

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 02 OF 2018

PARTIES: Gyan Bai
(Daughter of Late Shyam Bai)
Vs.
Management of Naba Kajora Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Basudeb Choudhury, Learned Advocate
For the Management of ECL: Mr. P.K. Das, Learned Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.10.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/119/2017-IR(CM-II)** dated 22.12.2017 has been pleased to refer the following dispute between the employer, that is the Management of Naba Kajora Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Nabakajora Colliery, Kajora Area, M/s. E.C.Ltd. in denial of employment of Gyan Bai D/O Late Shyam Bai, ex-employee on compassionate ground is correct?. If not, what relief the workman is entitled to.”

1. On receiving Order **No. L-22012/119/2017-IR(CM-II)** dated 22.12.2017 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 02 of 2018** was registered on 09.01.2018 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. After registration of the case, Shri C.B. Mishra, General Secretary of the United Koila Mazdoor Sangh initially filed a written statement on behalf of Gyan Bai, daughter of deceased Shyam Bai on 16.12.2022. The Agent, Naba Jambad Project, Kajora Area filed a written statement on behalf of management on the same date. The facts of the case disclosed in the written statement of the union

is that Shyam Bai was a permanent employee of Naba Kajora Colliery under Kajora Area of ECL. She was a Wagon Loader and died in harness on 02.04.1985. Gyan Bai, her daughter applied for employment on compassionate ground as per provisions under National Coal Wage Agreement (NCWA). After receipt of the application, the management of ECL remained silent and did not provide any employment to the dependent of the deceased employee. Mr. C.B. Mishra, General Secretary of the union requested the management to consider the case of Gyan Bai and on 16.11.1995 a discussion took place between the union and the management where it was assured that the application would be processed. On 11.08.2009 the union representatives held a discussion in the chamber of G.M. (P&R) at the Headquarters of ECL at Sanctoria and it was assured that the prayer for employment would be processed although it was a belated case and the management had already regretted the proposal for employment in November 1997. An Industrial Dispute was raised before ALC(C), Raniganj-Durgapur in the year 2012 over the issue of denial of employment to the dependent of workman. The conciliation proceeding before the ALC(C), Raniganj-Durgapur failed on 22.12.2017. The Central Government thereafter referred this Industrial Dispute to this Tribunal for adjudication. It is the contended that the claim for employment of Gyan Bai is valid as per existing rules.

3. Management contested the Industrial Dispute by filing their written statement wherein it is contended that compassionate employment is provided to dependent of employee for the purpose of overcoming the sudden financial crisis arising out of loss of the sole bread earner and it is not a vested right of the dependents. It is inter alia asserted that the employee died in the year 1985 and

the Industrial Dispute has been raised in 2012 after a span of 27 years due to lack of seriousness on the part of the petitioner. It is further contended that the written statement filed on behalf of the dependent does not disclose the date of death of the workman and the date when the daughter claimed for employment. According to the management the name of the dependent was not recorded in the service record of deceased employee and she failed to produce any document before the management in support of her relationship with the deceased employee.

4. It is further asserted that the bonafideness of claim for employment was doubtful and the same was rejected by the management as the application for employment was made 12 years after the death of ex-employee. Further case of management is that the application submitted by the petitioner would reveal that her father Kartick Das was an employee under ECL at the relevant time and she was dependent on her father having no financial hardship. Management refuted the claim of the petitioner that she was the dependent of her mother at the time of her death. The management has taken a plea that the instant case is not an Industrial Dispute as there is no employer-employee relationship between management and claimant. It is claimed that the instant reference case is liable to be dismissed and in support of their case, management relied upon a decision of Hon'ble Supreme Court in **M/s. Eastern Coalfields Limited Vs. Anil Badyakar and Ors.** (Civil Appeal No. 3597 of 2009), where it has been held that *"compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over"*. Reliance is also placed upon a decision of the Hon'ble High Court at Calcutta in the case of **Nunibala Mondal @ Nuni Mondal & Ors. vs. Eastern Coalfields Ltd & Ors.** (W.P. 1660 (W) of 2016) where

it is observed that *“It is now judicially recognized that a delay of more than five or six years is fatal to a matter pertaining to compassionate appointment”*. Management has also rested their case on the obiter dictum of another decision of Hon’ble High Court at Calcutta in the case of **State of West Bengal & Ors. Vs. Purnam Pradhan** (M.A.T. No. 1036 of 2011) where it was held that *“compassionate appointment should not be offered after lapse of reasonable period, to say five years”*.

5. The moot point for consideration before this Tribunal is whether the denial of the claim for employment to Gyan Bai, daughter of Late Shyam Bai on compassionate ground by the management of Naba Kajora Colliery is justified and correct?

6. Mr. Basudeb Choudhury, learned advocate representing the union examined Gyan Bai as Workman Witness-1 (WW-1). She has filed an affidavit-in-chief where she has reiterated the case disclosed in the written statement of the union and averred that after death of her mother, she made several representations before the management for considering her case for employment. She stated that her mother died on 02.04.1985 and Service Record Excerpt were issued in the month of April 1987, as such there was no scope for her to be declared as the dependent of her mother in the service record. She denied the contents of paragraph (4) of the written statement of the management where it was stated that the name of the petitioner was neither recorded in the service record of Shyam Bai as dependent nor did she produce any convincing and tangible evidence in support of her claim. She denied that the application for employment was made for the first time 12 years after the death of Shyam Bai. In her examination-in-chief, Gyan Bai deposed that her mother died before her marriage and she got married 12 years prior to the date of her adducing evidence.

She further stated that as the company did not provide her any employment, she raised an Industrial Dispute through the union. In course of her evidence the witness produced the following documents:

- (i) Copy of the Death Registration Certificate of Shyam Bai which is produced as Exhibit W-1.
- (ii) Copy of Aadhar Card of Gyan Bai is marked as Exhibit W-2.
- (iii) Copy of the minutes of meeting held on 16.11.1995 is marked as Exhibit W-3.
- (iv) Copy of the minutes of meeting held on 11.08.2009 is marked as Exhibit W-4.

In her cross-examination, she claimed to have submitted her application for employment immediately after the death of her mother but she failed to produce any document. The witness admitted that she was unable to produce a copy of her application claiming employment before the company. It is gathered from her cross-examination that she raised Industrial Dispute after death of her mother and from the written statement it appears that the Industrial Dispute was raised before ALC(C), Raniganj at Durgapur in the year 2012 i.e. 27 years after the death of her mother. Suggestion was put to the witness that she was not a dependent of her mother or that her name was not recorded in service record of her mother which she denied. It is strange to find that the witness could not state the name of her father. On being specifically questioned about Kartick Das, she was unable to state if Kartick Das was her father or his name was recorded as husband of Shyam Bai in her service record.

7. Management examined Shri Ramjee Tripathy, Assistant Manager (Personnel) at Naba Kajora Colliery as Management Witness-1 (MW-1). In his affidavit-in-chief, the witness stated that compassionate employment is provided

to dependent of employee to tide over financial crisis due to sudden loss of the bread earner. In the instant case, the workman died in 1985, the Industrial Dispute is raised in 2012, after 27 years and there was no seriousness on the part of union or workman. It is further stated the management regretted the case of the petitioner in 1997. Regarding the minutes of meeting referred by the union dated 16.11.1995 and 11.08.2009, it is stated that the minutes of the meeting can't be considered as a settlement between the parties and the management did not make any commitment in the matter of providing employment. The specific case of the management is that the name of claimant is not recorded as dependent in the service record of the deceased employee and as the claim has been made after inordinate delay, the claimant is not entitled to any relief. In course of his evidence, management witness produced a copy of application submitted by Gyan Bai claiming employment as Exhibit M-1. In cross-examination, the witness denied that the management committed any illegality by not providing employment to Gyan Bai.

8. Basudeb Choudhury, learned advocate appearing for the union argued that Gyan Bai being the dependent daughter of deceased employee had submitted an application for her employment immediately after death of her mother but management in order to frustrate her case did not process her application. It is argued that valuable time has been wasted due to procrastination of the management. It is contended that according to the provisions of NCWA, a dependent family member of deceased employee is entitled to get employment but in the instant case, the management has violated the clear terms of NCWA applicable to it. In reply, Mr. P.K. Das, learned advocate for the management argued that the present case is not tenable as Gyan Bai has failed to produce any document to show that she is the daughter of Shyam Bai. Referring to cross-examination of WW-1 it is submitted that the witness could not state the name of

her father. She clearly stated that she did not know the name of her father. Therefore, Exhibit W-1, the death certificate of Shyam Bai bearing the name of Kartick Das as her husband is of no avail to Gyan Bai. It is submitted that even if for argument sake it is assumed that Shyam Bai is the mother of Gyan Bai, it needs to be considered that application for employment was submitted for the first time on 18.02.1997 i.e. 12 years after the death of her mother. In the application it is stated that Kartick Das, the father of Kumari Gyan Bai was a workman under Madhabpur Colliery. It is also stated that for such reasons, he was unable to claim any employment against the death of his wife Shyam Bai. The petition sought for employment on the ground that father was unable to maintain her from his sole earning for which she was in need for some employment. Learned advocate referred to the copy of application produced by management witness as Exhibit M-1, which has not been controverted nor objected to on behalf of union/dependent of workman. Learned advocate argued that right to compassionate employment cannot be treated as a vested right and claim cannot be raised after a long period as the purpose of compassionate employment is to provide assistance to dependents of deceased employee to overcome financial crisis which may arise due to death of the sole bread earner. Learned advocate argued that the Industrial Dispute which has been raised after 27 years from the year of death of Shyam Bai does not have any merit and it is liable to be dismissed.

9. The Management has raised a vital question that this reference case does not involve any Industrial Dispute due to want of employer and employee relation between the claimant Gyan Bai and the management of ECL. Since this issue strikes at the root of this case under the Industrial Disputes Act, 1947, the issue needs to be addressed at the outset. It is undisputed that the petitioner is claiming employment as a dependant of Shyam Bai, ex employee, according to the provision of clause 9.4.3 of NCWA which the management of ECL has denied. One

of the Trade unions has raised the Industrial Dispute on the ground that the variance has cropped up in connection with terms of employment which provides for employment to dependent of the deceased employee. Besides, in the case of **Shambhu Nath Goyal Vs. Bank of Baroda**; (1978) 2 SCC 353, the Hon'ble Supreme Court observed that when once a dispute is referred for adjudication the presumption is that it is an Industrial Dispute. Taking such facts into consideration, I hold that the the dispute raised satisfies relevant conditions specified in the definition of Industrial Dispute in section 2(k) of the Industrial Dispute Act. The question is thus set at rest.

10. Having considered the material on record, facts and circumstances of the case and arguments advanced on behalf of the respective parties, it transpires from the affidavit-in-chief of Gyan Bai that she is 57 years of age at present and is married to Agar Das Mahant. There is no document on record to establish that Gyan Bai is the dependent daughter of Shyam Bai. No document has been submitted by the claimant to establish the relationship of Gyan Bai with the deceased. A copy of Death Registration certificate of Shyam Bai has been filed as Exhibit W-1 where her husband's name has been recorded as Kartick Das. In course of cross-examination, workman witness stated that she did not know the name of her father and went to the extent of stating that she did not know if Kartick Das was her father. In the written statement and affidavit-in-chief, the date of submitting the claim application has not been mentioned. The management witness after producing Exhibit M-1 deposed that Gyan Bai submitted an application for employment on 18.02.1997. The statement regarding date of application has neither been contradicted nor denied by learned advocate for the union. It is therefore presumed that for the first time application for employment was made on 18.02.1997 i.e. 12 years after date of death. The Industrial Dispute was raised in 2012 and reference has been made before this Tribunal in 2018. The Industrial Dispute therefore has been raised after 27 years

and reference has been made after 33 years. The present age of claimant is between 57 to 58 years. There is no convincing evidence before this Tribunal that at the time of submitting application for employment Gyan Bai was a dependent daughter of deceased employee. It is a well settled law that compassionate employment is not a vested right which can be exercised any time in future. The Hon'ble Supreme Court has held in **M/s. Eastern Coalfields Limited Vs. Anil Badyakar and Ors.** (Civil Appeal No. 3597 of 2009) that "*compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over*". Gyan Bai is a married lady and there is no question of her being dependent on her mother. The claim for employment has lost its relevance with passage of time. In my considered view, the concerned union has raised this Industrial Dispute after inordinate delay, only to take a chance.

11. In the matter relating to Industrial Disputes, the settled position is that law of limitation does not apply. Nevertheless, the requirement to make the same within a reasonable time persists to maintain its relevance and a live relation between the need and the claim.. The Hon'ble Supreme Court in a catena of decisions has emphasized the need to raise Industrial Disputes within a reasonable time as laid down in the cases of (i) **Bichitrananda Behra Vs. State of Orissa**; AIR 2023 SC 5064, (ii) **Rajasthan State Road Transport Corporation and Ors. Vs. Sadhna Singh**; (2022) 5 SCC 634, (iii) **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal**; (2013) 139 FLR 125 SC. In the **State of Karnataka and another Vs. Ravi Kumar**; (2009) 122 FLR 737 SC Hon'ble Supreme Court laid down that long delay in seeking reference of the dispute rendered the reference stale. It is held that it should have been rejected by the Labour Court. It also needs to be borne in mind

that appointment on compassionate ground is an exception to the constitutional scheme of equality as laid down under Article 14 and 16 of the Constitution of India.

12. Considering the aforesaid principles of law, I am constrained to hold that the claim for employment made by Gyan Bai on the alleged death of her mother is not sustainable under law due to inordinate delay and the Industrial Dispute raised on her behalf suffers on account of long lapse of time and the same is liable to be rejected. The question of providing employment to the petitioner as a dependent of her mother when the claim was raised after 12 years of death has no relevance. The husband of Shyam Bai was in service at the time of her death and the family did not wade over any financial crisis for providing employment to the daughter. This Industrial Dispute therefore has no merit and the same is dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute raised on behalf of Gyan Bai for compassionate employment on death of Shyam Bai is without merit and the same is dismissed on contest. An award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)
Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.