

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 24th OF MARCH, 2022

WRIT APPEAL No. 126 of 2022

Between:-

**DEEPIKA SINGH, AGED 26 YEARS,
OCCUPATION: UNEMPLOYED, D/O
LATE DEVENDRA SINGH,
RESIDENT OF WARD NO.02,
PATHARIYA TOLA, SOHAGPUR,
DISTRICT SHAHDOL.**

....APPELLANT

(BY SHRI R.K. CHAND - ADVOCATE)

AND

- 1. SOUTH EASTERN COALFIELDS LTD. THROUGH DIRECTOR, SEEPAT ROAD, BILASPUR (CHHATTISGARH).**
- 2. GENERAL MANAGER, SOUTH EASTERN COALFIELDS LTD. SOHAGPUR AREA, PO-DHANPURI, DISTRICT SHAHDOL (MADHYA PRADESH)**
- 3. DY. MANAGER (MINES), O/O. SUB AREA MANAGER, SOUTH EASTERN COALFIELDS LTD. DHANPURI OPEN CAST MINE, PO SANJAY KOYLA NAGAR, DISTRICT SHAHDOL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANOOP NAIR - ADVOCATE)

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*This appeal coming on for admission this day, **Hon'ble Shri Justice Ravi Malimath, Chief Justice** passed the following:*

ORDER

1. Aggrieved by the order dated 17.01.2022 passed by the learned Single Judge in dismissing the Writ Petition No.2442 of 2021, the petitioner is in appeal.
2. The case of the petitioner is that her father was working on the post of Senior Mechanic (Token No.3004) with the respondents. He died during the course of employment on 10.07.2020. By the application dated 15.09.2020, the widow of the deceased made an application for grant of compassionate appointment to her daughter. On the very next day, the respondents wrote a letter to the widow advising her to take compensation instead of a job for her daughter. Nothing happened thereafter. Thereafter, the mother of the petitioner wrote a letter dated 01.10.2020 indicating that her daughter is married, which information by mistake, was not provided to them earlier. By the communication dated 06.10.2020, the respondents informed her that there is no provision in the Company rules to provide compassionate appointment to a married daughter. Since no appointment was made, a letter was once again addressed on 13.10.2020 and thereafter again on 18.12.2020 seeking grant of compassionate appointment. Since the same was not done, the instant writ petition was filed seeking to quash the impugned letter dated 06.10.2020 and for a direction to the respondents to grant compassionate appointment to the daughter, namely, the petitioner.
3. The learned Single Judge by the impugned order dismissed the writ petition. Questioning the same, the instant appeal is filed.
4. Mr. R.K. Chand, learned counsel for the appellant contends that the order passed by the learned Single Judge is erroneous and liable to be

interfered with. That the subject matter involved herein is similar to the one that was considered by the judgment of Hon'ble High Court of Chhattisgarh at Bilaspur in W.P. No.4994 of 2015 (*Smt. Asha Pandey vs. Coal India Ltd. and others*). By the order dated 15.03.2016 the petition was allowed by directing that Clause 9.3.3 of NCWA-VI read with Clause 9.4.0 of NCWA-IX be read in the manner to include the married daughter also as the one eligible for appointment. The SLP filed against the said order has also been dismissed. That the learned Single Judge failed to properly appreciate the judgment of the Hon'ble High Court of Chhattisgarh and has wrongly dismissed the petition.

5. The learned counsel for the respondents defends the impugned order passed by the learned Single Judge. He contends that the Memorandum of Agreement does not provide for grant of compassionate appointment to a married daughter. Hence, it is pleaded that the writ appeal be dismissed.

6. Heard learned counsels.

7. So far as the impugned order is concerned, the learned Single Judge held in para 23 of the judgment that the interest of the widow was taken care of by the policy which provided for monetary compensation. That such a monetary compensation was offered to the petitioner's mother as is evident from the communication vide Annexure P-3 dated 16.09.2020. Therefore, since the interest of the widow was sought to be taken care of, the dependency cannot be extended to any arbitrary limit.

The said para reads as follows:-

“23. In the present case, primarily female dependent on the deceased employee is Smt. Lalita Singh and not the present petitioner. Interest of Smt. Lalita Singgh is taken care of by the policy, which provides for payment of monetary compensation and that was offered to the

petitioner's mother as is evident from Annexure P-3. Therefore, in terms of the offer of monthly monetary compensation during life time of the widow of the deceased, aspect of dependency of widow being taken care of, dependency cannot be extended to any arbitrary limit, so to include married daughter and son-in-law of deceased employee in absence of any cogent material available on record."

Furthermore, it was held in para 25 as follows:-

"25. Thus, though the law laid down by the Chhattisgarh High Court is respectfully accepted for its laudable object of bringing equality to its logical end, but claim for equality is subject to the other conditions and restrictions, which are mentioned in the policy namely dependency. When alternative offer of payment of recurring cash monetary compensation during the life time of the widow of the deceased, is also taken into consideration so also law laid down in case of Director of Treasuries in Karnataka & others Vs. V. Somyashree, AIR 2021 SC 5620 by the Hon'ble Supreme Court, this Court cannot go beyond the policy which was prevailing on the date of consideration of the application even after giving it inclusive interpretation for want of 'dependency'. Thus petition fails and is dismissed."

Therein the learned Single Judge came to the view that since there was lack of dependency, the writ petitioner was not entitled to relief.

8. A Memorandum of Agreement has been entered into dated 23.12.2000 prepared by the Joint Bipartite Committee for the Coal Industry, New Delhi. Chapter – IX therein deals with the provision pertaining to grant of compassionate appointment. Clause 9.3.0 deals with the provision of employment to dependents. Clause 9.3.2 is with regard to employment to one dependent of the worker who dies while in service. It also indicates that *"in so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0"*. Clause 9.4.0 pertains to employment of one

dependent of a worker who is permanently disabled in his place. The same is not applicable herein. Clause 9.5.0 is with regard to employment/monetary compensation to the female dependent.

9. The Hon'ble High Court of Chhattisgarh in the aforesaid judgment dealt with the provisions of Clause 9.3.3. Thereafter, the binding effect of a settlement under Section 2(p) of the Industrial Disputes Act was considered. On considering the various judgments, it was firstly held that the agreement is a binding settlement under Section 2(p) of the Act having a force of law. Thereafter, Clause 9.3.0 was considered by the Court. It was ultimately held in para 29 as follows:-

“(29) As a fallout and consequence of aforesaid discussion, the writ petition is allowed and consequently clause 9.3.3 of NCWA-VI, which has been made applicable to clause 9.4.0(I) of NCWA-IX, regarding dependent employment only to the married daughter is held to be violative and discriminatory and the said clause to the extent of impliedly excluding married daughter from consideration for dependent employment is hereby declared void and inoperative. Resultantly, impugned order dated 15.10.2015 Annexure P-1 rejecting the petitioner's claim for dependent employment on the ground of her marriage is hereby quashed being unsustainable in law and it is directed that Clause 9.3.3 of NCWA-VI read with clause 9.4.0 of NCWA-IX be read in the manner to include the married daughter also as one of the eligibles subject to fulfillment of other conditions. As a consequence, the respondents are directed to consider the claim of the petitioner for dependent employment afresh in accordance with law keeping in view that her father died way back on 08.02.2014 and her application for dependent employment was rejected on 15.10.2015, preferably within a period of 45 days from the date of receipt of certified copy of this order. No order as to costs.”

10. We have considered the said judgment at length. The reference to the Clause 9.3.3 and Clause 9.4.0, in our considered view, may not be

appropriate in the given facts and circumstances of the case. Clause 9.3.3 comes under the sub-heading “*employment to one dependent of the worker who dies while in service*”. Thereafter, it is narrated that insofar as the female dependents are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0. Therefore, the Clause 9.3.3 and 9.3.4 are not applicable to the case of the writ petitioner. The clear narration is that the female dependents should be governed by Clause 9.5.0 so also in Clause 9.4.0 which deals with one dependent of the worker who is permanently disabled in his place. The said clause has also been included to the effect that the female dependent would be governed by Clause 9.5.0. Therefore, the judgment of the Hon’ble High Court of Chhattisgarh enunciating the provisions of law with regard to Clauses 9.3.3, 9.3.4 and 9.4.0 may not be germane for the consideration of this case. The Clauses 9.3.2 and 9.4.0 clearly speak of Clause 9.5.0 being applicable in the case of female dependents. Clause 9.5.0 reads as follows:-

“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."

11. In the instant case, what will be applicable is sub-clause (ii) of Clause 9.5.0. The same is with reference to a case of death/total permanent disablement due to cause other than mine accident etc. It also narrates that if the female dependent 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 dependent is above 45 years of age, she will be entitled only to monetary compensation and not to employment. Admittedly, the writ petitioner is below the age of 45 years. Therefore, she will have the option either to accept the monetary compensation or to seek employment. Therefore, we are of the view that these are the relevant provisions that are applicable and not Clause 9.3.3 and 9.4.0. In terms whereof, therefore, the petitioner would be entitled for compensation or employment. Admittedly, the petitioner is below 45 years of age, therefore, she has an option either to accept compensation or employment. The respondents have offered compensation in lieu of employment. The same has been impliedly

refused by the petitioner. Therefore, the respondents were duty bound to offer employment to the petitioner. They have failed to do so. Therefore, there is infraction of law.

12. Insofar as the impugned order passed by the learned Single Judge is concerned, even though the learned Single Judge extracted the relevant provisions of the agreement, declined to grant the relief on the ground as stated by him in para 23 of the order. We are unable to accept the reasoning accorded by the learned Single Judge. Only because a monetary compensation has been offered, it cannot be said that dependency of the widow has been taken care of and, therefore, dependency cannot be extended to any arbitrary limit to include a married daughter. As narrated hereinabove, the option given in Clause 9.5.0 is compensation or employment. When the petitioner has opted for employment, the respondents are bound to grant the same subject to other compliance.

13. The further reasoning accorded by the learned Single Judge is to the effect that there is no dependency. We are afraid that such a finding could not have been recorded by the learned Single Judge. The entire case that was contested before the learned Single Judge was not as to whether the daughter was dependent on her father or other reasons. The learned Single Judge has wrongly considered the question of dependency especially when the respondents had not even filed the statement of their objections. The learned Single Judge could not have gone into the question of dependency when it was neither pleaded nor argued by the respondents. The primary contest before the learned Single Judge was the applicability of the relevant Rules to a married daughter. Therefore, the findings recorded, in our considered view, may not be appropriate.

14. So far as the factum regarding the dependency of the petitioner on her father and not her husband, the existence of penury and related matters are matters of fact which require to be determined by the concerned authority. We do not think the same could have been decided by the learned Single Judge. They are matters of fact which require to be ascertained by the respondents themselves.

15. The only question was whether the married daughter is governed by the Rules. On reading the relevant Clause 9.5.0, we have no hesitation to hold that the same is applicable to a female dependent and does not exclude anyone else. The Rules, as have been placed for our consideration vide Chapter-IX of the Memorandum of Agreement, do not indicate that the married daughter is excluded. The reference in Clause 9.5.0 is only to a female dependent which has not been further clarified as to who constitutes a female dependent. The only restriction placed therein is with regard to the age of female dependent. That she would have two options of either accepting the monetary compensation or to seek a job if she is less than 45 years and in case she is above 45 years she will only be entitled to monetary compensation and not employment. There is no other restriction placed in Clause 9.5.0.

16. For the aforesaid reasons, we are of the considered view that firstly the judgment of the Hon'ble High Court of Chhattisgarh, as relied upon hereinabove, may not be applicable to the facts and circumstances of the case in view of the fact that Clause 9.5.0 was not considered in the aforesaid judgment. Secondly, we are of the view that the learned Single Judge could not have dismissed the writ petition on the reasons assigned by him in para 25 of the order which pertains to an offer of monetary compensation. Thirdly, the learned Single Judge could not have recorded a finding with regard to the question of dependency which was not the

subject matter involved in the writ petition. Hence, for all these reasons, we are of the view that the order of the learned Single Judge as well as the impugned order before him becomes unsustainable.

17. Consequently, the writ appeal is allowed. The order dated 17.01.2022 passed by the learned Single Judge in Writ Petition No.2442 of 2021 is set aside. The writ petition is partly allowed. The impugned order dated 06.10.2020 (Annexure P-5 to the writ petition) is quashed. It is held that the application of the petitioner, who is a married daughter, was wrongly rejected by the respondents only on the ground that she is a married daughter. Even though she is a married daughter, she is entitled to be considered for grant of compassionate appointment. Therefore, the respondents are directed to consider the case of the petitioner for grant of appointment on compassionate ground subject to her fulfilling the other conditions as mentioned in the relevant Agreement.

18. The writ appeal is accordingly disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE