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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4712 of 2018

Mamni Pradhan D/o Late Sudama, aged about 21 years, R/o village Bartunga, Paraspani, Ward No. 26, PS/PO Chirimiri, Tahsil Khadgawan, District Korea, Chhattisgarh

--- Appellant

Versus

1. South Eastern Coalfields Ltd. Through: The Chairman-cum-Managing Director, Head Quarters, Seepat Road, PS Sarkanda, Bilaspur, Chhattisgarh.
2. Director (Personnel) South Eastern Coalfields Ltd. Head Quarters, Seepat Road, PS. Sarkanda, Bilaspur, Chhattisgarh.
3. Chief General Manager, Chirimiri Area, PS Podi (West Chirimiri) Chirimiri, District Korea, Chhattisgarh.
4. General Manager (Mining/Sub-Area Manager), Chirimiri Under Ground Sub Area, South Eastern Coalfields Ltd. Chirimiri Area, PS Chirimiri, Chirimiri, District Korea, Chhattisgarh.
5. Coal India Ltd. Through: The Chairman, 10, Netaji Subhash Road, Kolkata, West Bengal.
6. All India Trade Union Congress (AITUC), Through the General Secretary, PO Bhurkunda, District Hazaribag (Jharkhand)
7. Hind Mazdoor Sabha (HMS) Through the General Secretary, 1864, Wright Town, Jabalpur, Madhya Pradesh.



8. Bhartiya Mazdoor Sangh (BMS) through the General Secretary, WCL Colony, Purana Bazar, Pathakhera, District Baitul Madhya Pradesh.
9. Central of India Trade Union (CITU) Through the General Secretary, NCOEA Office, Darbhanga House, Ranchi Jharkhand.

---- Respondents

(Cause Title taken from Case Information System)

For Appellant	: Mr. N. Naha Roy, Advocate.
For Respondent No. 1 to 5	: Mr. H.B.Agrawal, Senior Advocate assisted by Mr. Vinod Deshmukh, Advocate.
For Respondent No. 6 to 9	: None
Date of Hearing	: 01.12.2021
Date of Judgment	: 25.01.2022

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon'ble Mr. N.K.Chandravanshi

C A V Judgment

Per Arup Kumar Goswami, Chief Justice

Heard Mr. N.Naha Roy, learned counsel for the petitioner. Also heard Mr. H.B.Agrawal, learned senior counsel assisted by Mr. Vinod Deshmukh, learned counsel for the respondents No. 1 to 5. None appears for other respondents.

2. By this petition, the petitioner challenges clause 9.5.0(iii) under Chapter IX with the heading 'Social Security' of the National Coal Wage



Agreement-VI, for short, NCWA-VI, which is a settlement arrived at in terms of Section 18 of the Industrial Disputes Act, 1947 (*for short, the ID Act*). The petitioner has prayed for the following reliefs:

“10.1 Issue a writ of mandamus and declare the provision of clause 9.5.0(iii) under the chapter of ‘social service’ in the National Coal Wage Agreement-VI, a settlement in terms of Section 18 of the Industrial Disputes Act, 1947, having statutory force, absolutely arbitrary and ultra vires to the theme of Article 14, 15, 16, and 21 of the Constitution of India, spreading discrimination on basis of gender.

10.2 Issue a writ of mandamus and quash the order dated 26.04.2018 / 01.05.2018 (Annexure P/2) whereby relying upon the provision of clause 9.5.0 (iii) under the chapter of ‘Social Service’ in the National Coal Wage Agreement-VI case of the petitioner for dependent employment has been negated arbitrarily and in a most improper manner.

10.3 Issue a writ of mandamus and direct the respondents to consider case of the petitioner for appointment under the scheme of dependent employment in the same way the same is applicable for male dependents without any discrimination, for losing her father during service with the respondents.



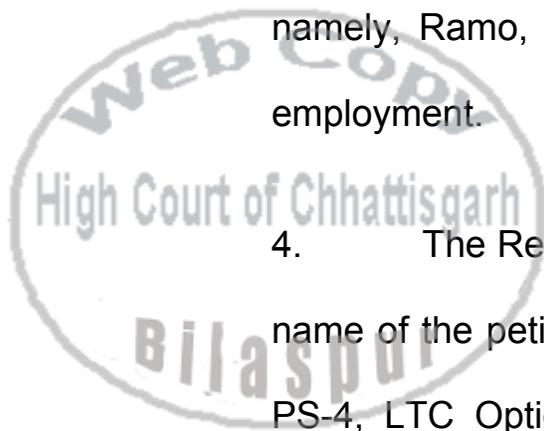


10.4 Grant any other relief, which is deemed fit in the circumstances of this case”.

3. The petitioner claims to be the daughter of one Late Sudama, who was working on a regular basis as ‘Belt Khalasi’ under the Respondent No. 1. While in service, he died of a snake bite on 08.09.2011. The mother of the petitioner, namely, Smt. Kumari filed a representation dated 22.02.2012 requesting consideration of the case of the petitioner for appointment under the scheme of dependent employment under the NCWA-VI stating that after the death of her son, namely, Ramo, the petitioner could only be considered for dependent employment.

4. The Respondents, by letter dated 11.07.2012, informed that the name of the petitioner was not recorded in service records (Form PS-3, PS-4, LTC Option Form and Gratuity Nomination Form, etc.) and in terms of the rules of the Company, she is not entitled for her name being put in a live roster and therefore, requested to file appropriate application in the prescribed format to receive monetary compensation. The Petitioner filed a civil suit before the learned Family Court, Manendragarh, District Korea, registered as Civil Suit No. 83A/2015, seeking a declaration that she was the daughter of Late Sudama. The suit was decreed by judgment and decree dated 10.11.2016.

5. The judgment and decree had attained finality as the same has not been put to challenge. It is also an admitted fact that the respondents No. 3 and 4 were arrayed as parties to the civil suit.





6. Subsequently, the petitioner also learnt that her name was included as daughter of the deceased employee in the year 1999. After obtaining the declaration in the civil suit declaring that she is the daughter of Late Sudama, she filed an application dated 28.01.2017 for consideration of her case afresh. Consequent thereto, an order dated 26.04.2018/01.05.2018 was passed informing that at the time of death of the deceased employee, she was aged about 14 years, 3 months and 22 days, and therefore, in terms of clause 9.5.0(iii) of the NCWA-VI, names of only male dependents are kept in a live roster if such dependent is 12 years of age or above, until he attains the age of 18 years when his case would be considered commensurate with his skill and qualifications.

7. It is in the aforesaid circumstances, clause 9.5.0(iii) of the NCWA-VI is called into question on the ground of gender discrimination as only the male dependent above 12 years of age is kept in a live roster while not extending such benefit to a female dependent.

8. Clause 9.5.0(iii) of NCWA-VI reads as under:

“9.5.0 Employment/Monetary compensation to female dependent.

Provision of employment/monetary compensation to female dependents of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

(i) In case of death due to mine accident, the female



dependent would have the option to either accept the monetary compensation of Rs. 4000/- per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to cause other than mine accident and medical unfitness under Clauses 9.4.0, if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3000/- per month or employment.

(iii) In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, 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 dependent is on live roster, the female dependent will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.”

9. Perusal of the letter dated 22.02.2012 (Annexure P/4) goes to show that in the said letter, the widow of the deceased mentioned that her brother-in-law had mentally and physically harassed her and her





family and he, taking advantage of the fact that her deceased son Ramo's name could not be deleted from the service records, had projected one Suraj, son of Govind Pradhan, as Ramo and put his signatures for the purpose of compassionate appointment. It is also stated that the signatures of her family members were obtained by threat, coercion and duress stating that they will not be allowed to live in their village at Chirimiri. In the said letter, the names of following legal heirs are mentioned:

1. Smt. Kumari 43 years, Self
2. Smt. Basanti, 24 years, married daughter
3. Smt. Nilli, 22 years, married daughter
4. Smt. Silli, 19 years, married daughter,
5. Ku. Mamni, 16 years, daughter

By the said letter, she prayed for appointment of the petitioner, *i.e.* Ku. Mamni on compassionate ground.

10. In the reply filed by the answering respondents, it is stated that the NCWA is binding upon the Management/Workers of the Coal India Limited and therefore, they are not entitled to any benefit beyond the scope of the agreement and therefore, the respondent No. 1 being a subsidiary and integral part of the Coal India Limited, NCWA-VI is also binding upon the employees of the company.

11. It is stated that the NCWA-VI was signed on 30.12.2000 and





thereafter, NCWA-IX was issued on 31.01.2012 wherein also similar provision which is questioned in the writ petition exists.

12. A plea is taken that the writ petition is liable to be dismissed on the ground of non-joinder of the five National Trade Unions who were the signatories to the NCWA-VI. The writ petition was also stated to be not maintainable in law on the ground of alternative remedy under the ID Act.

13. It is stated that during the service period of the deceased employee, he had submitted documents like Form PS-3 and PS-4 and Form 'F' nomination before the respondents and in such declaration, the name of the petitioner was not mentioned, which fact was also pleaded in the Civil Suit No. 83A/2015. It is stated that the date of birth of the petitioner is mentioned as 16.05.1997 in a representation dated 20.06.2012.

14. Initially, when the writ petition was filed, the Coal India Limited as well as the national trade unions were not made parties to the writ petition. Subsequently, they were arrayed as respondents No. 5 to 9 by way of amendment effected on 18.02.2019.

15. Mr. Roy, learned counsel for the petitioner submits that clause 9.5.0(iii) of the NCWA-VI is discriminatory and is violative of Articles 14, 15, 16, and 21 of the Constitution of India, and therefore, the same deserves to be quashed. It is submitted that there can be no justification for making differentiation in between the male dependents





above 12 years of age and a female dependent of above 12 years of age for the purpose of keeping them on live roster till they attain the age of 18 years. It is further submitted it is a glaring example of propagating discrimination on the ground of gender, and that gender equality being a fundamental right, the petitioner is entitled to equal opportunity with her male counter-part. In support of his contentions, he relies on the judgment of the Hon'ble Supreme Court in *Oswal Agro Furnae Ltd. & Another v. Oswal Agro Furnae Workers Union & Others*, reported in (2005) 3 SCC 224 and a decision of a Division Bench of this Court in *Coal India Ltd. & Others v. Miss. Hamshikha Mallick* (WA No. 562 of 2016, decided on 06.12.2016).

16. Mr. H.B.Agrawal, learned senior counsel appearing for the respondents No. 1 to 5, on the other hand, submits that the settlement reflects meeting of minds between the Management and the Colliery Workmen and the same is binding on the employer as well as the employees and therefore, the terms and conditions incorporated in the settlement, namely, NCWA-VI, should be allowed to have its full play. Thus, clause 9.5.0(iii) cannot be interdicted by this Court, he submits. He further submits that the deceased employee did not include the name of the petitioner in his service records and it is doubtful whether the petitioner is the daughter of the deceased employee. Even otherwise, no case is made out by the petitioner for grant of compassionate appointment, he submits.

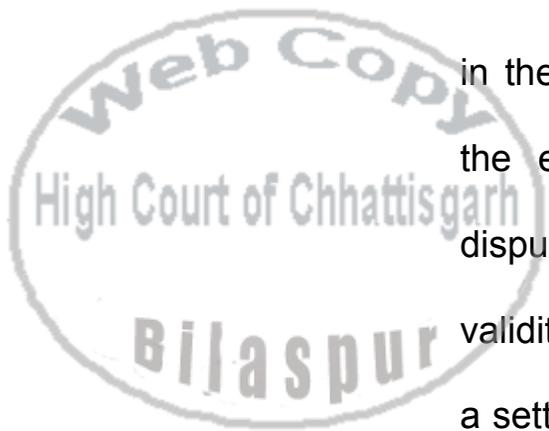
17. We have considered the submissions of learned counsel for the



parties and have perused the materials on record.

18. In *Oswal Agro Furane Ltd.* (supra), the Hon'ble Supreme Court, at paragraph 15 observed as follows:

“15. A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign





reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.”

19. In *Air India Cabin Crew Assn. v. Yeshaswinee Merchant*, reported in (2003) 6 SCC 277, the Hon'ble Supreme Court has held that discrimination only on the basis of sex is not permissible subject to one exception and observed as under:-

“41. In English law “but-for-sex” test has been developed to mean that no less favourable treatment is to be given to women on gender based criterion which would favour the opposite sex and women will not be deliberately selected for less favourable treatment because of their sex. It is on this “but-for-sex” test, it appears in *Nergesh*





Meerza case the three-Judge Bench of this Court did not find the lower retirement age from flying duties of air hostesses as discrimination only based on sex. It found that the male and female members of crew are distinct cadres with different conditions of service. The service regulation based on the agreements and settlement fixing lower retirement age of air hostesses was not struck down. The constitutional prohibition to the State not to discriminate citizens only on sex, however, does not prohibit a special treatment to the women in employment on their own demand.....”

20. Further, the Hon'ble Supreme Court, in the case of *Charu Khurana v. Union of India*, reported in (2015) 1 SCC 192, while considering the question of gender justice, at paragraphs 33 and 41 observed as under:

“33. ... On a condign understanding of clause (e), it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced. Be it stated, dignity is the quintessential quality of a personality and a human frame always desires to live in the mansion of dignity, for it is a highly cherished value. Clause (j) has to be understood in the backdrop that India is a welfare State and, therefore, it is the duty of the State to promote justice, to provide equal opportunity to all citizens and see



that they are not deprived of by reasons of economic disparity. It is also the duty of the State to frame policies so that men and women have the right to adequate means of livelihood. It is also the duty of the citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

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41. The aforesaid pronouncement clearly spells out that there cannot be any discrimination solely on the ground of gender. It is apt to note here that reservation of seats for women in panchayats and municipalities have been provided under Articles 243(d) and 243(t) of the Constitution of India. The purpose of the constitutional amendment is that the women in India are required to participate more in a democratic set-up especially at the grass root level. This is an affirmative step in the realm of women empowerment. The 73rd and 74th Amendments of the Constitution which deal with the reservation of women has the avowed purpose, that is, the women should become parties in the decision-making process in a democracy that is governed by the rule of law. Their active participation in the decision-making process has been accentuated upon and the secondary role which





was historically given to women has been sought to be metamorphosed to the primary one. The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity.”

21. In the matter of *National Legal Services Authority v. Union of India*, reported in (2014) 5 SCC 438, the Supreme Court recognized that gender identity is an integral part of sex within the meaning of Articles 15 and 16 of the Constitution of India and no citizen can be discriminated on the ground of gender. The Supreme Court observed as follows:

“We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.”

22. In *Coal India Ltd. & Others* (supra), the respondent No. 1 and respondent No. 5 were two of the appellants. Challenge in that appeal



was to the judgment of the learned Single Judge wherein clause 9.3.3 of the National Coal Wage Agreement providing for compassionate appointment had fallen for consideration. Under the aforesaid clause, appointment could be given to the spouse, unmarried daughter, son and legally adopted son. The learned Single Judge had come to the conclusion that the differentiation between the legally adopted son and legally adopted daughter has been made only on the ground of gender and therefore, is hit by Article 14 of the Constitution of India. The learned Single Judge held that the adopted daughter would be entitled to claim compassionate appointment under the scheme. The Division Bench concurred with the judgment of the learned Single Judge and held that clause which limits compassionate appointment to be given only to legally adopted male child is violative of Articles 14 and 16 of the Constitution of India and had, accordingly, dismissed the appeal filed by the Coal India Ltd.

23. In *Chhattisgarh State Electricity Holding Company & Another v. Chandrani Sinha* (WA No. 525 of 2016, decided on 21.11.2016), a Division Bench of this Court held that there was no reason as to why a married daughter should be denied the benefit of compassionate appointment. It is relevant to state that under the scheme of compassionate appointment, married daughter was not considered eligible for being considered for appointment.

24. The National Coal Wage Agreement is a binding settlement under Section 2(p) of the ID Act having force of law and therefore, the



settlement terms should be fair and reasonable and must satisfy the tests of Article 14, 15 and 16 of the Constitution of India as well as Section 23 of the Indian Contract Act, 1872. It is apparent that clause 9.5.0(iii) of the NCWA-IV is clearly violative of Articles 14 and 16 of the Constitution of India because discrimination is made on the basis of gender inasmuch as while the name of a male dependent of the deceased worker who is 12 years and above is kept in a live roster until he attains the age of 18 years when his case would be considered for compassionate appointment commensurate with his skill and qualifications, no such provision is made for a female dependent.

25. In view of the above discussion, it is provided that clause 9.5.0 (iii) of the NCWA-VI shall be read in a manner to also include a female dependent who is 12 years of age and above for keeping the same in a live roster till she attains the age of 18 years when her case would be considered for compassionate appointment commensurate with her skill and qualifications.

26. The contention of Mr. Agrawal that name of the writ petitioner was not entered in the service records and therefore, it is doubtful as to whether she is the daughter of Late Sudama, is without any substance. The judgment and decree of the Civil Court in Civil Suit No. 83A/2015 set the matter at rest as the Civil Court had given a declaration that the petitioner is the daughter of Late Sudama. That finding, as is noted earlier, has not been assailed and has attained finality.



27. In the instant case, though the name of the petitioner was not kept in the live roster, we are of the considered opinion that interest of justice would be sub-served if a direction is issued to the respondents to consider the case of the petitioner for grant of compassionate appointment commensurate with her skill and qualification within a period of two months from the date of receipt of a certified copy of this order. Ordered accordingly.

28. The writ petition is allowed. No cost.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-
(N.K.Chandravanshi)
JUDGE

