

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 16582 of 2020

Between:

Giravoina Komaraiah

... Petitioner

And

The Singareni Collieries Company Ltd and another

... Respondents

JUDGMENT PRONOUNCED ON: 15.11.2022

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
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 16582 of 2020**

% 15.11.2022

Between:

#Giravoina Komaraiah

..... Petitioner

and

\$ The Singareni Collieries Company Ltd
and another.

.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr K.Naga Phanindra

^standing Counsel for the Respondents:Mr P.Sriharsha Reddy

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 16582 of 2020****ORDER:**

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

2. This writ petition is filed to issue any order or direction more particularly one in the nature of a writ of Mandamus by declaring the respondent's action in rejecting petitioner's plea to add his daughter's name in the live roster and to grant monthly Monitory Compensation (MMC) to his wife till his daughter attains 18 years and is provided employment in Singareni Collieries Company Ltd as illegal, arbitrary and in violation of Articles 14, 15 and 16 of the Constitution of India and thereby direct the SCCL to grant MMC to petitioner's wife from 20.04.2018 and to keep the petitioner's daughter on its live roster and provide her employment after she attains 18 years.

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

a) The petitioner was appointed on 17.10.1986 as Badili worker. On 19.04.2018, the petitioner was examined by

SCCL Corporate Medical Board and thereafter, they certified that the petitioner is medically invalidated and the petitioner attending the work from 20.04.2018. The petitioner was subsequently terminated from service vide proceedings dated 25.05.2018.

b) The petitioner made a representation on 02.07.2018 to the 2nd respondent to add his daughter's name i.e. Sravanthi, aged 12 years on live roster to provide employment after she attains majority and till then to provide his wife MMC as his daughter is the only person eligible for compassionate employment as per Clause 9.5.0(iii) of National Coal Wage Agreement – VI.

c) The 2nd respondent replied that the existing rules does not provide for putting the name of the minor female dependant aged between 12 to 18 years by the time of death/medical unfitness of ex-employees of the live roster and that the petitioner is having another female dependant viz Kum. Praveena, aged 20 years and that she is eligible for the employment. Actually, the petitioner is having only one daughter by name KumSravanthi.

d) As per orders in **K.Satish Kumar v UOI & others** (WP (PIL) No.19 of 2017 the dependants of the employees who were medically invalidated are eligible for compassionate employment including employment for female dependants.

e) Aggrieved by the in action of the respondents, the present writ petition is filed.

4. The respondents filed counter, in brief, is as follows:

a) As per the National Coal Wage Agreements formulated by the Joint Bipartite Committee for Coal Industry, with regard to the provision of dependant employment on compassionate grounds, there is no provision to keep the name of a minor female dependant who is in the age of 12 to 18 years, as on the date of death/medical unfit of ex-employee, on live roster to enable to provide employment on attaining 18 years of age.

b) Clause 9.3.3 of National Coal Wage Agreement VI stipulates that the dependant for this purpose means the wife/husband as the case may be unmarried daughter, son and legally adopted son. If so, such direct dependant is available for employment, brother, widowed

daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

c) 9.3.0, 9.4.0 and 9.5.0: Provision of Employment/monthly monetary compensation to dependant:

(v) In case of death either in mine accident or due to other reasons or medical unfit, if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monthly monetary compensation as given in (iv) above.

d) As per the pension Form PS 3 in the details of family members' column, the petitioner has mentioned 'G.Praveena' as daughter and her date of birth is recorded as 6th January, 1998. The writ petition is non joinder of necessary party as the petitioner sought modification of the provisions as envisaged in NCWA.

e) Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD :

5. Paras 8, 9, 10, 13, 15 and 16 of the counter affidavit filed on behalf of the Respondents read as under :

Para 8 :

It is submitted, in this regard, that the employees(non-executive cadre) working in Coal Mines in India are governed by National Coal Wage Agreements (NCWAS) formulated by the Joint Bi-partite Committee for Coal Industry (JBCCI) consisting of representatives of major Trade Unions and representatives of Coal Companies. The JBCCI evolves wage structures, leaves, LTC/LLTC, medical facilities, allowances, increments, service conditions, other fringe benefits and also other provisions such as compassionate appointment to the eligible dependant of an employee died or declared medically unfit while in service, with a view to mitigate financial hardships of the family members disabled employee/died employee while in service as a welfare measure.

Para 9 : *It is submitted that the dependant for the purpose of providing employment on compassionate appointment, Clause – 9.3.3 of National Coal Wage Agreement VI stipulates as under:*

"thedependant for this purpose means the wife husband as the case may be, unmarried daughter, son and legally adopted son. If so such direct dependant available for employment, her daughter widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased mybe considered to be the dependant of the deceased"

Para 10 : *It is further submitted that the existing and relevant guidelines with regard to the provision of Employment Payment of Monthly Monetary Compensation to Dependant under NCWA-VIII as formulated by the JBCCL, are extracted as under:*

9.3.0, 9.4.0 & 9.5.0: Provision of Employment monthly monetary compensation to Dependant:

(v) In case of death either in mine accident or due to other reasons on medical unfit, if no employment has been offered and the male dependent of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and

qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monthly monetary compensation as given in (iv) above.

The above provisions of dependent employment are being followed in subsequent NCWAs. It is very clear from the above that the eligible unmarried daughter is entitled to claim for employment on compassionate grounds. But, it does not mean that minor daughter though dependent is entitled to be provided employment on compassionate grounds and in such case, the ex-employee is entitled to claim Monthly Monetary Compensation.

Para 13 : *It is submitted that the Representation dated 02.07.2018 submitted by the Petitioner was examined and a letter dated 30.01.2019 was issued to him intimating that as per the existing rules and guidelines in vogue with regard to keeping the name of the dependant on live roster, there is no provision to keep the name of Minor female dependant who is in the age of 12 to 18 years as on the date of death/medical unfitness of ex-employee on live roster to enable to provide employment on attaining the 18 years of age, and further informed to avail other benefits providing by respondent company in lieu of dependant employment.*

Para 15 : *It is submitted that the contention of the petitioner that he was medically invalidated through Medical Board on 19.04.2018 and that the dependants medically unfit employees are not eligible for compassionate appointment while the dependants of medically invalidated employees are eligible compassionate appointment, is not true and correct and hence denied and petitioner is put to strict proof of the same. It is submitted that the employees who are declared medically unfit or medically invalidated for further services, dependent employment will be provided to one of the eligible dependants. But, in the present case, the question is not providing employment to the eligible dependant whether male or female, it is the question of keeping on live roster of a minor female dependant and providing employment on attaining 18 years of age, which is against the provisions of NCWA Agreements as formulated by the JBCCI and being followed by the Respondent Company.*

Para 16 : *Further, it is submitted that dependant employment on compassionate grounds and definition of the dependant will be formulated in National Coal Wage Agreements by Joint Bi-partite Committee for Coal Industry(JBCCI) and all the major Unions like INTUC, AITUC, BMS, HMS and CITU are parties to the Agreements and the same will be followed by the Coal Companies and the said Agreements are binding upon all the parties including the petitioner.*

The relief sought by the petitioner amounts to seeking modification of the provisions as envisaged in NCWA and also for inclusion of the minor daughter to keep her name in live roster is n permitted under law unless and until the petitioner questions the NCW Agreements and especially the NCWAS are binding upon all the parties. Therefore, JBCCI is a necessary party to the writ petition. The writ petition as filed by the petitioner is also liable to be dismissed on the ground of non- joinder of the necessary party.

6. The Counsel for Petitioner places reliance on the Division Bench judgment dt.16.03.2017 passed in W.P.(PIL) No.19/2017 and also the judgment of the Apex Court dt. 12.08.2008 passed in V. Siva Murthy & Another v. State of A.P. & Others.

DISCUSSION & CONCLUSION :

7. The prayer sought for by the Petitioner is two fold and can be divided into two limbs:

a) The first limb of the prayer of the Petitioner is seeking a writ of mandamus declaring the action of the Respondents in rejecting Petitioner's plea to add Petitioner's daughter's name on the live roster and to grant Monthly Monetary Compensation (MMC) to Petitioner's wife till Petitioner's daughter attains 18 years and is provided employment in Singareni Collieries Company Limited as illegal, arbitrary.

b) The second limb of the prayer is a direction to the Respondents to pay Monthly Monetary Compensation to the wife of the Petitioner as per Clause 9.5.0(ii) of NCW Agreement-VI from 20.04.2018.

8. A bare perusal of Clause 9.5.0(iii) of National Coal Wage Agreement-VI (NCW Agreement – VI) indicates that a provision is made for including the name of minor male children age between 12 to 18 years by the time of death/medical and fitness of ex-employees on the live roster and during the period when the male child is on live roster, the female dependent is paid the MMC. In so far as the first limb of the prayer sought for by the Petitioner in the present Writ Petition is concerned, unless and until the Petitioner challenges the virus of the subject clause and the subject agreement, this Court cannot adjudicate and grant the same.

9. Taking into consideration the specific averments made by the Respondents in the counter affidavit filed in the paras 8, 9, 10, 13, 15 and 16 referred to and extracted above, this Court is of the firm opinion that the Petitioner is not entitled for grant of the first limb of the relief sought for by the Petitioner unless the Petitioner questions the NCWA Agreements (National Cold Wage Agreements) in view of the fact that the NCWA's are binding upon all the parties. The Petitioner has also not impleaded JBCCI (Joint Bipartite

Committee for Coal Industry) which is a proper and necessary party.

10. In so far as the second limb of the prayer is concerned i.e., a direction to the Respondents to pay Monthly Monetary Compensation (MMC) to the wife of the Petitioner as per Clause 9.5.0(ii) of NCW Agreement-VI from 20th April 2018, it is very clearly stated in the counter affidavit at para 13, that vide letter dt. 30.01.2019 of the Superintendent of Mines, KK5 Incline SCCL, the representation of the Petitioner dt. 02.07.2018 was examined and the Petitioner was informed to avail other benefits provided by the Respondent company in lieu of dependent employment. In view of the said clear averment in the counter affidavit filed by the Respondents, the Respondents are directed to forthwith pay Monthly Monetary Compensation (MMC) to the wife of the Petitioner as per Clause 9.5.0(ii) of NCW Agreement-VI, regularly, and further consider the request of the Petitioner for release of arrears of Monthly Monetary Compensation to the wife of the Petitioner w.e.f. 20.04.2018 the date on which the Petitioner has been medically invalidated, and pass appropriate orders in accordance to law within a period of 4 weeks from the date of

receipt of the copy of the order duly communicating the said decision to the Petitioner.

11. In so far as the judgements relied upon by the Counsel for the Petitioner and the principle laid down in the said judgements, the same would certainly come to the rescue of the Petitioner in the event the Petitioner challenges the NCWA Agreements by impleading JBCCI as party Respondent and initiate proceedings accordingly.

12. For all the reasons stated above the Writ Petition is disposed of giving liberty to the Petitioner to question the NCWA Agreements and seek the first limb of the relief sought for in the present Writ Petition afresh again. There shall be no order as to costs.

Miscellaneous petitions, if any, shall stand dismissed.

SUREPALLI NANDA, J

Date: 15.11.2022

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

kvrn