
(2017) 05 CHH CK 0004
In the Chhattisgarh High Court
Case No : 5454 of 2006

Sukhalu Pao and others

APPELLANT

Vs

South Eastern Coalfields Limited and others

RESPONDENT

Date of Decision : 01-05-2017

Acts Referred:

Citation : (2017) 05 CHH CK 0004

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : Gary Mukhopadhyay, Vinod Deshmukh

Final Decision : Allowed

Judgement

1. Shri Manglu Pao while working as Trammer in Category II in the South Eastern Coalfields Limited (hereinafter called as "SECL"), Behraband Colliery died in harness on 17.9.2002 leaving behind his widow petitioner No.2 Sahotia Bai and son-in-law petitioner No.1 Sukhalu Pao.

2. Since petitioner No.2 was dis-entitled for dependant employment as she was over age on the date of death of her husband and petitioner No.1 being son-in-law of the deceased SECL servant in accordance with clause 9.3.3 of the National Coal Wage Agreement (hereinafter called as "NCWA") made an application claiming dependant employment. The said application was rejected by the SECL vide Annexure P/1 dated 5.8.2006 stating that direct dependant is available, therefore, he is not entitled for dependant employment in terms of NCWA.

3. Feeling aggrieved and dissatisfied with the order dated 5.8.2006, the instant writ petition has been filed stating inter-alia that SECL is absolutely unjustified in rejecting the claim of the petitioners in view of the provisions contained in NCWA.

4. Return has been filed opposing the writ petition stating that petitioner No.1 being indirect dependant is not entitled for dependant employment, however, petitioner No.2 is free to apply for monetary compensation.

5. Learned counsel appearing for the petitioner would submit that petitioner No.2 is over age on the date of death of her husband for dependant employment, therefore, she is not entitled for dependant employment, as such, son-in-law is dependant residing with his father-in-law in his house and was almost fully dependant upon him is covered by clause 9.3.3 of the NCWA, therefore, the respondent-SECL is absolutely unjustified in rejecting the claim of petitioner No.1 by the impugned order, which deserves to be set aside.

6. On the other hand, learned counsel for the respondents would submit that son-in-law is not entitled for dependant employment.

7. I have heard learned counsel appearing for the parties and considered rival submissions made herein.

8. This Court in Writ Petition (S) No.5366 of 2012 vide order dated 28.1.2016 considered this aspect and allowed the writ petition filed by the similarly situated persons.

9. Facts of the case is that Shri Manglu, SECL employee while working as Trammer in Category II died in harness on 17.9.2002 and petitioner No.2-widow was over age on the date of death of her husband for dependant employment.

10. In order to consider the case of the petitioners, it would be appropriate to notice clauses 9.3.2, 9.3.3 and 9.3.4 of the NCWA, which state as under:-

"9.3.2 Employment to one dependant of the worker who dies while in service. In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0

9.3.3 The dependent for this purpose means the wife/husband as the case may be, unmarried daughter, so and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased may be considered to be the dependant of the deceased.

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 is 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."

11. A bare perusal of Clause 9.3.4 of the NCWA would show that maximum age of the female spouse is 45 years and if the age is more than 45 years, then she is not eligible for dependant employment. Clause 9.3.3 of the NCWA would show that if the deceased SECL employee has no son, then son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased would be considered to be dependant of the deceased.

12. In the instant case, admittedly, widow of the deceased was over age on the

date of death of her husband and therefore, she was not entitled for dependant employment by virtue of clause 9.3.4 of the NCWA. Petitioner No.1 being son-in-law residing with petitioner No.2 and his father-in-law made an application for dependant employment, which was rejected by the impugned order stating that petitioner No.2 is available for direct dependant employment, whereas petitioner No.2 was over age on the date of death of her husband and was not entitled for dependant employment in view of clause 9.3.4 of the NCWA, therefore, petitioner No.1 being son-in-law and residing with deceased SECL employee and dependant on the earnings of the deceased is eligible for dependant employment.

13. The provision contained in the National Coal Wage Agreement has a force of law, it has been held so by this Court in Writ Petition (S) No.832 of 2012 (Avinash Saloman v. South Eastern Coalfields Limited and others) vide order dated 30.11.2015.

14. In view of the order passed by this Court in Avinash Saloman (supra), the order passed by the SECL rejecting the case of the petitioner No.1 runs contrary to clause 9.3.3 of the NCWA and thereby the order dated 5.8.2006 (Annexure P/1) is illegal, perverse and contrary to the provisions contained in clause 9.3.3 of the NCWA, which deserves to be quashed.

15. As a fallout and consequence of aforesaid discussion, the writ petition is allowed and the impugned order dated 5.8.2006 (Annexure P/1) is hereby quashed. The SECL is directed to consider the case of the petitioner No.1 in accordance with clause 9.3.3 of the NCWA for dependant employment and pass an order within a period of 45 days from the date of receipt/communication of this order. As the deceased was SECL servant and died in harness on 17.9.2002, the petitioners would be entitled for cost of Rs. 10,000/-.