

IN THE HIGH COURT OF JHARKHAND AT RANCHI
LPA No.617 of 2017

Madhubala Sinha Appellant

Versus

1. M/s. Central Coalfields Limited, Ranchi,
through its Chairman-cum-Managing Director.
2. Chairman-cum-Managing Director,
M/s. Central Coalfields Limited, Ranchi.
3. Director, Personnel,
M/s Central Coalfields Limited, Ranchi.
4. General Manager (Personnel & Industrial relation)
Central Coalfields Limited, Ranchi.
5. General Manager, Kuju Area,
M/s. CCL, Kuju, Ramgarh.
6. Personnel Manager,
M/s. CCL, Kuju, Ramgarh.
7. Chief Manager (MM), Regional Store, Kuju Area,
M/s. CCL, Kuju, Ramgarh.
8. M/s. Coal India Limited, Kolkata,
represented through its Chairman.
9. Chairman, M/s. Coal Indian Limited, Kolkata.
10. Director (Personnel),
M/s. Coal India Limited, Kolkata.

..... Respondents

11. Seema Kumari Proforma Respondent

With
LPA No.475 of 2017

Smt. Gendia Debi Appellant

Versus

1. The Central Coal Fields Limited,
Through its Chairman-cum-Managing Director, Ranchi.
2. The Chief Manager,
Central Coal Fields Limited, Ranchi.
3. The Manager, Personnel (NEE),
Central Coal Fields Ltd., Ranchi.
4. Coal India Limited, Ranchi.
5. Miss Sarita Kumari

..... Respondents

P R E S E N T

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

- 2 -

For the Appellants	:	Mrs. M.M. Paul, Sr. Advocate Mr. Mahesh Tewari, Advocate Mr. Abhishek Kr. Dubey, Advocate
For the Respondents CCL	:	Mr. Amit Kumar Das, Advocate Miss Pooja Kumari, Advocate Mrs. Swasi Shalini, Advocate Mr. Aditya Jha, Advocate
For CIL	:	Mr. V.K. Dubey, Advocate (Advocates in respective cases)

C.A.V. on: 30.07.2019**Pronounced on: 16.09.2019**

H.C. Mishra, A.C.J.:- The common question of law that is involved in both these Letter Patent Appeals, is whether sister and the mother of the deceased workman of CCL, who were admittedly not included as dependents under Clause 9.3.3 of the National Coal Wage Agreement (hereinafter referred to as 'NCWA'), could be appointed on compassionate ground, in absence of there being any other dependent under Clause 9.3.3 of the NCWA, and whether their non-inclusion in the list of dependents in the NCWA is unjust and uncalled for. As such, both the appeals have been heard together and are being disposed of by this common Judgment.

2. Heard learned counsels for the appellants and learned counsel for the respondents CCL in both these matters.

3. In both these matters, the Writ Court has denied the relief to the appellants writ petitioners, stating that the mother and the sister did not fall within the definition of the dependents under Clause 9.3.3 of the NCWA, and were not entitled for compassionate appointment upon the death of the deceased workman.

4. **Facts in LPA No.617 of 2017 :-** The appellant in this appeal is the widow of late Anil Kumar, who had been working with the respondent CCL, and died in harness, while on duty. Thereafter her son Kundan Prakash was granted compassionate appointment in lieu of his deceased father, with the undertaking that he shall take care of his mother, i.e., the appellant herein, his inborn blind sister Pooja Kumari and also his unmarried sister at that time, Seema Kumari, who is the Performa respondent in the present appeal. Seema Kumari was subsequently married in the year 2014. The son

of the appellant also met with an accident and died on 15.8.2015, while he was aged only of 23 years, and was unmarried, leaving behind his mother, who at that time was about 43 years of age, inborn blind and unmarried sister and also one married sister, Seema Kumari. Thereafter, the appellant applied for compassionate appointment in place of her deceased son under the provisions of Clause 9.3.3 of NCWA, since she had no income for survival of herself and her inborn blind daughter, and they were facing financial hardships. Her prayer was rejected on the ground that under Clause 9.3.3 of NCWA, the mother and sister do not come within the definition of dependent. Against the said order, appellant preferred WP(S) No. 3406 of 2016, in this Court and the Writ Court by the impugned Judgment dated 14.07.2017, dismissed the writ application stating that the mother does not fall within the definition of dependents. Aggrieved thereby, the present LPA has been filed by the appellant, claiming appointment on compassionate ground, being the mother of the deceased employee.

5. **Facts in LPA No.475 of 2017** :- The appellant is the widow of late Nun Chand Mahto, who was employed under the CCL as driver, and after the death of Nun Chand Mahto in harness, his son Guruchand Mahto, being the dependent, was provided compassionate appointment by the respondent Company. Guruchand Mahto remained unmarried and he also died in harness on 28.11.2011. His service book revealed that his mother, i.e., the appellant herein, unmarried sister and his grandmother were dependents upon him. After the death of her son, the appellant gave application for the appointment of her unmarried daughter Sarita Kumari for appointment on compassionate ground. Since the sister was not included in the list of dependents for being appointed on compassionate ground in Clause 9.3.3 of NCWA, her claim was rejected by the respondent authorities. The appellant preferred WP(S) No. 6099 of 2012, in this Court, which was dismissed by the Writ Court by the impugned Judgment dated 17.07.2017, stating that since the sister was not included in the list of dependents in Clause 9.3.3 of NCWA, her prayer was not tenable in the eyes of law. Aggrieved thereby, the present LPA has been filed by the appellant, claiming appointment on compassionate ground for her daughter, who is the sister of the deceased employee.

6. Learned counsels for the appellants in both these appeals have submitted that the action of the respondent CCL in denying the compassionate appointment to the mother and the unmarried sister of the deceased employees, who also died unmarried, cannot be sustained in the eyes of law. Learned counsels drew our attention towards Clause 9.3.3 of NCWA, which defines the word 'dependant' for the purpose of employment to be given in the event of the death of a worker while in service, which only include the wife / husband, unmarried daughter, son and legally adopted son, and if none of them are available for the employment, the brother, widowed daughter / widowed daughter-in-law or son-in-law, residing with the deceased and almost wholly dependent upon the earnings of the deceased, may be considered to be the dependent of the deceased employee. It is submitted by learned counsels that this list of dependents is absolutely unjust and it wholly excludes the dependents of an unmarried worker, dying while in service, except his brother. It is submitted by learned counsels that this list is wholly unrealistic and it also suffers from gender bias, inasmuch as, if the brother of the deceased employee comes within the zone of consideration for employment on compassionate ground, there is no reason as to why, the sister, whether married or unmarried, should be excluded from that zone, if such sister is also fully dependent upon the deceased workman. It is also submitted by learned counsels for the appellants that there is no reason as to why in case of unmarried workman, who dies in harness, the father and mother of the deceased, if they are otherwise fit to be employed, be not given employment on compassionate ground, and even their exclusion from list of the dependents is thus absolutely unjust, unrealistic and uncalled for, particularly in view of the fact that the deceased workman was morally and legally under obligation to maintain his parents, and there is no reason as to why, after his death, if they are eligible to be employed, they be denied appointment on compassionate ground. In support of their contentions, learned counsels for the appellants have relied upon several precedents also, as discussed herein after.

7. In **Union of India & Ors. Vs. E.S. Radha**, in OP (CAT) No. 214 of 2016 (Z), decided on 19.10.2016, by the Kerala High Court, the appellant was the mother of the deceased, who was working as GDS Mail

Deliverer who had died in harness on 9.7.2011, leaving behind his mother and father as dependents. The mother gave application for her appointment on compassionate ground, stating that her husband was not in a position to do any physical labour, and she and her husband were dependents of the deceased, but her claim was denied by the officials on the ground that the term 'dependent family member', in the relevant scheme for compassionate appointment, did not include the father and mother of the deceased employee. The Central Administrative Tribunal held that the exclusion of father and mother is highly unjust and prejudicial to the parents of an unmarried Government employee, and passed direction for treating them as dependent family members. The Union of India challenged the said decision before the Kerala High Court, and Kerala High Court also affirmed the decision of the Central Administrative Tribunal, stating that the order passed by the Central Administrative Tribunal was neither perverse nor patently illegal, warranting any interference by the High Court. The Union of India again moved SLP in the Supreme Court of India being SLP (C) No.109300 of 2017, which was also dismissed by the Hon'ble Supreme Court.

8. In **Kumari Saraswati Vs. Hon'ble the High Court of Rajasthan & Anr.**, in Civil Writ Petition No.12539 of 2012, decided by the Rajasthan High Court on 26th August 2013, the unmarried sister of the deceased employee was not included in the relevant Rules as dependent of an employee. The Hon'ble Rajasthan High Court held that unmarried sister of the deceased employee is required to be treated as daughter, if the father is not alive and sister is wholly dependent on brother, holding that a wide interpretation of the Rule was required, even though the unmarried sister was not included in the definition of the dependent.

9. Learned counsels have also placed reliance upon two full Bench decisions of Calcutta High Court in **Putul Rabidas Vs. Eastern Coalfields Ltd. & Ors.**, reported in *2017 SCC Online Cal 13128*, and in **The State of West Bengal & Ors. Vs. Purnima Das & Ors.**, reported in *2017 SCC Online Cal 13121*. Both these cases were also covered by the NCWA. Putul Rabidas was denied the benefit of employment on compassionate ground, as she was a married daughter, but her marriage had been dissolved by a decree of divorce by the competent Court, and since

then she and her minor son were residing with her mother, who was an employee of ECL, and died in harness. Her case was rejected on the ground that the list of dependents did not include the married daughter, rather it included only unmarried daughter of a deceased employee. The Hon'ble Calcutta High Court laid down the law as follows:-

"31. However, before we move on to the main issue, it needs to be clarified that unlike schemes for compassionate appointment that normally come up for consideration before courts of law, compassionate appointment / monetary compensation that is envisaged in para 9.3.0 of Chapter IX is not dependent on the quantum of financial benefits that might have accrued in favour of a worker on his death. Para 9.3.0 or for that matter any other para / clause in Chapter IX does not make receipt of a particular quantum of money by a dependant of a deceased worker because of the latter's death on account of death benefits a disqualification for compassionate appointment / monetary compensation. In that view of the matter, irrespective of the quantum of death benefits that a dependent might have received owing to death of his / her father / mother / father-in-law / mother-in-law / brother / sister, ECL cannot repudiate a claim for compassionate appointment / monetary compensation on the ground that the family, having received substantial death benefits, is not in need thereof. The terms of the NCWA-VI are such that a dependent, if he / she satisfies all the conditions in clauses 9.3.3 and 9.3.4, i.e. he / she is a dependent of a deceased worker and has the requisite qualification for being given employment by ECL, is entitled to claim as of right that he / she ought to be extended the benefit of compassionate appointment or monetary compensation, as the case may be, under Chapter IX.

51. Having regard to the scheme of compassionate appointment as envisaged in Chapter IX of NCWA-VI, we have no doubt in our mind and accordingly, hold that an "unmarried daughter" as appearing in clause 9.3.3 would not only include a daughter who has never been married, but also a daughter who was once married but her marriage has been dissolved by a decree of divorce and she remains 'not married' on the date of death of her father / mother (the worker). We find no good reason as to why by putting a strained construction on the words "unmarried daughter", a divorcee daughter should be held to have been excluded and, a fortiori, ineligible for consideration."

10. In Purnima Das's case, Purnima was the married daughter of the deceased worker, who died in harness. She also claimed appointment on compassionate ground, which was also rejected on the ground that the married daughter was not included in the list of the dependents. The full Bench of Calcutta High Court has laid down the law as follows:-

“75. ----- . A person dependent would be one who for his survival was entirely dependent on the earnings of the Government employee and should he / she be appointed, is likely to take care of the other family members by his / her earning. It is permissible for the State to categorise persons to be comprised in 'dependent family member'; however, in the exercise of making such categorisation, care must be taken to ensure that no class of dependants is excluded without there being a plausible justification. The exclusion, if challenged, must pass the test of reasonable classification. ----- . It is in the background of these three conditions that we are to consider whether the policy decision of the State Government to exclude 'married daughters' from the scope of compassionate appointment is constitutionally valid.

88. The classification here is brought about by excluding 'married daughters' of a deceased Government employee from the purview of compassionate appointment, and the so called "intelligible differentia" put forward is that 'married daughters' cease to be part of the family of the Government employee on marriage. As noticed earlier, the object of appointment on compassionate ground is to save the wrecked family by ensuring that the dependents have a few crumbs of bread and a few yards of cloth. This raises a few important questions. First, as to who could form a class to which the scheme for compassionate appointment would apply? The appropriate answer would be the immediate members of the family of the deceased employee. This question being answered, the incidental question would be who are the immediate family members? For a broad idea of who would constitute the family of a person, the relevant personal laws including family and succession laws may be looked at. However, in the context of compassionate appointment, such laws may not be seen because the purpose thereof is totally different. We are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his / her survival must be considered to

belong to 'a class'. Exclusion of any member of a family on the ground that he / she is not so dependent would be justified, but certainly not on the grounds of gender or marital status. If so permitted, a married daughter would stand deprived of the benefit that a married son would be entitled under the scheme. A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be treated equally and at par if it is demonstrated that both depended on the earnings of their deceased father / mother (Government employee) for their survival. It is, therefore, difficult for us to sustain the classification as reasonable." (Emphasis supplied).

11. It is submitted by learned counsels that relying upon the full Bench decision of the Calcutta High Court, Jharkhand High Court also in case of **Central Coalfields Ltd. Vs. Hemanti Devi & Ors.**, in LPA No.196 of 2017, decided on 16th August 2018, has upheld the decision of the Writ Court, directing for consideration of a married daughter of the deceased workman of CCL, for compassionate appointment.

12. Again in **Smt. Vimla Srivastava Vs. State of U.P. & Anr.**, in Writ C No.60881 of 2015 and analogous matters, decided by the Allahabad High Court on 4th December 2015, wherein Rule 2(c) of the Dying-in-Harness Rules framed by the State of U.P., which included only unmarried daughters and not the married daughters, of the deceased employee in the list of dependents, has held the exclusion of the married daughters to be illegal & unconstitutional, being violative of Articles 14 and 15 of the constitution of India, and the High Court has struck down the word 'unmarried' in Rule 2 (c) of the aforesaid Rules.

13. In **Rekha Nanakchand Yadav Vs. Union of India**, in R/Special Civil Application No.6658 of 2014 decided by the Gujrat High Court on 12th June 2018, wherein the sister of one Shri Kuldip Yadav, who had been taken in captive in Pakistan on the charge for spying for India, and who was recruited by BSF for RAW, and was sent on a secret mission to Pakistan, has been directed to be appointed on compassionate ground, but this decision has been passed considering the case to be absolutely exceptional one. The SLP filed against the said order was also dismissed by the Hon'ble Apex Court.

14. It is submitted by learned counsels for the appellants, relying upon the decision of the Hon'ble Supreme Court in **Madan Singh Shekhawat Vs. Union of India & Ors.**, reported in (1999) 6 SCC 459, that it is the duty of the Court to interpret a provision, especially a beneficial provision liberally, so as to give a wider meaning rather than a restrictive meaning which would negate the very object of the rule. Again placing reliance upon the decision of the Hon'ble Supreme Court in **Central Inland Water Transport Corporation Ltd. & Anr, etc. Vs. Brojo Nath Ganguly & Anr.**, reported in 1986 AIR 1571, it is submitted that a Government company being "the State" within the meaning of Article 12, is bound to act fairly and reasonably, and if it does not do so, its action can be struck down under Article 14 as being arbitrary.

15. Placing reliance on these decisions learned counsels for the appellants submitted that the exclusion of sister and mother from the list of dependents in Clause 9.3.3 of the NCWA, cannot be sustained in the eyes of law and it is a fit case, in which, the respondents be directed to consider the cases of the appellants, irrespective of their non-inclusion in the definition of dependant in Clause 9.3.3 of the NCWA.

16. *Per contra*, learned counsel for the Respondent CCL has submitted that admittedly, neither the mother nor the sister are included in the list of dependents of the deceased workman in Clause 9.3.3 of the NCWA, and it is well settled principle of law that appointments on compassionate ground cannot be claimed as a matter of right and it must be provided as per the rules, regulations and schemes and if the appointment is not provided under the scheme, no case is made out for compassionate appointment. In support of his contention, learned counsel placed reliance upon the decision of the Hon'ble Apex court in **Steel Authority of India Ltd. Vs. Madhusudan Das & Ors.**, reported in (2008) 15 SCC 560, wherein the law has been laid down as follows:-

"14. The appellant being State within the meaning of Article 12 of the Constitution of India, while making recruitments, is bound to follow the rules framed by it. Appointment of a dependant of a deceased employee on compassionate ground is a matter involving policy decision. It may be a part of the service rules. In this case it would be a part of the settlement

having the force of law. -----. The Division Bench of the High Court, however, proceeded on the premise that the employer was bound to provide appointment on compassionate appointment (sic ground) in all cases involving death of an employee. The Division Bench, in our opinion, was not correct in its view.

15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right." (Emphasis supplied).

17. Learned counsel has also placed reliance upon the decision of the Apex Court in **State Bank of India & Anr. Vs. Somvir Singh**, reported in (2007) 4 SCC 778, wherein the law has been laid down as follows:-

"7. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependants of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

10. There is no dispute whatsoever that the appellant Bank is required to consider the request for compassionate appointment

only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be."

(Emphasis supplied).

18. Learned counsel for the respondent has again placed reliance upon of the decision of the Hon'ble Apex Court **Bhawani Prasad Sonkar Vs. Union of India & Ors.**, reported in (2011) 4 SCC 209, wherein the law has been laid down as follows:-

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts. (Emphasis supplied).

19. Learned counsel for the respondent has further placed reliance upon yet another decision of the Hon'ble Supreme Court in **MGB Gramin Bank Vs. Chakrawarti Singh**, reported in (2014) 13 SCC 583, wherein the law has been laid down as follows:-

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a

government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years." (Emphasis supplied).

20. Learned counsel has yet again placed reliance upon another decision of the Hon'ble Supreme Court in **State of Himachal Pradesh & Anr. Vs. Shashi Kumar**, reported in (2019) 3 SCC 653, wherein the law has been laid down as follows:-

"18. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The basis of the policy is that it recognises that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependent member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfil the terms of the policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependent member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek

consideration of the application in accordance with the terms and conditions which are prescribed by the State.

20. In view of the clear terms of the policy, we are of the view that the High Court was in error in issuing a mandamus to the Government to disregard its policy. Such direction could not have been issued by the High Court. -----."

(Emphasis supplied).

21. Placing reliance on these decisions, learned counsel for the respondent has concluded that since Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State, the appointment on compassionate ground cannot be made only because of the fact that the applicants were dependent upon the deceased employee, and particularly, in view of the fact that Clause 9.3.3 of the NCWA do not include the mother and sister of the deceased workman as dependents, to be appointed on compassionate ground, they could not be appointed, as it is well settled principle of law that such appointments cannot be made in absence of the rules, regulations or schemes.

22. Learned counsel for the respondent CCL, also submitted that it is not the case that the parents and the female siblings of the workman dying in harness is left by the CCL absolutely uncared and starving. They are entitled to the compensation under the workman compensation benefits admissible under the Workmen's Compensation Act, as they fall within the definition of 'dependent', given in Section 2(1)(d) of the said Act. Learned counsel accordingly, submitted that there is no illegality in the impugned Judgements passed by the Writ Court, rejecting the claims of the appellants.

23. Having heard learned counsels for both the sides and upon going through the record, we find that in both these appeals, Clause 9.3.3 of the NCWA, which makes provision for employment of dependent of the workman who dies while in service, needs to be interpreted, which reads as follows:-

"9.3.3 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 dependent 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."

A bare reading of the aforesaid clause clearly shows that the brother of the deceased workman comes within the zone of consideration for appointment on compassionate ground in absence of wife, husband and unmarried daughter, son and legally adopted son. The father, mother and sister of the deceased workman have been totally excluded from the list of dependants, though, it cannot be denied that an employee dying at a very young age, may be leaving behind father and mother, who were dependants upon him / her, still within the age of consideration of compassionate appointment. Thus a plain reading of this provision clearly shows that if the workman dies unmarried, except for his / her brother, no other blood relative is within the consideration zone for employment on compassionate ground, though they may be fully dependent upon the earnings of the deceased workman at the time of his / her death in harness. We are of the considered view that so far as the parents of the deceased workman are concerned, the deceased was in a moral and legal obligation to maintain them and if he / she failed to maintain them, the action would lie under Section 125 of the Cr.P.C. as well. In that view of the matter, there appears to be no reason as to why, such parents of the workman dying unmarried at an young age, be not included in the list of the dependants for being considered for compassionate appointment, if they are capable and otherwise eligible for the same. Excluding such parents of the deceased workman, cannot be said to be based on any plausible justification.

24. So far as the sister is concerned, we find from a plain reading of Clause 9.3.3 of NCWA quoted above that the brother of the deceased workman dying unmarried, if fully dependent upon him, is also entitled to be considered for appointment on compassionate ground. In that view of the matter, there is no reason as to why, sister, whether married or unmarried, should be deprived of such benefit. If a sister is denied the benefit of compassionate appointment only on the ground that she is not included as dependent under Clause 9.3.3 of NCWA, this is a clear case of gender bias

and the same cannot be sustained in the eyes of law, also on the touchstone of Articles 14 and 15 of the Constitution of India. At this juncture, we are tempted to quote Section 13 of the General Clauses Act, even though the General Clauses Act relates to Central Acts and Regulations. We are referring to this Section as admittedly the respondent Coal India Ltd is also 'State' within the meaning of Article 12 of the Constitution of India, and Section 13 of the General Clauses Act aims at non-discrimination only on the basis of gender. In other words, it prohibits gender discrimination. Section 13 of the General Clauses Act reads as follows:-

“13. Gender and number.- In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.”

A plain reading of this Section clearly shows that all the words importing the masculine gender shall be taken to include females and in that view of the matter also, if brother is included in the list of dependents under Clause 9.3.3 of NCWA, there is no reason as to why the word 'brother' shall not include sister also.

25. We are of the considered view that the case of the appellants is fully covered by the decisions relied upon by learned counsels for the appellants herein before. The non-inclusion of the parents and sister of the deceased workman dying in harness, in the list of dependants to be appointed on compassionate ground, cannot be said to be based on any rational basis, rather this is wholly unfair and absolutely unjust. It is also not based on any intelligible differentia, and frustrates the very object the scheme for compassionate appointment. These immediate blood relations cannot be denied the benefit of compassionate appointment, if they are otherwise entitled for the same, simply because of the fact that they may be entitled to the compensation under the workman compensation benefits admissible under the Workmen's Compensation Act, as they fall within the definition of 'dependent', given in Section 2(1)(d) of the said Act.

26. Even otherwise, in view of the law laid down by the Full Bench of Calcutta High Court, in Purnima Das's case (supra), while giving

interpretation to the term dependent in terms of the NCWA itself, that for the purpose of a scheme for compassionate appointment every such member of the family of the employee who is dependent on the earnings of such employee for his / her survival must be considered to belong to 'a class', and their exclusion cannot be only on the ground of gender or marital status, we are of the considered view that this decision has a binding effect on the respondents, as this decision was rendered in case of compassionate appointment in coal company itself, which was again governed by the NCWA itself. This decision was again followed by a co-ordinate Bench of this High Court also, in case of the present respondents themselves, i.e., Central Coalfields Ltd., in **Hemanti Devi's** case (*supra*).

27. For the forgoing reasons, the respondent Central Coalfields Ltd., is directed not only to consider the claims of the appellants for being appointed on compassionate ground in accordance with law, but also to take steps for inclusion of the parents and sister of the workman dying in harness, in the definition of dependents under Clause 9.3.3 of the NCWA. We would like to make it clear that consideration of the appellants for appointment on the compassionate ground, shall be subject to fulfillment of the other conditions necessary for such appointment, by the appellants.

28. In view of the foregoing discussions, we hereby set-aside the impugned Judgments passed by the Writ Courts, being the Judgment dated 14.07.2017, passed in WP(S) No.3406 of 2016, as also the Judgment dated 17.07.2017, passed in WP(S) No.6099 of 2012, out of which, both these appeals arise.

29. Both these appeals are accordingly allowed, with the directions as above.

(H.C. Mishra, A.C.J.)

Deepak Roshan, J.:-

(Deepak Roshan, J.)

Jharkhand High Court, Ranchi.
Dated the 16th of September, 2019.
R. Kumar/NAFR