

**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. 49 OF 2008

PARTIES: Dependents of Late Momin Sekh
Vs.
Management of Lachipur Colliery of ECL

REPRESENTATIVES:

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

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 14.02.2024

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-22012/48/2008-IR(CM-II)** dated 13.08.2008 has been pleased to refer the following 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 M/s. ECL in denying employment to dependent of Late Shri Momin Sheikh is legal and justified? To what relief is the claimant entitled? ”

1. On receiving Order **No. L-22012/48/2008-IR(CM-II)** dated 13.08.2008 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 49 of 2008** was registered on 27.08.2008 / 13.04.2009 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, President, Koyala Mazdoor Congress filed a written statement on 09.09.2015 on behalf of the dependents of the deceased workman. Facts of the case according to the petitioner is that Momin Sekh, a workman of Lachipur Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL) died in harness on 31.03.2000. According to the provisions of

Clause 9.3.2 of the National Coal Wage Agreement - VI (hereinafter referred to as NCWA-VI) a dependent of the deceased employee is entitled to get employment under the employer company. Initially the elder son of Late Momin Sekh applied for employment and submitted necessary documents in support of his claim. The employment proposal was processed by the management and sent to the Area Office but there was delay on the part of the Area Office in processing the employment proposal. In the meantime, the elder son Abdul Motakabbar Sekh started his own business and opened a shop. Mst. Sabera Bibi, the wife of Late Momin Sekh then changed the nomination in favour of Rafikul Sekh, her younger son for providing employment. The management of the colliery and the area did not process the proposal for employment on the ground that the claim for employment was belated. It is the case of the union that the claim for employment was made within time and only the nomination was changed subsequently. The competent authority of the company after a long period permitted processing of the proposal in favour of Rafikul Sekh. The proposal was forwarded to the Headquarters of ECL but the same was returned seeking police verification relating to the relationship of Rafikul Sekh with Late Momin Sekh. Police verification was conducted and report was submitted in favour of Rafikul Sekh but the employment proposal is still pending. The family of the deceased employee is facing starvation and is in need of an employment of the dependent son immediately. It has been averred in the written statement that Rafikul Sekh is the son of Late Momin Sekh, has submitted all the documents to fulfill the requirement of the management. It is urged that the management of ECL should be directed to provide employment to Rafikul Sekh and also pay monetary compensation to the wife of Late Momin Sekh for their livelihood.

3. The management of Lachipur Colliery submitted written statement on 24.02.2016 and contested the Industrial Dispute raised by the union. The specific case of the management is that the name of Rafikul Sekh did not appear in the

Service Record Excerpt (hereinafter referred to as SRE) of the deceased employee and during his lifetime Momin Sekh did not seek any approval for inclusion of name of Rafikul Sekh in the Service Record. It is claimed that the relationship of the nominee with the deceased employee has not been established and the claimant is not entitled to get any relief as per terms of reference of the Industrial Dispute.

4. On 06.05.2017 a rejoinder was submitted by Koyala Mazdoor Congress wherein it is submitted that the management of Colliery had sent the proposal of Rafikul Sekh to the Area Office after proper screening at the Colliery level and all family members appeared before the Area Screening Committee and submitted their no objection in favour of Rafikul Sekh for providing employment to him in place of Late Momin Sekh. Medical examination was held by the Initial Medical Examination Board and after finding him fit a proposal for employment was sent to the Headquarters of ECL. The relationship between Rafikul Sekh and Late Momin Sekh was verified. Voter Identity Card, PAN Card, Aadhaar Card, and Relationship Certificate were submitted as proof. Late Momin Sekh had availed LTC/LLTC during his lifetime where the name of Rafikul Sekh and other family members are recorded. It is denied that the name of Rafikul Sekh was not entered in the Service Record of Late Momin Sekh. The management of ECL also paid Coal Mine Provident Fund refund claim and Gratuity amount to the wife of Late Momin Sekh admitting the relationship of Mst. Sabera Bibi with Late Momin Sekh. It is claimed that the General Manager of the Area recommended the employment proposal of Rafikul Sekh after verifying records, documents and statements of the family members. Indemnity Bond was submitted by Rafikul Sekh reaffirming his relationship with deceased employee. It is contended that the management is harassing the dependent family members of Late Momin Sekh by delaying the employment of the dependent son without any valid reason.

5. It is asserted that there was no delay in submitting their claim for employment as dependent of Late Momin Sekh. Accordingly, Rafikul Sekh should get employment and the wife of Late Momin Sekh should get monetary compensation from the date of death of Late Momin Sekh till employment is provided to the dependent son.

6. In support of the case of the petitioner Rafikul Sekh, has been examined as workman witness - 1. An affidavit-in-chief has been filed wherein he has reiterated his relationship with Late Momin Sekh, claimed employment as dependent on the death of his father on 31.03.2000 while he was in the service of the company. WW-1 stated that his mother applied for employment of his elder brother, Abdul Motakabbar Sekh and thereafter she changed the nomination in favour of WW-1, the younger son. It is stated that the Colliery management processed the employment proposal of Rafikul Sekh. Medical examinations were held at the Area and the same was forwarded to the Headquarters for approval. Management also verified the relationship between Rafikul Sekh and Late Momin Sekh by way of Police Verification. Therefore, he is entitled to get employment in place of his father. It is stated that the management of ECL has deliberately delayed granting employment without justification. The witness has also demanded monetary compensation for his mother from the date of death of his father till employment is provided to him. The workman witness has produced the following documents which have been admitted in evidence :

- (i) Photocopy of the Identity Card of Late Momin Sekh is produced as Exhibit W-1.
- (ii) Photocopy of the SRE, as Exhibit W-2.
- (iii) Photocopy of the Death Certificate of Late Momin Sekh, as Exhibit W-3.
- (iv) Photocopy of the letter dated 07.09.2000 of Mst. Sabera Bibi addressed to the Agent of Lachipur Colliery claiming employment for her elder son, as Exhibit W-4.

- (v) Photocopy of the letter dated 11.09.2000 of the Manager of Lachipur Colliery calling for relevant documents, as Exhibit W-5.
- (vi) Photocopy of the letter dated 25.07.2005 of Mst. Sabera Bibi seeking employment for Rafikul Sekh, as Exhibit W-6.
- (vii) Photocopy of the letter dated 18.01.2006 of the Manager of Lachipur Colliery seeking explanation from Mst. Sabera Bibi regarding change of nomination, as Exhibit W-7.
- (viii) Photocopy of the letter dated 21.02.2006 of the Manager of Lachipur Colliery addressed to the Dy. CPM, Kajora Area relating to cause of delay in submitting the claim for employment cited by the wife of Late Momin Sekh, as Exhibit W-8.
- (ix) Photocopy of the letter dated 07.04.2006 issued by the Dy. CPM, Kajora Area addressed to the Agent, Lachipur Colliery regretting the claim for employment of Rafikul Sekh on the ground of delay, as Exhibit W-9.
- (x) Photocopy of the letter dated 26/30.10.2007 of the Agent of Lachipur Colliery addressed to Mst. Sabera Bibi seeking explanation for delay, as Exhibit W-10.
- (xi) Photocopy of the Minutes of Meeting dated 29/30.05.2007 where decision was adopted for processing the proposal of employment, as Exhibit W-11.
- (xii) Photocopy of the letter dated 01.08.2008 and 29.09.2008 whereby competent authorities were advised to process the proposal of employment, as Exhibit W-12 and W-13 respectively.
- (xiii) Photocopy of the application submitted by Rafikul Sekh and Mst. Sabera Bibi, as Exhibit W-14 and W-15 respectively.
- (xiv) Photocopy of the letter dated 13.05.2010 of Dy. CPM of Kajora Area addressed to the Agent of Lachipur Colliery seeking clarification, as Exhibit W-16.

- (xv) Photocopy of the letter dated 31.07.2012 seeking an affidavit from 1st Class Judicial Magistrate to reconcile the difference in spelling of the name of Rafikul Sekh, as Exhibit W-17.
- (xvi) Photocopy of the Memorandum of Settlement in Form-H dated 13.06.2014, as Exhibit W-18.
- (xvii) Photocopy of the representation dated 21.09.2018 submitted against refusal to process the employment proposal, as Exhibit W-19.
- (xviii) Photocopy of the Police Verification and other communications made by the management, as Exhibit W-20 series (W-20 to W-20/12).

In cross-examination witness denied that he is not the son of Late Momin Sekh or that he is not entitled to get any employment in place of Late Momin Sekh due to delay in placing the claim.

7. Mr. Proloy Dasgupta, Manager (Personnel) at Lachipur Colliery under ECL has filed his affidavit-in-chief and deposed on behalf of the management of ECL as management witness – 1. In his affidavit-in-chief he stated that Mst. Sabera Bibi at the first instance applied for employment of her elder son Abdul Motakabbar Sekh on 09.02.2001, then she changed her mind and submitted another application claiming employment for her younger son Rafikul Sekh. The employment of the dependent of Late Momin Sekh was regretted by the competent authority which was communicated vide letter no. KAJ/Pers./C-6/35/18/485 dated 21.07.2018 on the ground that the claim for employment has been made after more than eight years from the cause of action. The management of ECL has produced the following documents in support of their case which have been admitted in evidence :

- (i) Photocopy of the application submitted by the wife of Late Momin Sekh claiming employment for Rafikul Sekh produced as Exhibit M-1.
- (ii) Photocopy of the SRE of Late Momin Sekh, as Exhibit M-2.
- (iii) Photocopy of the letter dated 08.01.2013 for providing employment to Rafikul Sekh against the death of his father, as Exhibit M-3.

- (iv) Photocopy of the letter dated 21.07.2018 issued by the Area Personnel Manager of Kajora Area addressed to the Agent of Khas Kajora Colliery Group of Mines for issuing a formal rejection letter against the claim for employment of Rafikul Sekh., as Exhibit M-4.

In course of cross-examination management witness deposed that in 2008 the wife of Late Momin Sekh changed her nomination for employment in favour of her younger son Rafikul Sekh. It is admitted that no employment was provided to the elder son for the period from 2001 to 2008. The witness admitted that after settlement dated 13.06.2014 (Exhibit W-18) documents of the dependent of Late Momin Sekh were verified on 10.10.2017 and the proposal for employment was regretted on the ground of delay.

8. The point for consideration at this stage is whether the action of management of ECL in denying employment to the dependent of Late Momin Sekh is legal and justified and to what relief the claimant is entitled to.

9. Mr. Rakesh Kumar, Union representative arguing the case for Rafikul Sekh submitted that Late Momin Sekh died on 31.03.2000 while he was in employment of the company at Lachipur Colliery. He died an accidental death and Mst. Sabera Bibi, the wife of the deceased employee submitted an application before the management of the company claiming employment for Abdul Motakabbar Sekh, her elder son as per provisions of NCWA-VI, which came into effect from 01.07.1996. Referring to Exhibit W-4, the application submitted by Mst. Sabera Bibi on 07.09.2000 it is argued that the application claiming employment for the dependent of the deceased employee was made at the earliest point of time but the management of company did not process the proposal for employment. After waiting for a considerable period, the elder son started a business of his own due to which the wife of the deceased employee changed the nomination for employment in favour of Rafikul Sekh, her younger son. The change in

nomination was made in favour of Rafikul Sekh on 25.07.2005, photocopy of the letter has been produced as Exhibit W-6. After the nomination was changed the management of the company issued a letter dated 18.01.2006 (Exhibit W-7), informing Mst. Sabera Bibi that due to abnormal delay in filing the claim by her after the lapse of five years, she was required to explain why the nomination has been changed after such a long period and only then the competent authority would consider the matter. On the basis of her reply dated 02.02.2006 the management of the company informed that since the claim for employment was made by Mst. Sabera Bibi after lapse of five years and eleven months, the same could not be considered. Mr. Rakesh Kumar submitted that the management by regretting the claim for employment of the dependent son has acted arbitrarily, contrary to the scheme in NCWA for employment to the dependent of the worker who dies while in service. The union representative asserted that the proposal for employment in favour of Rafikul Sekh should be processed without further delay. He also prayed for necessary order to grant monetary compensation to Mst. Sabera Bibi, the wife of the deceased workman.

10. Mr. P. K. Das, learned advocate for the management of ECL in reply argued that Mst. Sabera Bibi changed the nomination in favour of Rafikul Sekh in her letter dated 25.07.2005 (Exhibit W-6) but the name of Rafikul Sekh did not appear in the SRE of Late Momin Sekh. It is further argued that the Area Screening Committee found discrepancy in the name of the dependent of Late Momin Sekh and the Senior Manager (Personnel) of Kajora Area asked for an affidavit to be sworn before the Judicial Magistrate since the name of the nominee differed from the name appearing in the service record. Learned advocate argued that in the Service Record Excerpt of Late Momin Sekh, produced as Exhibit M-2, the columns related to the details of family members were found blank. Referring to the letter dated 21.07.2018 issued by the Area Personnel Manager of Kajora Area addressed to the Agent of Khas Kajora Colliery Group of Mines, Kajora Area which

has been produced as Exhibit M-4, learned advocate submitted that it was informed that the claim for employment for Rafikul Sekh was made after more than eight years from the cause of action and as there were several discrepancies, the case was regretted. Relying upon the decision of order dated 20.03.2015 of the Hon'ble High Court at Calcutta passed in the case of **Nimai Kumar vs Coal India Limited and Others [W.P. 19645(W) of 2013 with C.A.N. 1225 of 2015]**, it is argued that as per guidelines of the company belated case of compassionate employment cannot be considered. Learned advocate submitted that compassionate appointment is intended to assuage the hardship the family of a deceased employee may face upon untimely death while in service.

11. It is urged that there can be no doubt that there is no right to such compassionate appointment but it only gives rise to an entitlement, where a scheme or rules envisaging it exists. Learned advocate submitted that the elder son whose name was at first nominated for employment started his own business by opening a shop. The mother relinquished the claim for employment of Abdul Motakabbar Sekh and made a fresh nomination claiming employment for Rafikul Sekh only in the year 2005. It is argued that the financial condition of the family of the deceased had improved and the family was not solely depended upon the employment of one family member in place of the deceased employee. Furthermore, the nomination was changed in favour of Rafikul Sekh after long lapse of time, which was not acceptable to the management of the company. Referring to the guidelines of Director (Personnel), ECL Headquarters vide Memorandum No. ECL/D(P)/47/16249 dated 07.06.2001, it is submitted that according to the guidelines the application claiming employment was required to be made within six (6) months. In the instant case delay in claiming employment for the second son has defeated the purpose and the management is under no obligation to provide any employment. Learned advocate submitted that the dispute is not related to claim for monetary compensation and prayed for dismissing the Industrial Dispute.

12. I have considered the Industrial Dispute raised, the pleadings of the parties, evidence adduced on behalf of the union and the employer and arguments advanced on behalf of parties. Delay in seeking employment for the second son is conspicuous from the available material. The claim for employment of Rafikul Sekh has been made more than five years after the death of his father. The provisions of Clause 9.3.2 of NCWA-VI provides that one dependent of the worker, who dies while in service, will be entitled to employment. Admittedly, Late Momin Sekh died while he was in service of the company and such incident made his dependent family members eligible to be considered for employment in terms of the provision of Clause 9.3.4. To avail such opportunity the application is required to be made within a reasonable time so that the management of the company is convinced that the dependent family member is in need of such employment. The first claim for employment was made by Mst. Sabera Bibi on 07.09.2000 (Exhibit W-4) and the management responded to such application by their letter date 11.09.2000 (Exhibit W-5) in which they called for some documents and asked resubmission of the claims. In her subsequent letter dated 25.07.2005 (Exhibit W-6) Mst. Sabera Bibi informed the management that her elder son has opened one Grocery Shop and is not interested to accept the employment against the death of his father, as such she nominated her younger son, Rafikul Sekh. The management of the company in their letter dated 26/30.10.2007 (Exhibit W-10) stated that the second claim has been made after lapse of four years and eight months and unless a satisfactory answer regarding such abnormal delay is received no further action would be taken. The management of the company had initiated a Police verification to ascertain the relationship of Rafikul Sekh with Late Momin Sekh, which was answered in the positive. The claim was regretted by the competent authority only on the ground of delay. Thereafter, a meeting was held between the Director (Personnel), ECL and representatives of Koyala Mazdoor Congress (HMS) on 23.10.2019 (Exhibit W-20/11) where the management agreed to re-examine the case of Rafikul Sekh. The management thereafter did not

communicate their final decision to the dependents though in this proceeding they specified that due to delay the proposal could not be accepted.

13. In a decision of the Hon'ble High Court at Calcutta in the case of **Nimai Kumar vs Coal India Limited and Others [W.P. 19645(W) of 2013 with C.A.N. 1225 of 2015]** it was observed that :

“ In view of the judicial pronouncements that mandate that an application for appointment on compassionate grounds cannot be pursued more than five years after the death of the concerned employee, since the petitioner has been able to survive without an appointment for more than ten years now, the petitioner's application for compassionate appointment cannot be carried forward any further.”

In the instant case Rafikul Sekh was nominated for employment more than 5 years after the death of his father. The first choice for dependent's employment was the elder son. The family of the deceased employee was able to relocate the elder son with an alternate employment by way of opening a Grocery Shop. The family of deceased has made provision for its subsistence during these twenty-three years. It is to be borne in mind that the employment of dependent under NCWA is not an inheritable right but only creates an entitlement under a scheme, making a person eligible for consideration. However, such eligibility does not condense into any irrefutable right.

14. The management in their Memorandum No. ECL/D(P)/47/16249 dated 07.06.2001 stipulated the period within which the application has to be submitted. Therefore, such claim cannot be accepted after long lapse of time. The management of ECL in Exhibit M-4, a letter dated 21.07.2018 has rejected the claim for employment due to delay. I do not find any arbitrariness or illegality on the part of the management in refusing the prayer for employment. So far as the other reliefs are concerned, I find that the wife of deceased was not paid any monetary compensation at any point of time. When the alternative relief of

employment is not extended to the dependents, the wife becomes entitled to monetary compensation under Clause 9.5.0 of NCWA-VI.

15. In view of the facts and circumstances of the case I hold that the claim for employment of Rafikul Sekh as dependent is defeated due to delay. Mst. Sabera Bibi, the wife of the deceased employee however, is entitled to the relief of monetary compensation from the date of death of Momin Sekh i.e. 31.03.2000 till she attains the age of sixty (60) years. The management of ECL is directed to pay the monetary compensation to the dependent wife of the deceased within two (2) months from the date of communication of the Notification.

Hence,

ORDERED

that the Industrial Dispute challenging the refusal of employment of the dependent of Late Momin Sekh is allowed in part on contest. The management of the company is directed to disburse monetary compensation to Mst. Sabera Bibi, the widow of the deceased workman for the period from 31.03.2000 till she attains sixty (60) years of age. The monetary compensation be paid within two (2) months from the date of communication of this Notification. An Award be drawn up in light of the 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.

(ANANDA KUMAR MUKHERJEE)

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