

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present:

THE HON'BLE JUSTICE REETOBROTO KUMAR MITRA

WPA/16326/2009

LAKSHMI PRASAD YADAV

Vs.

EASTERN COAL FIELD LIMITED & ORS.

For the Petitioner : **Mr. K.B.S. Mahapatra, Advocate**
Mr. Aditya Shit, Advocate

For the Respondent : **Mr. Manik Das, Advocate**

Heard on : July 16, 2026.

Judgment On : July 21, 2026.

The Court:

1. This writ-petition has been filed, *inter alia*, seeking compassionate appointment in the place instead of an underground labour in the Eastern Coal Fields Limited, Kendra Colliery.
2. The petitioner claims to be the son-in-law of one Nehal Gope (hereinafter Nehal).
3. Nehal Gope was in service with ECL at Kendra Colliery from January 1, 1958 till November 21, 1990. Though Nehal's date of superannuation was January 13, 1992, due of his medical

condition, he was declared unfit, and had obtained voluntary retirement from service on November 21, 1990. On seeking such voluntary retirement, the competent authority released him from service. His service was terminated with effect from November 19, 1991.

4. Nehal Gope, as per the records maintained by the employer, the respondent no. 1 herein had a wife, a son and two daughters.
5. Nehal was alive till about 2006. For the period between 1991, when he voluntarily retired from service, till about 2006, none of his family members/direct dependents applied for appointment on compassionate ground with the said employer.
6. Upon Nehal's death, sometime in 2006, the petitioner herein, only in 2007, made an application with the respondent no. 1 for appointment on compassionate ground in place of Nehal.
7. This application for compassionate appointment was rejected by the employer on the following grounds:-
 - i. *The application was made at a rather belated stage.*
 - ii. *The relationship between Nehal and the petitioner as father-in-law and son-in-law respectively could not be established before the concerned authority of the employer.*
 - iii. *The petitioner was unable to qualify the benchmark parameters of eligibility on compassionate ground.*
8. Hence the application of the petitioner for compassionate appointment was rejected.
9. Hence this writ-petition.
10. Mr. Mahapatra learned Advocate appearing for the petitioner has made the following submissions:-

- a. *The petitioner at all material times, pursuant to the demands made by the concerned authority of the employer, had submitted all requisite documents including the no objection certificate, relationship certificate, affidavit, indemnity bond, and declaration as sought for by the authorities.*
- b. *The only ground urged by the employer was that the petitioner could not establish his relation with Nehal to entitle him to obtain an appointment on compassionate ground.*
- c. *In fact, the findings of the authorities of the employer that the relationship of the petitioner with Nehal is fake, are bereft of any reasoning, particularly in the teeth of the documents produced by the petitioner from the superintendent of police of the District, the concerned member of the legislative assembly of the "area" and other such documents.*
- d. *As these documents conclusively established that the petitioner is indeed the son-in-law of the Nehal, he is entitled to an appointment on compassionate ground.*
- e. *Thus, the rejection of the authorities of his application for appointment on compassionate ground is bad in law and is liable to be set aside. Consequently he prays for appointment in the service of the employer on compassionate ground.*
11. Mr. Das learned advocate appearing for the respondent authorities has made the following submissions:-
 - a. *The petitioner's application for appointment is completely misdirected. Misdirected, as the petitioner was unable to establish the factum of his relationship with Nehal, particularly in view of the fact that a vigilance report submitted with the employer clearly states that the petitioner is not in any manner*

concerned with Nehal Gope and has relied upon forged and fabricated documents to establish a fake relationship.

- b. The petitioner is really the son-in-law of one Satyadeo Yadav who was at the material time not only an employee of the respondent no. 1 but was also an office bearer of AITUC, the union of the workers. With the assistance of Satyadeo Yadav, the petitioner had manufactured documents, especially an additional sheet which was found in the records, the particulars whereof are contrary to and in contradiction to the original particulars given by the Nehal at the time of his employment.*
- c. The original sheet specified that there were four dependents of Nehal. These four dependents were his wife, two daughters and a son.*
- d. This additional sheet which was specifically found in the records, conveniently mentioned three dependents in addition to the petitioner as the son-in-law. These three dependents are the wife and two daughters. It does not mention the name of the son of Nehal, which appeared in the original service record.*
- e. In any event Nehal is bound by the National Coal Wage Agreement – V (hereinafter NCWA) which is an agreement of the Joint Bipartite Committee for the coal industry. The employer and the Employee in this case the respondent no. 1 and Nehal are bound by the terms of this agreement.*
- f. Clause 9.4.0 of the NCWA stipulates that employment shall be given to one dependent of the worker who is permanently disabled in his place. 9.4.0(iii) defines who these dependents are. The first set of dependents has been classified as direct dependents, wife/husband, unmarried daughter, son and legally adopted son. If one of these direct dependents are*

available for employment, a second class has been created which includes younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the Employee and almost wholly dependent on the earning of the Employee, who may be considered.

- g. The petitioner may at best fall within the category of the second class of dependents. However, even if the petitioner were to fall within the second class of dependents he would have to establish that he was residing with the Employee (Nehal) and was almost wholly dependent on the earning of the Employee. None of these aforesaid parameters have been fulfilled by the petitioner. Hence the question of the petitioner being appointed on compassionate ground in place of Nehal cannot be considered.*
- h. The petitioner was grossly overage even at the time of making the application sometime in 2007. The petitioner was about 43 years as disclosed by him. The upper limit for such employment is 35 years, which completely disintitiled the petitioner, even on the date of making his application.*
12. I have heard learned advocates for the parties at length and considered the documents on record.
13. There is only one issue which falls for consideration in this matter, to facilitate its complete adjudication. This issue is whether the petitioner is entitled or not on the date of his application to be considered for appointment with the respondent no. 1 on compassionate ground?
14. The facts are slightly convoluted.
15. The right of the petitioner to seek appointment on compassionate ground arose from his claim that he is the

son-in-law of Nehal Gope. This issue has been decided by the respondent authority holding that the petitioner is not entitled to seek appointment on compassionate ground as he is not the son of Nehal Gope.

16. At this juncture, it would be convenient for the sake of adjudication to differentiate the documents which the respondent has adverted to, while concluding that the petitioner is not entitled to the job on compassionate ground, into two sets.
17. The first set of documents are:-
 - i. *Certificate produced by the petitioner to establish his status as the son-in-law of Nehal.*
 - ii. *A vigilance report which states that the petitioner has relied on documents to establish a fake relationship, thereby disentitling the petitioner from any compassionate appointment.*
18. The second set of documents are:-
 - i. *The service record certificate submitted by Nehal at the time of his appointment.*
 - ii. *The additional sheet which has been found subsequently in the service record of Nehal and which reflect the petitioner as the son-in-law of Nehal.*
19. The necessity of making this differentiation is that the first sets of documents are uncorroborated and may not be relied upon as conclusive proof for the purpose for which they were submitted. The certificates issued by some persons holding a post at the material time, cannot be construed as conclusive proof of the fact that the petitioner was indeed the son-in-law of Nehal. The vigilance report which has been heavily relied upon by the respondent authorities to negate the claim of the

petitioner is not on record. In fact, in spite of several opportunities granted by the Court, the vigilance report has not been disclosed. Thus, the vigilance report or the conclusions made therein cannot be relied upon to deny the claim of the petitioner.

20. The second set of documents relied upon by the respondent authorities is the copy of the original service record, prepared and submitted by Nehal, at the time of his appointment, with the respondent no. 1. The contents of this document are not disputed by the parties.
21. This document, as compared to the additional sheet of service record is at variance. In fact, the two documents are discrepant, inasmuch as the names of the dependents in these two documents are different. The original service record in addition to the names of the wife and two daughters of Nehal also had the name of his son, Umesh. The additional sheet to the service record does not have the name of the son, but has the name of the petitioner as the son-in-law of Nehal. This discrepancy has not been explained by the petitioner.
22. The additional sheet has been challenged by the authorities. The witness of this sheet is the same Satyadeo Yadav, the alleged actual father-in-law of the petitioner, an influential office bearer of one of the worker's union at the material time. In fact, the respondent authorities have also taken steps against at least nine persons including six executives and three staff including Satyadeo Yadav who have been charge sheeted for irregularities in processing the employment of various such candidates. Thus, there is no explanation

afforded in the petition or even in the affidavit filed by the petitioner as to how and why these discrepancies arose.

23. The respondent authorities have raised a further issue that the petitioner was never married to Pabia Devi, the daughter of Nehal, who has since expired. This allegation could have been put to rest by disclosing the marriage certificate between the petitioner and Pabia Devi. No such endeavour has been made.
24. Normally, it would not be proper for this Court while exercising jurisdiction under Article 226 to go into such questions of fact. However, in this case, it is the singular most pertinent question, so as to decide whether the petitioner is entitled or not to get appointment on compassionate ground.
25. From the documents on record, the status of the petitioner as the son-in-law of Nehal is suspect. However, even giving the petitioner the benefit of the doubt, the issue is whether the petitioner would still be entitled to appointment on compassionate ground.
26. The second rather disabling factor for the petitioner, which he is unable to overcome is that there is no explanation to the intervening period between the disablement of Nehal sometime in November 1991 till about 2007, when the petitioner applied for compassionate appointment. Interestingly enough, if at all, the petitioner was entitled to apply in 1991 itself, subject to the direct dependents not applying for an appointment on compassionate ground. The petitioner not having applied, waited for Nehal to expire in 2006 and only thereafter applied for appointment on

compassionate ground in 2007. This delay in the surrounding circumstances is rather suspicious.

27. The next issue relates to clause 9.4.0 of the NCWA, which the petitioner was unable to overcome. The relevant portion of clause 9.4.0 being clauses (iii) and (iv) are set out hereunder for ready reference:-

“9.4.0 Employment to one dependant of a worker who is permanently disabled in his place.

- (iii) 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, younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependent on the earnings of the employee may be considered.*

In so far as female dependants are concerned, their employment would be governed by the provisions of Clause 9.5.0.

- (iv) 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 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.”*

28. Clause 9.4.0 of the NCWA-V sets forth certain benchmark parameters; these parameters are mandatory in nature and have to be complied with to enable the respondent authorities to consider the candidature of a person seeking compassionate appointment. The parameters are as under:-

- a. There are two sets of dependents. Direct and others.
 - b. Wife/husband, unmarried daughter, son and legally adopted son are the direct dependents.
 - c. The other dependents will fall within the domain of consideration for compassionate appointment only if the direct dependent is not available for employment.
 - d. To be eligible for employment, the other dependents must:-
 - i. *be residing with the Employee;*
 - ii. *be almost wholly dependent on the earnings of the Employee;*
 - iii. *not be aged over 35 years.*
29. Clearly, the petitioner falls within the domain of “other dependent”, even if he is construed to be a son-in-law of Nehal. Not being a direct dependent of the Employee, he has to prove before the authorities that he was residing with Nehal, was almost wholly dependent on the earning of Nehal and that he was below the age of 35 years even on the date of application.
30. The additional sheet to the service record of Nehal includes the names of both his daughters along with his wife. It also includes the name of the petitioner as a son-in-law. The dependents of first class would disentitle Pabia Devi to be considered as a dependent any longer. Only an unmarried daughter is construed as a dependent, not a married daughter. If indeed the petitioner was the son-in-law on the date when the additional sheet had been executed, Pabia Devi could not have been a dependent of Nehal.
31. The petitioner, in this case, has to additionally prove that none of the direct dependents were available for employment

on compassionate ground, which includes Nehal's son Umesh. The no objection certificate relied upon by the petitioner is from the wife of Nehal. The no objection certificate has been issued only by the wife of Nehal, while at least the other daughter, Rekha Devi who is also marked as a dependent in the additional sheet, ought to have issued a no objection certificate. Only upon both direct dependents issuing a no objection certificate, would the petitioner's right as a son-in-law of Nehal, within the parameter of "other dependents" arise.

32. Thus, the petitioner has not provided any proof to overcome the all-important mandatory criteria in "NCWA-V", that none of the direct dependents were available for employment. There is no certificate of consent or in the nature of no objection from Umesh. The petitioner has also failed to provide any proof of the fact that he was residing with Nehal or that he was wholly dependent on the earning of Nehal during his lifetime.
33. Third and perhaps the last hurdle confronting the petitioner is that the petitioner, even if he was entitled, ought to have applied in 1991, when Nehal obtained voluntary retirement from respondent no. 1 and his services were terminated. The petitioner applied only in 2007. This, also, added to the fact that in 2006 Nehal had expired, on the date of application made by the petitioner. Thus, there is no explanation as to why the petitioner applied for appointment on compassionate ground after almost a lapse of 16 years from the date when Nehal became disabled. The suspicion is further aggravated as the application was made only after the death of Nehal.

Clearly, the petitioner waited to apply at an opportune moment. On the date of the application, in 2007, the petitioner's age was much above the upper limit as stipulated in 9.4.0(iv) at 35 years.

34. The decision of the Hon'ble Supreme Court of India in *Mrinmoy Maity vs. Chhanda Koley And Others* reported in 2024 SC Online 551 makes it abundantly clear that even though there is no fixed period of limitation for filing a writ petition, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time the same has been invoked. Even submitting requisite testimonials would not revive a stale cause of action or resurrect a cause of action which has had a natural death.
35. In the present case, the application for compassionate appointment has been made after almost 16 years since Nehal had been declared unfit and terminated from service.
36. In addition to the above, the additional sheet to the service record, which is relied upon by the petitioner nominates the petitioner as the person to get compassionate appointment, in the event of premature death of Nehal. Nehal having been terminated from service in 1990, expired in 2006, on account whereof his death cannot be construed as premature.
37. The respondent authorities have considered the application of the petitioner and rightly rejected the same.
38. Strangely, the petitioner had chosen not to implead his mother-in-law or wife or sister-in-law or his brother-in-law, as party respondents in the proceeding.
39. The petitioner is presently almost 60 years of age, which is the age of retirement for any employee of the respondent no.

1 and after the lapse of 36 years from the date of entitlement (date of Nehal becoming permanently disabled), there is absolutely no justification as to why an application for compassionate appointment made by a person whose status as such is gravely in doubt should be entertained and order should be passed directing the respondent authorities to appoint the petitioner on compassionate ground.

40. In view of the aforestated grounds and discussion, the following conclusions are inevitable:-

- a. *The status of the petitioner as the son-in-law of Nehal is in doubt as the same could not be clarified by the petitioner.*
- b. *The petitioner was unable to explain the discrepancies in the service record and the additional sheet to the service record of Nehal. These discrepancies are quite fatal.*
- c. *The petitioner was unable to explain the delay as to why he had not applied in 1991 and waited to apply till after the death of Nehal.*
- d. *The petitioner was grossly overaged on the date of his application for compassionate appointment.*
- e. *The petitioner was unable to prove that he was residing with Nehal or was almost wholly dependent on the earnings of Nehal.*

41. In view of the above conclusions, the instant writ petition fails and is dismissed.

42. There shall, however, be no order as to costs.

43. Urgent Photostat Certified Copy of this judgment, if applied for, be given to the parties on priority basis, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

