
(2013) 06 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 761 of 2012

Manik Paul

APPELLANT

Vs

Coal India Limited and Others

RESPONDENT

Date of Decision : 06-06-2013

Acts Referred:

Citation : (2013) LabIC 3111

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : U.S. Agarwal, for the Appellant; Alok Banerjee with Mrs. S.R. Roy Burman, for the Respondent

Judgement

Sambuddha Chakrabarti, J.—By the present writ petition the petitioner, inter alia, prays for a writ in the nature of Mandamus directing the respondents to send him to a State Government Hospital for assessment of age and a writ in the nature of Mandamus directing the respondents to provide employment if his age is assessed within 35 years. The case of the petitioner, inter alia, is that his father was working as a peon in Monohar Bohal Colliery of the Eastern Coal Fields Limited. He died in the year 2008. Shortly after his father's death the mother of the petitioner made an application before the respondents and requested them to provide an employment to the petitioner in lieu of her.

2. The petitioner appeared before the Medical Board in the State Sub-Divisional Hospital at Asansol on August 18, 2009 when after examining him the doctors certified that his approximate and apparent age appeared to be in between 33 and 34 years and he was physically fit and mentally alert for any kind of employment.

3. On June 11, 2010 the petitioner appeared before the area Medical Board and his age was assessed as 37 to 42 years. In July, 2010 the Respondent No. 6 herein informed the petitioner that as per the relevant rules his date of birth had been fixed to be on December 11, 1971 and consequently he had crossed the

age of 35 years, as on the date of the death of his father he was 36 years 6 months and 24 days. The petitioner made an appeal and requested to arrange for a further medical examination. On February 3, 2012 he was examined by the Apex Medical Board and his age was assessed on the date of the death of the deceased father as 38 years 11 months and 1 day and his claim for employment has been rejected on this ground.

4. The petitioner challenges the finding of the Medical Board with reference to the Identity Card of the Election Commission of India where his date of birth is recorded as January 1, 1975 and his PAN card from the Income Tax Department which also records the same date of birth.

5. According to the petitioner since his age was twice assessed by two Medical Boards and the Eastern Coal Fields Limited and they arrived at two different ages he prays that he may be sent to a Government hospital for further assessment of his age.

6. The respondents have contested the writ petition by filing an affidavit-in-opposition. According to the respondents it would appear from the service excerpt of the petitioner's father that the petitioner was 17 years on the date of the preparation of the said excerpt i.e., on March 19, 1987. The respondents have asserted that if the age of the petitioner was 17 years as on that date his age on the date of the death of his father would be 38 years. In the year 2008 when his father had died National Coal Wages Agreement-VIII was in operation. As per the relevant provisions of the said Agreement the dependant must be physically fit, suitable for employment and his age must not be more than 35 years which the petitioner had crossed. The respondents prayed for dismissal of the writ petition.

7. The petitioner had filed an affidavit-in-reply largely reiterating the contentions made in the writ petition. In the affidavit-in-reply the petitioner has alleged that the Apex Medical Board was the Medical Board of the respondents and his age stood assessed as per the direction of the respondent authority.

8. Admittedly the petitioner's father died in July, 2008 when the National Coal Wage Agreement-VIII was in operation. Clauses 9.3.0, 9.4.0 and 9.5.0 of the said agreement provided that on the subject of provision of employment to the dependents the corresponding clauses of National Coal Wage Agreement -VI would be operative till a revised scheme was jointly prepared keeping in view the various judgments of the Hon"ble Supreme Court. Clause 9.3.4 of the National Coal Wage Agreement-VI provides that in case of dependent of the worker who died-in-harness to be considered for him should be physically fit, suitable for employment and aged not more than 35 years.

9. Mr. Banerjee, the learned Advocate for the respondents have relied on the case of Jagdish Prasad Vs. State of Bihar and Another, for the proposition that the very object of appointment of a dependent of a deceased employee is to relieve unexpected, immediate hardship and distress caused to the family by the

sudden demise of the earning member of the family. The Supreme Court declined to direct the respondents in that case to provide employment to the appellant where the death took place way back in the year 1971 and appellant was only 4 years" old.

10. Mr. Banerjee has further relied on the case of State Bank of India and Another Vs. Raj Kumar, for a proposition that the claim for compassionate appointment is traceable only to the specific scheme framed by the employer. The Supreme Court had very clearly held in that case that this sort of employment is an exception to the general rule. The dependants of employees who die-in-harness have no special claim or right to employment, except by way of a concession that may be extended by the employer under the rules or by a separate scheme to enable the family of the deceased to get over the sudden financial crisis.

11. Relying on these two judgments Mr. Banerjee has strongly argued that since the relevant agreement provides that the age of the dependant should not be above 35 years on the date of the death of the deceased employee the petitioner was not rightly considered suitable for employment and he cannot be directed to be employed in violation of the agreement in view of the judgment of the Supreme Court in the case of Raj Kumar (supra) as the claim for a compassionate appointment is traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside this scheme.

12. The judgment of Jagdish Prasad (supra) has clearly no application to the facts of the present case. This is not a case of belated application or lapse of a very long time after the death of the employee to defeat the right of the dependant claimant. The mother of the petitioner made a very prompt application and the intervening time was taken by the respondents for arranging for medical examinations. So far as the judgment of Raj Kumar (supra) is concerned it must be remembered that the petitioner does not want to travel beyond the scheme and he has put forth his case based on the scheme itself.

13. The submissions of Mr. Agarwal, learned Advocate for the petitioner, if placed in the proper context, seems a very simple one. He does not want to bypass the scheme and is not seeking an employment dehors the provisions contained in that scheme. He has accepted the upper age limit to be 35. But still he has a point to make.

14. According to Mr. Agarwal there is sufficient variation in the assessed age of the petitioner between two Medical Boards of the respondent authorities and if we take the opinion given by the Medical Board of the sub-Divisional Hospital, Government of West Bengal, Asansol his age was definitely within the upper age limit as fixed by the concerned Agreement.

15. From the communication made by the Respondent No. 6 it appears that the respondents calculated the petitioner's age as 38 1/2 years on June 11, 2010 as

per the official medical examination and the petitioner was assessed to be 36 years 6 months and 24 days on the date of the death of his father. In the opinion of the Apex Medical Board the petitioner was 38 years 11 months and 1 day on the date of the death of the father of the petitioner. The respondents have annexed the report of the Apex Medical Board to their Affidavit which shows that the procedure adopted by them was fairly detailed. X-ray examinations of different parts of the body including that of sternum and skull were conducted and after the detailed examination they had assessed the age of the petitioner.

16. It is true that both these reports are given by the Medical Boards constituted by the respondents authorities. But then such is the law. And after the report of the final medical Board the petitioner prayed to the Respondent No. 6 to arrange for further examination by a Medical Board and thus the Apex Medical Board was constituted.

17. In such view of it the petitioner's prayer that he may be referred to a State Government Hospital for yet another medical examination will not serve any fruitful purpose and cannot be accepted. In both the cases the Medical Boards have determined the age of the petitioner to be fairly above the maximum upper age limit.

18. The allegation that the Medical Boards were constituted by the respondents was made in the Affidavit-in-reply and cannot be taken to be a very serious one. It is only expected that the respondents would refer a dependant for assessment of his age to the hospitals run by them and the petitioner also wanted his age to be assessed by a separate Medical Board without mentioning that it must be a Medical Board of a State hospital. In other words, the petitioner cannot be heard about the allegation of implied bias after he had appeared before the Board without any objection.

19. The date of birth recorded in the identity card and the PAN card is on the basis of the information given by the petitioner and cannot serve any purpose for assessment of the age of the petitioner. That apart, the petition is silent about the purpose for which the petitioner is seeking a reference to a State Government Hospital, except perhaps that a new Board might come to a different conclusion about his age. He does not explain what specific tests are to be conducted for the assessment of the age by the State Government Hospital which were not done by the Apex Medical Board the report of which, I have already found, is based on detailed examinations.

20. The petitioner cannot expect that he would be referred from one Medical Board to the other or from one hospital to the other till such time his age is assessed by any one of them to be below the maximum age as provided in the relevant Agreement.

21. I find no merit in the petition and the writ petition is dismissed.

22. However, there shall be no order as to costs. Urgent photostat certified copy

of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.