

## Eastern Coalfields Limited Vs Rakhi Mondal and Others

**Court:** Calcutta High Court

**Date of Decision:** Aug. 13, 2013

**Citation:** (2014) 1 CHN 486 : (2014) 1 WBLR 951

**Hon'ble Judges:** Arun Mishra, C.J; Joymalya Bagchi, J

**Bench:** Division Bench

### Judgement

Arun Mishra, C.J.

This is an application for condonation of delay in filing the appeal. After hearing the learned Advocates appearing for

the parties and having considered the averments contained in the application for condonation of delay in filing the appeal, we are satisfied that the

appellant was prevented by sufficient cause from presenting the memorandum of appeal in time. The delay in filing the appeal is, therefore,

condoned and the application for condonation of delay is allowed.

2. Now, we take up the appeal itself for final disposal upon dispensation of all other formalities.

3. The intra Court appeal has been preferred as against the judgment and order dated July 2, 2012 passed by a learned Single Judge of this Court

in W.P. 19920 (W) of 2009 whereby and whereunder the learned Single Judge directed compassionate appointment to one of the dependents of

the deceased Nandalal Mondal. The learned Single Judge directed the authorities of the Eastern Coalfields Limited to give appointment either to

the writ petitioner/respondent or to her brother, namely, Gourav Mondal, who was already more than 18 years of age, within two months from the

date of communication of the order. The learned Single Judge, also, issued direction for monetary compensation at the rate of Rs. 3,000/- (Rupees

three thousand) only per month for the period accruing after two months from the date of death of the deceased till the date of appointment to one

of the dependents of the deceased. The learned Single Judge had relied upon the National Coal Wage Agreement-VI in support of his decision.

4. The employer, namely, the Eastern Coalfields Limited has come up in the appeal against the said judgment and order passed by the learned

Single Judge.

5. The facts, in short, of this case are that Nandalal Mondal, who was an employee of the Eastern Coalfields Limited, died on February 14, 2004.

National Coal Wage Agreement-VI governs the monetary compensation and the compassionate appointment to be offered to the dependents of

the employee died in harness. In terms of the said Agreement, the dependents include wife/husband of the deceased, unmarried daughter and the

son including the adopted son. The wife of the deceased, namely, Sikha Mondal, applied for her employment, but on June 20, 2006 her prayer

was rejected by the appellant company on the ground-that she was aged within 33 and 38 years and that she was physically unfit and in lieu of

employment she was offered monetary compensation at the rate of Rs. 3,000/- per month till she would attain the age of 60 years or till the date of

remarriage and/or death, whichever is earlier. The widow of the deceased did not accept the offer of the authorities and applied for review of the

decision taken by the authorities. During pendency of her review application, on March 20, 2007 the widow died and on her death, the writ

petitioner/respondent being the unmarried daughter of the deceased Nandalal Mondal applied for appointment.

6. The authorities of the Eastern Coalfields Limited considered the case of the writ petitioner and rejected her prayer by order dated September 2,

2009 on the ground that if the writ petitioner's age could have been 18 years or more at the time of death of her father, then her case could have

been considered. There was no provision for employment for minor female dependent. She was advised to obtain terminal benefits of her father,

which the authorities assured to look into the same on priority basis.

7. Aggrieved by the order of the authorities, as aforesaid, the writ petition was filed before the learned Single Judge.

8. It was submitted on behalf of the Eastern Coalfields Limited that the authorities were not bound to give any compassionate appointment or to

compensate monetarily, as monetary compensation of Rs. 3,000/- was offered to the mother of the writ petitioner until her death. She being dead,

the authorities were no longer liable to give any employment.

9. The learned Single Judge opined that exercise undertaken by the widow came to an end without any result. She died, she was not offered

compassionate appointment and she also did not achieve the monetary compensation. The claim made by the daughter/writ petitioner was, also,

rejected on the grounds as stated hereinbefore.

10. The learned Single Judge observed that it would appear from clause 9.5.0(iii) of the National Coal Wage Agreement-VI that a male

dependent, who, at the time of death of the workman, was 12 years or above, would be kept on a live roster and would be provided employment

when he attains the age of 18 years.

11. The learned Single Judge further observed that the compassionate appointment could be offered either to a son or to a daughter of the

deceased and there was no reason as to why a male dependent would be kept on the live roster but a female dependent could not be. The

aforesaid provision was held to be bad and opposed to Article 14 of the Constitution of India.

12. Thus, the learned Single Judge issued direction to give compassionate appointment either to the son of the deceased, namely, Gourav Mondal,

or to the daughter of the deceased being the writ petitioner and to make payment of monetary compensation in favour of any one of the

dependents till the date of appointment so offered.

13. The main submission of Mr. Alope Kumar Banerjee, learned Senior Advocate appearing for the appellant, is that compassionate appointment

could not have been directed to be offered to the daughter of the deceased or to his son, namely, Gourav, as such appointment is not

contemplated to be offered to the daughter, since her age was below 18 years as also to the son, namely, Gourav, since he was below 12 years of

age, at the time of death of her father.

14. Mr. Banerjee further submits that the employee died on February 14, 2004, when the age of Gourav was approximately 8 years. As disclosed

by the employee himself in annexure-X to the additional affidavit filed by the appellant before us, the age of Gourav was mentioned as 2 years in

the year 1998. Thus, he could not have been kept on live roster in terms of provisions contained in clause 9.5.0(iii) of the National Coal Wage

Agreement-VI.

15. According to Mr. Banerjee, the impugned decision directing compassionate appointment either to the writ petitioner or to her brother, namely,

Gourav, is bad in law and liable to be set aside. In support of his contention, Mr. Banerjee cites a decision in the case of Birad Mal Singhvi Vs.

Anand Purohit, as also a decision in the case of Jagtar Singh Vs. State of Punjab, .

16. Mr. Priyabrata Ghosh, learned Advocate appearing on behalf of the writ petitioner/respondent, on the contrary, has submitted that no case for

interference is made out in the intra Court appeal as the age of Gourav was 13 years on the date on which his father died as apparent from the

admit card issued by the West Bengal Board of Secondary Education for the purpose of Madhyamik Pariksha (Secondary Examination) for the

year 2008, wherein his date of birth was mentioned as January 21, 1991.

17. In case, the stand of the appellant is accepted that Gourav was born in the year 1996, he would have been at the age of 12 years in the year

2008. A candidate of 12 years of age is not even supposed to sit in the Madhyamik Pariksha conducted by the West Bengal Board of Secondary

Education. Apart from that the learned Advocate for the appellant has relied upon the medical identity card issued on August 5, 1997 by the

Eastern Coalfields Limited to the deceased Nandalal Mondal, wherein the age of Gourav Mondal was mentioned as 6 years. Thus, the date of

birth mentioned in the medical identity card is correlated with what has been recorded in the admit card issued by the West Bengal Board of

Secondary Education. As such, it was incumbent upon the appellant/employer to keep Gourav in the live roster as he was above 12 years of age

at the time of death of his father and on attaining the age of 18. years, he is required to be offered employment in terms of provisions contained in

clause 9.5.0(iii) of the National Coal Wage Agreement-VI.

18. The learned Advocate for the writ petitioner/respondent has submitted that even if the daughter/writ petitioner cannot be offered

compassionate appointment, Gourav being the son of the deceased and above 12 years of age as on the date of death of his father, that is, on

February 14, 2004, is entitled to get compassionate appointment. Thus, according to him, the direction issued by the learned Single Judge calls for

no interference.

19. First, we decide the question of entitlement of compassionate appointment by Gourav in terms of provisions contained in clause 9.5.0(iii) of the

National Coal Wage Agreement-VI. Clause 9.5.0, which provides for employment/monetary compensation to female dependant, reads as

follows:--

9.5.0 Employment/monetary compensation to female dependent: 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. 3000/- 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.

iv) Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.

v) The existing rate of monetary compensation will continue. The matter will be further discussed in the Standardization Committee & finalized.

20. It is apparent that in case, the male dependant of the concerned worker is 12 years and above in age as on the date of death of the worker, he

would be kept on 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 would be paid monetary compensation as per rates at

paragraphs (i) and (ii) of clause 9.5.0 above.

21. The main dispute with respect to entitlement of Gourav be kept on live roster is in respect of his age. In the facts and circumstances of the

case, we have called for additional affidavit in course of the appeal. Both the parties have filed their additional affidavits and relies against the

additional affidavits used by the respective parties with regard to the age of Gourav as on the date of death of the deceased Nandalal in the year

2004.

22. The appellant/employer has filed the particulars of family disclosed by the employee himself, which is annexure X to their additional affidavit

and reply used against the additional affidavit filed by the writ petitioner/respondent. The particulars were given by the employee in ""English"" in

Form PS-3, which bears the date May 25, 1998, wherein the age of Gourav Mondal has been mentioned on the basis of approximation as 2

years. At the bottom of the said declaration in the right hand side, the employee has signed in Bengali. Considering the declaration in which the

employee has signed in Bengali, it is apparent that he hardly knew how to sign. In the circumstances, we find absolutely nothing in the declaration

to rely.

23. The medical identity card issued by the appellant/employer on August 5, 1997, that is, only ten months before the declaration given by the

employee himself, in which the age of Gourav Mondal has been mentioned as 6 years meaning thereby he was born in the year 1991. The admit

card issued by the West Bengal Board of Secondary Education clinches the issue in which the age of Gourav Mondal has been mentioned as

January 21, 1991. The genuineness of the admit card issued by the Board is beyond periphery of doubt, considering the cardinal principle of

evaluation of evidence that man may lie but circumstances do not, firstly, we find no reason to discard the medical identity card issued by the

employer and, secondly, we find from circumstances that had the age of Gourav been only 11 to 12 years in the year 2008, he would not have

been permitted to sit in the Madhyamik Pariksha in the year 2008. In normal course, a candidate of 15/16 years or above reaches or is permitted

to sit in the Madhyamik Pariksha of class 10th conducted by the West Bengal Board of Secondary Education. The date of birth as mentioned in

the admit card issued in favour of the son of the deceased, namely, Gourav Mondal, for the Madhyamik Pariksha, 2008 supports the age as

mentioned in the medical identity card issued by the employer.

24. Thus, in our considered opinion, the age of Gourav Mondal was approximately 13 years at the time of death of his father, namely, Nandalal

Mondal. Thus, it was incumbent upon the employer, in terms of provisions contained in clause 9.5.0(iii) of the National Coal Wage Agreement-VI,

to keep Gourav Mondal on the live roster and till such time he remains on the live roster the female dependant/writ petitioner was required to be

paid monetary compensation as provided in the clause 9.5.0.

25. Now we come to the other finding recorded by the learned Single Judge as to the arbitrariness of the provisions that there could not have any

distinction to be made between a male and female dependant to keep him/her on live roster. In the instant case, the widow of the deceased was

declined compassionate appointment on the ground that she was unfit for the job. The daughter/writ petitioner was denied compassionate

appointment on the ground that her age was below 18 years. However, the son, namely, Gourav Mondal, was above 12 years of age at the time

of death of his father. As such, it was incumbent upon the employer to offer him compassionate appointment upon his attaining the age of 18 years.

26. Therefore, the finding as recorded by the learned Single Judge that the provisions as contained in clause 9.5.0(iii) of the National Coal Wage

Agreement-VI is arbitrary and cannot be accepted, as the female dependent is taken care of by making payment of monetary compensation at the

rate of Rs. 3.000/- per month and the male dependent can be kept on live roster. As such, wholesome, the provision cannot be said to be

discriminatory or arbitrary and opposed to Article 14 of the Constitution of India.

27. Even it is trite as held by the Apex Court that compassionate appointment on the death of the employee is governed by the policy. The

National Coal Wage Agreement-VI contains the policy of offering compassionate appointment. It is not for the Court to rewrite a policy as the

offer of compassionate employment is governed by such rule/policy as held by the Hon"ble Supreme Court in V. Sivamurthy Vs. State of Andhra

Pradesh and Others, .

28. In the case of Birad Mal Singhvi (supra) cited by Mr. Banerjee the Apex Court while considering the provisions of the Representation of the

People Act has held that when there is question of appreciation of evidence, it is the duty of the High Court to determine whether the documents

produced by the parties prove the facts in issue. It has also been held that the entry with regard to the age of a person in a school register is of not

much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.

29. The aforesaid case is totally different with the present one. In the present case, the school authority has maintained the record and on the basis

of the same the admit card by statutory body was issued in which the date of birth was recorded. There is nothing to doubt it. Moreover, the

medical identity card issued by the employer itself clinches the issue in favour of Gourav Mondal. The cited case was a case under the

Representation of the People Act in an election petition.

30. The other cited case of Jagtar Singh (supra) relates to production of school certificate, wherein the name of the original school was not

mentioned. In the said case the Supreme Court held that such school certificate could not be relied upon for proving the age of the accused. The

present case relates to production of admit card itself by the West Bengal Board of Secondary Education, which is supported by the medical

identity card issued by the employer. Thus, the decision has no application to the factual matrix of the present case.

31. In the circumstances, we set aside the order with respect to offering of employment to the daughter/writ petitioner. However, we are not

disturbing the direction issued with respect to offer compassionate appointment to Gourav Mondal for the reasons recorded by us, as his age

found to be above 12 years at the time of death of the employee. The appellant is directed to offer suitable employment to Gourav Mondal.

32. We are informed that there is another son of the deceased employee, namely, Kaushik Mondal, who was born in 1999. Obviously, he was not

entitled to be considered for getting compassionate appointment or to be kept on live roster.

33. No other question was raised.

34. The order passed by the learned Single Judge is modified to the above extent. Resultantly, the appeal is allowed in part. In view of the order

passed, as above, nothing remains in the application for stay filed under CAN 9221 of 2013 and the same is, also, disposed of.

Joymalya Bagchi, J.

I agree.