

**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 2022

PARTIES: Prem Kumar Kurmi
(adopted son of Ashok Kumar Kurmi).
Vs.
Management of Kunustoria Colliery, ECL and another.

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

DATED: 29.10.2024

A W A R D

Instant Industrial Dispute has been raised by the President of Koyala Mazdoor Congress, a recognized Trade Union and on failure of conciliation proceeding between the employer, that is the Management of Kunustoria Colliery under Kunustoria Area of Eastern Coalfields Limited and their workman, the Government of India 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), through the Ministry of Labour and Employment has referred the scheduled Industrial Dispute to this Central Government Industrial Tribunal vide its Order **No. L-22012/06/2022-IR(CM-II)** dated 01.02.2022 for adjudication.

THE SCHEDULE

“ Whether the action of the Management of Kunustoria Colliery under Kunustoria Area of M/s. Eastern Coalfields Ltd. in regretting the claim for employment of Shri Prem Kumar Kurmi, adopted son of Late Ashok Kumar Kurmi, Ex-Roof Bolter of Kunustoria Colliery is just and legal? If not, to what relief the dependant son is entitled to? ”

1. On receiving Order **No. L-22012/06/2022-IR(CM-II)** dated 01.02.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 02 of 2022** was registered on 01.02.2022 / 01.07.2022 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. The union representative on behalf of Prem Kumar Kurmi, the dependent

son of Late Ashok Kumar Kurmi filed their written statement on 10.08.2022. In a nutshell, the fact of the case leading to this Industrial Dispute is that Ashok Kumar Kurmi was employed as a Roof-Bolter at Kunustoria Colliery under Kunustoria Area of Eastern Coalfields Limited (hereinafter referred to as ECL). He was a permanent employee under ECL and died in harness on 14.03.2014. Ashok Kumar Kurmi did not have any issue from his wife. He adopted Prem Kumar Rawat, son of Kapildev Rawat and Smt. Lakshmi Devi, with a consent of the biological father and mother. A deed of adaptation was prepared and submitted at Kunustoria Colliery for inclusion of the name of the adopted son as a dependent in the Service Record and other documents of the company i.e., Form PS-3, relating to the particulars of the family of the workman, Form PS-4, regarding nominee of the workman and also in the nomination forms for payment of Gratuity and Coal Mines Provident Fund (hereinafter referred to as CMPF) Refund.

3. The management of ECL initiated the proposal for inclusion of the name of the adopted son in the Service File of the employee and the management of the company at the Area level sought legal opinion from the penal advocates of the company and after receiving legal opinion the competent authority approved the inclusion of name of Prem Kumar Kurmi, as adopted son in the company's record. Ashok Kumar Kurmi also nominated Prem Kumar Kurmi, his adopted son in Form 'F' for payment of gratuity and Form 'A' for CMPF Refund and payment of pension. After the death of the employee Prem Kumar Kurmi applied for providing him employment under the provision of National Coal Wage Agreement (hereinafter referred to as NCWA) and also for payment of Gratuity, CMPF, Life Cover Scheme. Gratuity and CMPF payments were settled and paid to Prem Kumar Kurmi. He was also paid the Pension under CMPS scheme of CMPFO and the amount of the Life Cover Scheme, payable to the dependent.

4. The proposal for employment of Prem Kumar Kurmi as a dependent was

processed and after screening at the colliery level Initial Medical Examination (hereinafter referred to as IME) of Prem Kumar Kurmi was held and the IME Board found him fit for duty. The General Manager of the Area also recommended the employment proposal of the dependent son and had sent the file to Headquarters of ECL for approval. The adopted son had taken the surname of his adoptive father and in his educational certificate his name has been recorded as Prem Kumar Kurmi, son of Ashok Kumar Kurmi. The case of the union is that Prem Kumar Kurmi was below eighteen years of age at the time of death of his father so his name was kept in the live roster of the company under the provision of clause 9.5.0 (iii) of NCWA. An order was issued by the management of Kunustoria Area bearing Ref. No. ECL/KNT/PERS/2015/3653 dated 14/15.10.2015 for maintaining the name of Prem Kumar Kurmi in the live roster. After proper screening at the colliery and Area level and Medical Examination the General Manager of the Area recommended the proposal for employment of Prem Kumar Kurmi, which was sent to the Headquarters of ECL at Sanctoria for approval of the competent authority. The management of ECL at Sanctoria did not approve the proposal for employment and regretted the same. It is contended that denying employment to Prem Kumar Kurmi after keeping his name in the live roster is illegal, unjustified and he should be provided with employment without further delay. According to the union the adoption of Prem Kumar Kurmi had taken much earlier but at the instance of management at Colliery Level a Deed of Adoption was prepared and submitted for fulfillment of their unnecessary demand. The management took legal opinion from their penal advocates and also paid the Gratuity, Life Cover Scheme, CMPF dues and Pension amount to Prem Kumar Kurmi. Aadhaar Card, Educational Certificates bearing the name of adoptive father have been produced. It is urged that the dependant adopted son does not have any source of income to maintain his livelihood and he should be provided with an employment in accordance with the norms of NCWA.

5. The Agent of Kunustoria Colliery contested the case on behalf of the management. In their written statement filed on 17.01.2023, the management has specifically stated that Ashok Kumar Kurmi was an employee at Kunustoria Colliery who expired on 14.03.2014 and during his lifetime he had claimed that he adopted Prem Kumar Kurmi as his son. It is the case of the management that Prem Kumar Kurmi was born on 30.04.1998 but the adoption deed was signed on 17.04.2013 when his age was 14 years 11 months and 15 days and not 7 years 6 months as stated in the representation of the union. The management has refuted the claim for employment on the ground that the competent authority after going through the details of the case and material on record, regretted the claim for employment of Prem Kumar Kurmi. Since the Deed of Adoption has no basis, the decision of the management, regretting the claim for employment was intimated to Prem Kumar Kurmi by letter of ECL vide letter No. ECL/KNT/P&IR/Empl./2020/581 dated 28.05.2020. According to the management the claim of the union has no legal foundation and is contradictory to the Deed of Adoption and prayed for dismissing the claim.

6. To substantiate the case of Prem Kumar Kurmi, the union has filed an affidavit-in-chief of Prem Kumar Kurmi, reiterating the case disclosed in the pleading of the union. In his affidavit-in-chief he stated that Kapildev Rawat and Smt. Lakshmi Devi who are his biological father and mother gave him in adoption to Smt. Nutan Devi, wife of Ashok Kumar Kurmi, during her lifetime. Smt. Nutan Devi died in June, 2005. The biological father and mother of Prem Kumar Kurmi handed him over to the adoptive father and mother. Apart from giving and receiving in adoption, '*Datta Homam*' was performed in presence of friends and families of both biological and adoptive parents. Ashok Kumar Kurmi thereafter, applied before the management of ECL for including the name of Prem Kumar Kurmi in Service Record and other documents of the company. At the relevant time management of the colliery directed the adoptive father to submit deed of

adoption, as such deed of adoption was prepared in the Office of the Additional District Sub Registrar, Raniganj, Burdwan (WB) on 17.04.2013. The name of Prem Kumar Kurmi was included in the Service Record and in the Forms PS-3 and PS-4. After death of Ashok Kumar Kurmi, Prem Kumar Kurmi applied for his employment. According to the provision of Clause 9.5.0 (iii) of NCWA the management of the colliery initially maintained the name of Prem Kumar Kurmi in the live roster as he was below eighteen years at the time of his father's death. After he attained the age of eighteen years a screening test was done at Colliery and Area level. On medical examination he was found medically fit by the IME Board and the management had sent the proposal for employment to ECL Headquarters for approval. On 14.03.2014 Ashok Kumar Kurmi died leaving behind his only dependant son, who was a minor at the relevant time. The management took legal opinion from its penal advocates relating to the legality of the adoption and denied the claim for employment by Prem Kumar Kurmi.

7. Prem Kumar Kurmi was examined as Workman Witness – 1. In course of his evidence-in-chief he has produced the following documents :

- (i) Copy of the Identity Card of Ashok Kumar Kurmi is produced as Exhibit W-1.
- (ii) Copy of the Certificate of death of Ashok Kumar Kurmi, as Exhibit W-2.
- (iii) Copy of the Death Registration Certificate of Ashok Kumar Kurmi, as Exhibit W-3.
- (iv) Copy of the Death Registration Certificate of Nutan Devi, as Exhibit W-4.
- (v) Copy of the Office order dated 18.01.2014 for inclusion of the name of Prem Kumar Kurmi as the dependent of Ashok Kumar Kurmi, as Exhibit W-5.
- (vi) Copy of the letter dated 21/23.01.2014, intimating Ashok Kumar

Kurmi that name of Prem Kumar Kurmi has been included in the Service record, as Exhibit W-6.

- (vii) Copy of the Service Book of Ashok Kumar Kurmi, as Exhibit W-7.
- (viii) Copy of the Form PS-3 is produced as Exhibit W-8.
- (ix) Copy of the Form PS-4, as Exhibit W-9.
- (x) Copy of the letter dated 15.03.2014 of Prem Kumar Kurmi addressed to the Agent of Kunustoria Colliery, informing about death of Ashok Kumar Kurmi, as Exhibit W-10.
- (xi) Copy of letter dated 14/15.10.2015 of the Assistant Manager (IR/Pers), Kunustoria Colliery addressed to the Agent of Kunustoria Colliery regarding maintaining the name of Prem Kumar Kurmi in the live roster of ECL, as Exhibit W-11.
- (xii) Copy of the letter dated 06.06.2016 of Prem Kumar Kurmi addressed to the Agent of Kunustoria Colliery, claiming employment on attaining majority, as Exhibit W-12.
- (xiii) Copy of the letter dated 03.10.2016 of the Agent of Kunustoria Area issued to Prem Kumar Kurmi for his IME on 19.10.2016, as Exhibit W-13.
- (xiv) Copy of the letter dated 07/08.07.2017 issued by the Agent, Kunustoria Colliery, forwarding employment file of Prem Kumar Kurmi to Area Personnel Manager, Kunustoria Area, as Exhibit W-14.
- (xv) Copy of the letter dated 28/29.12.2017 issued by the Assistant Manager (Personnel), Kunustoria Colliery, asking Prem Kumar Kurmi to appear before the General Manager (P&IR), ECL, HQ along with witnesses of the Indemnity Bond, as Exhibit W-15.
- (xvi) Copy of the application dated 29.09.2018 of Prem Kumar Kurmi seeking employment, as Exhibit W-16.
- (xvii) Copy of another application of Prem Kumar Kurmi for employment

addressed to the General Manager, Kunustoria Area, as Exhibit W-17.

- (xviii) Copy of the Provisional Certificate of Secondary School Examination under the Bihar School Examination Board, Patna issued to Prem Kumar Kurmi is produced as Exhibit W-18.
- (xix) Copy of the Deed of Adoption in seven pages, as Exhibit W-19.
- (xx) Copy of the letter dated 08.01.2017 issued by the Area Personnel Manager, Kunustoria Area to Mr. P. K. Goswami, advocate, seeking legal opinion for inclusion of name of the adopted son, as Exhibit W-20.
- (xxi) Copy of the opinion of Mr. P. K. Goswami, advocate dated 13.01.2014 relating to inclusion of name of Prem Kumar Kurmi, as Exhibit W-21.

8. In his cross-examination WW-1 stated that Ashok Kumar Kurmi, the adoptive father is the brother of the biological mother of Prem Kumar Kurmi. He deposed that he had no document to show that he was adopted in the year 2005. In his cross-examination he stated that he passed the Madhyamik examination and other Board examinations after the death of Ashok Kumar Kurmi and during his childhood he used to reside at Kunustoria Colliery. He denied the suggestion given on behalf of the management that no adoption had taken place. He also denied that he was not entitled to get employment in place of Ashok Kumar Kurmi.

9. Mrs. Harshna Lal, Assistant Manager (Personnel), Kunustoria Colliery has adduced evidence on behalf of the management. She filed affidavit-in-chief and was examined as Management Witness – 1. In her affidavit-in-chief she stated that Prem Kumar Kurmi was born on 30.04.1998 and the Deed of Adoption was signed on 17.04.2013 when he was 14 years 11 months and 15 days old. The claim for employment as a dependent son was sent to the Headquarters but after going through the factual details and materials on record the competent authority

has regretted the claim for employment of Prem Kumar Kurmi on the ground that the Deed of Adoption had no legal basis, as intimated by the Head of Department (Legal), ECL. It is stated in her affidavit-in-chief that the claim of the union has no legal foundation and the decision of the Headquarters was communicated to the Assistant Personnel Manager of Kunustoria Area by letter dated 14.04.2020, regretting the claim for employment. The Assistant Personnel Manager, Kunustoria Area further communicate the same to the Agent of Kunustoria Colliery on 17.04.2020 and the Agent, Kunustoria Colliery in his letter dated 28.05.2020 addressed to Prem Kumar Kurmi informed that *“the competent authority has regretted the claim of employment of Sri Prem Kumar Kurmi since the Adoption Deed submitted with the claim, has no legal basis as intimated by the HOD (legal), ECL”*. Management Witness has produced the following documents in support of their case :

- (i) Copy of the letter dated 14.04.2020 whereby the competent authority has regretted the claim for employment of Prem Kumar Kurmi is produced as Exhibit M-1.
- (ii) Copy of the letter dated 17.04.2020 issued by the Assistant Personnel Manager, Kunustoria Area addressed to the Agent, Kunustoria Colliery, communicating the decision of the competent authority, as Exhibit M-2.
- (iii) Copy of the letter dated 28.05.2020 issued by the Agent, Kunustoria Colliery addressed to Prem Kumar Kurmi, informing him that his prayer for employment has been regretted by the competent authority, as Exhibit M-3.

10. In course of cross-examination MW-1 admitted that the management of ECL has approved the inclusion of the name of Prem Kumar Kurmi, as son in the Service Record of Ashok Kumar Kurmi on 18.01.2014. She further deposed that before incorporating the name of Prem Kumar Kurmi in the Service Record, as

dependent, the management had asked for a Deed of Adoption and also sought for legal opinions from the advocates before the decision was taken. The copy of the legal opinion of Mr. P. K. Das, advocate dated 26.12.2013 has been marked as Exhibit W-22. The death information of Ashok Kumar Kurmi given to the Agent of Kunustoria Colliery on 15.03.2014 has been identified by the management witness as Exhibit W-10. She admitted the fact that the management of the company maintained the name of Prem Kumar Kurmi in the live roster for the purpose of his employment on attaining majority and the same has been marked as Exhibit W-11. The application of Prem Kumar Kurmi seeking employment on compassionate ground on him attaining majority has been submitted on 06.06.2016 and the same has been admitted as Exhibit W-12. She stated in her evidence that the IME Board found Prem Kumar Kurmi medically fit for employment and the death benefits of Ashok Kumar Kurmi, such as Provident Fund dues and Gratuity were paid to Prem Kumar Kurmi as his legal heir. It also transpires from evidence that the application submitted by Prem Kumar Kurmi for his employment was forwarded to the Assistant Personnel Manager at Kunustoria Area on 07/08.07.2017. The witness denied the suggestion that the management arrived at a wrong decision by not providing employment to Prem Kumar Kurmi as dependent of the deceased employee.

11. The stage is now set to consider whether the action of the management of ECL is justified in regretting the claim for employment of Prem Kumar Kurmi as an adopted son of Ashok Kumar Kurmi and if the applicant is entitled to any relief in this case.

12. Advancing his argument on behalf of the dependent of the deceased workman, Mr. Rakesh Kumar, Union representative submitted that Ashok Kumar Kurmi was a permanent employee at Kunustoria Colliery. Prior to his death on 14.03.2014, Ashok Kumar Kurmi had prayed for inclusion of the name of his adopted son, Prem Kumar Kurmi in his Service Record. Prem Kumar Rawat, the

son of Kapildev Rawat and Smt. Lakshmi Devi was adopted on 20.11.2005. On being asked to produce a Deed of Adoption for the purpose of considering the prayer for inclusion of the name of Prem Kumar Kurmi in the Service Record of his adopted father, a Deed of Adoption was prepared in the year 2013 and has been produced as Exhibit W-19. The management of the company after verifying essential particulars and after obtaining legal opinion from their penal advocates (Exhibit W-21 and W-22) included the name of Prem Kumar Kurmi in the Service Record of Ashok Kumar Kurmi. Mr. Rakesh Kumar referred to Exhibit W-5, which is a copy of the letter dated 18.01.2014, where the Assistant Personnel Manager of Kunustoria Area informed the Agent, Kunustoria Colliery that on the basis of his record the competent authority has pleased to accord approval for incorporating the name of dependent of the following employees of this colliery. The name of Ashok Kumar Kurmi figures in the said list. Mr. Rakesh Kumar also relied upon Exhibit W-6, a letter dated 21/23.01.2014 issued by the Personnel Manager, Kunustoria Colliery in which Ashok Kumar Kurmi was informed that his application for inclusion of dependent's name in the Service File has been sent to the Area for approval of the competent authority and the competent authority vide letter No. A.KNT/P&IR/6597 dated 18.01.2014 of Assistant Manager (Personnel), Kunustoria Area has been pleased to approve the inclusion of dependent's name. Furthermore, the name of the dependent, Prem Kumar Kurmi has been described as son and his date of birth has been recorded as 30.04.1998. Mr. Rakesh Kumar argued that the Service Book (Exhibit W-7) and the particulars of family members of Ashok Kumar Kurmi (Exhibit W-8), Nomination From PS-4 (Exhibit W-9) clearly reveal that the name of the Prem Kumar Kurmi has been recorded as son. It is argued that according to the provision of Clause 9.3.3 of NCWA-IX, which is applicable to Ashok Kumar Kurmi, an adopted son has been recognised to be a dependent by the Joint Bipartite Committee for the Coal Industry and his legal right for employment as a dependent has been aggrandized. It is further argued on behalf of the dependent of the deceased employee that

Prem Kumar Kurmi had submitted his application before the Agent of Kunustoria Colliery on 15.03.2014, informing about the death of his father, Ashok Kumar Kurmi on 14.03.2014 at 1.30 pm and prayed for adopting necessary legal procedure. It is pointed out that in Exhibit W-11 the Assistant Personnel Manager, Kunustoria Area in his letter to the Agent, Kunustoria Colliery by letter Ref. No. A-KNT/P&IR/13/3380 dated 12.10.2015, informed that the General Manager of Kunustoria Area recommended that the name of Prem Kumar Kurmi, son of Ashok Kumar Kurmi, Ex-Roof Bolter, U. Man No. 118878 of Kunustoria Colliery be kept in the live roster till he attained the age of eighteen years as per provision of NCWA. Mr. Rakesh Kumar referred to the application of Prem Kumar Kurmi dated 06.06.2016 (Exhibit W-12) addressed to the Agent of Kunustoria Colliery, informing that he has attained the age of eighteen years and submitted his claim for employment as per NCWA. Relevant documents for employment were also enclosed with the application. On 03.10.2016, the Agent, Kunustoria Colliery referred Prem Kumar Kurmi for IME on 19.10.2016. after necessary examinations the file was forwarded to the Area Personnel Manager, Kunustoria Area along with relevant documents. It is argued that the management has no plausible reason to deny appointment to Prem Kumar Kurmi as dependent of Ashok Kumar Kurmi in violating of the terms of NCWA. Mr. Rakesh Kumar prayed for necessary direction upon the management to provide employment to the legally adopted son and only dependent of Ashok Kumar Kurmi.

13. Mr. P. K. Das, learned advocate for the management of ECL refuting the claim for employment of Prem Kumar Kurmi argued that in Clause 9.3.3 of NCWA it has been laid down that the dependent for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependent is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependent on the earning of the employee may be considered. In

the instant case Prem Kumar Kurmi claimed employment in the capacity of an adopted son but his name has been recorded in the Service Record of the deceased employee as son, therefore he is not entitled to any employment in the capacity of an adopted son. It is further argued that the Deed of Adoption dated 17.04.2013 (Exhibit W-19) has been produced in support of the fact that adoption have been taken on 20.11.2005. It is contended that Prem Kumar Kurmi was not adopted by Ashok Kumar Kurmi and the management of ECL was not satisfied about the legality of the adoption. On the basis of such consideration management regretted the claim for employment of Prem Kumar Kurmi on the ground that the same has no legal basis and issued a letter of regret dated 28.05.2020 to Prem Kumar Kurmi, which has been produced as Exhibit M-3. Learned advocate urged that there is no merit in this Industrial Dispute and the same is liable to be dismissed on contest.

14. I have traversed the pleadings of the parties, evidence adduced by Prem Kumar Kurmi as WW-1 and Mrs. Harshna Lal as MW-1, documents produced by the parties and considered the arguments advanced on behalf of the union and the management of ECL. The facts which emerge from the pleading of the union and admitted by the management is that Ashok Kumar Kurmi was a permanent employee of ECL and he adopted Prem Kumar Rawat, son of Kapildev Rawat and Smt. Lakshmi Devi and also submitted his application before Kunustoria Colliery for inclusion of the name of his adopted son in Service Record and other documents of the company i.e., Form PS-3, Form PS-4, Form 'F' and Form 'A'. It is undisputed that the management after obtaining legal opinion about such adoption, recorded the name of Prem Kumar Kurmi as a son of Ashok Kumar Kurmi in his Service Record and also in the Form PS-3 and Form PS-4. The union in support of such inclusion of name has produced Exhibit W-5, W-6, W-7, W-8 and W-9. The argument advanced by learned advocate for the management that the name of Prem Kumar Kurmi has been-recorded as son and not as adopted

son in the service record of Ashok Kumar Kurmi, does not bear any significance and would not disqualify him from the claim of employment. Such evidence has neither been denied nor any attempt was made to controvert the same in course of evidence. From the documents produced by the union it appears that by letter No. ECL/KNT/PERS/2015/3653 dated 14/15.10.2015, the Area Personnel Manager, Kunustoria Area informed the Agent of Kunustoria Colliery that the General Manager, Kunustoria Area has approved the inclusion of the name of Prem Kumar Kurmi, son of Late Ashok Kumar Kurmi in the live roster till he attained the age of eighteen years, as per the provision of NCWA. According to the Certificate issued by the Bihar School Examination Board, Patna, produced as Exhibit W-18, the date of birth of Prem Kumar Kurmi has been recorded as 30.04.1998 and he passed the Senior School examination in the year 2015. On his attaining majority Prem Kumar Kurmi submitted three applications dated 06.06.2016 (Exhibit W-12), 29.09.2018 (Exhibit W-16) and 20.07.2019 (Exhibit W-17) addressed to various authorities of the management of ECL for providing him with employment. It is also gathered from the documentary evidence that the Agent of Kunustoria Colliery has referred Prem Kumar Kurmi for his medical examination before the IME Board on 19.10.2016. The letter dated 03.10.2016 has been produced as Exhibit W-3. Subsequently, the adopted son was informed by the Assistant Manager (Personnel), Kunustoria Colliery to appear before the General Manager (P&IR), ECL, HQ along with the witness of the Indemnity Bond. The management considered the legal opinion for inclusion of the name of the adopted son in the Service Record. Mr. P. K. Goswami and Mr. P. K. Das both advocates in their respective legal opinion, produced as Exhibit W-21 and W-22, opined that the adoption of Prem Kumar Kurmi by Ashok Kumar Kurmi is valid and legal. Acting upon such opinion management has admitted the claim of Ashok Kumar Kurmi and recorded the name of Prem Kumar Kurmi in his service record. Ashok Kumar Kurmi expired one year thereafter, giving rise to this legal claim for employment of his dependent son. After attaining the age of eighteen

years on 06.06.2016, Prem Kumar Kurmi submitted an application dated 06.06.2016, informing the management that at the time of death of his father he was below eighteen years and his name was kept in the live roster and that on attaining the age of eighteen years he submitted his claim for employment as per NCWA. It is strange to find that after passage of more than three years the management of ECL by their letter dated 28.05.2020 (Exhibit M-3), addressed to Prem Kumar Kurmi, informed that :

“After going through the factual details and materials on record, the competent authority has regretted the claim of employment of Sri Prem Kumar Kurmi since the Adoption Deed, submitted with the claim, has no legal basis as intimated by the HOD(Legal), ECL.”

From the Deed of Adoption, it may be gathered that the family of biological parents as well as the family of adoptive parents are Hindu. The Hindu Adoptions and Maintenance Act, 1956, therefore applied to the procedure of giving and taking in adoption. Section 6 of the Hindu Adoptions and Maintenance Act, 1956 lays down the requisites of valid adoption. It provides that :

*“(i) the person adopting has the capacity, and also the right, to take in adoption;
(ii) the person giving in adoption has the capacity to do so;
(iii) the person adopted is capable of being taken in adoption; and
(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”*

In the instant case the adoption took place in the year 2005 and the adopted son since then is recognized to be a son of the adoptive parents. In the Certificate issued by the Bihar School Examination Board, Patna, the father's name of Prem Kumar Kurmi has been recorded as Ashok Kumar Kurmi. The presumption of a valid adoption therefore arises in favour of Prem Kumar Kurmi. The management of ECL did not raise any specific ground on which the adoption would be invalidated.

15. Section 11 (vi) of the Hindu Adoptions and Maintenance Act, 1956, relating to conditions of valid adoption lays down that :

“(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption. Provided that the performance of dattahomam shall not be essential to the validity of an adoption.”

It is absolutely clear that the procedure of adoption depends upon actually giving and taking in adoption and there is no requirement of executing any Deed of Adoption for validating the act nor even any ‘Datta Homam’ is necessary. The management of ECL after being duly satisfied with the legality of adoption has recorded the name of Prem Kumar Kurmi as the dependent son in the Service Record of Ashok Kumar Kurmi. The management cannot be allowed to approbate and reprobate their own act for the purpose of denying employment to the dependent son of a deceased employee, agreed upon in NCWA.

16. The management of Kunustoria Colliery by their own act has admitted that the name of Prem Kumar Kurmi was maintained in the live roster on recommendation of the General Manager, Kunustoria Area as per the provision of NCWA. He was also referred to IME Board for his medical examination and recommendation were made to ECL Headquarters for his employment. The dependent son submitted several applications for his employment to the Agent of Kunustoria Colliery, the Chairman-cum-Managing Director of ECL at Sanctoria and the General Manager of Kajora Area, praying for providing him with employment, having attaining majority. The management having regretted the claim for employment by their letter dated 28.05.2020 has acted in an unjust and unlawful manner, violating the terms of NCWA by not providing employment to the dependent son of the deceased employee and caused unnecessary delay. Any

further delay will make ECL liable to pay compensation to the dependant son.

17. Under such facts and circumstances, I hold the claim for employment of Prem Kumar Kurmi before the management of ECL, as a dependent son of Ashok Kumar Kurmi is just and in accordance with the provision of NCWA. The Industrial Dispute is allowed on contest with a direction to the management of Kunustoria Colliery under Kunustoria Area of Eastern Coalfields Limited to consider the claim for employment of Prem Kumar Kurmi and provide necessary employment to him within two (2) months from receipt of the Award.

Hence,

ORDERED

that the Industrial Dispute is decided in favour of the union and against the management on contest. The management of Kunustoria Colliery under Kunustoria Area of Eastern Coalfields Limited is directed to consider the proposal for employment of Prem Kumar Kurmi, dependent son of Ashok Kumar Kurmi and provide him with a suitable employment within two (2) months from communication of the Award. 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.

Sd/-

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.