

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 124 of 2021

with

I.A. No. 6797 of 2024

1. Shubhabrata Malakar
2. Sunanda Malakar
3. Suvra Malakar Petitioners

Versus

1. Eastern Coalfields Limited through its Chairman-cum-Managing Director, Burdwan (West Bengal).
2. The Director (Personnel), Eastern Coalfields Ltd., Burdwan (West Bengal).
3. The General Manager, Mugma Area of Eastern Coalfields Ltd., Mugma Area, Dhanbad.
4. The Agent, Badjna Colliery of Eastern Coalfields Ltd., Badjna Colliery, Dhanbad.
5. The Commissioner, Coal Mines Provident Fund, Police Line, Dhanbad.
6. Smt. Chinta Malakar.

.... Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

- For the Petitioners : Mr. Kaushik Sarkhel, Advocate
Mr. Rahul Dev, Advocate
For the Resp.-ECL : Mr. Rajesh Lala, Advocate
For the Resp. No. 5 : Mr. Prashant Kumar Singh, Advocate
Mr. Harbir, Advocate
For the Resp. No. 6 : Mr. A.K. Sahani, Advocate
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22/26.09.2024 Heard the parties.

2. The petitioners have approached this Court for quashing of the reasoned order dated 23.10.2020, by which the respondent no. 3 has denied the claim of the petitioners for compassionate appointment as well as for death-cum-retiral benefits, with direction to the petitioners to submit the nomination form and no objection certificate from his step mother, who is respondent no. 6 herein.

3. The brief facts of the case are that the father of the petitioner died in harness on 27.04.2018 while working on the post of Sr. Store Keeper at Badjna Colliery of Eastern Coalfields Limited. It may be stated that as the mother of the petitioner was already died on 05.03.2002, the deceased employee died left behind his son and two daughters, who are petitioners and

second wife (respondent no. 6) as legal heirs. The petitioners being the legal heirs of the deceased employee submitted their representation for appointment on compassionate ground as well as death-cum-retiral benefits including pension, gratuity, CMPF amount etc. When their grievance was not considered, they approached this Court by way of W.P.(S) No. 1864 of 2020 and the same was disposed of with direction to the respondent-ECL to consider their grievances. Thereafter, in compliance of the Court's order, the respondent-ECL passed the reasoned order dated 23.10.2020, which is under challenge in the writ petition.

4. Mr. Kaushik Sarkhel, learned counsel assisted by Mr. Rahul Dev, learned counsel appearing for the petitioners submits that the dispute has now already been resolved and there is compromise between the petitioners and their step mother (respondent no. 6). Learned counsel submits that a compromise petition has already been brought on record by way of I.A. No. 6797 of 2024 and as per which, it is resolved that if petitioner no. 1 will get compassionate appointment, the respondent no. 6 and other two petitioners shall have no objection. It was further resolved that the petitioners will have no objection, if the entire retiral benefits, except gratuity, which has already adjudicated vide order dated 19.03.2024 is paid to the respondent no. 6.

5. Mr. A.K. Sahani, learned counsel appearing for the respondent no. 6 also supports the aforesaid contentions and submits that there is a compromise between the petitioners and her step mother (respondent no. 6) to that effect.

6. Mr. Rajesh Lala, learned counsel appearing for the respondent-ECL submits that since the relevant documents were not produced by the respondent no. 6, the pensionery benefits as well as CMPF amount has not been extended to them and no recommendation in absence thereof can be made to the office of CMPFO for making its payment. Learned counsel further submits that at this belated stage, the compassionate appointment could not be given to the petitioner no.1. Referring to the judgments of the Hon'ble Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana & Ors.***, reported in (1994) 4 SCC 138 and ***Eastern Coalfields Limited Vs. Anil Badyakar & Ors.***, reported in (2009) 13 SCC 112, learned counsel submits that after inordinate

delay, the petitioner no.1 cannot be considered for compassaionte appointment, as the same has to be given to tide over the sudden financial crises and it cannot be claimed or offered after a lapse of time when crises is over. He further submits that compassaionte appointment is not a vested right which can be exercised at any time in future. Justifying the reasoned order, learned counsel submits that at this stage, no compassaionte appointment could be given to the petitioner no.1 and regarding payment of death-cum-retiral benefits, the same could only be considered when the relevant documents are received by the Management of ECL duly filled up by the petitioners as well as respondent no. 6.

7. Mr. Prashant Kumar Singh, learned counsel appearing for the respondent no. 5 (CMPFO) submits that till date the CMPFO has not received any clarification regarding payment of CMPF amount, as there is serious dispute between the heirs of the deceased employee.

8. Having heard the learned counsel for the parties and upon perusal of the entire records, this Court is of the view that the case of the petitioners needs consideration for the following facts and reasons:-

- (i) Admittedly, the deceased employee died on 27.04.2018 in harness and the application for compassaionte appointment was made on 25.5.2018. When no heed was shown, the respondents were directed by this Court in earlier round of litigation to consider the case of the petitioners and it was only after two and half years thereafter, the respondent-ECL has passed the reasoned order dated 23.10.2020, asking the parties to resolve the dispute.
- (ii) The matter was earlier heard by this Court and by order dated 27.08.2024, specific direction was given to the respondent-ECL to ensure properly filled up the required documents from the petitioners and respondent no. 6 and thereafter do the needful for payment of death-cum-retiral benefits.
- (iii) Thereafter, the petitioners and the respondent no. 6 have entered into a compromise and they have approached the respondent-authority for extending the benefit of death-cum-retiral benefits as well as the compassaionte appointment.

- (iv) At this stage, the refusal on the part of the respondents for compassionate appointment as well as death-cum-retiral benefits on the ground of inordinate delay is not countenanced for the simple reason that it was the respondent-authority who delayed the matter. The petitioners have acted with utmost hastily in applying for compassionate appointment.
- (v) Exactly, the similar issue was placed for consideration before the Hon'ble Apex Court in the case of *Malaya Nanda Sethy Vs. State of Orissa & Ors.*, reported in **2022 SCC OnLine SC 684**, wherein the Hon'ble Apex Court has been pleased to observe that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together and in several cases, the applicants have to approach the concerned High Courts seeking a writ of mandamus and even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. The Hon'ble Apex Court further directed that such applications must be considered at an earliest point of time and the application cannot be rejected on the basis of frivolous and for extraneous reasons. The relevant paragraphs-16 to 18 are quoted herein below:-

“16. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

17. We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their

applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

18. *If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.”*

- (vi) In the present case, the application of the petitioners was pending before the respondent authority for more than two and half years. Till date, the case of the petitioners was not turned down, rather, the observation was made to settle the dispute and now the dispute has already been resolved and the same has been brought on record by way of I.A. No. 6797 of 2024. At this stage, it was the bounded duty of the respondent-authority to consider the case of the petitioners by extending the compassionate appointment to the petitioner no.1 as well as retiral benefits to the respondent no. 6 as per the compromise. The argument of the learned counsel for the respondent-ECL is not tenable in law and the judgments referred by him is of no assistance to the respondent-ECL.

9. As a sequitur to the aforesaid rules, regulations, guidelines and judicial pronouncements, the impugned reasoned order dated 23.10.2020 is

hereby quashed. The respondent-ECL is directed to provide the compensation appointment to the petitioner no.1 and to extend the death-cum-retirement benefits, including CMPF amount to the respondent no. 6 by recommending it to the CMFPO. Let the entire exercise be completed within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that after recommendation from the respondent-ECL for payment of death-cum-retirement benefits, the CMFPO shall extend the benefits thereof to the respondent no. 6 within a further period of three weeks. Let it also be made clear that it is the duty of the respondent-ECL and respondent-CMFPO to call for the petitioners and respondent no. 6 and ask for filling up the required documents.

10. With the aforesaid observations and directions, this writ petition stands allowed. The aforesaid interlocutory application also stands disposed of.

(Dr. S. N. Pathak, J.)

R.Kr.