioner, viz., Ranjit Kumar Hela under the Coal India Special Female Voluntary Retirement Scheme, 2014 (SFVRS) with effect from November 26, 2014 to May 25, 2015.
2. Petitioner was an employee of the Eastern Coalfields Ltd. (herein referred to as the said 'respondent company') who worked as a Sweeper at Satgram Area Hospital under Satgram Area, P.O. – Debchand Nagar, P.S. – Jamuria,

Dist – Burdwan, having unique memo no.300548, C.M.P.F., A/c.ASN/01/201. In the year 2014, a scheme was introduced by the Coal India Limited, viz., Coal India Special Female Voluntary Retirement Scheme, 2014 (Revised) to be effective from November 26, 2014 to May 25, 2015 for a limited period of six months.

3. The petitioner decided to opt for the said scheme, so that her younger son could be appointed under the said scheme as Category – I, General Mazdoor under the Eastern Coalfields Limited. Accordingly, on December 17, 2014 the petitioner applied before the Officer of the Director (Personnel), Eastern Coalfields Limited under the said scheme for offering an appointment in favour of her specially challenged younger son, viz., Ranjit Kumar Hela. Along with the said application, no objection certificates duly given by the other dependent members of the family of the petitioner were also submitted before the said authority.
4. After receiving the said application along with a physically handicapped certificated of the candidate, the ECL authorities subsequently by issuing a memo dated March 13/14, 2015, the Senior Manager (Personnel), Eastern Coalfields Limited, Satgram Area, Post Office Debchand Nagar, Police Station - Jamuria, District - Burdwan asked the petitioner to send her nominated son, viz. Ranjit Kumar Hela, to the Area Medical Officer, Satgram Area Hospital for initial medical examination on May 25, 2015.
5. The medical board conducted the medical test of the younger son of the petitioner and, thereafter, vide a letter dated May 8, 2015 the Chief Manager (Personnel), Eastern Coalfields Limited informed the physically handicapped

certificate of the younger son of the petitioner was found to be genuine and authentic.

6. On June 8, 2015, a letter was sent by the Senior Manager (Personnel), Eastern Coalfields Limited, Satgram Area, Post Office Debchand Nagar, Police Station Jamuria, District Burdwan with an intimation that the competent authority did not agree to dispense with her service in lieu of employment to her son as it did not satisfy the object and essence of the Special Female Voluntary Retirement Scheme.
7. The petitioner on such rejection filed an appeal/complaint on July 13, 2015 thereby ventilating her grievance before the office of the Chief Commissioner, Ministry of Social Justice and Empowerment, Government of India, New Delhi and the said appeal/complaint of the petitioner was registered by the Ministry of Social Justice and Empowerment through its Deputy Chief Commissioner and the ECL authorities were called to submit their comment/rejoinder in respect of the said appeal/complaint of the petitioner.
8. Consequently, the ECL authorities filed their comment/rejoinder denying the claim of the petitioner. After considering the complaint of the petitioner as well as comment/rejoinder of the ECL authorities, the Deputy Commissioner on May 25, 2016 observed there was no scope to confer employment on the son of the petitioner under the said scheme and a copy of the said decision was also communicated to the petitioner.
9. The Learned Advocate representing the appellant submitted as follows:-

- i. The reason shown by the ECL authorities in respect of rejection of the prayer of the petitioner was absolutely arbitrary, mala-fide and purported in nature.
- ii. The petitioner had applied for her younger son's job under the said Scheme mentioning clearly that her son was physically handicapped person and in spite of that, her son was sent before the medical board for verification and genuineness of the certificate granted by the medical board earlier.
- iii. The ECL authorities could have easily rejected the application on the ground of physical disableness of the younger son of the petitioner.
- iv. The respondent authorities by adopting a "pick and choose policy" could not outright reject the claim of the petitioner.
- v. The petitioner sent a demand justice letter through her learned Advocate on June 22, 2016 requesting the concerned authorities to reconsider the application of the petitioner in accordance with law and to offer an appointment under the said scheme to her younger son, but save and except receiving the said demand justice, no reply was communicated by the concerned authorities.
- vi. The purported acts and/or actions on the part of the ECL authorities were on utter violation of the principle of natural justice as guaranteed under Articles 16 and 21 of the Constitution of India, for which an interference of this Hon'ble Court was necessary and emergent for the ends of justice.

15. The Learned Advocate representing the respondents submitted as follows:-

- i. The petitioner was a workman under Industrial Dispute Act, 1947. The legislation had prescribed a particular mode for redressal of the grievances. Since the specific provision had been laid down in the Industrial Dispute, the instant writ was not maintainable.
- ii. The Coal India Special Female Voluntary Retirement Scheme, 2014 (revised) had been introduced on 26.11.2014 which was applicable for the eligible female employees to nominate their eligible sons.
- iii. The petitioner applied for voluntary Retirement under SFVRS on 17.12.2014 and nominated her son Sri Ranjit Kumar Hela. She also submitted a physically handicapped Certificate dated 26.10.2013 issued by the Asansol Hospital certifying temporary disability over 40% Later on, the petitioner once again submitted a physical Handicapped certificate dated 25.4.2015 issued by the same hospital certifying disability of Shri Ranjit Kumar Hela as permanent Disability above 40%, which required enquiry as to how two types of certificates could have been obtained from the Govt. Hospital. The nominated son of the petitioner was asked to appear before the Initial Medical Examination done on 25.3.2015 and was declared "unfit for under Ground job". During this period the dependent of the petitioner had submitted physically handicapped certificate dated 25.4.2015/25.5.2015. As per Mines Rules unfit persons could not to be employed in the Mine.

- iv. The female employees working in Technical posts and also those who were gainfully deployed were not to be considered to be substituted by their sons. The scheme was optional meaning neither were the female employees forced by the management to retire prematurely nor could a female employee claim that her son must be employed in her place regardless of the decision of the management not to dispense with her services. It was a prerogative of the employer to accept or not to accept voluntary retirement of the female employee. An offer remained valid unless the same was accepted within the cut of date.
- v. Allowing a female employee to be substituted by a son not capable of working in the mines where there was a requirement and since he was not found to be medically fit would not defeat the purpose of the scheme.
- vi. Since the petitioner was still in service the questions of providing any employment on the ground of Special Female Voluntary Scheme would not arise. Furthermore the validity of the scheme was not extended. Since the service of the petitioner was not terminated there was no loss of employment and son being medically found 'unfit for work in UG Mines', the question of providing employment to her nominated son would not arise.
- vii. The petitioner had filed a complaint case No-4859/1014/2015/R/8818 dated-29.07.2015 before Chief Commissioner, Ministry of Social Justice and Empowerment, Govt.

of India, New Delhi for ventilating her grievance. After hearing both the parties, the Dy. Commissioner on May 25, 2016 was please too disposed of the Petitioner's application and held that "*In view of the petition explained by ECL, there is no scope that your son, a person with disability, could get employment in your place. Further there is no violation of any provision of person with disability Act-1995. No further intervention is required in the matter and the case is accordingly closed.*"

- viii. Sweeper was not a surplus category in M/s. Eastern Coalfield Ltd. The petitioner had crossed the age of 55 years and there was a shortage of sweeper. The validity of the above scheme lapsed on 25.05.2015 and the same had not been revived by the Coal India Ltd.
- ix. The senior Manager (Pers) Satgram Area had informed the writ petitioner vide letter dated 08.06.2015 that the competent Authority had not agreed to dispense with the service of the writ petitioner in lieu of employment to her son as it did not satisfy the objective and essence of the special Female voluntary Retirement scheme.
- x. As a SFVRS Optee the petitioner applied before the respondent company on 17.12.2014 nominated her son namely Sri Ranjit Kr Hela. However, later on during Initial Medical Examination (IME) to Ranjit Kr. Hela it was found by the IME Board that Ranjit Kr. Hela

is a physically handicapped hence the Board has recommended “Unfit for Underground (UG) Job”.

- xi. On receiving the application of the Petitioner as per SFVRS Scheme, the nominated son Ranjit Kr. Hela was referred to IME Board for medical examination vide. Memo No-831 dated-13/14.03.2015. During Initial Medical Examination (IME) Board which was held on 25.03.2015, Ranjit Kr. Hela was found permanent physically handicapped, hence IME Board recommended “Unfit for UG Job”.
- xii. As alleged by the Petitioner that the medical board has found, the physically handicapped certificate dated 25.04.2015 as genuine and authentic was false. The fact is that the said letter dated May 8, 2015 was issued by Medical Superintendent of Asansol District Hospital to Respondent Authority in response to the verification of the certificate.
- xiii. The application of the Writ Petitioner along with the handicapped certificate of her nominated son was put up to competent authority for their perusal and decision. On examination of the documents along with the SFVRS application of the Writ Petitioner, the competent authority did not agree to dispense the service of Smt. Bitania Hela in lieu of employment to her son. As it did not satisfy the objective and essence of the SFVRS Scheme-2014 (Revised). The said decision of the authority was informed to the Petitioner vide memo No-1845 dated-08.06.2015.

- xiv. The Writ Petitioner submitted her re-joinder before the said court and after considering the complaint as well as comments/re-joinder of the Respondent Authority, the Dy. Commissioner on May 25, 2016 please to held and disposed of the Petitioner's application clearly stating that In view of the petition explained by ECL, there was no scope that your son, a person with disability, could get employment in your place. Further there is no violation of any provision of person with disability Act-1995.
- xv. After examination of the documents the competent authority did not agree to dispense with the service of the Petitioner in lieu of employment of her son, as it did not satisfy the objective and essence of the scheme.
- xvi. The petitioner did not submit permanent physically handicapped certificate of her nominated son in her application date-17.12.2014 and it came to the knowledge of the Respondent authority after Initial Medical Examination Board held on 25.03.2015 that Ranjit Kr. Hela is a permanent physically handicapped person so that Medical Board declared him "Unfit for UG Job".
- xvii. Each and every designated persons were deployed based on cadre and their services declared surplus for the scheme as the deployment of their sons are gainful to the company with due consideration of their physical and mental fitness as per Mines Act-1952 to work at underground mines.

- xviii. The Respondent Authority never violated the Principle of Natural Justice as guaranteed under Article-16 and 21 of the constitution of India. Further to be noted that the Dy. Commissioner, court of chief commissioner for persons with Disabilities. Ministry of Social Justice and Empowerment, Govt. of India held on 25.05.2016 and fairly informed to the petitioner that *“there is no violation of any provisions of Person with Disabilities Act, 1995 and disposed of the grievance of the petitioner”*.
- xix. The Writ petitioner was still working under the Respondent Company in the capacity of sweeper, Cat-11, and getting her fair wages, so there was no irreparable loss or injury to the petitioner.
16. The Learned Advocate representing the respondent further submitted as follows:-
- i. The Writ petitioner appointed was 15.04.1986 and declared her date of birth as 30.11.1960.
 - ii. The writ petitioner was superannuated on and from service 30.11.2020 (Afternoon).
 - iii. The writ petitioner has applied for Gratuity and total amount of Rs.15,70,105/ (Rs. Fifteen lakhs seventy thousand One hundred and five only) was paid.
 - iv. On recommendation of Eastern Coalfield Ltd the Regional Commissioner Coal Mines Provident fund Organisation has paid Rs.38,84,346.00/- (Thirty Eight lakhs Eighty Four thousand Three hundred forty six Only) to the writ petitioner.

v. The Hon'ble Division Bench of this Hon'ble High Court has been pleased to set aside the Order passed by the Hon'ble Single Judge being A.P.O No. 190 of 2014, W.P. NO. 1035 of 2011 (Eastern Coalfield Ltd. -versus- Asharafi Mallah & others.

17. The Coal India Special Female Voluntary Retirement Scheme, 2014 (Revised) was operative from 26.11.2014 till 25.05.2015 for a period of six months. The promulgation of such scheme was aimed to optimize manpower utilization of the company by reducing female manpower deployed in non-technical jobs by appointment of their sons on jobs where there is requirement without increasing the overall manpower.
18. *“A female worker deployed in non-technical job may opt for the scheme subject to the condition that she must have completed 10 years of service but must not have completed 55 years of age on the date of receipt of her application.”*
19. The stipulated eligibility criteria for the nominated son was to be in the age group of 18 to 35 years on the date of receipt of the application of the female VRA optee with a minimum educational qualification to be a literate. Such nominated son of an SFVRS Optee would be deployed as Cat-1 General Mazdoor in the respective subsidiaries or other subsidiaries where there is requirement. The scheme further prescribed a procedure which in Clause 4 stated *“On receipt of the application, the controlling officer, after scrutiny of the application, will recommend to the competent authority, with reasons to be recorded in writing for acceptance or rejection as the case may be of the request for Voluntary Retirement.”* and in Clause 11 stated *“The IME of the*

nominated son of a VRA Optee is to be conducted by the concerned subsidiary and order as regard to separation of female VRS Optee under Coal Indian Special Female Voluntary Retirement Scheme-2014 (Revised) would be issued by Subsidiary concerned subject to her nominated son is found medically fit during IME. In case a nominated son is not found medically fit, the application of such SFVRS Optee would be rejected.”

20. The process of the scheme as aforesaid was entirely based on the option of the petitioner to be exercised on the fulfilment of conditions as enumerated therein reserving the right by the respondent Coal Fields Ltd. to accept or reject the application forwarded by the petitioner justifying reasons in writing where to consider the request of voluntary retirement or to refuse the same.
21. In the instant case, the son of the petitioner suffered from physical disability disentitling the petitioner to opt for voluntary retirement scheme as the same was basically formulated to engage younger sons of the female workers for the purpose of maximizing their effort and physical aptitude in mining areas. The son of the petitioner was found to be physically incapacitated on medical grounds to have served the objective of the scheme for optimizing manpower and accordingly the petitioner was disallowed to opt for the voluntary retirement scheme which under no circumstances prejudiced her. The petitioner as of date had been superannuated receiving all her retirement dues which under no circumstances affected her in terms of money or otherwise.

22. In view of the above discussions, the instant writ petition being W.P.A. 19240 of 2016 is dismissed.
23. There is no order as to costs.
24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)