

**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. 07 OF 2019

PARTIES: Shankar Kumar Mistry
(dependent son of Late Brijdeo Mistry)
Vs.
Management of Madhusudanpur Colliery, ECL

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: 22.08.2025

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-22012/168/2018-IR(CM-II)** dated 10.01.2019 has been pleased to refer the following dispute between the employer, that is the Management of Madhusudanpur 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 Madhusudanpur Colliery of Eastern Coalfields Ltd in not providing employment on compassionate ground to Sri Shankar Kr. Mistry, S/o Lt. Brijdeo Mistry is justified or not. If not what relief to which Sri Shankar Kr. Mistry son of Lt. Brijdeo Mistry, ex-employee of Madhusudanpur Colliery is entitled to? ”

1. On receiving Order **No. L-22012/168/2018-IR(CM-II)** dated 10.01.2019 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 28.01.2019 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.

2. The management of Eastern Coalfields Limited (hereinafter referred to as ECL) contested the case by filing their written statement on 26.12.2022. The dependent of the workman filed written statement in this case on 06.03.2023

through Mr. Rakesh Kumar, President, Koyala Mazdoor Congress. Fact of the case, as disclosed in the written statement of the union is that Brijdeo Mistry was a permanent employee at Madhusudanpur Colliery under Kajora Area of ECL. He was posted as an Underground Loader. While he was in service of the company, he died on 25.06.1999. According to the provisions of the National Coal Wage Agreement (hereinafter referred to as NCWA) applicable to the employee and employer, one dependent of the deceased employee is entitled to get employment as per Clause 9.3.2 of NCWA-VI. Initially, the wife of Late Brijdeo Mistry had applied for providing employment to Rinki Kumari, the dependent daughter of the deceased employee as the son was below eighteen (18) years of age. Management processed the proposal for employment of Rinki Kumari, the unmarried daughter and after screening at the Colliery Level the proposal for employment was sent for further action. The Area Office delayed in processing of proposal for employment of Rinki Kumari in order to discourage the employment of female dependent. In course of time marriage of Rinki Kumari was solemnized and according to NCWA, married daughter could not get employment. The wife of the deceased nominated Shankar Kumar Mistry, son of the deceased employee for employment and submitted all the documents. According to the union the claim for employment of the son was a continuous process as management did not provide employment to the married daughter of Late Brijdeo Mistry. After a considerable period, management did not provide employment to the dependent son. As a result, the workers' union raised an Industrial Dispute before the Assistant Labour Commissioner (Central), Raniganj. During conciliation proceeding management agreed to process the proposal for employment of the dependent son. A Memorandum of Settlement was signed on 03.03.2011 before the Assistant Labour Commissioner (Central), Raniganj. However, after passage of a considerable period, management did not process the proposal for employment of Shankar Kumar Mistry. The union was constrained to raise this Industrial Dispute, claiming employment for the dependent son. Further case of the union

is that dependent daughter claimed employment on 22.02.2000 and after her marriage the wife and daughter of Late Brijdeo Mistry issued no objection in favour the dependent son. The management neither provide any monetary compensation to the wife of Late Brijdeo Mistry nor employment to the dependent son. The wife died on 27.05.2004 and the dependent has no source of income to maintain his livelihood. In this Industrial Dispute union has claimed for employment of the dependent son according to the provisions of NCWA.

3. Management submitted their written statement contending that the claim for employment has been raised seventeen (17) years after the death of Late Brijdeo Mistry. Referring to the decision of the Hon'ble Supreme Court of India in the case of **M/s. Eastern Coalfields Ltd Vs. Anil Badyakar and Others [Civil Appeal No. 3597 of 2009]**, it is stated that the Hon'ble Court has disapproved employment on compassionate ground after passage of long years. According to the management of ECL, Rinki Kumari, daughter of Brijdeo Mistry had applied for employment on 22.02.2000 after death of her father. She did not contact with the management for years together and did not submit relevant documents for the purpose of processing the claim for her employment. After a long period, Shankar Kumar Mistry filed an application on 22.04.2014, claiming employment as dependent son in place of his sister Rinki Kumari, who was already married. It is contended that Shankar Kumar Mistry submitted his application for employment after fifteen (15) years from the date of death of his father and at the time of death of his father he was nine (9) years old for which his name could not be considered for being maintained in the Live Roster as per NCWA. Management has therefore, prayed for dismissing the Industrial Dispute, on the ground that it is bereft of merit.

4. The point for consideration is whether management of Madhusudanpur Colliery is justified in not providing employment to Shankar Kumar Mistry on

compassionate ground and to what relief the dependent son of Late Brijdeo Mistry is entitled to.

5. In order to substantiate the case of the dependent son, union examine Shankar Kumar Mistry as Workman Witness No. 1. He filed an affidavit-in-chief where he has reiterated the case disclosed in the written statement. In course of his evidence the workman witness has produced the following documents :

- (i) Copy of the Certificate of Death dated 25.06.1999 of Brijdeo Mistry issued from Central Hospital, Kalla has been produced as Exhibit W-1.
- (ii) Copy of the Death Registration Certificate of Brijdeo Mistry, as Exhibit W-2.
- (iii) Copy of the Identity Card of Brijdeo Mistry issued by the management, as Exhibit W-3.
- (iv) Copy of the Service Record Excerpt of Brijdeo Mistry dated 13.05.1987, as Exhibit W-4.
- (v) Copy of the Application dated 13.09.1999 of Rameli Devi to the Agent of Madhusudanpur Colliery, informing him about the death of Brijdeo Mistry, as Exhibit W-5.
- (vi) Copy of the Application for employment of Rinki Kumari Mistry against death of her father dated 22.02.2000, as Exhibit W-6.
- (vii) Copy of the Report of the Screening Committee, as Exhibit W-7.
- (viii) Copy of the Death Registration Certificate of Rameli Devi, as Exhibit W-8.
- (ix) Copy of the Certificate of Death dated 29.07.1996 of Ranjit Kumar Mistry, issued by Dr. P. C. Choudhary, as Exhibit W-9.
- (x) Copy of the Memorandum of Settlement dated 03.03.2011, as Exhibit W-10.
- (xi) Copy of the Application for employment of Shankar Kumar Mistry against death of his father, as Exhibit W-11.

- (xii) Copy of the Attestation Form of Shankar Kumar Mistry dated 11.03.2014, as Exhibit W-12.
- (xiii) Copy of the Indemnity Bond dated 28.02.2014 submitted by Shankar Kumar Mistry, as Exhibit W-13.
- (xiv) Copy of the No Objection Certificate from the family members of Late Brijdeo Mistry in favour of Shankar Kumar Mistry, as Exhibit W-14.
- (xv) Copy of the Notice dated 08.10.2014 for screening of Shankar Kumar Mistry, as Exhibit W-15.
- (xvi) Copy of the letter dated 14.01.2015 issued by the Deputy Manager (Personnel) addressed to the dependent of Late Brijdeo Mistry regarding discrepancies, as Exhibit W-16.
- (xvii) Copy of the Reply of Shankar Kumar Mistry dated 02.02.2015 against the letter dated 14.01.2015, as Exhibit W-17.
- (xviii) Copy of the letter dated 28.07.2015 issued by the Deputy Manager (Personnel), Madhusudanpur Colliery addressed to the Senior Manager (Personnel), Kajora Area, regarding Initial Medical Examination of the dependent of Late Brijdeo Mistry has been produced as Exhibit W-18.
- (xix) Copy of the Birth Certificate of Shankar Kumar Mistry, as Exhibit W-19.

6. In course of cross-examination the witness stated that he studied up to Class-VI in Madhusudanpur Colliery School. His elder sister who claimed employment is married. The witness denied that he submitted application for employment for the first time on 24.04.2014 but did not mention any other specific date on which he submitted application for employment on earlier occasion. It transpires from the evidence of Shankar Kumar Mistry that since his sister did not get employment, he subsequently submitted his application for employment. The witness deposed that at the time of his father's death he was

fifteen and half (15 and ½) years of age. He also admitted that the contents of application submitted by Rinki Kumari are correct. A suggestion was put to the witness that he was nine (9) years of age in the year 2000 but he denied the same. Witness denied the suggestion that he is not entitled to get employment in place of his deceased father on the ground that he was nine years of age at the time of death of his father. It is also denied that his mother did not claim for monetary compensation during her lifetime.

7. Mr. Proloy Dasgupta, Manager (Personnel), Madhusudanpur Colliery was examined as Management Witness No. 1. He filed an affidavit-in-chief disclosing that Rinki Kumari, the daughter of the deceased employee had applied for employment on 22.02.2000, the proposal for employment of Rinki Kumari was processed and sent to the ECL Headquarters but the employment file was returned due to delay in submission of claim. The management witness further submitted that Rinki Kumari did not contact with the management for years together and after passage of thirteen (13) years Shankar Kumar Mistry claimed for employment in place of his deceased father, Late Brijdeo Mistry, by submitting an application on 24.04.2014. It transpires from the statement in the affidavit-in-chief of management witness that Rinki Kumari was married. In Paragraph No. 8 the witness stated that in the Indemnity Bond and Certificate issued by MLA, and submitted by Rinki Kumari at the time of claiming her employment, the age of Shankar Kumar Mistry was stated as nine (9) years as on 08.03.2000, which implies that at the time of death of his father the age of Shankar Kumar Mistry was only eight (8) years and three (3) months and his name was not considered for being maintained in the Live Roster. The witness stated that the claim for employment by the son is not valid and the same could not have been accepted. Management produced the following documents in support of their case :

- (i) Copy of the Death Registration Certificate of Brijdeo Mistry has been produced as Exhibit M-1.

- (ii) Copy of the Service Record Excerpt of Brijdeo Mistry, as Exhibit M-2.
- (iii) Copy of the application for employment of Rinki Kumari Mistry against death of her father, as Exhibit M-3.
- (iv) Copy of the Relationship certificate of Brijdeo Mistry, mentioning the names of family members and their relationship with the deceased employee, as Exhibit M-4.
- (v) Copy of the Indemnity Bond dated 08.03.2000 submitted by Rinki Kumari, as Exhibit M-5.
- (vi) Copy of the Application for employment of Shankar Kumar Mistry against death of his father, as Exhibit M-6.
- (vii) Copy of the Letter dated 17.03.2001 issued by the Deputy Chief Personnel Manager, Kajora Area, regretting the proposal for employment on the ground of delay, as Exhibit M-7.

8. During cross-examination the witness deposed that a screening test of Rinki Kumari was held by the management for her employment and produced a letter dated 17.03.2001 (Exhibit M-7) issued by the Deputy Chief Personnel Manager, Kajora Area, informing that the files of the following employees were returned on the ground of delay as the claim for employment was made six months after the date of death of the employee. Witness submitted that no monetary compensation was paid to the wife of the deceased. It further transpires from the evidence of Management Witness No. 1 that the Memorandum of Settlement dated 03.03.2011 was entered between the management and union representative where it was agreed that management shall examine the document and after verifying genuineness of the case management shall forward the same within ninety (90) days of receipt of the application and that it was also agreed that application would be submitted within thirty (30) days from the date of Memorandum of Settlement but no such application was submitted. It is stated

that in the cross-examination the application was submitted after three (3) years from the date of Memorandum of Settlement. The management witness in his cross-examination deposed that management did not violate the terms of NCWA by not paying monetary compensation to the wife and not providing employment on compassionate ground to the dependent son or daughter of the deceased employee.

9. Mr. Rakesh Kumar, Union representative arguing the case on behalf of the dependent son submitted that after death of Brijdeo Mistry on 25.06.1999, initially an application was submitted on 22.02.2000 (Exhibit W-6) for employment of Rinki Kumari, the daughter of the deceased employee. The wife of the deceased died on 27.05.2004, thereafter an application was submitted on 24.04.2014 by Shankar Kumar Mistry for his employment (Exhibit W-11). It is argued that the management delayed over the matter for which an Industrial Dispute was raised and a Memorandum of Settlement was executed by the representatives of management and Mr. P. C. Pandey, Vice President, Colliery Mazdoor Congress (HMS) on 03.03.2011 (Exhibit W-10). According to the terms of settlement management agreed to process the proposal for employment within ninety (90) days of receipt of the application and the application would be submitted within thirty (30) days from the date of Memorandum of Settlement. It is submitted that screening of Shankar Kumar Mistry was held but no receipt was filed. The Deputy Manager (Personnel) of Madhusudanpur Colliery by his letter dated 14.01.2015 (Exhibit W-16) returned the employment file on the ground the during screening held on 05.04.2000 Rameli Devi stated that she has four daughters and only one son and Shankar Kumar Mistry did not appear before the said screening committee on 05.04.2000. The management sought for clarification in this regard. It was further stated that claim for employment of Shankar Kumar Mistry was received on 24.04.2014 after considerable lapse of time and the reason for delay was required to be proved. Mr. Rakesh Kumar

submitted that the reply to the queries were submitted by Shankar Kumar Mistry on 02.02.2015 (Exhibit W-17). On 28.07.2015 the management decided to hold the medical examination of Shankar Kumar Mistry for the purpose of his employment but thereafter management did not communicate the finality of such claim for employment. It is argued by the union representative that as per the provisions of NCWA, management of ECL should be directed to provide employment to the dependent son.

10. Mr. P. K. Das, learned advocate for the management, in reply argued that after the death of employee on 25.06.1999, the first application claiming employment was made by Rinki Kumari on 22.02.2000. She did turn up before the management for a long period and subsequently she got married and was no more entitled to get employment as a dependent of her father. After fifteen (15) years from the date of death of Brijdeo Mistry, Shankar Kumar Mistry submitted application on 24.04.2014, claiming employment. Learned advocate argued on two counts, Firstly, it is submitted that the application for employment was submitted by the son, long after death of father. Since the family was able to tide over the financial crisis, if any, the son was not entitled to claim employment on compassionate ground after fifteen years. The second point of argument is that in the Indemnity Bond, submitted by Rinki Kumari (Exhibit M-5) dated 08.03.2000 she stated that at the time of her father's death Shankar Kumar Mistry was nine (9) years of age. Learned advocate submitted that on the basis of their own statement which has been proved by the management witness, it transpires that the petitioner son was only eight (8) years and three (3) months on the date of death of the employee. It is argued that according to NCWA-VI the minimum age of a minor son should be twelve (12) years for his name to be maintained in the Live Roster of the company for the purpose of employment. In the instant case the age of Shankar Kumar Mistry was far below the eligible age as per Clause 9.5.0 (iii) of NCWA-VI. Therefore, he did not fulfill the condition for being

considered for employment on attaining majority. Learned advocate urged that the Industrial Dispute is liable to be dismissed.

11. I have considered the arguments advanced on behalf of the union and learned advocate for the management in the light of pleadings of parties and evidence adduced. On a conspectus of relevant materials, it appears that the son of the deceased employee submitted his application for employment, fourteen (14) years and ten (10) months after the death of his father. It appears from the Indemnity Bond, earlier submitted by Rinki Kumari (Exhibit M-5) that the age of Shankar Kumar Mistry was nine years on the date of death of the employee i.e., 25.06.1999. It therefore, appears that the age of Shankar Kumar Mistry was far below twelve (12) years at the time of his father's death and did not fulfill the conditions of Clause 9.5.0 (iii) of NCWA-VI for the purpose of his name being maintained in the Live Roster of the company. No application had been filed at any point of time for maintaining the name of the minor son in the Live Roster therefore even if any application was made, he would not have been eligible for consideration for employment on attaining majority. The terms of NCWA serve as guiding principle for the purpose of employment to the dependent of the employee are required to be strictly complied. Once the terms are settled between the management of the employer company and the employees, there is no escape from such mandates. In the present case, I find that apart from delay in submitting application by Shankar Kumar Mistry for his employment against death of his father, there was no scope for his being considered for employment as he was a minor and far below the age for his name to be maintained in the Live Roster.

12. Under such facts and circumstances, I hold that Shankar Kumar Mistry is not entitled to any employment as dependent son of Late Brijdeo Mistry, as per the terms of NCWA. The Industrial Dispute is therefore dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. The dependent son is not entitled to get employment under Eastern Coalfields Limited, as claimed by him. The management of Eastern Coalfields Limited is directed to pay all the legal dues to the legal heirs of Late Brijdeo Mistry, if not disbursed earlier. Let 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.