

**(2024) 03 CHH CK 0012**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (S) No. 2026 Of 2014**

Manoj Kumar

APPELLANT

Vs

South Eastern Coalfields Ltd

RESPONDENT

**Date of Decision :** 05-03-2024

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (2024) 03 CHH CK 0012

**Hon'ble Judges :** Rajani Dubey, J

**Bench :** Single Bench

**Final Decision :** Disposed Of

## Judgement

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the order/letter dated 31.8.2013/02.09.2013 (Annexure P/1) whereby his application for dependent employment has been rejected on the ground of he being overage. The petitioner is also challenging the order/letter dated 07/09.02.2014 (Annexure P/2) whereby he has been informed about non-consideration of his case for inapplicability of provisions of I.I. 76 to his case.

2. Brief facts of the case, as mentioned in the writ petition, are that father of the petitioner namely Rajendra Sahu was appointed and working as Conveyor Belt Operator with the respondents since 14.4.1975 and died in harness on 16.4.2012. This fact was brought to the notice of the respondents by his widow i.e. petitioner's mother by moving an application for dependent employment under Chapter 9 of National Coal Wage Agreement (NCWA)-VII and on being so informed, the respondents issued an office order dated 12.5.2012 (Annexure P/3) to strike off the name of the deceased employee from its rolls. On 4.1.2013 the petitioner's mother moved another application (Annexure P/4) for dependent employment to the petitioner stating that her other family members have no objection to it. However, by the impugned letter dated 13/14.05.2013 the respondents informed the petitioner that as per their records, he has attained

the upper age limit for appointment and as such, cannot be considered for dependent employment, and the petitioner was directed to produce his age related documents for further proceedings. Accordingly, the petitioner produced transfer certificate/school leaving certificate issued by the school from where he studied Class-X as also his Adhar Card along with application dated 5.9.2013 (Annexure P/6) wherein his date of birth is shown as 10.08.1978, meaning thereby that he had not attained the upper age limit of 35 years as on the date of application for appointment under the scheme of the respondents. However, by the impugned order/letter dated 07/09.02.2014 (Annexure P/2) the respondent No.4 informed the petitioner that the provisions of NCWA are applicable to only those who are on rolls of the company and not to the case of the petitioner. Since rejection of claim of the petitioner for dependent employment is per se arbitrary, illegal and contrary to the provisions of NCWA, hence this petition for the following reliefs:

?10.1 Issue a writ of mandamus and quash the orders dated 31.08.2013/02.09.2013 (Annexure P/1) as well as 07/09.02.2014 (Annexure P/2) whereby case of the petitioner for dependent employment has been negated arbitrarily and in a most improper manner.

10.2 Direct the respondents to consider case of the petitioner for appointment under the scheme of dependent employment taking into consideration his age in accordance with the date of birth entered in the school leaving certificate (Annexure P/6) produced by him.

10.3 Grant any other relief, which is deemed fit in the circumstances of the case.?

3. Learned counsel for the petitioner submits that the reluctance shown by the respondents towards consideration of age of the petitioner for dependent employment under the provisions of NCWAs being contrary to law is unsustainable in the eyes of law. The petitioner's application has been rejected on the ground that provisions of I.I. 76 are applicable to only those employees who are on the rolls of the company whereas it is absolutely misconceived and incorrect and contrary to the direction of the head office of the respondent-company. The reason assigned by the respondents while rejecting the petitioner's case is not open to them at all as Clause A (ii) of I.I. 76 drawn under NCWAs specifically provides for determination of age at the time of appointment, meaning thereby that the same is applicable to persons entering in service. In other words, such provision may not be made inapplicable for new incumbents at the whims and fancies of the respondents. Further, as per provisions of Clause 9.3.4 of NCWA-VI adopted in toto in NCWA-XI, the petitioner on the date of making application for dependent employment, was a person below 35 years of age and thus, had a very genuine case for such purpose. Hence, the respondents are absolutely unjustified in rejecting the petitioner's case for dependent employment. Thus, the petition deserves to be allowed with the reliefs sought for by the petitioner.

Reliance has been placed on the decision of this Court in the matter of Amarnath Kurre Vs. South Eastern Coalfields Ltd. reported in Laws (Chh) 2013 8 43.

4. On the other hand, learned counsel for the respondents strongly opposes the prayer of the petitioner and submits that the petitioner's application for grant of dependent employment was rejected on the ground of he being overage as per record of the company and thereafter he was granted an opportunity to produce any evidence in support of his claim of age. In response thereto, the petitioner produced his school leaving certificate and Adhar Card to show that he is a person within the upper age limit fixed for the purpose of dependent employment and prayed for determination of his age as per I.I. 76. However, his case was rejected by the impugned letter dated 7/9.2.2014 (Annexure P/2) on the ground that the provisions of I.I. 76 are inapplicable to his case whereas according to the petitioner, they are absolutely applicable to his case.

5. Learned counsel for the respondents would argue that the impugned orders/ letters are only correspondence between the respondent authorities and the petitioner regarding consideration and examination of his case for dependent employment. The respondents have not passed any adverse order against him. Therefore, for want of any proper order being challenged in this petition, it is not maintainable and is liable to be dismissed as such. This apart, the petition is filed with an inordinate delay as the petitioner's father died on 16.4.2012 whereas the petitioner submitted application for dependent employment on 4.1.2013 and filed the present petition on 16.4.2014. Hence there being unexplained inordinate delay in filing the petition, the same is liable to be dismissed on the ground of delay and laches only.

In the entire official record of the petitioner's father, age of the petitioner has been mentioned. In LTC claim prepared in January, 1984 vide Annexure R/3, age of the petitioner is mentioned as twelve years and six months as on 25.1.1984 which tallies with the age mentioned in the service record, meaning thereby that at the time of submission of application for dependent employment, the petitioner was more than 41 years. From Form PS-3 and PS-4 duly filled in and signed by the petitioner's father on 26.5.1998 also vide Annexure R/4, age of the petitioner is mentioned as 26 years, meaning thereby at the time of submission of application for dependent employment, he was more than 40 years of age and as such, he was barred by the maximum age limit of 35 years prescribed in Clause 9.3.4 of NCWA which governs the terms and conditions of service of the employees working in the coal mines.

6. So far as I.I. 76 is concerned, I.I. 76 is the rule regarding determination/ verification of age of the employees of coal mines company by which all the employees of Coal India Limited are governed. In fact, as per I.I. 76 provision for referring the case to the Age Determination Committee will be applicable to the existing employees only who are on the rolls of the company. As regards the school leaving certificate and Adhar Card of the petitioner, they were issued on

28.9.2013 and 3.8.2013 respectively i.e. after submission of application by the petitioner for dependent employment and according to which also, his comes to 34 years 4 months and 25 days, meaning thereby he almost completed the upper age limit fixed for dependent employment. Even otherwise, these documents are invalid under the provisions of I.I. 76 because they are not issued by the recognized educational institution and as such, are not considerable for assessing the age of the petitioner.

7. He further submits that it is a well settled law that such appointment is an exception to the general rule of appointment in public office through competitive examination. Once it is proved that in spite of death of the breadwinner, the family survived and a substantial period is over, there is no need to make appointment on compassionate ground at the cost of interest of several others ignoring the mandate of Article 14 of the Constitution. In this case also there has been inordinate delay throughout on the part of the petitioner in pursuing the matter. After death of his father, all the retiral benefits i.e. PF, Gratuity, Leave Encashment etc. have been granted to the deceased family, therefore, at this stage dependent employment cannot be granted to him as the deceased family has survived for a long period after death of the breadwinner. On the aforesaid grounds, the petitioner has failed to make out a case in his favour and therefore, the present petition being devoid of any substance is liable to be dismissed.

Reliance has been placed on the decision of the Hon<sup>ble</sup> Apex Court in the matter of Ravinder Singh Gorkhi Vs. State of U.P., AIR 2006 SC 2157; Ram Suresh Singh Vs. Prabhat Singh @ Chhotu Singh & another, AIR 2009 SC 2805 and Mukarrab Etc. Vs. State of U.P., AIR 2016 SC (Supp) 152.

8. Learned counsel for the petitioner in the Rejoinder contended that the stand of the respondents that the present petition is not maintainable for want of challenge to the proper order as the impugned documents are merely correspondence between them and the petitioner and no adverse order has been passed against the petitioner, is highly misconceived and misleading because there is no other order/communication by the respondents on the subject matter till date. From the contents of the impugned letters it is quite evident that the petitioner's case for dependent employment has been negated by the respondents which has undoubtedly an adverse effect on the petitioner's claim. The scheme of dependent employment as provided in NCWA is a welfare scheme and is not supposed to be interpreted obliquely to negate even the genuine claims. I.I. 76 is a part or chapter under NCWA which is a settlement between the worker unions and the management and is not in confrontation with other part or chapters viz 'social security' within the same NCWA. Therefore, the stand of the respondents while negating the petitioner's request is absolutely misconceived and unsustainable. Further, in the given set of circumstances, there is no delay in filing the petition and it is well within limitation. The documents of school leaving certificate and Adhar Card clearly establish the fact that the petitioner was below the upper age limit prescribed for dependent employment

on the date of submission of his application for the said employment. I.I. 76 may not be used as a tool against him to negate his genuine claim and the same being a part of NCWA may not be read in isolation or otherwise than the mandate of NCWA. Issuance of school leaving certificate subsequent to making application for dependent employment under the scheme has no adverse bearing, hence the stand of the respondents not taking into account the school leaving certificate issued by a valid institution as also the Adhar Card of the petitioner which is issued under the seal of the Government of India while considering the petitioner's case is nothing but an autocratic approach.

9. Heard learned counsel for the parties and perused the material available on record.

10. It is not in dispute that the petitioner's father namely Rajendra Sahu was an employee of the respondent-company and died in harness on 16.4.2012 and thereafter, when the petitioner moved an application for dependent employment, he was informed by the respondent authorities that he is not entitled for such employment being overage vide Annexure P/1. However, in the said communication, the petitioner was directed to submit his age related documents for further proceedings. The relevant portion of Annexure P/1 reads as under:

In compliance of the above direction, the petitioner submitted his high school transfer certificate and Adhar Card wherein his date of birth is mentioned as 10.8.1978. However, vide Annexure P/2, the petitioner was informed that I.I. No.76 is a scheme for working employees and as such, the same is not applicable to his case.

11. The main objection of the respondents is that as per the age mentioned in the documents of LTC, Form PS-3 and PS-4 etc., by the petitioner's father, he was overage on the date of submission of application for dependent employment, hence he could not be provided such employment. Clause 9.3.4 of Chapter-IX of Social Security contained in Memorandum of Agreement, National Coal Wage Agreement-VI, reads as under:

9.3.4 The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

12. As per transfer certificate of high school and Adhar Card of the petitioner, the petitioner's date of birth is 10.8.1978, meaning thereby on the date of submission of his application, he was 34 years 4 months and 25 days i.e. below the prescribed age limit of 35 years.

13. This Court in the matter of Amarnath Kurre (supra) held in para 8 of the order as under:

8. Once the petitioner has produced the mark sheet of higher secondary/

matriculation examination held in the year 1980, in fall fairness respondents should have treated his date of birth as 1-1-1960 as per clause B(i)(a) of Implementation Instruction No.76. This Court does not find any force in the argument of the counsel for the respondents that at the fag end of his service career the petitioner has raised the dispute relating to his date of birth because present is a case where according to respondents themselves the petitioner would retire from service on 30-9-2013 whereas he raised the said dispute in the year 2000 i.e. 13 years prior to retirement. Moreover, after submitting the first representation in the year 2000 the petitioner made several representations to the authorities seeking correction in his date of birth. This Court further finds no force in the argument of the respondents that as the petitioner has put thumb impression in some of the documents and signature on some, he is estopped from challenging the action of the respondents in not correcting his date of birth. In the rejoinder, the petitioner has categorically stated that he had never put his thumb impression in any of the documents as he is a literate person and puts signature on all the documents. This Court is not entering into the correctness of the documents whether thumb impression or signatures have been put by the petitioner. As per Implementation Instruction No.76 which has a binding effect, respondents should have decided the dispute regarding the date of birth of the petitioner. In view of what has been discussed above, the petition is allowed. Retirement notice dated 22-6-2012 (Annexure P-1) is set aside. Respondents are directed to correct the date of birth of the petitioner in his service record treating it as 1-1-1960. Respondents would be at liberty to verify the authenticity of the mark sheet of the Higher Secondary School Certificate Examination submitted by the petitioner before them and this Court as well.

14. In this case also, the petitioner submitted his transfer certificate of high school and Adhar Card before the respondent authorities and this Court as well which makes it clear that on the date of submission of the application for dependent employment he was below 35 years of age.

15. Having regard to the facts and circumstances of the case, the nature of dispute between the parties and the documents available on record, the instant petition is disposed of with a direction to the petitioner to submit a fresh representation with all essential documents related to his date of birth before the respondent authorities, who in turn shall consider his case as per applicable rules and if he is found to be within the upper age limit prescribed for dependent employment on the date of submission of his initial application, he shall be given dependent employment from the said date along with all consequential benefits except the monetary benefits. All this exercise be completed within a period of four months from the date of receipt of copy of this order.