

**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. 12 OF 2021

PARTIES: Kola Bhuiya
(dependent son of Late Nagia Kamin)
Vs.
Management of Nimcha Colliery of 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: 27.03.2024

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-22012/32/2021-IR(CM-II)** dated 16.08.2021 has been pleased to refer the following dispute between the employer, that is the Management of Nimcha Colliery under Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of M/s ECL vide Ref. No.SAT/PER/EMPL/98/1905 dated 23/25-12-1998 in rejecting the claim of Kola Bhuiya dependent son of Late Nagin Kamin, Ex-Wagon Loader, who expired on 08-01-1991 while in service for employment on compassionate ground under the provisions of NCWA, is legal and justified? If not, what relief Kola Bhuiya dependent son of Late Nagin Kamin Ex-Wagon Loader is entitled to and from which date? ”

1. On receiving Order **No. L-22012/32/2021-IR(CM-II)** dated 16.08.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 12 of 2021** was registered on 16.08.2021 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. Mr. Rakesh Kumar, Union representative and Mr. P. K. Das, learned advocate for the management of ECL filed their written statement on 21.11.2022.

Fact of the case in brief, is that Nagia Kamin, Ex-Wagon Loader who was employed at Nimcha Colliery under Satgram Area of Eastern Coalfields Limited (hereinafter referred to as ECL), expired on 08.01.1991 while she was in service of the company. Kola Bhuiya, son of Late Nagia Kamin claimed employment as a dependent under the provision of National Coal Wage Agreement (hereinafter referred to as NCWA). The Management of ECL delayed the matter and asked him to submit some more document. The employment proposal was processed by the Screening Committee at Colliery level and Kola Bhuiya appeared before the Initial Medical Examination Board (hereinafter referred to as IME Board), where he was declared fit for employment. The proposal was forwarded to the Headquarters of ECL for approval. By letter No.SAT/PER/EMPL/98/1905 dated 23/25.12.1998 informed that the competent authority has expressed his inability to consider the case as it was a belated claim for employment. Kola Bhuiya in his written statement has contended that his claim was not a belated one as he had claimed employment just after the death of his mother but failed to produce the documents. It is further stated that the dependent son has no source of income for his livelihood and is facing starvation with other family members and he should be provided employment.

3. Management filed written statement wherein it is stated that the Industrial Dispute has been raised more than twenty-eight years after the death of Nagia Kamin on 08.01.1991. It is submitted that as per office record Kola Bhuiya submitted an application for his employment on 26.03.1997. According to the management, compassionate appointment is an exception to the general rule of appointment in the public services. It is urged that the whole object of granting compassionate appointment is to enable the family to tide over the sudden financial crisis but the claimant failed to submit his claim for employment within reasonable time or substantiate a case that the family was in a dire need of livelihood in absence of the sole bread earner. The management contended that

inordinate delay in claiming employment is unjustified and relied upon a case wherein the Hon'ble Supreme Court of India in the case of **Nedungadi Bank Ltd. Vs. K. P. Madhavankutty and Others [AIR 2000 SC 839]**, observed that the Government should exercise the power of referring under provisions of Industrial Disputes Act, 1947 in reasonable and rational manner and it should not accept the case referred it for adjudication after a lapse of seven years, as there was no Industrial Dispute existed or could be even said to have been apprehended. The management urged that the claim should not be allowed and the Industrial Dispute is liable to be dismissed.

4. To substantiate his case Kola Bhuiya examined himself as Workman witness – 1 and he filed an affidavit-in-chief reiterating the case disclosed in his written statement. In course of his evidence-in-chief the witness produced several documents which have been admitted in evidence as follows :

- (i) Photocopy of the Death Registration Certificate of Nagia Kamin has been marked as Exhibit W-1.
- (ii) Photocopy of the Service Record Excerpt of Nagia Kamin in three pages, as Exhibit W-2.
- (iii) Photocopy of the Office Order dated 11/13.11.1997, whereby he was referred to the Screening Committee, as Exhibit W-3.
- (iv) Photocopy of the letter dated 27/29.11.1997 directing him to file some documents, as Exhibit W-4.
- (v) Photocopy of letter explaining cause of delay, as Exhibit W-5.
- (vi) Photocopy of the subsequent applications dated 02.09.2003 and 13.02.2010, as Exhibit W-6 and W-7 respectively.

In his examination-in-chief the witness admitted that he has no document to show that he had filed application before the company seeking employment.

5. In his cross-examination the workman witness identified his letter submitted in the year 1997 as Exhibit M-1. The evidence of WW-1 reveals that the claimant had four other brothers. After death of Kashi Bhuiya, his father, the elder brother of the claimant namely Mohan Bhuiya was provided with employment under ECL as a dependent of his father. The witness denied that he is not entitled to employment as dependent of his mother and also stated that his other four brothers have died.

6. Mr. Sumit Choudhary, Deputy Manager (Personnel) at Nimcha Colliery has been examined as Management witness – 1. In his affidavit-in-chief the witness stated that Kola Bhuiya submitted applications dated 26.03.1997 and 18.09.1997. The four other brothers had no objection against the claim for employment of Kola Bhuiya, as dependent. It is evident from his affidavit-in-chief that Kola Bhuiya appeared before the Screening Committee as per the Office Order dated 15.11.1997 and a report was prepared on 25.03.1998. On 27.04.1998 the employment proposal was initiated by the Personnel Manager of Satgram Area. On 23/25.12.1998 the Agent Nimcha (R) Colliery was informed that the claim for employment had failed due to delay. In his examination-in-chief the management witness has produced the following documents :

- (i) Photocopy of the application of Kola Bhuiya addressed to the General Manager of Satgram Area has been marked as Exhibit M-1.
- (ii) Photocopy of the Death Registration Certificate of Nagia Kamin, as Exhibit M-2.
- (iii) Photocopy of the Service Record Excerpt of Nagia Kamin in three pages, as Exhibit M-3.
- (iv) Photocopy of the application dated 18.09.1997, regarding no objection of other legal heirs, as Exhibit M-4.
- (v) Photocopy of the application of Kola Bhuiya dated 29.12.1997, as Exhibit M-5.

- (vi) Photocopy of the letter dated 12/15.01.1998 requesting Kola Bhuiya to submit some documents and to state reasons for delay, as Exhibit M-6.
- (vii) Photocopy of the application of Kola Bhuiya dated 02.02.1998 addressed to the General Manager, Satgram Area, informing cause of delay, as Exhibit M-7.
- (viii) Photocopy of the Office Order dated 11/13.11.1997, as Exhibit M-8.
- (ix) Photocopy of the report of the Screening Committee in two pages, as Exhibit M-9.
- (x) Photocopy of the Note Sheet dated 27.04.1998 regarding claim for employment of Kola Bhuiya, as Exhibit M-10.
- (xi) Photocopy of the letter dated 23/25.12.1998 informing that the competent authority has expressed his inability to consider the employment proposal, as Exhibit M-11.

In his evidence-in-chief the management witness deposed that the elder brother of Kola Bhuiya did not issue no objection in his favour regarding employment. On 18.09.1997 an application was submitted by Kola Bhuiya informing that the other legal heirs have no objection if employment was provided to him. (Exhibit M-4). The Deputy Chief Personnel Manager (HQ) regretted the claim for employment due to delay of seven years.

7. In cross-examination the management witness deposed that he is unable to produce any document to show that the management of the company informed the dependent of Late Nagia Kamin regarding his entitlement to death benefits. The cross-examination of management witness reveals that Kola Bhuiya had been referred to IME for employment. He denied that the management of the company acted illegally by not providing employment to the dependent of Late Nagia Kamin.

8. The union representative vehemently argued that on the death of an employee, Clause 9.4.2 of NCWA provided for employment to one dependent of the deceased employee. In the instant case Kola Bhuiya, the dependent son of Late Nagia Kamin applied for his employment but the management delayed the matter on various pretexts and finally communicate their inability to consider the prayer due to delay. It is argued that dependent son of the workman has participated in the process and had appeared before the Screening Committee on 20.11.1997, which examined Kola Bhuiya and finally referred the matter to the Chief Personnel Manager, Satgram Area for processing the case. The union urged that the management failed to consider the prayer of the dependent in accordance with law and the dependent son should be provided with employment at the earlier.

9. In reply the learned advocate for the management harped upon their case that the son of the deceased employee submitted the application for employment after inordinate delay for which the management was unable to provide any employment.

10. I have considered the rival contention of parties in light of the evidence on record and argument advanced on behalf of both parties.

11. It is a settled principle of law that a public post is not a heritable property. The Hon'ble Supreme Court of India in the case of **State Bank of India Vs. Jaspal Kaur [(2007) 9 SCC 571]** held that :

"..... public post is not heritable, therefore, the right to compassionate appointment is not a heritable property."

In a catena of decisions, the Hon'ble Supreme Court of India observed that appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India

12. The object of providing employment to the dependent of the deceased employee is to prevent destitution or penury in the family of the deceased employee. It is also well settled that the compassionate appointment is not a matter of heritable right and depends upon the extant rules or schemes under which benefits or facilities are envisaged. The NCWA is one such scheme adopted by the representatives of the management, union and workmen casting duty upon themselves to provide employment to a dependent of the deceased employee under certain circumstances. Though in course of framing NCWA, the policy makers did not prefer to use the expression "compassionate appointment", it lays down that one dependent family member is entitled to employment within certain range of age, if such dependent expresses the choice. The expression "dependent" connotes that the person concerned has no independent means or source of livelihood and seeks support from some other person. Therefore, it is necessary to consider whether the person claiming employment as a dependent of the deceased employee has any suitable source of livelihood to be considered as a dependent. In the instant case Nagia Kamin died in the year 08.01.1991. The evidence disclosed that for the first time on 26.03.1997 the management received claimant's application for employment (Exhibit M-1). The dependent petitioner failed to indicate that it had made any earlier claim for employment. the passage of time of over six years suggests that the petitioner was in a position to wade over the necessities of life. The evidence of WW-1 also reveals that another member of his family i.e. his elder brother, Mohan Bhuiya was already employed under ECL as a dependent of his father, Late Kashi Bhuiya. Since the family had means of sustenance, the delayed claim for employment of Kola Bhuiya has no merit. In my considered view the management of the company committed no illegality by regretting the claim of employment by Kola Bhuiya as a dependent of Late Nagia Kamin. The Industrial Dispute raised by the union therefore has no merit and the same is dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute raised against rejection of claim for employment of Kola Bhuiya as a dependent son of Late Nagia Kamin 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.

S/d

(ANANDA KUMAR MUKHERJEE)

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