

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.11103 OF 2019

Between:

Muthineni Mallaiah

... Petitioner

And

Singareni Collieries Com. Ltd. and others

... Respondents

JUDGMENT PRONOUNCED ON: 19.01.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No.11103 OF 2019

% 19.01.2023

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Muthineni Mallaiah

... Petitioner

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.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Sri Ch Venkat Raman

^Counsel for respondents : Sri P.Sriharsha Reddy
Standing counsel for respondents

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 11103 of 2019

ORDER:

Heard learned counsel for the petitioner and learned standing counsel appearing for the respondents.

2. The petitioner filed this writ petition to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring that the acts, deeds and things of the respondents in declaring the petitioner is medically fit is illegal, arbitrary and violative of rights guaranteed by the Constitution of India against to the Mines Act, 1952 and its Rules, 1955 and National Coal Wages Agreement (NCWA) and consequently declare that petitioner is medically invalid from the services of the respondents Company from 15-09-2015 and further direct the Respondents to issue statutory benefits under Mines Act, 1952 and its Rules 1955.

3. **The case of the petitioner, in brief, is as follows:**

a) When the petitioner was working as Hammer Man (R), KK-1, Mandamarri Area, he fell ill and was given treatment by the respondent company in Area Hospital, Ramakrishnapur.

c) The petitioner was referred to Corporate Medical Board, Bhadaadri-Kothagudem District, by the 4th Respondent vide Ref. No. RKP/MED/C/001/2359, dated 09.04.2015. On 15-09-2015 the 4th respondent conducted Corporate Medical Board examination and found that the petitioner was unfit for further service.

d) Thereafter, the petitioner applied for statutory benefits with the respondent Company under Mines Act and National Coal Wages Agreement (NCWA) and on the Vigilance Enquiry against the Doctors of the respondent company again they have conducted Medical Examination on 23.07.2016.

e) The petitioner was referred to NIMS, Hyderabad for MRI Scanning vide ref. CRP/MED/C/002/2978 dated 26.05.2016 and they conducted Medical Examination and sent report to the respondent Company.

f) The respondent company sent a letter dated 29.10.2016, vide ref.No.MMR/PER/E/175 that the medical

examination results of the petitioner was kept as 'results withheld' and till today not declared, which is illegal.

g) On 30-05-2017 the petitioner made a representation to respondents to declare him as unfit for further service in respondent company and provide dependant employment to his son and also informing that he would be retiring from service on 31-05-2017.

h) Aggrieved by the inaction of the respondents, the petitioner filed Writ Petition No.39473 of 2018 before the High Court and at the time of admission, the 4th respondent was directed to declare the Medical Fitness results of the Petitioner.

i) After the direction of the High Court, the 4th respondent on 10-12-2018 has informed that the Medical Board could not be conducted due to Administrative reasons and that as per the Neuro Surgeon report of NIMS, the petitioner was fit for the Job.

j) The petitioner who was suffering from Neuro problem was declared fit for job is illegal, unilateral and without

conducting any enquiry into the issue. Hence this Writ Petition.

4. The case of the respondents, in brief, is as follows:

a) The Petitioner was initially appointed in the respondent company and retired on 31-05-2017, on attaining the age of Superannuation. The name of the petitioner was removed from the rolls of the company on 20-04-2017. Further, the Terminal benefits were not settled due to the petitioner not approaching the concerned authorities even though, the petitioner was given a month notice dated 01-04-2017.

b) The Corporate Medical Board declared the petitioner as unfit for services on 15-09-2015, but the Vigilance Department of respondent Company received information that the petitioner was malingered as if he was suffering from disease in order to be declared as unfit by the Corporate Medical Board.

c) Basing on this information, the Vigilance Department has conducted the enquiry and advised the concerned authority to re-assess the medical fitness of the petitioner.

d) After admission into NIMS, the petitioner was directed to attend the Corporate Medical Board on 23-07-2016 and the Corporate Medical Board on 23-07-2016 has declared results "With-held" for further evaluation.

e) The Petitioner was sent to NIMS for re-assessing his medical fitness on 22-02-2016 and MRI Examination on 30-05-2016 due to the Corporate Medical Board not being held from 24-02-2017 to 07-04-2018.

f) After examining the Petitioner, the Neuro Surgeon at NIMS, Hyderabad declared that, the Petitioner is fit for job and is walking comfortably.

g) After the perusal of the orders of the Court in W.P. 39473 OF 2018 and after perusal of the Medical Records including NIMS, Hyderabad medical examination records, the Petitioner was declared fit for Job vide Letter ref. No. CRP/MED/C/001/9249 dated 10-12-2018.

h) As per the attendance of the petitioner from the year 2011 to year 2015, shows that the petitioner is hale, healthy and fit for the job and is malingering in order to be declared unfit by the Corporate Medical Board with the intention to claim benefits arising in medical invalidation scheme including

the Dependent employment to his son. Hence, when the *prima-facie* case is not made out in support of the petitioner, the respondents pray to dismiss the writ petition.

5. The proceedings of the Corporate Medical Board held on 15.09.2015, in respect of the petitioner, reads as under:

S. No.	Name of the Employee	EC No.	Designation	Mine Area	CMB DECISION
09	M.Mallaiah	2851693	Coal Cutter	Ktk-2 BHP	UNFIT FOR UNDER-GOUND

PERUSED THE RECORD :

6. A bare perusal of the contents of the letter dt. 09.04.2015 vide Ref. RKP/MED/C/001 of the Chief Medical Officer, Area Hospital, Ramakrishnapur of the Respondent Company clearly indicates the fact that the Petitioner had been referred to MH, KGM. A bare perusal of the report of the Corporate Medical Board dt. 15.09.2015 filed as Material Document along with the counter filed by the Respondents, clearly declares the Petitioner as unfit for further services in the company. The minutes of the said report of the Corporate Medical Board, dt. 15.09.2015 are extracted hereunder :

"Minutes : The medical history of Sri Muthineni Mallaiah, Hammer Man, E.C. No.2524814, KK 1 Incline, MMR Area, was explained to the Members of Corporate Medical Board by the Doctor. A case of CVA, Right Hemiparesis, Left Thalamic Infarct, Alcoholic. On 15.09.2015 the Corporate Medical Board Examined and declared him UNFIT FOR FURTHER SERVICES in the company.

REMARKS : HE WAS DECLARED UNFIT FOR FURTHER SERVICES IN THE COMPANY."

7. The said report of the Corporate Medical Board dt. 15.09.2015 is signed by Dr. G.Bhanumathi, (Physician), A.Anand Rao G.M. (P), Welfare & CSR and Dr. K. Prasanna Simha, Chief Medical Officer, P.Uma Maheswar, G.M. O/o. DIR (OPRN) and S.Sarath Kumar, G.M. (MS), J.Pavithran Kumar, IRS Director (PA&W) and attested by the Chief Medical Officer Singareni Collories Company Limited, Kothagudem Collieries on 06.04.2021.

8. A bare perusal of the contents of the Medical Certificate attested by the Chief Medical Officer, the Singareni Collories Company Limited, Kothagudem Collieries on 06.04.2021, clearly indicates that the Dr. G.Bhanumanthi examined the Petitioner on 15.09.2015. The contents of the said certificate read as under :

"I have examined Sri Muthineni Mallaiah, E.C.No.2524814, Hammer Man, an employee of KK-1 Incline, MMR Area on 15.09.2015 and found that he is suffering from CVA Right Hemiparesis, Left Thalamic Infarct, Alcoholic, which has permanently and totally incapacitated him for work in the Coal Fields within the meaning of paragraph 63 (1) (b) of the Coal Mines Provident Fund Scheme."

9. 63 (1) (b) of the Coal Mines Provident Fund Scheme reads as under :

63 - Circumstances in which accumulations in the Fund are payable to a member –

(1) A member may withdraw the full amount standing to his credit in the Fund -

(b) On being rendered permanently and totally incapacitated for work in the coal fields due to bodily or mental infirmity, notwithstanding the date on which he ceases to be employed.

10. A bare perusal of the letter dt. 26.05.2016 vide Ref. CRP/MED/C/002/2978 of the Chief Medical Officer of the Respondent Company addressed to the Director, NIMS, Hyderabad indicates the Petitioner and one other employee as being directed to NIMS for MRI Scanning.

11. A bare perusal of the results of the Corporate Medical Board held on 23.07.2016 indicates Petitioner's name at Sl.No.37 and the result as being withheld. A bare perusal of the contents of the letter dt. 15.03.2017 of the Chief Medical Officer, Area Hospital, RKP

addressed to the Chairman, NIMS, Hyderabad, clearly reveal the request of the said Chief Medical Officer, not to mention/comment regarding fitness of the employee. However, in pursuance to the orders dt. 02.11.2018 passed in W.P.No.39473 of 2018 directing the Respondents herein to declare the result of the Medical Examination of the Petitioner conducted on 23.07.2016, the Chief Medical Officer vide Ref.No.CRP/MED/C/001/9249, dt. 10.12.2018 passed orders observing as under:

You were attended Corporate Medical Board on 15.09.2015 and declare Unfit for further services. Later a complaint received by Vig. Dept., Vigilance Dept., has taken up enquiry and advised to the undersigned to re-assess the medical fitness.

You were kept under observation at Main Hospital, Kothagudem as In-patient from 20.10.2015 to 01.02.2016. Later on 22.02.2016 you were referred to NIMS Hospital, Hyderabad for further evaluation. Again on 30.05.2016 you were sent to NIMS for further evaluation. Based on the NIMS report you were directed to attend Corporate Medical Board for review on 23.07.2016.

The Corporate Medical Board on examination held on 23.07.2016 has declared your result as "WITH-HELD".

However, due to administrative reasons CMB could not be conducted and you were referred to NIMS, Hyderabad along with Medical Support from SCCL Main Hospital with your medical records. On examination by

the Neurosurgeon at NIMS, Hyderabad on 20.03.2017 who opined you were having normal functional capacity and walking comfortably and appears to be malingering. As such you were found FIT for the job.

Accordingly, the result of CMB held on 23.07.2016 is hereby communicated as Fit for Duty.

12. The counter affidavit filed on behalf of the Respondents Paras 9 & 10 read as under

"It is respectfully submitted that the petitioner was sent to NIMS on 22.02.2016 for re-assessing his medical fitness and MRI examination was on 30.05.2016. It is further submitted that the Corporate Medical Board was not held due to administrative reasons from 24.02.2017 to 07.04.2018 and as such the competent authority has decided to refer the petitioner to NIMS, Hyderabad along with his medical record and with a medical superintendent from the respondent Company on 20.03.2017. It is submitted that after examination of the petitioner, the Neurologist at NIMS examined the petitioner and opined as follows:

"Sri Mutheneni Mallaiah is found to be walking comfortably and appears to be malingering having normal functional capacity and walking comfortably. Patient is FIT for his Job".

It is respectfully submitted that in pursuance of the orders passed by the Hon'ble Court in Writ Petition No.39473 of 2018, dated 02.11.2018, the respondent company after examining the entire medical

records/reports of the petition including NIMS medical examination records, the corporate Medical Board declared the petitioner Fit for job in the Corporate Medical Board examination which was held on 23.07.2016, and the same was communicated to the petitioner vide letter ref.No.CRP/MED/C/001/9249, dated 10.12.2018.

10. It is submitted that the following are the attendance particulars of the petitioner for 5 preceding years:

<i>Year</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>Attendance</i>	<i>258</i>	<i>286</i>	<i>275</i>	<i>275</i>	<i>53</i>

From the above attendance particulars, it clearly envisages that the petitioner has put in more than the required minimum 190 musters/attendances as per Mines Act, 1952 and Mines Rules 1955 in any year as expected from an underground workman and as such it is submitted that the petitioner is hale, healthy and fit for the job and he is malingering in order to be declared unfit by the corporate medical board with an intention to claim benefits arising in medical invalidation scheme including that of dependant employment to his son in the respondent company.

DISCUSSION AND CONCLUSION :

13. This Court taking into consideration the fact that the report of the Corporate Medical Board dt. 15.09.2015, which has six signatories to it had declared the Petitioner as unfit for further services in the company and also the fact of Dr. G. Bhanumathi, Additional CMO (Physician), one of the signatories of the report of the Corporate Medical Board, dt. 15.09.2015, having certified the Petitioner as suffering from CVA Right Hemiparesis, Left Thalamic Infarct, Alcoholic, which has permanently and totally incapacitated the petitioner for work in the Coal Fields within the meaning of paragraph 63 (1) (b) of the Coal Mines Provident Fund Scheme, and the said certificate having been attested by the Chief Medical Officer of the Respondent Company on 06.04.2021, fails to understand how the Chief Medical Officer of the Respondent Company referring to the examination of the Petitioner by the Neuro Surgeon at NIMS, Hyderabad on 20.03.2017 finds the Petitioner as fit for the job, in the letter dated 10.12.2018 vide Ref.No.CRP/MED/C/001/9249.

14. The letter of the Chief Medical Officer, Area Hospital RKP, dt. 15.03.2017 vide Ref. No.RKP/MED/A3/D/ 0027/20174 addressed to the Chairman, NIMS, Hyderabad, requesting him not to mention/comment regarding fitness of the employee/Petitioner, filed as Material Document by the Petitioner herein is also curiously unexplained in the counter affidavit filed by the Respondents.

15. A bare perusal of the contents of para 9 of the counter affidavit filed by the Respondents indicates that the Petitioner had been declared fit for job by the Corporate Medical Board in the Corporate Medical Examination which was held on 23.07.2016, but however the said report of the Corporate Medical Board, dated 23.07.2016 filed along with counter affidavit filed by the Respondents herein only indicates in the remarks column as result withheld and not having declared the Petitioner as fit for job and the said report dated 23.07.2016 also has six signatories to it, but however, the said report is not attested by the

Chief Medical Officer of the Respondent Company whereas every page of the report dated 15.09.2015 of the Corporate Medical Board of the Respondent Company has six signatories to it and is also attested by the Chief Medical Officer of the respondent company on 06.04.2021.

16. This Court opines that it is the Neuro Surgeon at NIMS, Hyderabad who examined the petitioner on 20.03.2017 and opined that the Petitioner is having normal functional capacity and not the Corporate Medical Board of the Respondent Company because as borne on record the two medical reports of the Corporate Medical Board dt. 15.09.2015 and 23.07.2016 are prior to the examination by the Neuro Surgeon at NIMS, Hyderabad on 20.03.2017 and the said examination report dated 20.03.2017 cannot be equated to the report of the Corporate Medical Board of the Respondent Company.

17. Taking into consideration the report of the Corporate Medical Board dt. 15.09.2015 and also the

certificate issued by Dr. G.Bhanumathi, Additional CMO (Physician) certifying the Petitioner as permanently and totally incapacitated for work in the Coal Fields within the meaning of 63 (1) (b) of Coal Mines Provident Fund Scheme, and the fact of the said report dated 15.09.2015 and also the certificate being attested by the Chief Medical Officer of respondent company on 06.04.2021, this Court opines that the Petitioner is entitled for grant of relief as prayed for in the present Writ Petition. The writ petition is accordingly allowed. The Respondents are directed to consider Petitioner's representation dt. 30.05.2017 for providing dependent employment to petitioner's son and the respondents are further directed to consider Petitioner's case with regard to the release of all statutory benefits under Mines Act, 1952 and its Rules 1955 as per petitioner's legal entitlement as per rules and pass appropriate orders within a period of 4 weeks from the date of receipt of the copy of the order treating the Petitioner as Medically Invalid from the services of the Respondent Company from 15.09.2015

**and communicate the said two decisions to the
Petitioner.**

Miscellaneous petitions, if any, pending shall stands
closed.

SUREPALLI NANDA, J

Date: 19.01.2023
Note: L.R. copy to be marked
b/o kvrm