

Unfortunately, Bharat Mahto died-in-harness on 27.01.2007. After the death of employee Bharat Mahto the biological mother of petitioner No.1, namely, Kalyani Devi applied for employment on 05.06.2007 under para-9.3.2. of NCWA which was effective from 01.07.2006 to 30.06.2011. The petitioner No.2 herein also applied for employment under the same clause of NCWA VIII. However, the respondent vide letter dated 04.07.2007 informed the petitioner No.2 that second wife Kalyani Devi has also claimed employment but the same cannot be given to Kalyani Devi as the first wife i.e. petitioner No.2 was alive and requested the petitioner No.2 to apply for monetary compensation as she has already attained the age of 45 years.

4. In the instant case, the first wife i.e. petitioner No.2 was not given employment because of her over age and second wife Kalyani Devi was also denied employment as she has no legal right for the same. Subsequently, petitioner No.2 who is the elder mother of petitioner No.1 vide Letter dated 05.06.2008 requested the respondents to keep the name of her husband's son from his second wife, namely, Suraj Kumar Mahto who is petitioner No.1 in the instant case and during relevant time he was above 12 years of age to put him on live roaster as per the scheme and thereafter provide employment.

It is the case of the petitioner that as per para 9.5.0. (III), if no employment has been offered and the male dependent of the concerned worker is above 12 years but below the age of 18 years; he will be kept on a live roaster and would be provided employment when he attains the age of 18 years. During the period the male dependent is on live roaster the female dependent will be also be paid monetary compensation.

5. In the instant case, the date of birth of petitioner No.1 is 12.11.1994 which is evident from his matriculation certificate and at the time of death of his father, he was above 12 years and the respondents were also requested vide letter

dated 05.06.2008 of the elder mother i.e. petitioner No.2, to keep the name of petitioner No.1 in the live roaster in terms of para-9.5.0. (iii) of NCWA VIII. However, till date, neither any employment has been offered to the petitioner No.1 nor the monetary compensation has been given to the petitioner No.2 from the date of death of her deceased husband.

Further fact reveals that earlier the respondent-BCCL vide their letter dated 04.07.2007 admits the claim of monetary compensation for petitioner No.2 but did not respond to the other claim of appointment which was claimed by the petitioners in view of para- 9.5.0. (iii) of NCWA.

6. Mr. Ratnesh Kumar, learned counsel representing the petitioners draws attention of this Court towards Annexure-6 which is the chapter of social security under NCWA (VIII). He further submits that as per para-9.5.0 (iii) in case if no employment has been offered and the male dependent of the deceased worker is 12 years and above in age but below 18 years of age, will be kept on live roaster and would be provided employment when he attains the age of 18 years. Further, during the period, the male dependent is on live roaster, the female dependent will be paid monetary compensation.

He further submits that recently in the case of ***Jhambai Vrs CCL and Others (W.P.(S) No.803 of 2014)*** the coal company upon direction of this Court after 11 years of death of the deceased employee, has granted employment and simultaneously monetary compensation under para- 9.5.0.(iii) of NCWA. He strenuously contended that if the payment of monetary compensation to petitioner No.2 is admitted by the respondent BCCL then the second part of 9.5.0. (iii) regarding employment to the male dependent has to follow.

7. Mr. Anup Kr. Mehta, learned counsel for the respondents submits that the Late Bharat Mahto having Personnel No. 00146407 was working as Rigger / Dredger Operator of Ropeways Area. While in service he died on

27.01.2007 and as per his Service Excerpt he had given the names of his dependents which are as under :-

- (i) Smt. Bhabhi Devi - wife aged 30 years as on 01.04.1987.
- (ii) Kumari Manju - daughter aged 09 years as on 01.04.1987.
- (iii) Gautam Kumar, son 06 years as on 01.04.1987.
- (iv) Renu Bala Devi, mother 45 years as on 01.04.1987.

It has been further submitted by learned Counsel that the name of the petitioner No.1 does not appear in the Service Excerpts. As per nomination in Form "F" under Payment of Gratuity Act, 1972, the employee had furnished details of his nominees namely Smt. Bhabhi Devi wife with 50% share, (ii) Smt. Kalyani Devi - wife with 50% share in Gratuity. Xerox copy of Form "F" is annexed and marked as Annexure-A.

He further submits that after the death of Late Bharat Mahto, both Smt. Bhabhi Devi and Smt. Kalyani Devi applied for their appointment on compassionate ground. The applications were referred to the BCCL Headquarters for their opinion. The headquarter informed E.J. Area of BCCL that claim of Smt. Kalyani Devi cannot be accepted as the legally married 1st wife of Late Bharat Mahto is alive. Further as Smt. Bhabhi Devi was aged more than 45 years at that time, she was advised to apply for monetary compensation in lieu of employment as per clause 9.5.0 of N.C.W.A vide letter No. 738 dated 04/05.07.2007. A Xerox copy of the letter dated 04/05.07.2007 is annexed and marked as Annexure B.

It has been further submitted that as there was a dispute with regards to payment of Gratuity under P.G Act, 1972, the petitioner in the light of the orders dated 05.11.2009 and 30.11.2011 passed by the Controlling Authority under P.G Act, 1972 in Application No. 36/(46)/2010.E. 5 applied for Succession Certificate in the Court of the District Delegate (Sub Judge 1st) Dhanbad vide Succession Certificate Case No. 07/2012 and the District Delegate by reasons of his order dated 19.07.2012 has been pleased to issue Succession Certificate in the name of the

petitioner No.2. Xerox copies of the orders dated 05.11.2009 30.11.2011 passed by Controlling Authority under P.G Act and the Succession Certificate dated 19.07.2012 are annexed and marked as Annexures C, D and E respectively.

Further, Smt. Kalyani Devi (2nd wife of the deceased) has also raised an Industrial Dispute for not providing her employment. Conciliation was taken up by the ALC (C) Dhanbad vide his letter / notice dated 28.02.2008 and the respondents have also appeared for Conciliation. Xerox copy of the I.D dated 15.01.2008 and the notice of Conciliation dated 28.02.2008 are annexed and marked as Annexures F and G respectively. The respondents have appeared in Conciliation and have submitted their reply dated 26.07.2011 stating that it is not possible to provide employment to the 2nd wife of Late Bharat Mahto. Xerox copy of the reply dated 26.07.2011 is annexed and marked as Annexure H.

It is also been submitted that the petitioner No.2 was advised to apply for monetary compensation in the light of the letter dated 06/07.06.2007 of BCCL Headquarters. The petitioner No.2, however, has not applied for monetary compensation till date and therefore the respondents are unable to extend the benefit of monetary compensation.

Learned Counsel lastly submitted that the petitioner cannot maintain an application for compassionate appointment which has been made for the first time by filing this writ application after about 11 years of death. Even otherwise, petitioner No.1 is not included in the list of dependents in the Service Excerpts enclosed with the writ application and marked as Annexure -1.

8. Having heard learned counsel for the parties and after going through the document annexed with the respective affidavits and the averments made therein, it appears that the main grievance of the petitioner is that as per para-9.5.0.(iii) of NCWA (VIII), the petitioner No.1 is entitled to be kept on

“Live Roaster” and after attaining the age of majority, he should be given employment and till that period his elder mother, who is petitioner No.2, should be given monetary compensation. As such for proper appreciation of the contention of both the parties para-9.5.0(iii) which deals of employment/monetary compensation to a female dependent is to be examined. For brevity, the same is extracted hereinbelow:

Chapter-IX

Social Security

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 11 2000.*

9. After going through the aforesaid provision made in NCWA (VIII), it appears that there are specific clauses with regard to employment as well as monetary compensation. Clause-(i) of 9.5.0. stipulates that in case of death due to mine accident, the female dependent would have the option either to accept the monetary compensation or to accept

employment. Thus, the first clause is in the case of death due to mine accident which is not the case here.

Clause (ii) deals with the case of death or total disablement due to cause other than mines accident and medical unfitness under 9.4.0. and stipulates that if the female dependent is below the age of 45 years, she will have the option either to accept monetary compensation or employment. Since in the instant case the first wife (petitioner No.2) was admittedly above 45 years; as such the respondent BCCL has rightly offered for monetary compensation.

Now the bone of contention is Clause (iii) where the scheme stipulates that in case of death either in mine accident or other reason or medical unfitness under 9.4.0. if no employment has been offered and the male dependent of the concerned worker is 12 years and above, he will be kept on a live roaster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years. It is further stipulated in Clause (iii) that during the period the male dependent is on live roaster, the female dependent will be paid monetary compensation as per rate mentioned in Clause (i) and Clause (ii). In the said clause it is also mentioned that this Clause (iii) will be effective from 01.01.2003.

10. Thus, by going through the aforesaid clauses stipulated in 9.5.0. in **Chapter-IX** which is for social security, the contention of the petitioner that in cases where the male child is above 12 years and below 18 years and the widow of the deceased is more than 45 years, then both the benefits should be given to the claimants. Accordingly, this Court holds that as per 9.5.0.(iii) the respondent Coal Company is under obligation to keep the minor child in the live roaster till the age of his majority and during the said period the widow dependent will get the monetary benefit.

11. Now coming to the facts of the instant case, in 2008 itself vide Letter dated 05.06.2008 (Annexure-5) an application was given to the respondents with regard to

appointment of petitioner No.1 who was son of the second wife. The same was never considered; rather the stand of the respondents in para- 11 of its counter affidavit is that the petitioner No.2 was advised to apply for monetary compensation (Annexure-B). However, petitioner No.2 has not applied for monetary compensation till date.

This Court has already held that as per 9.5.0. (iii) of Chapter VI which deals with social security provides for a system of live roaster of a minor child between 12-18 years and simultaneously for payment of monetary compensation. As a matter of fact, it was unfair on the part of respondents to come with a plea in the counter affidavit that now monetary compensation could not be paid since she has not applied and further the petitioner No.1 is not entitled for appointment. They could have very well rejected the claim of the petitioner no.2 for keeping her step son in live roaster.

12. Even assuming for a moment that the said letter of the widow of the deceased was misplaced or not received by the respondents; it was obligatory on the part of the respondents to keep his name in the live roaster which has not been done in the instant case. As a matter of fact, Section 73 in the Mines Rules 1955 stipulates the duties of a welfare officer which cast certain duties upon the welfare officer. For brevity, Section 73 of Mines Rules, is quoted herein below:

73. Duties of Welfare Officers.—[(1)] The duties of Welfare Officers shall be—

(i) to establish contacts and hold consultations with a view to main-tain harmonious relations between the management and persons employed in the mine;

(ii) to bring to the notice of the management the grievances of em-ployees, individual as well as collective, with a view to securing their expeditious redress;

(iii) to promote relations between management and employees which will ensure productive efficiency as well as amelioration in the working conditions and to help work-ers to adjust and adapt them-selves to their working environments;

(iv) to assist in the formation of Works and Joint Production Com-mittees, Co-operative Societies and Safety-First and Welfare Com-mittees, and to supervise their work;

(v) to help the management in regulating the grant of leave with wages and explain to the workers the provisions

relating to leave with wages and other leave privileges and to guide the workers in the matter of submission of applications for grant of leave for regulating authorised absence;

(vi) to advise on welfare provisions, such as housing facilities food stuffs, social and recreational facilities, sanitation, individual per-sonnel problems and education of children;

(vii) to supervise welfare activities, statutory or otherwise, including education and training of employees;

(viii) to suggest measures which will lend to raise the standard of living of workers and in general promote their well being;

(ix) to perform any other duty connected with the welfare of the persons employed in mines.

[(2) Notwithstanding anything contained in sub-rule (1), no Welfare Officer shall deal with any disciplinary case against a person employed in a mine, or, appear before a Conciliation Officer, Court or Tribunal on behalf of the management of a mine against a person or persons employed in the mine, except when he is required by the Conciliation Officer, Court or Tribunal to appear as an independent witness:

Provided that nothing in this sub-rule shall be deemed to prohibit a person employed in a mine from approaching the Welfare Officer in respect of a grievance arising out of any case of disciplinary action against him.]

[(3) Every Welfare Officer shall keep a record of his day-to-day work and shall, at the end of every year, forward to the Chief Inspector through the manager of the mine concerned, a summary of the report of his work during the year.]

13. After going through Rule 73, it appears that it is the duty of Mines Welfare Officer to bring to the notice of the management the grievance of employee, individuals as well as collective with a view to securing their expeditious redressal and that is the reason this Court holds that it was obligatory on the part of respondents who acts as a Welfare Officer to bring to the notice of the management about the petitioner's grievance which has not been done in the instant case. This proposition is supported by the judgment passed in the case of **Mohan Mahto Vrs. CCL and other reported in (2007) 8 SCC 549** where at para-18 the Hon'ble Apex Court has held as under-

"18. We have indicated hereinbefore, that it is not necessary for us to go into the question as to whether in the teeth of the provision of NCWA V, the respondent at all had any power to fix a time-limit and thereby curtailing the right of the workman concerned. We would assume that even in such a matter, it had a right. But, even for the said purpose, keeping in view the fact that a beneficial provision is made under a

settlement, the “State” was expected to act reasonably. While so acting, it must provide for a period of limitation which is reasonable. Apart from the fact that the period of limitation provided for in the circular letter with a power of relaxation can never be held to be imperative in character, the matter should also be considered from the subsequent conduct of the respondent insofar as it had issued another circular letter in the year 2000 providing for filing of an application for appointment on compassionate grounds within a period of one year. It may be that the said circular letter has prospective operation but even in relation thereto we may notice that whereas the said circular letter was issued upon holding discussion with the unions, the circular letter of the year 1995 was a unilateral one. Furthermore, in its letter dated 2-8-2000/3-8-2000, it will bear repetition to state that expiry of the period of limitation was not taken as a ground for rejecting his application. Underage and non-placement of his name in live roster are stated to be the reasons. It is, therefore, unfair on the part of the respondent to raise such a plea for the first time in its counter-affidavit to the writ petition. If he was underage, definitely, it was obligatory on the part of the respondent to keep his name in the live roster. It was not done.”

Further the Division Bench of this Court in the case of **Gangia Devi Vrs. BCCL (L.P.A. No.657 of 2018)**, has held in para-6 as under :- Relevant portion of paragraph-6 is quoted hereinbelow:-

“6. We after appreciating the provisions of National Coal Wage agreement have found therefrom that it is a bipartite agreement entered in between the authorities of Coal India Limited, to which, the respondent- B.C.C.L. is one of the subsidiary and the trade unions other than in course of conciliation which means that bipartite agreement will be treated to be an agreement within the meaning of Section 18(1) of the Industrial Disputes Act, 1947 and as such, the nature of agreement is having its statutory fervor, as has been held by the Hon’ble Apex Court in the case of Mohan Mahto Vs. Central Coalfield Ltd. & Ors., reported in (2007) SCC 549.

This Court, therefore, is of the view that since bipartite agreement by way of National Coal Wage Agreement is having statutory fervor, therefore, the same is to be followed in its strict sense by the respective parties i.e., its signatories.

It is evident from the condition as contained under Clause 9.5.0. of N.C.W.A.-V, wherein it has been agreed to provide immediate relief to the dependent of the bereaved family in case of death of deceased employee in harness, two modes have been provided to provide the said relief by way of providing employment on compassionate ground if the dependent is found to be eligible and less than 45 years of age or by way of monetary compensation.

The issue as to whether the monetary compensation would be paid from the date of death or from the date of making an application is involved herein.

It is evident from the conditions stipulated in N.C.W.A. as under Clause-9.5.0, wherein a condition of entitlement to receive monetary compensation has been made, meaning thereby, there is no stipulation made therein that the wife of the deceased employee will only be entitled to get the monetary compensation if she files an application for getting such monetary compensation, and if entitlement has been made in the agreement which has got statutory force irrespective of the fact that the application has been submitted or not, the wife of the deceased employee would be entitled to get the monetary compensation.”

14. The stand of the Respondents that the name of petitioner no.1 was not appearing in the Family excerpts is not acceptable to this Court, inasmuch as, the family excerpts was filled up much prior to the date of birth of the Petitioner No.1.

15. The stand of learned counsel for the respondent that the basic object of compassionate appointment is to give immediate relief and now after more than 15 years immediate relief does not survive but the fact remains it was the respondents who did the mistake and we cannot forget that compassionate appointment in cases of other institution and in cases of mines area; same principle cannot be adopted keeping in view the fact that a beneficial provision is made out under a settlement and the state is expected to act reasonably. The matter should also be considered from the subsequent conduct of the respondent coal company.

16. The Judgments relied upon by Mr. Mehta rendered in the case of Parden Oraon is not applicable in the instant case as the same was not dealing Para 9.5.0(iii); rather the facts of the said case were under 9.4.0. Further, in the case of **Gangia Devi (Supra)**, the beneficiary got employment after 11 years.

17. In view of the aforesaid facts and circumstances this application deserves to be allowed. Accordingly, the respondents are directed to extend employment to the petitioner No.1, who is admittedly now more than 18 years,

and also to pay the monetary compensation to petitioner No.2 from the date of death of the deceased employee till the date of attaining the age of 60 years as per 9.5.0 (iii) of NCWA-VIII.

18. As a result, the instant writ application stands allowed. Pending I.A., if any, is also closed.

(Deepak Roshan, J.)

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AFR