AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (S) No. 832 of 2012

Avinash Saloman, S/o. Late Ranjan Saloman, Aged about 19 years, R/o Ward No.3, Badan Singh Mohalla, Mission Road-Manendragarh, District Korea (CG)

---- Petitioner

Versus

1. South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur (CG)
2. Chief General Manager, South Eastern Coalfields Limited, Hasdeo Area, District Korea (CG)
3. Senior Personnel Officer, South Eastern Coalfields Limited, Hasdeo Area, Kapildhara Colliery, P.O.-Bijuri, District-Anuppur (M.P.)
4. Superintendent (Mines)/Manager, South Eastern Coalfields Limited, Kapildhara U.G. Project, Hasdeo Area, District-Anuppur (M.P.)

---- Respondents

For Petitioner : Mr.Chandresh Shrivastava, Advocate
For Respondents : Dr.N.K.Shukla, Senior Advocate with Mr.Shailendra Shukla, Advocate
For Amicus Curiae : Mr.Gary Mukhopadhyay, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

30/11/2015

1. Deciding issue falling for consideration is whether the respondent/SECL being governed by National Coal Wage Agreement (NCWA), a settlement within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 (ID Act), which is binding under Section 18(3) of the ID Act, can decline to grant "dependant

employment" to the petitioner despite provision in National Coal Wage Agreement solely on the ground that one of the member of dependant family is on employment ?

2. The petitioner's father Shri Ranjan Saloman was employed as Electrician in the South Eastern Coalfields Limited, Kapildhara Colliery and he died in harness on 24.6.2007 leaving behind his widow and son (petitioner herein). The petitioner's mother namely Smt.Pratima Saloman filed an application on 16.8.2007 for grant of monthly monetary compensation to her till the petitioner attains the age of majority and to allow the petitioner to continue in live roster for future employment as per provision contained in the National Coal Wage Agreement-VI (hereinafter referred to as "NCWA"). The petitioner's mother application was rejected by the respondent/SECL by an order dated 10.5.2010 (Annexure P/5) stating inter-alia that she is in the government job, therefore, neither she is entitled for monthly monetary compensation nor her son can be employed on any post in the SECL. After attaining the age of majority, the petitioner made an application for appointment on 30.11.2011 stating inter-alia that he is dependent of deceased Ranjan Saloman, therefore, he is entitled for appointment as per clause 9.3.0 provided in the NCWA effective from 1.7.2006 to 30.6.2011, which provides provisions for employment and payment of monthly monetary compensation to the dependants. The said

application remained pending and no final decision was taken leading to filing of this writ petition stating inter-alia that as per clause 9.3.0 of the NCWA, the petitioner being dependent of the deceased, is entitled for “dependant employment” within the meaning of the NCWA and non-grant of such an employment as per the NCWA is unsustainable and a writ of mandamus be issued to the respondent-SECL to consider and grant the appointment as per provision contained in NCWA.

3. Return has been filed on behalf of the respondents stating inter-alia that the petitioner's mother Smt.Pratibha Saloman is an employee of the State Government and therefore, he is not entitled to get the benefit as provided in the NCWA. It has also been pleaded that the petitioner was minor at the time of death of his father and as such, on the ground of delay and “laches”, the writ petition deserves to be dismissed in addition to the ground that the petitioner has sustained for fairly long time since 2007 and therefore, question for appointment on compassionate ground has become non-issue, therefore, the writ petition deserves to be dismissed.

4. Mr.Chandresh Shrivastava, learned counsel appearing for the petitioner would submit that clause 9.3.0 of the NCWA provides for employment to the dependants and NCWA is the “settlement”

within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 (hereinafter referred to as “ID Act”) and settlement is binding to the respondent/SECL by virtue of Section 18 (3) of the ID Act and unless the settlement is altered/modified and substituted by another agreement, the settlement is binding to both the parties and would remain in force. The petitioner has a right to obtain dependant employment on such a ground emerging from the settlement as defined in Section 2(p) of the ID Act and therefore, refusal on the part of SECL merely on the ground that the petitioner's mother is in government job is hit by binding settlement in the shape of the NCWA. He would additionally submit that the respondent/SECL has taken self-serving ground that the petitioner's mother is an employee without giving any detail as to the post, salary and other allowances of such post and it is also submission of Mr.Chandresh Shrivastava that the respondent-SECL is the “State” within the meaning of Article 12 of the Constitution of India and therefore, respondent/SECL is required to act fairly & reasonably and such a technical plea not available in the NCWA ought not to have been taken by the respondent/SECL to defeat the just and fair claim of the petitioner. It is the fit case where an appropriate writ of mandamus be issued to the respondent/SECL to consider the case of the petitioner in accordance with clause 9.3.0 of the NCWA. Lastly, he would bring

to notice of this Court of service excerpts of his deceased father in which the petitioner has been shown to be dependent of the deceased.

5. Dr.N.K.Shukla, learned Senior Counsel with Mr.Shailendra Shukla, learned counsel appearing for the respondents would submit that the petitioner's mother is already in government job and as such, the petitioner and his family is not in penury and precarious condition and as such, the petitioner is not entitled for the benefit of social Security scheme as provided in the NCWA. Learned Senior Advocate would further submit that employment on compassionate ground is not a method of recruitment, but is a facility to provide for immediate rehabilitation to the family in distress for relieving the dependent family members of the deceased employee from destitution, therefore, the petitioner is not entitled for any employment as per provisions contained in the NCWA and writ the petition deserves to be dismissed.

6. Mr.Gary Mukhopadhyay, learned counsel appearing as Amicus Curiae would submit that NCWA is the “settlement” defined under Section 2(p) of the ID Act and such settlement is binding to employer and employee till its modification/alteration/substitution by another settlement and since the settlement in the instant case, which is applicable providing

dependants employment contained in clause 9.3.0 of the NCWA, has not been substituted/altered till this date, it is binding to the parties. He would also bring to notice of this Court clause 9.3.0 of the NCWA which provides employment to dependants on the death of an employee of the SECL under the heading Social Security scheme and therefore, merely on the basis that the petitioner's mother is in government job, such a dependent employment cannot be declined in terms of the NCWA. He would also bring to notice of this Court of clause 13.3.0 of the NCWA, which provides the Management of the Coal Companies on their part will not resort to unilateral interpretations of the Agreement in case of any doubt or difficulty in interpretation or implementation of any clause of this Agreement, the same shall be referred to and settled by the Joint Bipartite Committee for the Coal Industry or a Sub-Committee constituted by the JBCCI for the purpose in the spirit of mutual goodwill. He would further submit that there is no specific bar contained in the NCWA, which is binding “settlement” between the parties to be dependants employment in terms of clause 9.3.0 of the NCWA in case of one of the family member is in government job and therefore, dependant employment cannot be denied in absence of specific bar created in the NCWA. He would lastly submit that the matter has not been referred by the SECL to the said committee indicated in the NCWA raising any

dispute or difficulty, therefore, NCWA should be implemented by the SECL in its letter and spirit and as such, the petitioner is entitled to be considered for “dependant employment”.

7. I have heard learned counsel appearing for the parties, also considered the rival submissions made therein and gone through the record of the case with utmost circumspection.

8. It is not in dispute that the petitioner's father died in harness on 24.6.2007 while he was on employment of SECL. It is also not in dispute that the petitioner's mother applied for monthly monetary compensation in terms of clause 9.5.0 of the NCWA, which has been denied to her on the ground of being an employee of government. She also made a request for keeping her son in live roster as provided in clause 9.5.0 (iii) of the NCWA, which was declined. It is also not in dispute that such a dependants employment provided in the NCWA would be to wife/husband, as the case may be, unmarried daughter, son and legally adopted son. Documents filed i.e. service excerpts clearly indicated that the petitioner was dependent on him. Status of the respondent/SECL is also not in dispute. Respondent/SECL is government company incorporated under the provisions of the Indian Companies Act, 1956 and the “State” within the meaning of Article 12 of the Constitution of India and therefore, the respondent/SECL has an

obligation to act fairly, reasonably and bonafidely.

9. The question formulated in opening paragraph of this order can be sub-divided in following two questions for the sake of convenience:-

(i) Whether the National Coal Wage Agreement entered into between the parties is a “settlement” within the meaning of Section 2(p) of the ID Act and binding under Section 18(3) of the said Act ?

(ii) Whether denial by the respondent/SECL to grant “dependant” employment” to the petitioner is justified in the facts of the case ?

10. The National Coal Wage Agreement is a Memorandum of Agreement arrived at by Joint Bipartite Committee for the Coal Industry which has been re-constituted defining the various service conditions entered into between representative of the management of coal companies and five Central Trade Unions representing workmen and such National Coal Wage Agreement is a “settlement” as defined in Section 2(p) of ID Act and by virtue of Section 18(3) of the ID Act is binding to the parties therein.

11. At this stage, it would be proper to notice Sections 17, 18, 19 and 20 of ID Act. Section 18 of the ID Act, states as under:-

> **“18. Persons on whom settlements and awards are binding.- (1)-** A settlement arrived at by agreement between the employer and workman

otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) XXX XXX XXX

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-Section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

12. The binding effect of "settlement" under Section 2(p) of the ID Act has been considered by the Supreme Court in umpteen number of judgments. Some of them are noticed herein usefully:-

In the matter of **Workmen of the Motor Industries Co. Ltd. v. Management of Motor Industries Co. Ltd. and another**[1], Their Lordships of the Supreme Court have held that

1AIR 1969 SC 1280

settlement as defined by Section 2(p) of Industrial Dispute Act and one under Section 12(3) are binding on workmen under Section 18(3) of the Act until it is validly terminated.

13. Likewise, in the matter of **P. Virudhachkalam and others v. The Management of Lotus Mills and another**[2], Their Lordships of the Supreme Court after considering Section 12(3) of the Act, held that settlement arrived at during the conciliation proceeding has the effect as an award of Labour Court by observing pertinently as under:-

> "The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an Arbitration Award. They all stand on par. It is easy to visualize that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Sections 2(p) read with

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2AIR 1998 SC 554

Section 12(3) of the Act when arrived at during conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlement necessarily are based on written agreements between the parties. It is impossible to accept the submission of learned Counsel for the appellants that settlements between the parties are different from agreements between the parties. It is trite to observe that all settlements must be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such settlement gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have binding effect as provided under Section 18(1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5.5.1980 between respondent No.1-Management on the one hand and the four out of 5 unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding to even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act."

14. In the matter of **Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd.**[3], Their Lordships of the Supreme Court had an occasion to consider the binding effect of such a settlement arrived at during conciliation proceedings in light of the Section 18 of the Act and held as under:-

> "A settlement arrived at in the course of conciliation proceedings with a recognized majority Union will be binding o all workmen of the establishment, even those who belong to the minority Union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority Union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the Union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on part with an award made by an adjudicatory authority."

15. In the matter of **Punjab Natioinal Bank & Ors. v. Manjeet Singh & Anr.**[4]**,** it has been held by Their Lordships of the Supreme Court that once an award has been passed under Section 18(3) of ID Act, it is binding between the parties and have finally held in paragraph 21 that appellant-Bank has no other option but to implement the award. If it did not, its action could be held to be

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3AIR 1990 SC 1801
4 AIR 2007 SC 262

penal. Paragraph 17, 18 & 21 of the report states as under:-

> “17. From a perusal of clause (d) of sub-section (3) of Section 18 of the Industrial Disputes Act, it is, thus, evident that all workmen who are employed in the establishment or who subsequently become employed in that establishment would also be bound by an award made by an industrial tribunal. The management as also the workmen were parties to the said award. Hence, Respondents cannot be heard to say that the award was not binding on them only because they were not parties.
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> 18. In an industrial dispute referred to by the Central Government which has an all-India implication, individual workman cannot be made parties to a reference. All of them are not expected to be heard. The Unions representing them were impleaded as parties. They were heard. Not only the said Unions were heard before the High Court, as noticed hereinbefore from a part of the judgment of the High Court, they had preferred appeals before this Court, Their contentions had been noticed by this Court. As the award was made in presence of the Unions, in our opinion, the contention of Respondents that the award was not binding on them cannot be accepted. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance of the principles of natural justice in

view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice.

21. Appellant-Bank has no other option but to implement the award. If it did not, its action could be held to be penal."

16. Extremely recently, in the matter of **T.N. Terminated Full Time Temporary LIC Employees Association v. LifeInsurance Corporation of India and others**[5], Their Lordships of the Supreme Court have recorded the similar proposition.

17. In the matter of **Indian Bank v. K. Usha and Another**[6], Their Lordships of the Supreme Court while considering the liability of employer under the settlement arrived at between the parties have held settlement under Section 2(p) of the ID Act is a contractual liability having a binding legal force under Section 18(1) of the ID Act. The report provides as under:-

".....Now it is obvious that the claim of the respondents flows from 2(p) Settlement under the ID Act entered into by the transferor company with

5 (2015) 9 SCC 62
6 (1998) 2 SCC 663

its erstwhile employees through their Union and the liability arising under the settlement which is sought to be enforced against the appellant-Bank, obviously is not a monetary liability or a crystallized liability, but it is purely a contractual liability having a binding legal force under Section 18(1) of the ID Act.

18. Similarly, in the matter of **Steel Authority of India Limited v. Madhusudan Das and others**[7], Their Lordships of the Supreme Court have held in no uncertain terms that memorandum of settlement entered into by and between the management and employee is binding to both of them and it has the "force of law" by holding as under:-

"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. A memorandum of settlement entered into by and between the management and the employees having regard to the provisions contained in Section 12(3) of the Industrial Disputes Act is binding both on the employer and the employe...."

19. Thus, on the basis of aforesaid decision, it is quite vivid that

7 (2008) 15 SCC 560

National Coal Wage Agreement is a “settlement” within the meaning of Section 2(p) of the ID Act and is binding as provided under Section 18(3) of the ID Act and having force of law and to continue to remain in force unless the same is altered/modified or substituted by another settlement. The National Coal Wage Agreement, which was in force from 1.7.2006 to 30.6.2011 is contained in Chapter IX, which relates to Social Security. Clause 9.3.0 relates to provision of Employment to Dependants. Clause 9.3.1 relates to employment to dependant and clause 9.3.2 relates to employment to one dependant of the worker who dies while in service.

20. A careful perusal/reading of clause 9.3.3 of the NCWA would show that dependant of the deceased either it may be wife/husband, as the case may be, unmarried daughter, son and legally adopted son would be entitled for dependant employment under Social Security Scheme. It would also be evident from close look of Chapter IX that there is no provision in the NCWA, which dis-entitles any dependant member from employment under Social Security Scheme on the ground that some other member of his family is employed elsewhere or is in government job and as such, NCWA does not exclude the dependant of the deceased for dependant employment on the ground that one of the family member is on employment and family is able to meet both ends.

Clause 13.3.0 of the NCWA provides that the Management of the Coal Companies on their part will not resort to unilateral interpretations of the Agreement in case of any doubt or difficulty in interpretation or implementation of any clause of this Agreement, the same shall be referred to and settled by the Joint Bipartite Committee for the Coal Industry or a Sub-Committee constituted by the JBCCI for the purpose in the spirit of mutual goodwill. So, if there is any dispute according to the respondents, then the matter has to be referred by the respondents to the sub-committee, which admittedly they have not been referred with reference to the ground which the respondents have taken in this writ petition.

21. Thus, it is quite vivid that the provision of dependant employment in National Coal Wage Agreement is not a concession but arises from the contractual liability of the respondent/SECL flowing from settlement entered by and between the management and employee having regard to the provision contained in Section 18 (3) of the ID Act. It is an agreement entered into between the coal companies and representative of the employees in the shape of the NCWA and is a “settlement” within the meaning of Section 2(p) of the ID Act and it creates right in favour of the dependant of the deceased to get dependant employment as per provisions of the NCWA and as such, it is a contractual liability of the respondent/SECL having force in Law. The question No.1 is

answered accordingly.

Answer to question No.2

22. The determination of the above-stated question leads me to advert to the next question whether the respondent/SECL is justified in denying the dependant employment to the petitioner on the ground that his mother is in the government job and therefore, no “employment” could be granted to him.

23. It has been held in the foregoing paragraphs that there is no such provisions in the NCWA that if one of the family member of the deceased employee is already on employment, dependant employment cannot be granted. The argument which has been taken in the present case that on account of the petitioner's mother already in government job, the petitioner cannot be granted dependant employment came to be considered before the Supreme Court in the matter of **Mohan Mahto v. Central Coal Fleld Ltd. And others**[8], which relates to Central Coalfields Ltd, which is also subsidiary company of the Coal India like the respondent/SECL. The Supreme Court frowned upon the Central Coalfields Limited and it has clearly been held that public sector undertaking is the State within the meaning of Article 12 of the Constitution and therefore, it must act fairly and reasonably and

8(2007) 8 SCC 549

while repelling the similar plea taken by Central Coal Field Ltd. It was observed as under:-

> “17. It is neither in doubt nor in dispute that the case for grant of compassionate appointment of a minor was required to be considered in terms of Sub-clause (iii) of Clause 9.5.0 of the N.C.W.A.V. In terms of the said provision, the name of the appellant was to be kept on a live roster. He was to remain on the live roster till he attained the age of 18 years. Respondents did not perform their duties cast on them thereunder. It took an unilateral stand that an application has been filed in the year 1999 in the prescribed form. For complying with the provisions of a settlement which is binding on the parties, bona fide or otherwise of the respondent must be judged from the fact as to whether it had discharged his duties thereunder or not. In this case, not only it failed and/ or neglected to do so, but as indicated hereinbefore it took an unholy stand that the elder brother of the appellant being employed, he was not entitled to appointment on the compassionate ground. Thus, what really impelled the respondent in denying the benefit of compassionate appointment to the appellant is, therefore, open to guess. We expect a public sector undertaking which is a 'State' within the meaning of Article 12 of the Constitution of India not only to act fairly but also reasonably and bona fide. In this case, we are satisfied that the action of the respondent is neither fair nor reasonable nor

bona fide."

24. Way back, in the matter of **Indian Bank** (supra), Their Lordships of the Supreme Court relying upon the decision of Supreme Court in the matter of **Workmen of Messrs Binny Ltd. v. Management of Binny Ltd. And Another** [9] have held that in the matter of welfare legislation involving labour, the terms of contract and provision of Law should be liberally construed in favour of weak and it was pertinently held as under:-

> "14. In this connection we must also have to keep in view the settled legal position that while construing any scheme in connection with the question of providing compassionate appointments to the heirs of deceased employee who was the breadwinner and whose exit had left his heirs in the lurch and in precarious and vulnerable economic position a construction which fructifies such a welfare measure has to be preferred as compared to another construction which stultifies such a benevolent welfare measure....."

25. Very recently, in the matter of **Rajendra Shankar Shukla & others, etc. v. State of Chhattisgarh and others, etc.**[10], Their Lordships of the Supreme Court have deprecated the practice on the part of the Government and other authorities who are the State under Article 12 of the Constitution of India to raise the technical

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9 (1985) 4 SCC 325
10 AIR 2015 SC 3147

pleas to defeat the rights. Paragraph 22 of the report states as under:

> 22. Further, this Court has frowned upon the practice of the Government to raise technical pleas to defeat the rights of the citizens in Madras Port Trust v. Hymanshu International[11] wherein it was opined that it is about time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens....."

26. (i) The High Court of Gujarat in the matter of **Gujarat State Road Transport Corporation v. Nansinh B. Dabhi since died thro his Legal heir Arjunsinh (Special Civil Application No.1295 of 2010),** decided on 9.3.2010 while upholding the order of the Industrial Tribunal has held that "settlement" entered into by the Gujarat State Road Transport Corporation with the employees of the Corporation is binding under Section 18(3) of the ID Act and legal heir of the deceased is entitled for compassionate appointment and rejection by the Corporation on the ground that family is having sufficient income is unsustainable in absence of

11 (1979) 4 SCC 176

any exclusion in the settlement by holding as under:-

> "In terms of settlement section 30 which was produced on record by respondent exh 16 where there is no terms or having any ceiling of income for getting compassionate appointment, then such condition can not be instead or to be incorporated by issuing GSO which relied by Corporation. The Industrial Tribunal has rightly ignored it and relied exh 16 settlement u/s section 30. On that basis, Industrial Tribunal has rightly granted relief in favour of respondent. For that, Industrial Tribunal has not committed any error which would require interference by this Court while exercising power under Art. 227 of Constitution of India."

(ii) The aforesaid decision was assailed by the Corporation in Letters Patent Appeal No.1207 of 2010 and the Division Bench of said Court by its order dated 3.10.2012 dismissed the appeal upholding the order of the Single Bench by recording the following finding as under:-

> "6. In the above backdrop, we are in complete agreement with the findings recorded by the learned Single Judge, which, in our considered opinion, require no

interference at the hands of this Court. This appeal fails and accordingly the same is dismissed. Interim relief, if any, shall stand vacated forthwith. No order as to costs."

(iii) The above-stated order of the Division Bench was assailed by the Corporation in SLP before the Supreme Court of India. The Supreme Court dismissed the appeal by its order dated 29.4.2013, as under:-

"The special leave petitions are dismissed, leaving the question of law open."

27. The respondent/SECL is subsidiary company of the Coal India, a public sector undertaking and undoubtedly, a State within the meaning of Article 12 of the Constitution of India and it has also been conferred with the status of "Miniratna Company" by the Government of India and therefore, it is obliged to act fairly, reasonably and bonafidely and should take a plea, which is legally available to them. The plea taken in this writ petition is an unholy plea as observed by Their Lordships of the Supreme Court in the matter of **Mohan Mahto** (supra), but such a plea has been taken only to deny the claim the claim of the petitioner and as such, denial on the part of the respondents to consider the case of the petitioner for dependant employment in terms of Section 9.3.3 of the NCWA is per-se illegal and arbitrary.

28. Accordingly, it is held that action of the respondents in not considering the case of the petitioner for dependant employment provided under Section 9.3.0 of the NCWA, which is binding settlement and which nowhere excludes the dependant employment on the ground of one of the family member of dependant employee on employment is ex-facie illegal and plainly arbitrary.

29. At this stage, it is apposite to notice the authoritative decision rendered by the Supreme Court in the matter of **Smt.Sushma Gosian and others v. Union of India and others**[12], in which Their Lordships have clearly held that all claims for appointment on compassionate grounds, there should not be any delay in appointment taking into consideration the object of such appointment and further held that it is improper to keep such case pending for years. The relevant paragraph of the report states as under:-

> "9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the

12 (1989) 4 SCC 468

> family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.
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> 11. The appellants are entitled to their costs which we quantify at Rs 15,000/- and it shall also be paid within three weeks."

30. The petitioner's father died on 24.6.2007 and his case was not considered appropriately and properly by the respondents till this date for dependant employment despite express provision in NCWA in this regard and plea taken is found to be unsustainable. The respondent/SECL has failed to act fairly, reasonably and bonafidely towards the dependant of the deceased, who is struggling to meet both ends since 2007. Thus, while expressing my disapproval of the way in which the SECL Authorities have dealt with the claim of the petitioner relating to dependant employment and took five years time in taking a final decision, it would be appropriate to impose cost quantified at ₹15,000/- to the respondent/SECL, which will be paid to the petitioner within four weeks.

31. As a fallout and in consequence of aforesaid discussion, the writ petition is allowed. The respondent/SECL and its authorities are directed to consider the petitioner's application for grant of dependant employment in accordance with the provisions

contained in NCWA, which was prevalent at the time of death of his father, on its own merit, within forty-five days from today.

32. Accordingly, the writ petition is allowed to the extent indicated hereinabove.

33. Before parting with record, this Court appreciates excellence of written submission submitted by Mr.Gary Mukhopadhyay, learned Amicus Curiae as well for his assistance in short notice.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (S) No. 832 of 2012

Avinash Saloman

Versus

South Eastern Coalfields Limited and others

Head-note

(English)

National Coal Wage Agreement is a “settlement” within the meaning of Section 2(P) of the ID Act and is having force of law.

(हिन्दी)

नेशनल कोल वेज एग्रीमेन्ट धारा 2(P) औद्योगिक विवाद अधिनियम के अर्न्तगत सेटलमेन्ट है एवं कानून का प्रभाव रखता है।