

**IN THE HIGH COURT AT CALCUTTA**

**CIVIL APPELLATE JURISDICTION**

**ORIGINAL SIDE**

Present:-

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM**

**AND**

**HON'BLE JUSTICE CHAITALI CHATTERJEE DAS**

**APOT 106 OF 2025**

**with**

**GA/2/2025**

**EASTERN COALFIELDS LIMITED AND ORS**

**VS**

**MANGALI @ MANGALA BOURI**

**For the Appellant**

: Mr. Shiv Shankar Banerjee, Adv.

Ms. Sanchita Barman Roy, Adv.

Mr. Abhishek Chakraborty, Adv.

**For the Respondent**

: Mr. Partha Ghosh, Adv.

Mr. Simran Sureka, Adv.

Mr. Debashis Das, Adv.

Mr. Bratin Guin, Adv.

**APOT 123 OF 2025**

**With**

**GA/2/2025**

**MANGALI @ MANGALA BOURI**

**VS**

**EASTERN COALFIELDS LIMITED AND ORS**

**For the Appellant**

: Mr. Partha Ghosh, Adv.

Mr. Simran Sureka, Adv.

Mr. Debashis Das, Adv.T

Mr. Bratin Guin, Adv.

**For the Respondent** : Mr. Shiv Shankar Banerjee, Adv.  
Ms. Sanchita Barman Roy, Adv.  
Mr. Abhishek Chakraborty, Adv.

**Last Heard on** : 21.05.2025

**Judgement on** : 01.07.2025

**CHAITALI CHATTERJEE DAS, J:-**

1. These intra Court appeals have been filed by both the parties against a judgement and order dated 26.11.2024, allowing the prayer of the writ petitioner Mangala Bouri for her claim of Monthly Monetary Cash Compensation (MMCC) and directing the Appellant Authority to pay the same from the date of death of her mother that is 27th November 2000 with interest at the rate of 6% per annum.
2. The appellant Authority challenged the order on the ground of wrong interpretation by the learned single Judge in respect of the facts and circumstances of the case and saddled them with interest at the rate of 6% per annum ignoring the negligence on the part of the writ petitioner/claimant to substantiate her claim with proper and sufficient documents. That apart the ground of challenge of the said judgement by the claimant is the quantum of interest granted by the single Bench and prayed for 18% interest instead of 6% per annum with costs of Rs .10 Lakhs only for the harassment

suffered by her. Since both the appeal germinated from the same judgement and order and the matter for adjudication in both the cases are same, the appeals were heard analogously.

**Brief fact of the case**

3. The husband of Tulsi Bouri was an employee of Eastern Coalfield limited in short (ECL) , who is a leading coal producer in India , Government of India undertaking and one of the subsidiaries of the Coal India Limited. After demise of the said employee, his wife Tulsi Bouri was given a compassionate appointment. On September 8, 2008, Tulsi Bouri applied for VRS and GHS scheme, which was under active consideration and on November 27, 2000, received intimation from the respondent regarding death of her mother Tulsi Bouri, expired on November 26, 2000.
4. The Claimant /writ petitioner made an application before the Appellant No.1 seeking employment on compassionate ground on December 14, 2000 and on March 14, 2001, submitted her attestation, biodata, etc. Dispute raised primarily regarding her claim of sole dependant daughter of the deceased employee when in the service record names of other legal heirs were found. Several communications were made between the parties relating to her application and she also appeared before a committee constituted by ECL to consider her case on several occasion with the necessary documents and on April 22, 2003 she specifically refused to take MMCC of ₹3000 in lieu of employment.
5. Long thereafter in the year 2013 she was suddenly intimated about certain discrepancies and was again directed to appear and then on 19.8.24 she

made a representation before the Authority and claimed for MMCC in place of employment. Since the authority did not take any positive step she filed a writ petition being WP No. 915 (w) of 2024, seeking payment of arrears of MMCC back from the date of death of her mother, which was contested by the Authority .The learned Single Judge by virtue of an order dated November 26, 2024, allowed the prayer of the writ petitioner Mongolia Bouri directing the Authority to pay the arrears of MMCC along with 6% interest per annum considering the fact the claimant has surpassed the age of 45. Being aggrieved thereby these intra court appeals have been preferred by both the parties .

### **Submissions**

6. The learned advocate appearing on behalf of the ECL, would submit that the appointment of Tulsi Bouri was a compassionate appointment in place of her deceased husband after considering all the documents as well as after compliance with all formalities. Tulsi Bouri during her life time on September 8, 2000, applied for VRS and GHS scheme, which was pending for consideration. Meantime the claimant, claiming to be the sole widowed daughter of the deceased Tulsi Bouri informed the present appellant on November 27, 2000 about the demise of her mother on November 26, 2000. It is submitted that the husband of the claimant passed away only on October 10, 2000 that is only after few days after death of her mother and that ipso facto cannot be a ground to claim for a compassionate appointment unless she proves that she was the sole dependent legal heir of the deceased employee and is entitled for the employment. On December 14, 2000, the respondent made the application before the appellant No.1 seeking

employment on compassionate ground and on March 14, 2001 she filed her biodata along with other documents.

**7.** It is also submitted that she filed an indemnity bond executed by one Shashti Dhibar indemnifying the relationship between the her and said deceased employee as mother and daughter. The appellant found serious discrepancies in the said indemnity bond and despite repeated request made by the company the respondent failed to clarify the said discrepancies. She even neglected to appear before the screening committee constituted by the Authority to consider her application when the dispute pertains to the genuinity of her claim of sole dependency.

**8.** It is further submitted that though the claimant claimed to be the sole dependant heir of the deceased the service record revealed the names of other sons and daughter of said Tulsi Bouri and therefore it was necessary to seek the clarification for arriving at a concrete decision .On two occasions she did not appear and lastly appeared before the screening committee and gave the reasoning that the other named family members were illiterate and had no knowledge about the service /development so the compassionate appointment should only be given to her. She failed to furnish any “No objection” from such family members which is otherwise a mandatory and non- negotiable requirement of the Authority according to the prevailing rules. Further submission advanced by the Authority that despite having sufficient discrepancies the authority being a State, considered the beneficial aspect of the employee and decided to call her again with requisite documents and

accordingly gave the letter on April 3rd, 2003. Long thereafter lastly the respondent produced the succession certificate on June 9th, 2005.

**9.** It is contended that the succession certificate may be considered as a proof of her claim as a legal heir of the deceased but failed to substantiate that she was dependant on her mother. In the meantime the company despite she having failed to clear the ambiguity, proposed the claimant to take MMCC of Rs. 3000/- in lieu of employment but that offer was turned down by the Respondent and demanded the employment only. Accordingly she was again asked to submit the No objection from the other family members whose names were found in the office record and several communications took place since July 2003 to November 2011 in this regard.

**10.** It is further contended by the learned advocate that the claimant /Writ petitioner although failed and neglected to cooperate with the Authority, filed the writ petition claiming the MMCC back from the date of death of her mother. The prayer of the petitioner was allowed by the Hon'ble Single Bench with 6% interest which was completely on an erroneous interpretation of law and facts. It is further contended by the learned advocate that in another identical set of Appeal the same travelled up to Hon'ble Supreme Court where the order of the Hon'ble Division Bench was upheld that the Company was held liable to pay MMCC back for a period of three years commencing from the date of filing of the writ petition.

**11.** Further argument advanced was that the amount as claimed if allowed to be paid would be to Rs. 44,84,635.08 /- plus interest which will be a huge burden and ultimately would be a catalyst for wastage of public money, when

it is a subsidiary under the Coal India Ltd. The learned Single Bench failed to consider the absence of any reason, for the inordinate delay in approaching the Court claiming the arrears amount towards MMCC starting from 26 th November, 2000 till 2024.

**12.** It is strenuously argued that the learned Single Judge ought to have considered, while allowing the prayer of the writ petitioner from the death of the mother with interest, the observations made in number of cases by the Hon'ble Supreme Court as well as by this Hon'ble Court regarding payment of arrear. Accordingly the Appellant Authority prayed for modification in case the order impugned is allowed to sustain, for a period of three years backward commencing from the date of filing the writ petition as the law pertaining to the limitation for being awarded MMCC has been settled by the Hon'ble Supreme Court in the matter of M/s Eastern Coalfields Ltd. & ors vs Dukhini Bhuiya (Civil Appeal no 673 of 2023).

**13.** On the other hand the appellant /writ petitioner/claimant represented through her learned advocate, assailed before the court that she being the widowed daughter of Tulsi Bouri who died in harness, prayed for an compassionate employment in terms of the prevailing settlement, by letter dated 14.12.2000 as she was not willing to receive the MMCC. Immediately thereafter on 14.3.2001 she also submitted all her documents to substantiate her claim. After that also whenever it was asked for she furnished all the documents but the authority did not consider the same nor provided the death cum retirement benefit of her mother and accordingly she had to apply

for succession certificate which was granted on 18.8.2003. Despite submitting the same, the company did not release the death benefit.

**14.** It is also argued that even after clarifying all the queries ,the final decision of her employment reached up to highest level as sent for the final approval and accordingly the authority placed her in the final employment status list being WD-2392 with the remark 'under process' . It is her further contention that this entire process took long 24 years and she grew older and surpassed the age bar and then only she made the representation dated 19.8.2024 intimating that she belongs to schedule caste community and is facing funds crunch as her mother was the sole breadwinner and accordingly prayed for the amount of MMCC instead of the employment, from the date of death of her mother.

**15.** In course of argument, it is also submitted that in identical situations, the dependent of the deceased employee filed a writ petition being W.P.O No. 331 of 2020 and W.P. O number 332 of 2020, where the Hon'ble Court by order dated 20th October, 2020 directed the Director, Personnel of ECL to consider the representation and to pass reasoned order and also directed that ECL authority to have the same view that monetary compensation has to be paid from the date of death of employee. In this regard the learned advocate has relied upon the following decisions of Hon'ble Supreme Court ,

<sup>1</sup> (Central Coalfield vs Bipini Murmu & ors )

<sup>2</sup>(Mohan Mahato vs Central Coalfield Ltd & ors )

<sup>3</sup> (Sukhomoni Hembram vs Union of India.

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<sup>1</sup> 2024 SCC online SC 1535

<sup>2</sup> (2007) 8 SCC 549



**16.** It is further submitted that Chapter IX of the National Coal Wage Agreement (NCWA) provides for social security. Clause 9.3.1 of NCWA provides for employment to dependent of workers who are disabled permanently and also those who die while in service and also provides for the manner of implementation of such provisions in the following clauses. Clause 9.3.2 of NCWA provides that so far as female dependents are concerned, their employment/payment of monetary compensation would be governed by paragraph/clause 9.5.0 and by no means the Authority can deny such settlement even on the ground of delay. In this regard relied upon a decision of Hon'ble Supreme Court reported in <sup>4</sup> (Subhadra vs Ministry of Coal and Anr). It is further contended that the petitioner is illiterate lady and in such circumstances, naturally it was difficult for her to comprehend the rules and regulations guiding their case and to forthwith act the formalities but the complicated and lengthy procedure for consideration of the prayer of the claimant and the gross negligence on the part of the appellant authority are the root causes for this inordinate delay which disentitled her from having the opportunity of employment and further to drag her to court .In this regard the Learned Advocate has relied upon a decision reported in<sup>5</sup> ( S.K Mastan Bee vs General Manager ,South Central Railway and another )

**17.** However, the Hon'ble Single Bench while allowing her prayer, granted interest only about 6% when she is entitled to 18% interest considering the prolonged delay and harassment faced by her, and hence she has also preferred the intra court appeal, against the said Order. The Learned

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<sup>3</sup> 2024 SCC online cal 17361

<sup>4</sup> (2018) 11 SCC 201

<sup>5</sup> 2002 SCC online SC 1160

Advocate relied upon the decision of the Hon'ble Supreme Court in R.Kapur versus Director of <sup>6</sup>and Gorakhpur University vs Shetala Prasad <sup>7</sup> in support of his contention that the interest to be awarded at 18%.

**18. Heard the submissions of the learned advocates of the parties of both the Appeals.**

**Analysis**

It is undisputed that Tulsi Bouri since deceased was an employee of the Authority (ECL) and she died in harness. The stand taken by the appellant/authority that the said Tulsi Bouri got the appointment on compassionate ground and the claimant was the married daughter so otherwise she was not entitled to have an appointment on compassionate ground unless she fulfils the required criteria which she failed to substantiate. According to the Authority, the service record revealed that Tulsi Bouri had two sons and a daughter but it was the claimant who applied for compassionate appointment claiming to be the sole dependant heir of the deceased. In this regard the letter of reply dated April 25, 2001 of the claimant, if looked into, would suggest the claimant specifically stated that she is the only daughter of Tulsi Bouri and it is not necessary to submit any "No Objection Certificate" as called for.

**19.** The screening committee consisting of three members was constituted by the Appellant Authority who further asked for clarification regarding other members of the family namely Niren Bouri, Nareen Bouri, Nirupa Bouri and

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<sup>6</sup> (1994) 6 SCC 589

<sup>7</sup> (2001) 6 SCC 591

Tani Bouri after the respondent appeared before the committee since their names were found in the record . On perusal of the finding of the screening committee dated September 3rd, 2001 as annexed with the stay application, it appears that, in the Gratuity nomination Form of Tulsi Bouri the name of Mangala Bouri was nominated for full share of the Gratuity and after local enquiry also the committee was of the opinion that she is the only surviving member of Late Tulsi Bouri and her claim is a genuine one. However certain queries arose regarding the age of the claimant/respondent and accordingly observed that the age will be assessed subject to the opinion of the Medical Board. Surprisingly the above finding was typed and signed by the three members on 27.8.2001 but after that certain hand written points are noted with certain observation that, on 3rd September 2001 as per option form her age comes to 18 years when she claimed to be 35 years so some doubt arises regarding the genuinity. No explanation can be found from the four corners of the stay application as to why after the committee arrived at a finding considering the genuinity of the claim, on 27th August , 2001 took a different stand after few days questioning the genuineness of the claim. In the said decision the names of other family member are also written . The claimant Appellant in A.P.O.T123 of 2025 has annexed a computer generated document showing the status of employment under National Coal wage Agreement ,October 2022 (P-12) where the name of late Tulsi Bouri WD-2392 as an ex-employee of Mithilapur Colliery with name of claimant as Mongola Bouri as widow daughter is shown as under process. Therefore the pendency

of the application of employment by the claimant before the authority since 2000 is well established.

**20.** That apart the said finding appears to be silent about the next date of appearance of the respondent, but vide a letter dated 4th October 2001 the claimant was again directed to appear before the screening committee on October 10, 2001 at 10 A.M. along with all relevant document/ papers in original. She was further directed to attend with two permanent employees as witness with their identity card. The documents annexed with the stay petition shows the further finding of the screening committee held on 15th May 2002 when again she recorded her statement and reiterated her stand that she is the only surviving dependent legal heir of the deceased Tulsi Bouri. On March 13, 2002, she also produced two witnesses from the colliery who endorsed the fact that the respondent/claimant is the daughter of late Tulsi Bouri. The record clearly shows that on repeated occasions the claimant appeared before the screening committee and recorded her statement, submitted the required document and claimed that she is the only surviving legal heir of the deceased. It is quite surprising that the authority never refused or rejected the claim of the claimant, nor provided her either with the employment or with the death benefit, completely ignoring the settlement as recorded in the NCWA. In the year 2003, the respondent informed the Personnel Manager on April 22, 2003 that she wanted employment and will not accept ₹3000 per month as monetary compensation in lieu of employment.

**21.**In the decision of Sukhomoni Hembram vs Union of India And Ors. (supra) the mother of the appellant had nominated the appellants for employment in the died in harness category in terms of NCWA then prevailing by a writing dated March 4, 2022 and the respondent authorities processed such application up to a given level . The appellants were called for medical examination and requested to appear before the screening committee .The appellant duly appeared after undertaking the medical examination but since there was no progress, filed the writ petition . Hon'ble Division Bench discussed the case of Subhdra (supra), Putul Rabidas vs Eastern Coalfield Ltd reported in<sup>8</sup> of the Special Bench of this High Court and of the Division Bench of this High Court in<sup>9</sup> (Santi Ruidas vs Coal India Ltd) and Eastern Coalfields Ltd. Vs Kumari Kiran Singh, <sup>10</sup>and observed ;

*45. 'Unlike other scheme of compassionate appointment which usually provides for negation of the claim of appointment on the grounds of financial solvency or delay ,clauses 9.3.0 to 9.5.0 of the NCWA does not specify financial solvency or delay to be disqualifications for receipt of compassionate appointment or monetary compensation .As noted above the provisions of NCWA which is a settlement within the meaning of the Act of 1947 are required to be strictly construed.'*

**22.** This decision was upheld by the Hon'ble Supreme Court on 14.10.24 in SLP no. 23181/2024. The learned advocate in course of argument filed through

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<sup>8</sup> 2017 volume 6, WBLR (cal) 255

<sup>9</sup> (2010) 2 CHN 327

<sup>10</sup> 2019 (1) CLT 130

his compilation a copy of the reasoned order in compliance with a direction of the Hon'ble High Court at Calcutta in Jyoti Devi Khoyra vs M/SE.C.L & Ors. (W.P.O No.331 of 2020).The concluding part of such order shows the observation of the Authority which discussed the principle behind the concept of compassionate appointment and further that in number of cases the widow/claimants insist for employment in various forums or through VIP references and are very adamant in not accepting MMCC but after losing all hopes for compassionate appointment they claim for MMCC with interest from the date of the death of the employee which results in sudden financial implications over the company but the E.C.L being a Public Sector undertaking and also State under Article 12 of the Constitution of India is a bona fide employer and always strives to ensure that the dependents of the deceased employees should get maximum of the benevolent provisions. Accordingly paid the monetary compensation in applicable rates from the death of the deceased employee till she attained 60 years of age upon completing all the necessary formalities .In that case also the application for compassionate appointment was not considered being a belated claim. In the case on hand the Authority kept silent and did not inform the fate of the claim of the claimant.

**23.** In Chapter IX clause 9.5.0. (ii) Of the NCWA, it is very clearly and specifically mentioned that a female dependant, if below 45 years of age, has an option either to accept monetary compensation or employment. It is not an option reserved to the employer, but an option given to the employee. Therefore, the claimant Mangala Bouri in exercise of such option insisted for

giving an employment instead of monetary compensation and therefore the statement was well justified in doing so. In the decision relied upon on behalf of the claimant reported in<sup>11</sup> (Subhadra vs Ministry of Coal and anr.) the Hon'ble Supreme Court discussed the entitlement of a claimant pursuant the scheme of NCWA. It was observed that the provision related to payment of MMCC is guided by the National Wage Agreement (NCWA.), which is governed by a Bipartite agreement signed on 23.12.23. In the said case the claim for compassionate appointment was declined though it was not disputed that on the death of her husband she was 35 years of age and they had a minor son aged about 13 years. The Authority was prepared to pay the monetary compensation but she wanted employment. The stand of the Authority was compassionate appointment is not a matter of right and relied upon the decision of Canara Bank vs M.Mahesh Kumar<sup>12</sup> (2015) 7 SCC 412. The Hon'ble Supreme Court observed that there is no quarrel with the settled proposition but the case was not discretionary compassionate appointment governed by statutory guidelines but governed by a scheme as agreed by the parties and which has become a part of the scheme. So the terms of agreement are very specific and give no room for any discretion. It was further held that

*‘ In para 9.5.0 (ii) of the Agreement it is very clearly and specifically mentioned that a female dependant if ,below the age of 45 years of age ,has a option either to accept the monetary compensation or employment .It is not an option*

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<sup>11</sup> (2018) 11 SCC 201

<sup>12</sup> (2015) 7 SCC 412

*reserved to the employer ,but an option given to the employee. It was in terms of the Agreement only that the Appellants had been insisting that she should be given employment if she is otherwise eligible in terms of the Bipartite Agreement.*

*Para 9.50 (iii) would come into play only in case para 9.5.0 (ii) does not operate .Employment is assured to the dependant in terms of the Bipartite Agreement .If the female dependent opts for employment there is no further discretion left to the employer ,unless she is otherwise ineligible .There is no such contention raised by anybody .*

**24.** The Hon'ble Division Bench of this Hon'ble Court observed in Sukhomoni Hembram vs Union of India (supra) in paragraph no. 21 to 25 as follows;

*21. NCWA is a negotiated agreement that has been arrived at between the employer and the employees. It is a settlement under section 2 (p) of the Industrial Disputes Act, 1947 and has binding effect on the parties thereto under section 18 (3) of the Act of 1947. NCWA has made provisions for compassionate appointment for the dependents of the deceased employee.*

*22. Compassionate appointment is an exception to the general rule of merit-based recruitment under Article 14 of the Constitution of India. It is provided to the family of the deceased in order to tide over the immediate financial*



penury that the family of the deceased employee upon death or medical incapacitation of the employee. Compassionate appointment is governed by the terms of employment of the deceased employee. Compassionate appointment is not a matter of right unless emanating out of the terms of employment of the deceased employee. Compassionate appointment is a contingency provided for in the context of employment of concerned employee, the happening of which triggers a right to receive employment on fulfilment of the specified criteria. Right to receive compassionate appointment vests the right to receive employment with the specified dependent on the happening of the pre-identified contingencies.

23. Terms and conditions of employment of the deceased employee may in a given case vest discretion upon the employer with regard to grant of compassionate appointment. Usually, the terms of employment of the deceased employee for the grant of compassionate appointment takes into consideration the financial condition of the family of the deceased employee. It usually prescribes a time limit within which an application for compassionate appointment is required to be made by the family member of the deceased employee for successful consideration thereof.

24. In absence of any stipulation to the contrary an employer cannot choose which of the beneficiaries of the concerned employee should opt for the compassionate appointment when it is provided for in the terms of employment.

25. Terms of compassionate appointment have to be strictly construed. Both the employer and the employee are bound by the terms and conditions governing the employment of the deceased employee, at the time of his death. On a true and proper construction of the terms and conditions of the settlement under the Act of 1947 governing the employment of the deceased employee where such terms allow more than one interpretation, then the one which is beneficial to the employee, (as an employee is considered a weaker section in the collective bargaining resulting in the settlement), Is to be opted. In the facts of the present case, the terms of employment of the deceased employee are governed inter alia by clauses 9.3.0. to 9.5.0 of the NCWA which is a settlement within the meaning of the Act of 1947.

**25.** The Appellant/Authority is a public sector undertaking and thereby it is “State” under article 12 of the Constitution of India and as a Model employer must ensure that the family members of the deceased employee must not face

financial crisis, after sudden demise of the sole breadwinner of the family. The Claimant herein also produced the succession certificate from the District Delegate at Asansol and submitted the same before the authority and by a letter dated 22 April 2003 expressed her unwillingness to accept ₹3000 per month in lieu of employment however her claim was kept pending.

**26.** The provision made in 9.3.2 is *Employment to one dependent of the worker who dies while in service* and clause 9.3.2. deals with-

In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.

It is neither in doubt, nor in dispute that the grant of compassionate appointment of a widowed daughter was required to be considered in terms of 9.3.3 which reads as follows:

*The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no 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 dependent on the earnings of the deceased may be considered to be the dependant of the deceased.*

**27.** In the instant case, the respondent first applied for appointment on compassionate ground on December 14, 2000 and as she was offered with MMCC of ₹3000 per month, she declined to accept the same exercising option for employment in accordance with the above terms of settlement on April 22,

2003. She further produced the succession certificate to avail the death benefit of late Tulsi Bouri, which was also denied to her by the authority. No further communication was made since 2011 till 24<sup>th</sup> August 2024 when the claimant informed that she is facing fund crunch as her mother was the sole bread winner of the family and no employment has been given to her and also prayed for immediate release of MMCC for survival.

**28.** Therefore in the light of above discussion there was no bar in claiming the MMCC if she is above the age of 45 years in view of the above clause. So either she was to be given an employment or the stipulated monetary compensation unless otherwise found not eligible or suitable for availing any of the above. In the decision relied upon by the learned advocate of the appellant reported in 1<sup>13</sup> Mohan Mahato vs Central Coalfield Ltd Ors it was observed by the Hon'ble Supreme Court that, the public sector undertaking, which is the 'State' within the meaning of Article 12 of the Constitution of India, not only to act fairly but also reasonably and bonafidely and in view of the fact, a beneficial provision is made under a settlement. It was further observed that

*' a settlement within the meaning of subsection (3) of section 18 of the Industrial Dispute Act is binding on both the parties and continues to remain in force unless the same is altered ,modified or substituted by another settlement . No period of limitation was provided in the settlement. We would assume that the respondent had*

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<sup>13</sup> (2007)8 SCC 549

*jurisdiction to issue such circular prescribing a period of limitation for filing an application for grant and appointment on compassionate grounds. But such circular was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into between the parties .The expanding definition of workman as contained in section 2 (s) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate grounds, subject of course, to compliance with the conditions precedent contained therein’.*

Therefore in the instant case the silence on the part of the Authority for a prolong period certainly dehors the purpose of the settlement as entered into and certainly that breaches the fundamental right of the claimant.

**29.** It is the stand taken by the learned advocate of the Authority that the negligence was on the part of the claimant in giving appropriate reply or to submit documents to satisfy the authority regarding the ambiguity or the discrepancies pointed out, in order to enable them to proceed more expeditiously and despite that they were prepared to grant the MMCC to the claimant whereas it was she who insisted for employment. Even if for the sake of argument and on prima facie looking into the communications made by the Authority, some substances can be found as the Authority was to satisfy about the genuinity of the claim of dependency but that may be considered till the finding of the committee was arrived at, that is on 27<sup>th</sup>

August 2001. The argument that the claimant ought to have been more careful while giving the reply regarding other family members as raised by the Authority cannot be accepted as the court cannot be oblivious of the fact that both Tulsi Bouri and the claimant were illiterate and it would have been really difficult for them to follow the procedure. In the case of S.k Mastan Bee vs General Manager, South Central Railway and another (supra), the Hon'ble Supreme Court held ;

*“It is on record that the appellant is an illiterate who at the time of her husband’s death did not know of her legal right to family pension and the remedy to enforce her such right . On the death of the husband of the Appellant ,it was obligatory for her husband’s employer viz the railways ,in the present case to compute the family pension payable to the appellant and offer the same to her without her having to make a claim or without driving her to a litigation .The very denial of her right to family pension amounts to a violation of the guarantee assured to the appellant under Article 21”*

- 30.** But the Authority once arrived at a finding, in absence of any cogent ground again asked the claimant to appear further, instead of asking her to appear before any medical Board for assessing the age and thereby created a stalemate situation. The conduct of the Appellant therefore never appeared to be for the benefit of the family of the deceased and cannot be appreciated in terms of the basic principles behind such scheme which was only to mitigate

the financial issues occurs on account of sudden death of the sole earning member. More so the appellant asked for 'No Objection' certificate from the other family members on 2003 and then long after 9 years in the year 2011 and thereafter in the year 2013. It is evident that according to the whims and fancies of the authority, they issued a letters to the claimant which shows that they acted in most lackadaisical manner without making any effort to ensure that the family of the deceased must not suffer from any financial distress. Lastly the claimant was compelled to seek for the compensation amount instead of the employment in the year 2024 anticipating that the claim for employment will be futile considering the age bar .No communication was sent to her regarding the fate of her previous application for a prolong period of 10 years and allowed the application to be kept pending and also did not give reply to her representation made in the year 2024.

**31.** The Appellate authority's repeated demands for various documents, suggest uncertainty about the exact requirements, leading to unnecessary delays in processing the application. The authority's decision to pay compensation despite discrepancies raises questions about the rationale behind this decision, specially when the claimant was not provided with employment.

**32.** The ground of challenge to the order impugned by the authority pertains to the period for which the arrear of MMCC has been granted along with 6% interest without considering the specific objection taken that the cause of delay was on the part of the claimant and the learned Judge was not correct

in directing the appellant/authority to pay from November 27, 2000 that is from the date of death of the employee. In this regard a decision relied upon by the appellant reported in <sup>14</sup> (Hindustan Petroleum corporation Ltd vs Dolly Das) can be looked into where it was held by the Apex Court that *“the delay by itself cannot defeat claim for relief unless position of other side had been so altered which cannot be retracted on account of lapse of time or inaction of petitioner.”* It can be reiterated at the cost of repetition that NCWA being a settlement arrived at between the employer and employee the binding effect in terms of the provision under Industrial Disputes Act cannot be overlooked and any refusal of benefit extended vide such settlement amounts to violation of fundamental rights.

**33.** Further stand taken by the Authority that learned single judge granted interest at the rate of 6% without any claim for interest by the claimant and from the date of death of the deceased. In the decision of the Hon’ble Apex court as relied upon by the learned advocate of the ECL in this regard as reported in<sup>15</sup> Subhadra vs Ministry of Coal & anr (supra), the compassionate appointment was not given and the appellant prayed for interest on account of loss of employment for 13 years and the rate of interest of 7.5% was directed to be paid to compensate the appellant for the period from 2004 to 2018, and a lump sum amount of ₹5 lakhs was directed to be paid.

**34.** In an identical case as reported in<sup>16</sup> Central Coal Field Limited versus Bipini Murmu and others the prayer of one of the daughter of the deceased employee for compassionate appointment was turned down by the appellant

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<sup>14</sup> 1999 (4) Supreme 144

<sup>15</sup> (2018) 11 SCC 201

<sup>16</sup> (2024) SSC Online SC 1 535



on the ground that a married daughter is not entitled for compassionate appointment in terms of the National Wage Agreement. It was observed by the Hon'ble Supreme Court that ;

*8. It is apparent from bare perusal of the aforesaid clauses that the employment would be provided by the appellant to one dependent of an employee who died in harness. The rider added is that in so far as female dependents are concerned, their employment /payment of monetary compensation would be governed by Clause 9.5.0 which provides for employment. /monetary compensation to female dependents of workers who died in harness while in service or who were declared medically unfit and states clearly in sub -clause (ii) that in case the female dependent crossed 45 years of age, she would be entitled only to monetary compensation per month and not to employment.*

**35.** In the said case the submission made by the learned counsel for the respondent that the female dependent crossed the age bar of 45 years, and therefore was not to be considered fit for being granted employment then clause 9.3.3 would come into play was termed as fallacious . In the said case, the widow of the deceased/employee was neither granted compassionate appointment having crossed the age bar of 45 years, nor was, she granted any monetary compensation to which she was entitled in terms of the NCWA.

Accordingly the Hon'ble Court directed the appellant to pay monetary compensation to the widow of the deceased from the date of the demise of her husband. The arrears computed was directed to be released in favour of the widow within six weeks from the date of order. In the case on hand also the widowed daughter was neither given employment nor the monetary compensation and also did not dispose of the application, causing a state of limbo. The claim of the authority for not granting any compensation or employment immediately after the demise of the employee may be considered because in this case the claimant claimed to be the sole dependent legal heir of the deceased employee but names of some other persons also found from the record and the claimant was asked to substantiate with cogent documents. But the inaction on the part of the Authority not to provide either monetary compensation or employment for long 11 years failed to justify the conduct, considering it as a public undertaking and a State withing the meaning of Article 12 of the constitution.

**36.** So far the stand taken by the Authority that the arrear ought to have been considered preceding last three years and relied upon the decision of Dukhini Bhuiya (supra) but the facts of that case is way different than the instant case, since after the death of the employee no application for monetary compensation was made for 21 years by the claimant and thereby the Hon'ble Supreme Court allowed the monetary compensation for the period backwards for three years prior to the date of writ petition. When in this case immediately after the death of the employee the widowed daughter made the application along with all the required documents and on the basis of that the

committee was constituted before whom the claimant appeared but on repeated occasion the claimant though furnished the documents failed to arrive at any conclusion.

### **Conclusion**

**37.** Therefore, the ratio decidendi all the decisions relied upon should inure in favour of the claimant in view of the facts and circumstances, the manner in which the application was processed and allowed the same to be kept pending and thereby the order to provide MMCC to the claimant was passed rightly by the learned Single Judge and requires no interference. After giving an anxious consideration of the entire facts, circumstances, coupled with the various judicial pronouncement of the Hon'ble Apex Court, it is amply clear that the appellant authority under the garb of processing of the application and taking advantage of the silence on the part of the respondent for these long 10 years showed ample apathy over the issue of giving employment or the monetary compensation to the claimant and thereby failed to implement the scheme and only after the writ petition was filed, the Authority became active to contest the same. Therefore the stand taken by the learned advocate of the Appellant that on account of negligence on the part of the claimant in satisfying the authority, such huge unexplained delay about 10 years occurred and the claim of monetary benefits to be limited to 3 years proceeding the date of petition filed before the High Court does not merit acceptance, and thus rejected.

**38.** In view of the various judicial pronouncement, it is settled that the monetary compensation or compassionate appointment in terms of NCWA is not a matter of any bounty to be distributed by the authorities, but valuable rights of the workmen attached to the company and any delay in settlement and disbursement should be viewed seriously, and dealt with severely by imposing penalty in the form of payment of interest. Therefore, no ground is made out to interfere with any reason to discard the views expressed by the learned Single Bench regarding payment of interest, rather considering the long silence on the part of the Authority and in order to render complete justice, the rate of interest be enhanced up to 7.5% instead of 6% however the entitlement can be reckoned from the date when the committee took a positive view about the Claim of the applicant from on 27th August, 2001.

**39.** In view of the above, the appeal filed by the ECL being A.P.O.T No. 106 of 2025 is dismissed and the appeal filed by the petitioner/claimant in A.P.O.T No. 123 of 2025 is partly allowed. The impugned order passed by the learned Single Bench is modified as follows:-

The arrear of the monetary compensation to be paid on from September 2001 when the committee was of the opinion about the authenticity of the claim instead of the date of death of the deceased employee , along with simple interest at the rate of 7.5% and such payment is to be made on or before 15th July 2025.

**40.** The other observation of the Learned Judge is to remain unaltered.

**41.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

I agree

**(CHAITALI CHATTERJEE DAS,J.)**

**(T.S. SIVAGNANAM,CJ.)**

