



2026:CGHC:10585

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Order Reserved on : 09.02.2026

Order Delivered on : 28.02.2026

WPS No. 8779 of 2023

Surendra Kumar S/o Keshri Singh, Aged About 31 Years R/o Village Dola, P.O. Ramnagar, Tehsil Kotma, District Anuppur (M.P.)

... Petitioner

versus

- 1** - South Eastern Coalfields Limited, Through Chairman -Cum- Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur Chhattisgarh.
- 2** - General Manager, (Personnel/Man Power), South Eastern Coalfields Limited, Seepat Road, Bilaspur Chhattisgarh.
- 3** - Area General Manager, South Eastern Coalfields Limited, Hasdeo Area, P.O. South Jhagrakhand, District Korea Chhattisgarh.
- 4** - Sub Area Manager, South Eastern Coalfields Limited, Rajnagar OCM, P.O Rajnagar, District Anuppur (M.P.)
- 5** - Senior Manager (Personnel), South Eastern Coalfields Limited, Rajnagar OCM, P.O Rajnagar, District Anuppur (M.P.)

--- Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Mr. Chandresh Shrivastava, Advocate
For Respondents	:	Mr. Sudhir Kumar Bajpai, Advocate

Hon'ble Shri Amitendra Kishore Prasad, Judge

CAV Order

1. Heard Mr. Chandresh Shrivastava, learned counsel for the petitioner as well as Mr. Sudhir Kumar Bajpai, learned counsel appearing for the respondents.
2. By filing the present petition, the petitioner assails the inaction of the respondent authorities in not considering and granting him employment as a dependant of his deceased mother under the Social Security Scheme framed in terms of the National Coal Wage Agreement (for short, 'NCWA'), and seeks issuance of appropriate directions for grant of appointment with consequential benefits. The petitioner has sought for following reliefs:-

“10.1. The Hon'ble Court may kindly be pleased to call for the entire record pertaining to the case of the petitioner.

10.2. The Hon'ble Court may kindly be pleased to direct the respondent authorities to consider the case of petitioner and grant employment to the petitioner being dependant of his mother as per the Social Security Scheme as envisaged under the National Coal Wage Agreement.

10.3. The Hon'ble Court may kindly be pleased to direct the respondent Company to issue appointment order in favour of the petitioner as per the National Coal Wage Agreement.

10.4. The Hon'ble Court may kindly be pleased to direct the respondent company to pay

compensation to the petitioner for the reason that the petitioner's valuable right is unnecessarily being denied by the respondent company.

10.5. Any other relief, which this Hon'ble Court may deems fit and proper may also be awarded to the petitioner including the cost of the petition."

3. Brief facts of the case in a nutshell are that the Government of India constituted the Joint Bipartite Committee for the Coal Industry (JBCCI) in the year 1973 for negotiating service conditions of non-executive employees in the coal sector, pursuant to which successive settlements known as the NCWA were executed from time to time, the latest being NCWA-XI (01.07.2021 to 30.06.2026). The NCWA is a binding settlement within the meaning of Section 2(p) read with Section 18(3) of the Industrial Disputes Act, 1947 and governs the service conditions of workmen in coal mines.
4. The petitioner's mother, Late Smt. Bhagwaniya, was employed as General Mazdoor at Rajnagar OCM and served till her demise on 07.05.2011. In the official service record maintained by the respondents, the petitioner was duly recorded as her dependant family member. After her death, the petitioner applied on 12.09.2011 seeking employment under the Social Security Scheme for dependant employment as envisaged under the NCWA, enclosing all requisite documents. However, by letter

dated 20.04.2012, the respondents informed him that his case could not be considered, without assigning any cogent reason.

5. Despite repeated representations, the petitioner's claim has neither been duly considered nor formally rejected by a reasoned order, thereby depriving him of his legitimate entitlement under the NCWA. Hence, the present petition.
6. Mr. Chandresh Shrivastava, learned counsel for the petitioner, submits that the claim of the petitioner for dependant employment is founded upon and protected by the binding provisions of the NCWA, which is a statutory settlement within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 and is binding on all parties in terms of Section 18(3) thereof. He would submit that the NCWA, having been arrived at through collective bargaining under the aegis of the Joint Bipartite Committee for the Coal Industry (JBCCI), governs the service conditions of non-executive employees in the coal sector and has statutory flavour, and therefore its provisions are mandatorily enforceable against the respondent Company. He further submits that the petitioner's mother, Late Smt. Bhagwaniya, admittedly died in harness while serving as General Mazdoor at Rajnagar OCM, and during her lifetime the petitioner was duly recorded in the official service record as her dependant family member. Immediately after her demise, the petitioner applied for appointment under the Social Security Scheme as envisaged under the NCWA and submitted all

requisite documents. However, the respondents, without assigning any cogent or lawful reason, declined to consider his case, which action is per se arbitrary and violative of Articles 14 and 16 of the Constitution of India.

7. It is submitted by Mr. Shrivastava that Chapter IX / X of the NCWA, particularly Clauses 9.3.0, 9.4.0 and 9.5.0, specifically provide for employment or monetary compensation to the dependant of an employee who dies in harness. The petitioner squarely falls within the definition of “direct dependant” under Clause 9.3.3 and satisfies all eligibility conditions. Learned counsel emphasizes that neither NCWA-VI nor NCWA-VIII contains any stipulation disentitling a dependant merely because another family member is employed, and therefore the stand of the respondents, if any, on such a ground is wholly extraneous to the scheme itself.
8. Mr. Shrivastava contends that it is well settled that a settlement under Section 18(3) of the Industrial Disputes Act binds not only the signatories but all workmen and the employer concerned, and such a settlement has statutory force. Therefore, the respondent Company cannot act contrary to the explicit provisions of the NCWA. The denial or non-consideration of the petitioner’s application, despite admitted eligibility, amounts to non-compliance with a binding settlement and is liable to be interfered with in exercise of writ jurisdiction. He thus submits that the petitioner’s entitlement flows directly from the NCWA, which is a beneficial

social security provision intended to mitigate hardship caused by the death of an employee in harness, and the arbitrary inaction of the respondents in not granting dependant employment, despite the law being settled by the Hon'ble Supreme Court, deserves to be quashed with appropriate consequential directions.

9. Mr. Shrivastava placed reliance upon the dictum rendered by the Hon'ble Supreme Court in ***Mohan Mahto v. M/s. Central Coal Field Ltd. and Ors., (2007) 8 SCC 549***, wherein it has been held that a settlement within the meaning of Section 2(p) read with Section 18(3) of the Industrial Disputes Act, 1947 is binding upon the parties and continues to remain in force unless altered, modified or substituted by another settlement. It was further held that the right to obtain appointment on dependent/compassionate grounds, where flowing from such settlement, cannot be curtailed by executive circulars in a manner inconsistent with the settlement and that a public sector undertaking, being "State" under Article 12 of the Constitution of India, is obligated to act fairly, reasonably and bona fide. He further relied upon the judgment of the Hon'ble Supreme Court in ***Smt. Subhadra v. Ministry of Coal, AIR 2018 SC 783***, wherein the distinction between discretionary compassionate appointment under statutory policy and dependent employment flowing from a bipartite agreement like the National Coal Wage Agreement (NCWA) has been reiterated, holding that where the scheme forms part of a binding agreement, its terms leave no room for employer's discretion.

- 10.** On the other hand, Mr. Sudhir Kumar Bajpai, learned counsel appearing for the respondents, vehemently opposes the submissions advanced on behalf of the petitioner and submits that the present writ petition is not maintainable either in law or on facts and deserves to be dismissed at the threshold. At the outset, learned counsel submits that the petitioner has an alternative efficacious remedy under the Industrial Disputes Act, 1947. The respondent Company is an employer within the meaning of the said Act and the mother of the petitioner was its employee. In case of any dispute relating to service conditions or benefits arising out of employment, the appropriate course for the petitioner was to invoke the jurisdiction of the competent authority under the Industrial Disputes Act. Without exhausting the statutory remedy available under the Act, the petitioner has directly approached this Court under Article 226 of the Constitution of India. It is contended that where an efficacious alternative remedy exists, the writ petition is not maintainable, and therefore the present petition is liable to be dismissed on this ground alone.
- 11.** Mr. Bajpai further submits that the petition suffers from gross delay and laches. Admittedly, the mother of the petitioner, Late Smt. Bhagwaniya, expired on 07.05.2011. The petitioner applied for dependant employment on 12.09.2011 and his claim was rejected by a reasoned office order dated 20.04.2012 (Annexure P/4). The said order was never challenged before any court of law nor assailed before any competent authority for more than eleven

years. The present writ petition has been filed only in October, 2023, i.e., after an inordinate delay of more than 12 years from the date of death and more than 11 years from the date of rejection. There is absolutely no explanation for such extraordinary delay. On this ground alone, the petition is liable to be dismissed. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Surjeet Singh Sahni v. State of Uttar Pradesh, AIR Online 2022 SC 226***, learned counsel submits that mere representations do not extend limitation nor do they furnish a fresh cause of action. The Apex Court has categorically held that if a writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition at the threshold and should not entertain stale claims. It is further contended that the rejection order dated 20.04.2012 attained finality as the same was never challenged in accordance with law. By filing the present writ petition after more than a decade, the petitioner is indirectly seeking to reopen an issue which has already attained finality. Such an attempt is impermissible in law. On merits, learned counsel submits that the terms and conditions of service of the employees working in coal mines are governed by the NCWA. At the time of the death of the employee, NCWA-VIII was in force and the relevant provisions applicable to dependant employment are contained in Clauses 9.3.0, 9.4.0 and 9.5.0. It is submitted that employment under the dependant/compassionate scheme is not automatic and is intended only to mitigate the immediate financial hardship of the family caused due to sudden

demise of the employee.

12. Mr. Bajpai contends that as per the service records of the deceased employee, her husband, Shri Kesari Singh, was already employed in SECL and working as Clerk Grade-II in the Hasdeo Area. Thus, the deceased was not the sole breadwinner of the family. In view of a policy decision taken in the 80th Meeting of the Directors (Personnel) of all subsidiaries of Coal India Limited held on 16.04.2004, it was clarified that in case the spouse of the deceased employee is already employed, the question of providing further employment or monetary compensation does not arise. The competent authority, after examining the records and considering the aforesaid policy decision, rejected the claim of the petitioner vide order dated 20.04.2012. The action of the respondent is, therefore, strictly in consonance with policy and guidelines. It is further submitted that compassionate appointment is not a vested right nor a source of recruitment. It is an exception carved out to meet immediate financial crisis and must be strictly governed by the applicable scheme. In this regard, learned counsel places reliance on the judgment of the Hon'ble Supreme Court in ***Managing Director, MMTC Ltd. and others v. Pramoda Dei, 1997 (11) SCC 390***, wherein it has been held that compassionate appointment is intended to enable the family to tide over sudden financial crisis and mere death of an employee does not entitle the family to such appointment as a matter of right.

13. Further reliance is placed on ***State of Chhattisgarh and others v. Dhirajo Kumar Sengar, AIR 2009 SC 2568***, wherein the Hon'ble Supreme Court reiterated that compassionate appointment is an exception to the constitutional scheme under Articles 14 and 16 and no one can claim appointment by way of inheritance. He also relied upon ***Union of India and others v. Shashank Goswami and others, AIR 2012 SC 2294***, wherein it has been held that compassionate appointment cannot be claimed as of right and must be strictly in accordance with the rules, regulations or administrative instructions applicable, taking into account the financial condition of the family.

14. Mr. Bajpai further relies upon the decisions of the Division Bench of this Court in ***Purnendra Kumar Sinha v. State of Chhattisgarh, AIR Online 2022 CHH-59***, ***State of Chhattisgarh v. Madhuri Sharma, AIR Online 2022 CHH-715*** and ***State of Chhattisgarh v. Md. Imran Khan, AIR Online 2022 CHH-244***, to submit that compassionate appointment is not a source of recruitment and where a member of the family is already in government service, denial of compassionate appointment to another member of the family has been upheld as neither arbitrary nor illegal. He thus submits that in the present case, since the husband of the deceased employee was already in service and earning, there was no immediate financial penury so as to attract the object of the compassionate appointment scheme. The rejection of the petitioner's claim was therefore justified, legal and

in consonance with the policy decision and the law laid down by the Hon'ble Supreme Court.

- 15.** In view of the aforesaid submissions, it is contended by Mr. Bajpai that the petition is barred by delay and laches, suffers from non-exhaustion of alternative statutory remedy, seeks to reopen a matter that has attained finality, and is devoid of merit even otherwise. The same, therefore, deserves to be dismissed with costs.
- 16.** By filing a rejoinder-affidavit, Mr. Chandresh Shrivastava, learned counsel for the petitioner, further submits that the preliminary objection raised by the respondents regarding availability of alternative remedy is misconceived and untenable in law. It is contended that the grievance raised in the present petition pertains to arbitrary and illegal denial of dependant employment under the binding provisions of the National Coal Wage Agreement, which involves violation of Articles 14 and 16 of the Constitution of India. In such circumstances, existence of an alleged departmental or industrial remedy cannot operate as an absolute bar to the exercise of writ jurisdiction. It is further submitted that the objection regarding delay and laches is also unsustainable. The petitioner had applied for dependant employment within time and had been continuously pursuing the matter by making representations. The communication dated 20.04.2012 was only an intimation and not a reasoned or speaking

order. The petition has been filed within reasonable time from the date of knowledge of final denial, and the doctrine of delay cannot be applied mechanically in matters concerning livelihood and social security.

17. Mr. Shrivastava reiterates that the petitioner squarely fulfills the eligibility conditions under Clauses 9.3.0, 9.3.3, 9.4.0 and 9.5.0 of NCWA-VI/VIII, and there is no provision under the NCWA disentitling a dependant merely because another family member is employed. The reliance placed by the respondents on internal minutes dated 16.04.2004 cannot override the statutory and binding settlement under the NCWA. It is further submitted that the issue involved is not one of general compassionate appointment but of dependant employment specifically governed by the NCWA, and similar objections of the employer have already been repelled by the co-ordinate Bench of this Court in ***Avinash Saloman v. South Eastern Coalfields Limited and others*** passed in ***WPS No.832/2012 vide order dated 30.11.2015***, which view stands affirmed by the Hon'ble Supreme Court in ***South Eastern Coalfields Limited and others v. Avinash Saloman*** passed in ***Civil Appeal No.8728/2018 vide judgment dated 20.02.2023***. Further reliance is placed on the judgment in ***South Eastern Coalfields Limited and others v. Gulshan Prakash*** passed in ***Writ Appeal No. 89 of 2016*** decided on ***11.10.2023***, wherein denial of dependant employment on similar grounds was disapproved. It is thus submitted that the action of the respondents

in rejecting the petitioner's claim is arbitrary, discriminatory and contrary to the binding provisions of the NCWA, and the petitioner's case deserves to be allowed in the interest of justice, equity and the humanitarian object underlying the dependant employment scheme.

18. Reliance has also been placed upon the judgments of the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra and others, AIR 2011 SC 312***, wherein the doctrine of per incuriam and the binding nature of judgments of larger and coordinate Benches under Article 141 of the Constitution have been elaborately considered as well as the reliance upon the recent decision of the Hon'ble Supreme Court in ***Kanishk Sinha and another v. The State of West Bengal and another (SLP (Criminal) No.8609-8614 of 2024 vide order dated 27.02.2025)***, that the law declared by a Constitutional Court is ordinarily retrospective in operation unless specifically made prospective, and therefore the benefit of the legal position settled in ***Avinash Saloman*** (supra) cannot be denied on the specious plea of prospective application.
19. I have heard learned counsel for the petitioner as well as learned counsel appearing for the respondents and have perused the pleadings and documents placed on record.
20. At this juncture, it would be profitable to extract Clauses 9.3.0, 9.3.1, 9.3.2, 9.3.3 and 9.3.4 of the National Coal Wage

Agreement, for easy reference :-

“9.3.0 Provision of Employment to Dependants

9.3.1 Employment would be provided to one dependant of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows.

9.3.2 Employment to one dependant of the worker who dies while in service

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

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

9.3.4 the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of male spouse is concerned, there would be no age limit regarding provision of

employment employment of female spouse would be 45 years as given in Clause 9.5.0 in so far as male spouse is concerned, there would be no age limit regarding provision of employment.”

21. From a perusal of the aforesaid Clauses 9.3.0 to 9.3.4 of the NCWA, it is apparent that the scheme unequivocally provides for appointment on compassionate grounds to one dependant of a worker who dies while in service or is permanently disabled, subject to the conditions stipulated therein. The expression “dependant” has been specifically defined to include the spouse, unmarried daughter, son and legally adopted son, and in the absence of such direct dependant, certain other close relatives residing with and substantially dependant upon the deceased employee may also be considered. The clauses further prescribe eligibility conditions relating to physical fitness, suitability and age, while also carving out distinct provisions for female dependants under Clause 9.5.0 and removing the age restriction in the case of a male spouse. Thus, the entitlement is structured, conditional and regulated by the parameters expressly laid down in the Agreement.
22. It is not in dispute that the petitioner’s mother was working under the respondent Company and while in service she died on 07.05.2011. On account of her death in harness, the petitioner, being her dependant, became entitled to consideration for employment under the Social Security Scheme embodied in the

National Coal Wage Agreement. Clause 9.3.1 of NCWA-VI specifically provides that employment shall be offered to one dependant of a worker who dies while in service. Further, Clause 9.4.0 also contemplates grant of employment to one dependant in specified contingencies. The said provisions of NCWA-VI were continued under NCWA-VIII dated 24.01.2009, wherein it has been stipulated that Clauses 9.3.0, 9.4.0 and 9.5.0 of NCWA-VI shall remain operative until a revised scheme is jointly framed in light of the judgments of the Hon'ble Supreme Court. Thus, the applicable NCWA provisions were in force on the date of death of the petitioner's mother and governed the field; however, despite the petitioner fulfilling all eligibility conditions and applying within time, his case has not been considered in accordance with the binding provisions of the NCWA, compelling him to file the present writ petition.

23. In ***Mohan Mahto*** (supra), the Hon'ble Supreme Court has held as under :-

“10. A settlement within the meaning of Sub-section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement. No period of limitation was provided in the settlement. We would assume that the respondent had jurisdiction to issue such circular prescribing a period of limitation for filing application for grant of appointment on

compassionate ground. But, such circular was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into by and between the parties. The expanding definition of workman as contained in Section 2(s) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate ground, subject, of course, to compliance of the conditions precedent contained therein.

11. The right to obtain appointment on compassionate grounds emanates from the settlement. Settlement is defined in Section 2(p) of the Industrial Disputes Act to mean 'a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer'.

16. 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.

17. We have indicated hereinbefore, that it is not necessary for us to go into the question as to whether on the teeth of the provision of N.C.W.A.V., the respondent at all had any power to fix a time limit and thereby curtailing the right of the workman concerned. We would assume that even in such a matter, it had a right. But, even for the said purpose, keeping in view the fact that a beneficial provision is made

under a settlement, the 'State' was expected to act reasonably."

24. Further, in **Smt. Subhadra** (supra), the Hon'ble Supreme Court has observed as under :-

"6. The learned counsel for respondent no.2- Organisation has invited our attention to the decision of this Court in Canara bank &anr. V. M.Mahesh Kumar, reported in (2015) 7 SCC 412 and submitted that compassionate appointment is not a matter of right and there is a discretion available to the employer. We have no quarrel with the settled position, but the instant case is not a case of discretionary compassionate appointment governed by any statutory guidelines. It is governed by a scheme, as agreed to by the parties and which has become part of Bipartite Agreement. The terms of the agreement are very specific and give no room for any discretion."

25. Also in **Kanishk Sinha** (supra), the Hon'ble Supreme Court has held as under:-

"3. Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, there verse is true for the law which is laid down by a Constitutional Court, or law as it is interpretated by the Court. The judgment of the Court will always be

retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fide done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.”

- 26.** The Co-ordinate Bench of this Court in ***Avinash Saloman*** (supra), following question was framed for consideration in paragraph 1 of the order, however, it has been divided into two questions for the sake of convenience in paragraph 9 of the said order, which state as under:-

“1. ... 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?”

“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?”

Question No. 9(i) formulated in Avinash Saloman (supra) was answered in paragraph 21 of the order, which states as under:—

“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.”

Similarly, question No. 9(ii) was answered in paragraphs 27, 28, 30 & 31 of the order, which state as under:—

“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 Mahto² (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 perse 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.

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 Rs. 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.”

27. Against the order passed by the writ court in **Avinash Saloman**

(supra), the SECL has preferred writ appeal before this Court and writ appeal was dismissed by the order of the Division Bench passed on 11.10.2023 in which the order passed by the Single Bench has been affirmed against which review petition has been filed which has also been dismissed on 27.02.2024 and thereafter, the matter was taken up in SLP by the SECL before the Supreme Court which too was dismissed on 10.04.2024 by passing following order:—

“2. In the facts and circumstances of these cases, we are not inclined to interfere with the impugned judgment(s) and order(s) passed by the High Court. The special leave petition(s) are, accordingly, dismissed.

3. However, six weeks' time is granted to the petitioner(s) for complying with the order of the High Court.”

- 28.** As such, the order of this Court in ***Avinash Saloman*** (supra) has attained finality, wherein it has been categorically held that the agreement entered into between the coal companies and the representatives of the employees in the form of the National Coal Wage Agreement constitutes a “settlement” within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 and is binding under Section 18(3) thereof. Being a statutory settlement, it creates an enforceable right in favour of the dependant of a deceased employee to be considered for employment strictly in terms of its provisions. The said legal position stands fortified by

the pronouncement of the Hon'ble Supreme Court in ***Mohan Mahto*** (supra), wherein it has been authoritatively held that the right to compassionate/dependant appointment, when flowing from a settlement, cannot be diluted by executive instructions and that a public sector undertaking, being "State" under Article 12 of the Constitution of India, must act fairly, reasonably and bona fide.

29. The distinction between a discretionary compassionate appointment under a statutory policy and dependant employment flowing from a binding bipartite settlement has been clearly reiterated by the Hon'ble Supreme Court in ***Smt. Subhadra*** (supra), wherein it has been held that where the scheme forms part of a binding agreement, its terms leave no room for administrative discretion dehors the agreement. The legal position regarding the binding nature of precedents and the impermissibility of taking a view contrary to settled law has been elaborately considered in ***Siddharam Satlingappa Mhetre*** (supra), emphasizing judicial discipline under Article 141 of the Constitution of India. Further, the contention of the respondents regarding prospective operation of judgments stands repelled in view of the recent pronouncement of the Hon'ble Supreme Court in ***Kanishk Sinha*** (supra), wherein it has been clarified that law declared by a Constitutional Court is ordinarily retrospective unless specifically directed otherwise.

30. In the instant case, therefore, the rejection/non-consideration of

the petitioner's claim solely on the ground that his father is already in employment is wholly misconceived and legally unsustainable. The petitioner's mother died in harness while serving the respondent Company, thereby giving rise to a right in favour of one eligible dependant to be considered for employment under the Social Security Scheme contained in the NCWA. The Agreement nowhere provides for an absolute bar disentitling a dependant merely because another member of the family is in employment. Introducing such a condition by way of internal minutes or administrative policy would amount to adding to or altering the binding settlement, which is impermissible in law.

31. The object of the scheme is to provide immediate socio-economic relief to the bereaved family upon the death of the employee in harness. The respondents, being "State" under Article 12 of the Constitution of India, are obligated to act fairly and in consonance with the binding settlement. The action of the respondents in denying consideration to the petitioner on an extraneous ground not contemplated under the NCWA is *ex facie* arbitrary, violative of Articles 14 and 16 of the Constitution of India, and contrary to the law laid down by the Hon'ble Supreme Court and affirmed by this Court.
32. In view of the aforesaid discussion and in the light of the law laid down in ***Avinash Saloman*** (supra), ***Mohan Mahto*** (supra) and ***Smt. Subhadra*** (supra), the impugned action of the respondents

insofar as it relates to rejection/non-consideration of the petitioner’s claim for dependant employment vide order dated 20.04.2012 is hereby set aside. The respondents are directed to consider and decide the petitioner’s application for grant of dependant employment strictly in accordance with the provisions of the NCWA as applicable on the date of death of the petitioner’s mother, without being influenced by the fact that the petitioner’s father is already in employment. A reasoned and speaking order shall be passed within a period of 45 days from the date of receipt of certified copy of this order.

- 33. The writ petition is allowed to the extent indicated herein-above.
- 34. There shall be no order as to cost(s).

Sd/-
(Amitendra Kishore Prasad)
Judge

Yogesh

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
09.02.2026	28.02.2026	-----	28.02.2026

Head-Note

An employee who dies in harness leaves behind a dependant who acquires a legitimate right of consideration for appointment under the Social Security Scheme framed in terms of the National Coal Wage Agreement. Such entitlement cannot be denied merely because another family member is already in employment, in the absence of any express disqualification under the NCWA. Rejection on such extraneous ground is arbitrary and unsustainable in law.