

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 22939 of 2022

Goutam Hari
Vs.
Coal India Limited & Ors.

For the writ petitioner	:-	Mr. Samiran Mandal, Adv. Mr. Abhinaba Dan, Adv. Mr. Nitish Samanta, Adv. Ms. Shreyashree Mitra, Adv.
For the respondent nos. 2-4 & 6	:-	Mr. Manik Das, Adv.
Heard on	:-	24.03.2026
Judgment on	:-	02.04.2026

Amrita Sinha, J.:-

1. The matter relates to compassionate appointment in the died in harness category. The petitioner's father was serving as Safai Karmachari in Kalla Central Hospital. He died in harness while on duty on 14th January, 2021. On his death, the petitioner applied for compassionate appointment. At the time of making application seeking compassionate appointment the petitioner disclosed his age as 33 years. The petitioner was provisionally issued an appointment letter with effect from 15th January, 2021. He was advised to submit requisite documents for verification.

2. The petitioner submitted all his documents before the respondent authority. Initial Medical Examination of the petitioner was conducted on 25th May, 2021 when his age was assessed between 33 to 38 years. As per the National Coal Wages Agreement- VI (NCWA), which is prevailing at present, the upper age limit for appointment is 35 years. The petitioner was declared medically unfit for employment due to overage and low vision. The provisional employment of the petitioner was terminated with effect from 10th July, 2021.
3. Being aggrieved by the findings of the Initial Medical Examination relying on which his engagement stood terminated, the petitioner approached the Apex Medical Board of the authority for reassessment of his age and vision. Simultaneously, the petitioner got himself tested before the State Government hospital on 31st July, 2021 where he was declared fit for joining. The Apex Medical Board report dated 19th November, 2021 assessed the age of the petitioner to be between 35 and 40 years and found his vision to be normal.
4. During the course of consideration of the instant writ petition, the Hon'ble Court directed the Superintendent of SSKM hospital and IPGMER to constitute a Board for assessment of age of the petitioner by way of ossification test. The test report has been placed before this Court which mentions that the age of the petitioner will be between 30 and 40 years.

5. According to the petitioner, he is within the prescribed age limit eligible for appointment and his vision is normal. He alleges that he has been illegally terminated from service. Prayer has been made to set aside the impugned order of termination and direct the Eastern Coalfields Ltd. to reinstate the petitioner in service.
6. Learned advocate representing the respondent authorities opposes the submission of the petitioner. The report filed by the Chief Medical Officer (Administration) is relied upon. It has been mentioned therein that the father of the petitioner died while on duty. Due to tremendous pressure of all the unions in the Central Hospital, the authority was compelled to give immediate appointment to the petitioner on the self-same day. The appointment was provisional, subject to compliance of the rules for appointment including medical check-up.
7. At the time of Initial Medical Examination, the age of the petitioner was assessed between 33 and 38 years. Taking the midpoint of the age bracket, the age of the petitioner was considered as 37 ½ years. The age limit for providing appointment on compassionate ground by the respondents is 35 years. Apart from being overaged, the petitioner was also found to be suffering from low vision.
8. According to the respondents, The Mines Rules, 1955 restricts appointment to persons with low vision. It has been submitted that

it is extremely dangerous to give appointment to a person with low vision to work in the mines.

9. As the petitioner failed on two counts, i.e., (i) overage and (ii) low vision, the provisional appointment letter which was issued in his favour stood terminated.
10. Learned advocate for the respondents relies upon the judgment delivered by the Hon'ble Division Bench of this Court on 25th April, 2023 in **MAT 1582 of 2022** in the matter of ***M/s. Eastern Coalfields Limited and Others vs Sujala Ankure @ Sujala Akuria*** wherein the Court was pleased to direct SSKM Hospital to constitute medical board for conduct of ossification test and to provide the report with the range of five years instead of ten years. It has been contended by the respondents that ten years is a long bracket for ascertaining the proper age of a person who will be employed in the mines.
11. The respondents pray for dismissal of the writ petition or alternatively a direction for conducting ossification test of the petitioner once again before AIIMS, Kalyani and for furnishing a report within the bracket of five years.
12. I have heard and considered the rival submissions made on behalf of both the parties and have perused the materials on record.
13. It appears that at the initial stage of consideration of the instant writ petition, the Court directed the petitioner's age to be assessed

by way of an ossification test to be conducted by the Board specifically constituted by the Superintendent of SSKM hospital. An application was filed by the respondents seeking recall of the order directing ossification test to be carried out. The said application for recalling stood dismissed. An appeal being MAT 1434/2023 carried from the said order by the respondents also stood dismissed by the Hon'ble Division Bench on 30th January, 2024.

14. The ossification test report of SSKM hospital has been perused wherefrom it appears that the age of the petitioner has been assessed within 30 to 40 years. The mean age of the petitioner as per the said report will be 35 years, which is the prescribed age limit for being appointed by the respondent authorities.
15. From the documents annexed to the writ petition it appears that, though initially the petitioner was disqualified for engagement on two counts, but thereafter, it is only the age that is standing in the way of providing appointment to the petitioner. The vision of the petitioner has been recorded as normal in the medical report of the Apex Medical Board.
16. It appears that the age of the petitioner was assessed by three different authorities; namely, the Initial Medical Examination Board who found the petitioner's age to be between 33 to 38 years, the Apex Medical Board found the petitioner to be within 35 to 40 years

and the SSKM hospital found the petitioner to be within 30 to 40 years.

17. When the age of the candidate is uncertain, the respondent authorities assess the age of the candidate by taking the midpoint of the bracket within which the age of the candidate has been assessed. Applying the aforesaid formula, the midpoint of the petitioner's age as per the Initial Medical Examination will be 35 $\frac{1}{2}$ years, as per the Apex Medical Board report it will be 37 $\frac{1}{2}$ years and as per the SSKM report the petitioner is 35 years.
18. The direction passed by the learned single Judge for conducting ossification test of the petitioner to ascertain his age was unsuccessfully challenged by the respondent authority. The order of the Division Bench was, however, not tested before any other superior forum. The same implies that the order of the Division Bench is final and the authority would be bound to comply with the same.
19. After the report of the SSKM hospital has arrived, the authority ought to follow the opinion given by its expert Board. It has to be kept in mind that the ossification test of the petitioner was conducted by SSKM hospital in the year 2024. The petitioner was provided appointment in the year 2021. Had the ossification test of the petitioner been conducted in the year 2021 by SSKM hospital,

the age bracket of the petitioner would certainly have been lower than that has been currently found.

20. The prayer of the respondent authority for conducting fresh ossification test cannot be allowed because of the reason that the petitioner is claiming appointment on compassionate ground. His father died while on duty in the year 2021. Though the petitioner was provisionally appointed for a brief period of time, but thereafter the said appointment stood terminated. The petitioner has filed the instant writ petition in the year 2022.
21. Appointment on compassionate ground is considered only when the family of the deceased employee is suffering from acute financial crisis and is not in a position to have two square meals a day. Prayer for compassionate appointment ought not to be kept pending for an indefinite period of time. It will be nearly five years that the petitioner lost his father and he is still now running from pillar to post to get back his job which stood terminated.
22. Passing order for conducting further ossification test of the petitioner will result in more delay in consideration of the petitioner's prayer for compassionate appointment. The same will cause not only injustice but severe prejudice to the petitioner.
23. Moreover, as the petitioner was engaged as a Safai Karamchari in a hospital, minor age difference at the time of providing appointment will not cause much harm to the respondent authorities vis-a-vis

the suffering that the petitioner is facing for losing the job that he got on compassionate ground. It is not at all suggested that the prescribed age limit for providing appointment has to be given a go by; but at the same time, as the ossification test report of the petitioner, as per the method of calculation of the respondent authorities, will suggest that he was approximately 35 years of age when the test was conducted in the year 2024, it can be safely concluded that the petitioner was certainly under 35 years of age in the year 2021, when compassionate appointment on provisional basis was provided to him.

24. The facts of the case in Sujala Ankure (*supra*) do not match with the facts and circumstances of the instant case. In the said case, ossification test of a female was conducted. By taking into consideration the age of the child of the said female, the age of the incumbent, assessed after the ossification test, was found to be improper. It was under such doubtful circumstances that the Court directed further ossification test to be conducted and the report to be furnished within a bracket of five years. Such is not the case at hand. Here the age of the petitioner, as assessed by the medical boards of the authority and the medical board of SSKM hospital, does not differ much.
25. In view of the above, the Court is of the considered opinion that the impugned order of termination of the provisional appointment of the petitioner is liable to be set aside and is, accordingly, set aside. The

respondent authorities are directed to reinstate the petitioner in service by taking into consideration the report of the ossification test conducted by SSKM hospital at the earliest but positively within a period of four weeks from the date of communication of this order.

26. No direction can be passed for grant of back wages as the respondent authorities could not have engaged the petitioner relying on the age assessed by their medical boards. The provisional appointment letter issued to the petitioner was subject to compliance of the rules of appointment including medical check-up. As the age of the petitioner has been determined by the ossification test conducted as per the direction of the Court, accordingly, the authority cannot be held to be responsible for the delay in ascertaining the proper age of the petitioner.
27. The writ petition stands disposed of.
28. No costs.
29. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)