



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

WRIT PETITION NO. 5417 of 2017

Smt.Dhanpati wd/o Rambrich Nishad
Aged about 48 years, Occupation-Nil.
R/o. Pota Hutment, Silewara Colony,
At & Post Silewara,
Tahsil-Saoner, Nagpur-441 109
District Nagpur.

2. Avinash s/o Late Rambrich Nishad,
Aged about 27 years, Occupation-Nil.
R/o Pota Hutment, Silewara Colony,
AT & Post Silewara, Tahsil-Saoner,
Nagpur-441 109, Dist. Nagpur.

..PETITIONERS

VERSUS

1. Superintendent of Mine/Manager,
Western Coalfields Limited
(A Government of India Undertaking)
Silewara Colliery, At & Post Silewara,
Tahsil-Saoner, Nagpur-441 109.
District Nagpur.
2. The Area Personnel Manager,
Nagpur Area,
Western Coalfields Limited
(A Government of India Undertaking)
Registered Office: 'Coal Estate'.
Civil Lines, Nagpur-440 001.
District Nagpur.
3. The Manager (P/MP),
Western Coalfields Limited,
(Miniratna Category-1 Government of India
Undertaking)
Personnel and Industrial Relations
Department, Registered Office:'Coal Estate',
Civil Lines, Nagpur-440 001. Dist. Nagpur.

.. RESPONDENTS

Mr. S.S.Gupta, Advocate for petitioner.
Mrs. R.S.Sirpurkar, Advocate (to assist the Court).
Mr. C.S.Samudra, Advocate for respondents.

CORAM :- NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
THE ARGUMENTS WERE HEARD ON : 13th MARCH, 2025
JUDGMENT IS PRONOUNCED ON : 20th MAY, 2025

JUDGMENT (PER NITIN W. SAMBRE, J.)

Heard.

Rule. Heard finally by consent of the learned counsel for the respective parties.

By this petition the petitioners are challenging the impugned communication dated 08.05.2017 issued by the respondent no. 3 whereby the claim of the petitioner no. 2 for appointment on compassionate basis was rejected. Further, they are seeking directions to the respondents to pay monthly monetary compensation with effect from the date on which the ex-employee died viz. 08.06.2000 with interest @ 18% p.a. till employment is provided to the petitioner no. 2.

2. The factual matrix of the case appears to be that the husband and the father of petitioner no. 1 and petitioner no.2 respectively, who passed away while he was in the employment of respondents on 08.06.2000, was working as a permanent loader with the respondents. As a sequel of above, the petitioner no. 1 applied to the respondents in the year 2000 for grant of appointment in favour of her eldest son Indresh Rambrich Nishad so also sought monthly monetary compensation from the respondents to which she is statutorily entitled till employment is provided to her son *vide* letter dated 04.03.2002.

Subsequent thereto, the petitioner no. 1 *vide* communication dated 16.10.2003 requested for grant of appointment in favour of her

youngest son *viz.* Avinash-petitioner no. 2 herein. As no reply was received from the respondents, several reminders were sent which were in vain. On 08.05.2017, the respondent no. 3 issued the impugned letter thereby rejecting the claim of the petitioner no. 2 for appointment on compassionate basis on the ground that the petitioner no. 2 was less than 12 years of age on the date of death of his father which precludes his name being taken on the live roster as the minimum age required as per the provisions of the National Coal Wage Agreement-VI (for short 'NCWA') is 12 years. The said communication is assailed in the present petition.

3. While questioning the impugned communication dated 08.05.2017 Shri. Gupta the learned counsel appearing for the petitioner would urge that due to the delay on the part of the respondents, who kept the applications for appointment on compassionate basis so also for monetary compensation pending for 17 years, has led to the petitioners living in penury and facing unfathomable hardship. The petitioner no. 1 who is the widow of the deceased employee is an illiterate woman and after taking assistance from the people around her and the representative of trade union, she has made more than 15 representations to the respondents to which no reply was received except for the impugned communication. As far as the grant of employment to her youngest son *viz.* petitioner no. 2 is concerned, even the elder son originally for whom the employment was requested before passing away on 22.02.2014 gave his no objection which is placed on record. The learned counsel for the petitioner would further claim that after obtaining information under the Right to Information Act, 2005 it

came to light that the name of the petitioner no. 2 was recommended for employment by the letter dated 26.03.2012 by the three-member committee which was constituted on 12.02.2009, however, the said letter was never supplied to the petitioners. In view of the above recommendation, there was no reason to refuse employment to the petitioner no.2 as the committee constituted by the respondents themselves had recommended the name of the petitioner no. 2. He would further urge that the respondents have themselves violated their own policy viz. NCWA-VI Chapter-IX by neither providing employment nor providing monetary compensation. So as to substantiate his contention, our attention is invited to Clause 9.5.0 (ii) of the aforesaid policy wherein it is stated that in case the female dependent is below the age of 45 years she will have the option to either accept the monetary compensation or employment. The petitioner no. 1 at the time of the death of her husband was of 38 years of age, she was not offered either of the above. Our attention is also invited to the letter dated 14.03.2001 issued by the respondent no. 3 wherein it is decided that in cases where sanction is delayed beyond three months for providing employment, monetary compensation equivalent to the amount offered to the female dependents as the case may be, would be paid till the approval of employment is conveyed. Therefore, the petitioner no. 2 is entitled for appointment on compassionate ground in lieu of his father and till the employment is granted, the petitioners are entitled for monetary compensation. So as to substantiate the aforesaid arguments, the learned counsel for the petitioner has placed reliance on the judgments of the Apex Court in the matter of *Subhadra Versus Ministry of Coal and another*

reported in **(2018) 11 SCC 201** and *Balbir Kaur and another Versus Steel Authority of India* reported in **(2000) 6 SCC 493**.

4. Mr. Samudra, the learned counsel appearing for respondent nos. 1, 2 and 3 taking an exception to the submissions of the learned counsel for the petitioner would support the impugned communication dated 08.05.2017 and claim that at the outset the petition suffers from delay and laches so also suppression of material facts and the same is liable to be dismissed. The learned counsel for the respondents would urge that both the reliefs as sought by the petitioners are not tenable in view of the provisions of their policy *viz.* NCWA-VI. There are serious discrepancies in the names of the legal heirs as were entered in the service register as per the information given by deceased employee where the name of petitioner no. 2 is not mentioned and Form PS-3 which was filled in by the deceased employee which mentions particulars of his family where the name of the eldest son is absent. He would further urge that the petitioner no. 2 being of less than 12 years of age on the date on which his father passed away creates an embargo for his name to be kept on live roster as per Clause 9.5.0 (iii) of Chapter IX of NCWA-VI. So as to substantiate the aforesaid argument, reliance is place on various decisions rendered by this Court in Writ Petition No. 3803/2009, Writ Petition No. 3936/2008, Writ Petition No. 3890/2009, etc. It is also claimed that even the petitioner no. 1 is not entitled for monetary compensation as she had opted for providing employment initially to her elder son and subsequently to petitioner no. 2. As far as the recommendations dated 26.03.2012 is concerned, it is urged that it is

merely an opinion of the committee without examining provisions of NCWA-IV and the competent authority has not accepted the said recommendations. Lastly, he would submit that the respondents during the pendency of this petition have decided to pay monetary compensation to the petitioner no. 1 in terms of Clause 9.5.0(ii)(iv) of NCWA-VI from the date of her entitlement pursuant to her application dated 31.10.2003 till she attains the age of 60 years instead of providing compassionate appointment to the petitioner no. 2.

5. We have considered the rival claims.

6. The deceased husband of the petitioner no.1 widow, Mr. Rambrich, was working on permanent post of loader in the underground mine with the respondents who suffered untimely death on 08.06.2000 leaving behind total five legal heirs including the petitioners herein. The petitioner no.1 widow has stated that she was blessed with four children out of the marriage with deceased Rambrich and all of them were fully dependent on deceased Rambrich.

7. The National Coal Wage Agreement (for short, 'the NCWA') provides for the service conditions of all the non-executive employees and binds the respondents. By way of social security measures, a provision is made in the NCWA for grant of employment to the dependent of the deceased employee and the monetary compensation to the widow. It is specifically stated that the deceased Rambrich, so also the petitioner no.1 are completely illiterate which could be inferred from the petition as the

petition bears the thumb impression of the petitioner no.1-widow. Similarly, the deceased Rambrich has affixed his thumb impression in his service book which was filled in by the respondent Employer, which narrates incomplete information as the same is filled-in in English language. The name of initial sponsored candidate Indresh was not entered therein, however rest of the details are rightly incorporated. The petitioner no.1 widow, who was illiterate, initially sponsored the name of Indresh, which later on she cancelled as he started living separately and was not willing to shoulder the responsibility of the entire family which prompted her to sponsor the name of petitioner no.2- Avinash in 2003.

8. The aforesaid factual matrix is borne out of the record as could be inferred from Annexure-2. The Annexures 2 and 3 are the extract of the service book and the application for grant of compassionate appointment to the petitioner no. 2, so also the reminders forwarded by her from time to time. In fact, in 2003 itself the petitioner no.1 not only has sought compassionate appointment but also the maintenance allowance to which otherwise she was entitled to.

The fact that the petitioner no.1 is illiterate is accepted by the respondents in their communication dated 21/23.04.2011 which is produced at Annexure-7. Apart from above, the proposal of Avinash, the petitioner no.2, was not appropriately examined and verified by the Area Committee. The relevant extract of the inter-department communication between the respondents reads as under:

“..... In the list of family particulars mentioned in the performs for considering employment to dependent, name of sahri

(Shri) Indresh and Shri Ramnivas are mentioned, but name of Shri Avinash is not mentioned. Area has not verified these facts. Moreover, there is no Area Committee's report examining the proposal.

You are, therefore, requested to kindly arranged to get the case re-examined by area committee in totality and submit report with recommendations, for placing the matter before Competent Authority for decision."

9. In spite of above, from the communication issued by the Deputy Manager, it appears that the respondents have not taken any action in the matter though subsequent thereto again representations were moved by the petitioners. A Committee consisting of Chairman and two members i.e. Senior Manager (Personnel) and Senior Manager(Finance), was constituted for examining the case of the petitioners for grant of compassionate appointment. In the said communication, it is specifically recommended by the Committee that it has agreed to send the proposal for providing the employment to the younger son Avinash, who has already submitted relevant papers for providing employment. The Committee has after scrutinizing the documents found the same to be true and genuine and as such recommended the candidature of the petitioner no.2-Avinash for grant of employment as a dependent in place of deceased father. Such recommendations of the Committee were never given effect to by the respondents for the reasons best known to them. Even subsequent request of the petitioner no.2 in 2013 onwards through Trade Union was not responded to.

10. As such, the following facts emerge:

(1) The death of deceased Rambrich on 08.06.2000.

(2) The proposal for grant of compassionate employment/appointment to the dependent was forwarded on 05.08.2000 which was forwarded by the Field Officer to the Head Quarter, Western Coalfields Limited, on 16.03.2001.

(3) The elder son Indresh, whose recommendation was made, expired on 22.02.2014 and the candidature of the petitioner no.2- Avinash, younger son of the deceased employee, was duly recommended by the High Level Committee for grant of compassionate employment.

(4) It is only after 17 years the respondents have realized that though there are recommendations by the High Level Committee, the petitioner no.2 is disqualified for the purpose of grant of compassionate employment.

Once there was a strong recommendation of the case of the petitioner no.2, we failed to understand as to what prompted the respondents not to grant the compassionate appointment and also the compensation as was prayed.

11. Clause 9.5.0 of the NCWA-IV Scheme, which is relevant, is reproduced below:

“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) In case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to cause 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.

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

(iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0, if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.

(iv) Monetary Compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.

(v) The existing rate of monetary compensation will continue. The matter will be further discussed in the Standardisation Committee and finalised.

Note: *In the cases of TISCO, the matter would be settled at bipartite level.”*

12. Reverting back to the date on which the petitioner no.1 husband died, it can be noticed that she was vigilant enough to exercise her claim in the manner prescribed by the respondents in NCWA-IV. It has also come on record that the financial condition of the petitioner was already not very good but even then, she managed to make those representations which is a testimony to the fact that she tried her level best to gain co-operation from the respondents but it was all in vain. The delay caused cannot be attributed to the petitioner no.1, who is an illiterate woman, considering the fact that over the period of 17 years she made several representations which

are placed on record in order to gain clarity with respect to her claim. There is a reason to believe that social beneficial legislation is a recurring cause.

13. The respondents in their reply have contended that in the year 2003 the petitioner no.1 applied for grant of appointment to the petitioner no. 2 in place of her elder son which is not permissible as he was below the prescribed age on the date of death of his father. This contention cannot be accepted for the reason that, had the respondents processed the claim in respect of her elder son in a timely manner, such a situation would not have arisen at the first place. Further the fact remains, that the three-member committee constituted by the respondents has recommended on 26.03.2012 for giving employment to the petitioner no. 2. We cannot be oblivious to the fact that the petitioner no.1 who was in dire need of financial assistance and in the alternative compassionate appointment for her son was left helpless due to inaction of the respondents. This conduct is not just negligence on the part of the respondents but also constitutes mental harassment. Had the claim of the petitioner no.1 was decided within time, she would have at least gained clarity as to the position of her claim and even if she was not eligible for compassionate appointment she would have received the appropriate monetary compensation as an alternate remedy. The least that was expected of the respondents was to reply to her representations in a time bound manner and grant her monetary relief as a stop-gap measure. Not only did the respondents not process her claim but they did not even deem it important to at least reply to the communications made by her.

14. The learned counsel for the respondents has also contended that there are lot of discrepancies as to the names and age of the legal heirs, we have to be sensitive to the fact that the petitioner no. 1, an illiterate woman, is trying to sustain herself and her family after the death of her husband who was the sole bread earner. Even then she made an effort to make several representations to the respondents in order to find a way to improve her financial condition. We cannot be so stringent and go into technicality as the same would cause injustice to the petitioners. We have to be sensitive to the Apex Court's observations in *Balbir Kaur (supra)* in paragraph no. 19, which reads thus:

“19.We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

15. The whole object of granting compassionate employment by an employer being intended is to enable the family members of a deceased or an incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress [*Canara Bank Versus Ajithkumar GK, Civil Appeal No. 255/2025*]. Further, the Apex Court in *State of West Bengal*

Versus Debabrata Tiwari and others reported in [2023 SCC OnLine SC 219] has opined that there is a sense of urgency in dealing with the matters of compassionate appointment because failure of the same would frustrate the object of the scheme and the financial condition of the family of the deceased employee at the time of his death is the primary consideration that ought to guide the authorities' decision. The aforesaid object stood frustrated due to the inaction on the part of the respondents. Considering the financial condition of the petitioner this was a fit case to at least consider the case of the petitioners for compassionate appointment. Not only have the respondents lost sight of the very object of their own scheme viz. NCWA-IV but have also failed to pay heed to the grievance of the petitioners.

16. As such, from the NCWA, it is apparent that the petitioner no.1-widow was entitled for the compensation she being below 45 years age on the date of death of her husband, who was in the employment, viz. 08.06.2000. That being so, she should have been paid monetary compensation from the date of death of her husband i.e. 08.06.2000. As such, we hold that the respondents who have volunteered to pay the compensation which otherwise is due and payable since last more than 24 years should be paid immediately as per the NCWA and for non-payment, the same shall carry interest @7% per annum. The said amount be deposited by the respondents in the account of the petitioner no.1 after obtaining her account details and such act/exercise be completed within a period of eight weeks from today.

17. We are required to be sensitive to the fact that the respondent-employer is the Government of India Undertaking and is into the profiteering business and its conduct of not paying the statutory compensation to the petitioner no.1 for last more than 24 years speaks about voluminous, negligent and callous approach on its part. This would have prompted us to direct an enquiry in the matter and disciplinary action against the Highest Officer.

18. The aforesaid observations are required to be made in view of the fact that in spite of the notice of the present writ petition was served on the respondents way back in 2017, they have chosen not to take corrective measures and immediately grant compensation to the petitioners. The approach of the respondents speaks of/about negligence, inhuman and irresponsible for non-payment of timely compensation to the widow i.e the petitioner no.1. The respondents have nothing to lose as they are contesting the litigation at the cost of the public exchequer. The cost of litigation could also have been recovered from the salary of the respondents-Officers who have decided to oppose the prayer for grant of even compensation to which otherwise the petitioner no.1 is entitled to.

19. Rather, the factual matrix of the case in hand prompts us to pass further order in line with the approach of the Supreme Court in the matter of *Subhadra* (supra). As such, we further direct the respondents to provide employment to the petitioner no.2 on Class-IV post or such other

post as commensurate with his qualifications, within 8 weeks from today. On account of loss of employment, we direct the respondents to provide compensation of Rs. 3,00,000/- (Rs.Three Lakhs) to be deposited in the account of the petitioner no.1.

‘20. In the aforesaid background, we quash and set aside the impugned communication dated 08.05.2017.

21. Rule is made absolute in the above terms. No costs.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.