

**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. 44 OF 2022

PARTIES: 1. Bhadu Bouri (dependent wife of Late Ganesh Bouri),
2. Manoj Bouri (dependent son of Late Ganesh Bouri).

Vs.

Management of Lachipur 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: 28.05.2025

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-22012/81/2022-IR(CM-II)** dated 05.09.2022 has been pleased to refer the scheduled dispute between the employer, that is the Management of Lachipur 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 Lachipur Colliery, Kajora Area of M/s. E.C. Ltd. for delay in providing employment under the provisions of NCWA to the dependent of Shri Ganesh Bouri, UG Loader, Lachipur Colliery, Kajora Area of M/s E.C. Ltd., who was expired on 24.12.2000 (copy enclosed) while in service, in spite of appeal for employment dated 25/05/2001 (copy enclosed) of Smt. Bhadu Bouri wife of Late Ganesh Bouri and appeal for employment dated 29.11.2011 (copy enclosed) of Sri Manoj Bouri son of Late Ganesh Bouri, is fair, legal and justified? If not, what relief the dependent of deceased workman is entitled to? ”

1. On receiving Order **No. L-22012/81/2022-IR(CM-II)** dated 05.09.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 08.09.2022 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.

2. Dependents of the deceased employee in support of their claims filed written statement on 14.02.2023 through the President of Koyala Mazdoor Congress. Management of Eastern Coalfields Limited (hereinafter referred to as ECL) contested their case by filing their written statement on the same date i.e., 14.02.2023. The fact of the case, in brief, as disclosed in the written statement of the union is that Ganesh Bouri was a permanent employee of ECL and was posted at Lachipur Colliery under Kajora Area of ECL, having U.M. No. 058887. Ganesh Bouri died in harness on 24.12.2000. Bhadu Bouri the widow of Late Ganesh Bouri submitted an application before the management of ECL, claiming employment as a dependent as per the provisions of National Coal Wage Agreement (hereinafter referred to as NCWA). Initially a date was fixed for screening of Bhadu Bouri, which was communicated through letter dated 16.07.2001 but the date for screening was cancelled. According to the union Screening test and Initial Medical Examination (hereinafter referred to as IME) of Bhadu Bouri was done at Area level and her age was assessed as above forty-five years. Management deliberately did not process the claim for employment of Bhadu Bouri though she was below forty-five years of age at the time of death of her husband. No monetary compensation was provided to her according to Clause 9.5.0 (iii) of NCWA-VI. Subsequently, Bhadu Bouri applied for employment of Manoj Bouri her son on his attaining the age of eighteen years. The management held screening of Manoj Bouri and the proposal for employment was sent to the Area Office. Management of ECL also referred the case of Manoj Bouri to Police for verifying his relationship with Ganesh Bouri. After receiving necessary Police Verification Report, establishing the relationship between Manoj Bouri and Ganesh Bouri, the management referred the dependent son for his medical examination by IME Board, which declared Manoj Bouri medically fit for job. The General Manager of the Area recommended the proposal for employment and forwarded the same to ECL Headquarters for approval. After retaining the file for a long period ECL Headquarters regretted the prayer for employment of the

dependent son on the ground that the application for employment was submitted very late. It is asserted that Manoj Bouri, the dependent son is entitled for employment in place of his father but the management deliberately refused to provide employment to the son, violating the guidelines of NCWA. It is urged that in similar cases dependent sons of Late Sitaram Singh of Chapui Khas Colliery and Late Puran Gope of Parascole Colliery were provided with employment and monetary compensation was paid to the widows. It has been prayed that Manoj Bouri, the dependent son should be provided with employment and wife of the deceased employee should be provided with monetary compensation from the date of death of the employee i.e., 24.12.2000 till the dependent son is provided employment along with all other consequential benefits.

3. Management of ECL in their written statement contended that Bhadu Bouri claimed employment in place of her deceased husband Ganesh Bouri by submitting an application on 27.04.2001. Screening of Bhadu Bouri was held on 02.06.2001 and her file was forwarded for further examination at the Area level. The employment proposal could not be finalized as Bhadu Bouri failed to submit relevant documents. After eleven years from the date of death of her husband Bhadu Bouri changed her nomination in favour of Manoj Bouri for employment, as dependent son. The employment proposal of Manoj Bouri was considered, processed and finally regretted by letter No. ECL/CMD/C-6B/EMPL/ED-2875/18/641 dated 10.12.2018. According to the management, instant Industrial Dispute is raised before the Assistant Labour Commissioner (Central) after lapse of more than twenty years and referred to this Tribunal twenty-two years after death of Ganesh Bouri. Management urged that employment on compassionate ground cannot be claimed after long lapse of time as it has become stale and is fit to be dismissed. Management in support of such plea referred a decision of the Hon'ble Supreme Court of India in the case of **Eastern Coalfields Limited Vs. Anil Badyakar and Others [Civil Appeal No. 359 of 2009]**. It is

urged that the compassionate employment is not a vested right and cannot be exercised at any time after a long lapse of time and after the crisis is over. Management claimed that the petitioners are not entitled to any relief in this case.

4. In support of their claim union examined Manoj Bouri as Workman Witness No. 1. He filed his affidavit-in-chief and produced several documents which have been adduced in the evidence as follows :

- (i) Copy of the Identity Card of Ganesh Bouri issued by the management of ECL has been produced as Exhibit W-1.
- (ii) Copy of the Death Certificate of Ganesh Bouri, issued by Central Hospital at Kalla of ECL, as Exhibit W-2.
- (iii) Copy of the Death Certificate of Ganesh Bouri, issued by Government of West Bengal, as Exhibit W-3.
- (iv) Copy of the Application dated 25.05.2001 submitted by Bhadu Bouri for employment against death of her husband, as Exhibit W-4.
- (v) Copy of the Letter dated 19.07.2001 issued by the Senior Personnel Officer, Lachipur Colliery for Screening of Bhadu Bouri, as Exhibit W-5.
- (vi) Copy of the Office Order dated 26.07.2001 issued by the Manager, Lachipur Colliery for Screening of Bhadu Bouri, as Exhibit W- 6.
- (vii) Copy of the Letter dated 07/08.08.2001 issued by the Manager, Lachipur Colliery for IME of Bhadu Bouri, as Exhibit W-7.
- (viii) Copy of the Application dated 29.11.2011 of Manoj Bouri seeking employment against death of his father, as Exhibit W-8.
- (ix) Copy of the Application indicating submission of various documents by Manoj Bouri before the Agent, as Exhibit W-9.
- (x) Copy of the Letter dated 01/02.03.2012 issued by the Senior Manager (M), Lachipur Colliery asking Manoj Bouri to submit some documents, as Exhibit W-10.

- (xi) Copy of the Letter dated 07.01.2013 issued by the Sr. Manager (M), Lachipur Colliery to Manoj Bouri for his screening, as Exhibit W-11.
- (xii) Copy of Letter dated 30.04.2013 / 16.05.2013 of Manager, Lachipur Colliery, submitting screening report and all relevant document before the Chief Manager (P), Kajora Area, as Exhibit W-12.
- (xiii) Copy of Letter dated 13.08.2013 issued by Assistant Manager (Personnel), referring Manoj Bouri for medical examination on 23.08.2013, as Exhibit W-13.
- (xiv) Copy of Letter dated 12.09.2012 of the Sr. Manager, Lachipur Colliery, seeking police verification, as Exhibit W-14.
- (xv) Copy of Letter dated 20.10.2014 of the Manager (P&A), Kajora Area, seeking clarification from the Agent, Lachipur Colliery, as Exhibit W-15.
- (xvi) Copy of reply of the Assistant Manager (Personnel), Lachipur Colliery against letter dated 20.10.2014, as Exhibit W-16.
- (xvii) Copy of No Objection letter from the dependents of Ganesh Bouri for providing employment to Manoj Bouri, as Exhibit W-17.
- (xviii) Copy of the Legal heirship Certificate dated 27.04.1992 issued by Madanpur Gram Panchayat, as Exhibit W-18.

5. Witness was cross-examined by the learned advocate for the management. It appears from the cross-examination that Manoj Bouri that he did not attend any School for his education and was unable to sign. It transpires from his testimony that Bhadu Bouri, his mother is still alive. According to the witness Bhadu Bouri applied for employment as the dependent wife of Ganesh Bouri but management never informed her that she was disentitled to employment. The witness admitted that his mother did not submit any application before the management of ECL for maintaining his name in the Live Roster for providing employment to him on attaining the age of 18 years. The witness denied that

management of the employer company informed him that due to delayed submission of application, the management of the ECL was not in a position to provide employment to him.

6. Mr. Proloy Dasgupta, Manager (Personnel), Lachipur Colliery has adduced evidence on behalf of the management of ECL. He has filed an affidavit-in-chief and has been examined as Management Witness No. 1. In his affidavit-in-chief the witness stated that Bhadu Bouri claimed employment as wife of Late Ganesh Bouri by submitting application dated 27.04.2001. The proposal for employment was processed but the name of Bhadu Bouri did not appear in the Service Record of Ganesh Bouri. It is further stated that the proposal for employment of Bhadu Bouri could not be finalized as she failed to file relevant documents. She also did not apply before the management to maintain the name of Manoj Bouri in the Live Roster. After lapse of 11 years, she nominated Manoj Bouri for employment, as son of Late Ganesh Bouri. The application was submitted on 29.11.2011 without assigning any reason for such change of mind. The proposal for employment of Manoj Bouri was forwarded to the Competent Authority and after observing all formalities the prayer was regretted by management's letter dated 10.12.2018. The management witness has produced the following documents :

- (i) Copy of the Death Certificate of Ganesh Bouri, issued by Central Hospital at Kalla of ECL has been marked as Exhibit M-1.
- (ii) Copy of the Death Certificate of Ganesh Bouri, issued by Government of West Bengal, as Exhibit M-2.
- (iii) Copy of the Application dated 27.04.2001 of Bhadu Bouri for employment against death of her husband, as Exhibit M-3.
- (iv) Copy of the Application dated 29.11.2011 of Bhadu Bouri seeking employment for her son Manoj Bouri, as Exhibit M-4.
- (v) Copy of Report of Pre-employment Medical Examination of Manoj Bouri, as Exhibit M-5.

- (vi) Copy of Report of the Screening Committee dated 12.01.2013, as Exhibit M-6.
- (vii) Copy of the Letter dated 02/03.07.2014 issued by the Chief Manager (P) IC, Kajora Area, forwarding employment proposal of Manoj Bouri to the Sr. Manager (P) EMPL/ED, ECL Headquarters, Sanctoria, as Exhibit M-7.

7. In course of cross-examination the management witness deposed that after submission of application by Bhadu Bouri on 27.04.2001 for her employment, management did not take any step to process her employment petition. The witness was called upon to provide Screening Report of Bhadu Bouri, which he failed. Witness further admitted that he is unable to produce any IME Report of Bhadu Bouri and he could not state that if any IME was ever held. Witness admitted that management did not take any final decision regarding claim for employment of Bhadu Bouri and further admitted that no monetary compensation was paid to the wife of the deceased workman. Witness in the same breath stated that management committed no illegality by not providing employment or monetary compensation to Bhadu Bouri after the death of her husband. Management witness also denied that management committed any illegality by not providing employment to Manoj Bouri after founding him fit for employment.

8. The crux in issue in this case is whether Manoj Bouri, son of Late Ganesh Bouri is entitled to employment in place of his deceased father and if Bhadu Bouri is entitled to any monetary compensation till employment is provided to the dependent son?

9. Mr. Rakesh Kumar, Union representative arguing the case on behalf of the dependent wife and son of the deceased employee submitted that Ganesh Bouri

died on 24.12.2000 at the age of 42 years. On 27.04.2001 his wife submitted an application claiming employment for herself (Exhibit M-3). The wife was asked to appear before the Screening Committee and for her medical examination but the management took no action and did not communicate anything to her for a very long period. Since the management of ECL did not finalize her prayer for employment and Manoj Bouri, the minor son of the deceased employee attained majority in the meantime, a separate application was filed by Manoj Bouri on 29.11.2011 praying for his employment (Exhibit W-8). Traversing me through the evidence adduced by the parties Mr. Rakesh Kumar submitted that screening test of Manoj Bouri was held on 12.01.2013 (Exhibit M-6) where the other dependents of the deceased employee also appeared and expressed that they have no objection, if employment is provided to Manoj Bouri. Pre-employment medical examination of the dependent son was held on 23.08.2013 and the IME report (Exhibit M-5) reveals that the candidate was found fit for job. The IME Board assessed the age of the son as 25 years to 30 years, which implies that at the time of his father's death on 24.12.2000 the age of the son was between 13 to 14 years. At the relevant time NCWA-VI was applicable and it provided that if a dependent son was above 12 years, his name would be maintained in the Live Roster of the company for his employment on attaining majority. It is argued on behalf of the dependent son that according to the provision of NCWA he is entitled to be considered for employment, but the management without communicating anything to the dependent son, in their internal letter dated 10.12.2018 regretted the proposal for employment of Manoj Bouri on the ground that ex-employee expired on 24.12.2000 and his Service Book is not available. Bhadu Bouri stated to be wife of the ex-employee was the first claimant and the second claimant was Manoj Bouri, son of the ex-employee who applied for employment in the 2011. Mr. Rakesh Kumar vehemently argued that management of the employer company without any communication to the dependent candidate, in their internal letter expressed their decision, regretting the proposal for employment

on the ground that application for employment was submitted after 11 years from the date of death. It is argued that the cause of action of the Industrial Dispute arose only after such confidential letter dated 10.12.2018 was issued to the Sr. Manager (Personnel), Kajora Area. It is further argued that the management has deliberately delayed in finalizing the proposal for employment though they have found Manoj Bouri fit for employment in course of pre-employment medical examination. Contention of the union is that after death of the ex-employee at the Central Hospital at Kalla of ECL, management ought to have maintained the name of the dependent son in the Live Roster of the company and consider his proposal for employment after he attained majority. In the instant case the management admitted that the Service Record of the ex-employee could not be found and they did not consider the case for employment of Bhadu Bouri, the wife of Ganesh Bouri. In the case of the dependent son management sought for police verification to ascertain the relationship of Manoj Bouri with the ex-employee and admittedly the relationship was established through Police Verification Report. In the instant case the age of the Manoj Bouri as assessed by the IME Board on 23.08.2013 was 27 years and 6 months. Accordingly, he was 25 years and 10 months on 29.11.2011, which is well within the stipulated age of a dependent provided in Clause 9.3.4 of NCWA-VI and Circular dated 25.07.2003 for reckoning age on the date of his application. It is argued that delay in providing employment can be attributed to the negligence of the management, firstly, as they have misplaced the Service Record of the ex-employee due to which police verification had to be conducted to verify the relationship between claimant and the deceased employee and secondly, by non-communication of the final decision of the management. It is urged that this a fit case where the dependent son should be provided employment and the wife of the deceased employee should be paid monetary compensation from the date of death of the employee till the dependent son is provided employment.

10. Mr. P. K. Das, learned advocate for the ECL, in reply, argued that the first

application for employment was submitted by the wife of the deceased on 27.04.2001. Before the same was processed, after 11 years from the date of death of Ganesh Bouri his son submitted another application for his employment on 29.11.2011. It is argued on behalf of the management that the claim for employment is stale one and compassionate employment cannot be claim after any length of time from the date of death of the employee.

11. I have considered the argument advanced on behalf of the union and management. I have also considered the facts and circumstances of this case disclosed in their pleadings and evidence adduced by the parties. The admitted position in the case is that Ganesh Bouri was a permanent employee of ECL and he died in harness at Central Hospital, Kalla of ECL on 24.12.2000. The management was fully aware about the death of their employee and as per the provision of Clause 9.3.2 of NCWA-VI management was dutybound to provide employment to one dependent of the worker, who died while in service and also provide monetary compensation to the female dependent of the deceased employee as per provision of Clause 9.5.0. In the present case the wife submitted an application for her employment within a very short period from the date of death of her husband but the management failed to consider her prayer for employment in 10 years and did not communicate anything to her regarding finality of her claim which is a glaring deficiency of ECL. Management of ECL had fixed up date for screening and medical test of Bhadu Bouri for her employment but failed to produce any document to prove that such proceedings were carried out. It is gathered from paragraph no. 3 (three) of the affidavit-in-chief filed by the Management Witness No. 1 that the name of Bhadu Bouri was not present in any of the Service Records of Ganesh Bouri. Management of ECL did not seek any police verification to verify the relationship between Bhadu Bouri and Ganesh Bouri. The cross-examination of Management Witness reveals that he was unable to produce Screening and IME Report of Bhadu Bouri. He was also unable to state

if any medical examination of Bhadu Bouri was ever held. The witness admitted that no final decision was taken regarding claim for employment made by Bhadu Bouri. From the facts and circumstances, it is clear that the management of ECL deliberately kept the matter pending without verifying particulars of the dependents and its office is liable for its negligence for not producing the Service Record of the deceased employee. Manoj Bouri, son of Ganesh Bouri, was a minor and 14 years of age at the time of death of his father. After attaining majority when the proposal for employment for his mother was pending before the management of ECL and no finality was reached, Manoj Bouri submitted his application for his employment on 29.11.2011. The management having considered the application did not reject it at the threshold but decided to process the same. A screening for employment of Manoj Bouri was held on 12.01.2013 where statements of other dependents of Late Ganesh Bouri i.e., Sujata Bouri, Mamta Bouri, the two married daughters, and Guria Bouri, unmarried daughter, and Bhadu Bouri, the widow were also recorded. In the paragraph no. 3 of Employment Screening Report, it is stated that the name of Manoj Bouri was not recorded as the dependent son of Ganesh Bouri in the Service Record Excerpt and they did not find any Service Record Excerpt of Ganesh Bouri, as such police verification was made only where relationship was confirmed as genuine. From Exhibit M-6, Screening Report it is revealed that the management did not maintaining the Service Record of the employee for the purpose of Screening, as such considerable delay was caused in finding genuineness of relationship between the claimant and the deceased employee for which the dependents are not liable. The report of Pre-employment Medical Examination disclosed that the age of the candidate was between 25 to 30 years on the date of examination and he was found fit for examination. The report dated 23.08.2013 has been produced as Exhibit M-5. The management thereafter remained silent for five years after finding Manoj Bouri fit for employment and issued an internal letter on 10.12.2018, regretting the prayer for employment on the ground that the

application for employment was submitted after 11 years from the date of death of his father. In my view the delay in processing the claim for employment of the widow and thereafter the son can be attributed to the negligence of management company for not maintaining the Service Record of the deceased employee, not disposing the prayer for employment of the wife of the deceased employee within reasonable time and not informing the right of the minor son under NCWA who is entitled to employment on attaining majority.

12. It would be pertinent to refer to the decision of the Learned Special Bench of the Hon'ble High Court at Calcutta in the case of **Smt. Putul Rabidas Vs. Eastern Coalfields Limited and Others [2017 Volume 6 West Bengal Law Reporter (Cal) 255]**, wherein it was held that since NCWA is a settlement arrived at between the parties after protracted deliberations, the same is binding on the parties governed thereby in view of section 18 of the Industrial Disputes Act, 1947. No departure from whatever is provided in NCWA is warranted and that, various terms of the NCWA have to be read and the meaning of the words used herein gathered from the context. It has also held that, employer cannot repudiate a claim for compassionate appointment or monetary compensation on the ground that the family having received substantial death benefits, is not in need thereof.

13. In the case of **Sukumoni Hembram alias Sukumoni Mejhan Vs. The Union of India and Others [MAT 27 of 2024]**, the Hon'ble High Court at Calcutta held that once a right stand vested it can be taken away by a process approved by law. The High Court further held that none of the clauses 9.3.0 to 9.5.0 of NCWA provide any time limit for applying or prescribe any financial solvency of the family as a disqualification. It does not allow the employer to choose between the dependents as to who it would grant the employment or the MMCC.

14. The case of **Eastern Coalfields Limited Vs. Anil Badyakar and Others [Civil Appeal No. 3597 of 2009]**, relied upon by the management is distinguishable from the facts and circumstances of the present case where the delay in completing the employment procedure is due to the lapse on the part of the management. Under such circumstances the ratio of the decision of the Hon'ble Supreme Court of India in the case of **Anil Badyakar and Others (Supra.)** is not found applicable to the present case.

15. In the instant case I find and hold that Manoj Bouri was around 25 years and 10 months of age at the time of submitting his application for employment in the year 2011 and he was well within the stipulated age for being considered for employment. The management appears to have acted in an arbitrary and illegal manner by not granting employment to the dependent son. Evidently, the delay has been caused due to the laches on the part of the management for not acting promptly on the claim for employment by Bhadu Bouri, widow of Late Ganesh Bouri. As the application of the dependent son was admitted and processed by holding screening and medical test, the management is estopped from questioning delayed submission of the claim for employment of the dependent son.

16. In the instant case Manoj Bouri, the dependent son of Late Ganesh Bouri is entitled to be considered for employment as per provisions of NCWA, which is strictly applicable to parties. Management is therefore directed to provide employment to Manoj Bouri by completing necessary procedures within 3 (three) months from the date of communication of the Award. Bhadu Bouri, the wife of the deceased employee shall be entitled to monetary compensation as per Clause 9.5.0 of NCWA-VI from the date of death of her husband Ganesh Bouri i.e., 24.12.2000 till employment is provided to her son or her attaining the age of 60 years, whichever is earlier.

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Hence,

ORDERED

that the Industrial Dispute is allowed on contest against the management of Eastern Coalfields Limited. Management of Lachipur Colliery under Kajora Area of Eastern Coalfields Limited is directed to provide employment to Manoj Bouri, son of Late Ganesh Bouri, the ex-employee of Eastern Coalfields Limited on completing all procedures within three (3) months from the date of communication of the Award. Management shall also pay monetary compensation to Bhadu Bouri, the wife of the deceased employee according to the prevailing rate from 24.12.2000, till employment is provided to Manoj Bouri or she attained 60 years of age, whichever is 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 and Employment, Government of India, New Delhi for information and Notification.

Sd/-

(ANANDA KUMAR MUKHERJEE)

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