

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 14830 of 2024

Eastern Coalfields Limited
Vs.
Union of India & Ors.

For the Petitioner : Mr. Manik Das.

For the Union of India : Mr. Soumak Bera,
Mr. Ashok Prasad.

Hearing concluded on : 19.02.2025

Judgment on : 10.03.2025

Shampa Dutt (Paul) , J.

1. The present writ application has been preferred against the impugned award dated 27th September, 2023 passed by the Central Government Industrial Tribunal cum Labour Court, Asansol in Reference No.19 of 2008.
2. The said Rajmohan Rajbhar was declared a delinquent employee who did not appear for hearing in the enquiry in spite of notice for his unauthorised absence to answer the charge framed against him and finally was terminated vide a letter dated 13.12.2005 as no reply was received even to the second show cause notice dated 15.11.2005.

3. Subsequently, by a letter dated **28.01.2006** the respondent no.5 informed the petitioner that the said Raj Mohan Rajbhar died on 05.11.2005 and claimed for compassionate employment. Within 10 (ten) days of the issuance of the letter dated 28.01.2006 claiming for employment by the respondent no.5, a purported industrial dispute was raised by the respondent no.4 before the respondent no.3 on 7th February, 2006 whereupon conciliation proceedings were initiated.
4. Such conciliation having been failed, the Government of India, Ministry of Labour, the respondent no.1 herein, by an order bearing No.L-22012/370/2007-IR(CM-II) dated **12.05.2008** referred the purported dispute for adjudication by the Central Government Industrial Tribunal cum Labour Court, Asansol under Section 10 of the Industrial Dispute Act, 1947 for adjudicating the following issue:-

“Whether the action of the management of Madhavpur Colliery under Kajora Area of M/s. ECL in not providing employment to Smt. Guddi Devi, wife of Late Raj Mohan Rajbhar, legal and justified ? To what relief is the dependent of the deceased workman entitled ?”

5. The CGIT, upon receiving the reference as aforesaid, registered the same as Reference Case No.19 of 2008.
6. The CGIT disposed of the said proceedings by an Award dated 27th September, 2023 directing the petitioner for providing

employment to the respondent no.5 herein within three months from the date of notification of the Award and also to pay monetary compensation from the date of death of the husband of the respondent no.5. The impugned award was notified by the Government of India on 18th January, 2024.

7. Hence, the writ application on the ground that the award is patently illegal and is liable to be set aside on the ground that the impugned award is bad from the perspective of **National Coal Wage Agreement** which is to be strictly adhered to for providing employment **or** monthly monetary cash compensation (MMCC) to a female dependant of an employee who died while in service, as under the NCWA monetary compensation is given in lieu of employment but in the impugned award, learned CGIT has directed to provide both employment and MMCC to the respondent no.5 which is not only bad in law but also not permissible under the NCWA.
8. **It appears from the award challenged that the Presiding Office of CGIT Cum Labour Court, Asansol ordered as follows :-**

“Hence,

ORDERED

*That the Industrial Dispute is accordingly allowed in favour of Smt. Guddi Devi, wife of Late Rajmohan Rajbhar on contest. An award be drawn up in the light of my above findings. The management of ECL is directed to provide suitable employment to Smt. Guddi Devi within three months from the date of communication of the Notification of the Award and **also***

disburse monetary compensation to her from the date of death of her husband till providing her with an employment. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

Sd/-

Presiding Officer,

C.G.I.T-cum-L.C, Asansol.”

9. Written notes of argument has been filed on behalf of the petitioner who has relied upon the following judgments:-
- i) *The State of Bihar & Ors. Vs. Shanti Kumari & Ors. Unreported judgment passed by the Hon'ble Division Bench of the Patna High Court in LPA No.247 of 2015.*
 - ii) *Managing Director, ECIL, Hyderabad & Ors.-vs- B.Karunakar & Ors., reported in (1993) 4 SCC 727- para 31.*
 - iii) *Hochtief Gammon-vs- Industrial Tribunal, Bhubaneshwar, Orissa & Ors. Reported in AIR 1964 SC 1746-para 7, 8, 12, 15, 17 & 18.*
 - iv) *Eastern Coalfields Limited vs. Union of India & Ors. Passed by the Hon'ble High Court at Calcutta in WPA No.8323 of 2024-paras 9 and 10.*
10. The petitioner has also relied upon a judgment of this court passed in **WPA 8323 of 2024 on 29.01.2025 in Eastern Coalfields Ltd. vs. Union of India & Ors.**

11. Learned counsel for the petitioner has further relied upon following **clause 9.3.2** under the National Coal Wage Agreement-VI, which is a memorandum of Agreement for the Coal Industry by the Joint Bipartite Committee, New Delhi, 23rd December, 2000.

9.3.2 of the National Coal Wage Agreement-VI :-

“9.3.2 Employment to one dependant of the worker who dies while in service

*In so far as **female dependants** are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.”*

12. It appears from the materials on record that admittedly the **employee died on 5.11.2005** and he was **terminated** from service on **13.12.2005**. As such, **the employee herein died while in service** and the learned Tribunal rightly held that the dismissal of the workman was not significant any more as he has died before his termination and thus while in service.
13. From the exhibited documents before the Tribunal, it transpires that at the time of death of the worker who was her husband, the respondent no.5 was aged about 35 years.
14. The specific findings of the Tribunal before passing the award in favour of the respondent no.5 at paras 17 and 18 of the Award are:-

“17. It is to be borne in mind that the commitment of the Company in providing employment and monetary compensation to female dependent under Clause

9.5.0 of NCWA-VI and VII and also to provide an employment to one dependent of the worker who dies while in service according to the Clause 9.3.2 of NCWA-VII is an outcome of a collective decision of the management and Union. Under no circumstance the decision of providing employment should be treated as a subjective issue to frustrate the cause of the employee.

18. In view of the facts and circumstances, I find it to be a fit case where the management of ECL should be stopped from taking the plea of “delay” for not providing employment to the widow of the deceased employee. The management of ECL is therefore directed to provide **suitable employment to Smt. Guddi Devi within three months** from the date of communication of the Notification of the Award and **pay monetary compensation from the date of death of her husband till providing her with an employment.”**

15. Clause 9.5.0.-(ii) of the said National Coal Wage Agreement is as follows:-

“Clause 9.5.0:-

*(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”

16. In the present case, it is on record/duly proved that the **claimant** was **aged 35 years** at the time of death of the workman and as such she is prima facie entitled to exercise her option.
17. The claim in this case was made on 28.01.2006. The reference was made on 12.05.2008. The award of the CGIT is dated 27.09.2023 (after more than 15 years).
18. It further appears that the learned Tribunal passed an order which is clearly in accordance with law in view of the fact that the Management has been directed to provide **suitable employment** to Smt. Guddi Devi **within three months** from the communication of the notification of the Award. **It is because no employment was provided to her in spite of her being suitable as per NCW Agreement, the Tribunal rightly directed to disburse monetary compensation to her from the date of death of her husband till providing her with an employment.**
19. This court finds no irregularity in the award under challenge **as monetary compensation has been provided till she is given employment being entitled.** The claim is pending since 2006. The petitioner cannot be made to suffer for no fault on her part.

20. As such, **the writ petition is dismissed** with the direction that the petitioner shall comply with the direction in the award under challenge within 30 days from the date of this order and the monetary compensation to be paid to the respondent no.5 shall also be along with statutory interest as applicable.
21. In case an employment is provided which is suitable for the respondent no.5, the monetary compensation shall be paid till that date. As such contention of the learned counsel for the petitioner that the Tribunal cannot grant both compensation and employment has no substance in the present case.
22. **WPA 14830 of 2024 is thus dismissed.**
23. All connected applications, if any, stand disposed of.
24. Interim order, if any, stands vacated.
25. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)