

Dilip Kumar Roy Vs. Eastern Coalfields Limited and ors.

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Court : Kolkata

Decided On : Jan-30-2004

Reported in : 2004(2)CHN643

Judge : M.H.S. Ansari, J.

Acts : Administrative Law

Appeal No. : W.P. No. 15700 (W) of 2002

Appellant : Dilip Kumar Roy

Respondent : Eastern Coalfields Limited and ors.

Advocate for Def. : Bijoy Kumar, Adv.

Advocate for Pet/Ap. : Kalyan Bandopadhyaya and ;Biswarup Bhattacharjee, Adv.

Judgement :

M.H.S. Ansari, J.

1. Petitioner by a deed of sale executed on or about March 23, 1998 conveyed lands measuring about 2 acres to the respondent colliery (Annexure P-1). It is the case of the petitioner that at the material time there was in operation a scheme providing for appointment to such land losers or persons from whom land has

been acquired by the company for its requirements. Annexure P-2 is the said scheme dated December, 1984. Annexure P-3 is said to be the scheme operating from April, 1991. Under the aforesaid scheme the requirements for providing employment is, inter alia, that one employment subject to a maximum of two employments from a family is to be granted in case where land acquired is more than 3 acres. In respect of lands purchased from January 1, 1985 and thereafter the eligibility for grant of appointment is that minimum 2 acres of land should have been purchased from a family. Appointment is to be given to the land loser or his nominee subject to upper age limit of 35 years and medical fitness.

2. Petitioner submitted an application in the prescribed form enclosing therewith required documents. It is however contended in the affidavit-in-opposition that the said application had been made to the Agent, Kuardih Colliery who is not the competent authority to consider the case for employment. According to the affidavit-in-opposition, the Chairman-cum-Managing Director and/or the Director Personnel is the competent authority for providing employment. From the file produced by the respondent colliery it would appear from page 39 that the requisite Form 'B' was filled in by the Officers of the respondent colliery namely Agent/Manager. It bears the signature of the said two officers and beneath it the date mentioned is February 17, 2000. Also from page 58 it would appear that the Government Pleader gave clearance with respect to the land of the petitioner and opined that the same is free from any encumbrance. Also from page 53 it would appear that the agent of the colliery asked the police authorities as to whether there is any report to the contrary or any F.I.R. in respect of the petitioner. From page 60 of the file it would appear that the Deputy Estate Manager forwarded to the General Manager the employment file in respect of the petitioner duly recommended by Area Land Sale Committee. The Personal Manager informed the General Manager by his letter dated January 14, 2002 that petitioner is not eligible for employment under the land loser scheme. The reasons are to be found at page 61 of the noting sheet. It would be appropriate to extract the said reasons which are to the following effect:

'In this case land measuring 2.00 acres has been purchased by ECL, on 23.3.98. The ownership of the land has come from 19.2.98 and 9.3.97 and the land was

used from 31.6.77 to 1988. Thus, the ownership of the land has come after the date of use. The nominee is himself land owner and his date of birth is 3.2.1965. Thus, he has crossed the upper age limit of 35 years on 3.2.2000 and his present age is 36 years 7 months (approx.), The area authority confirmed in the 18 points proforma & in form 'C' that previously no employment was offered against the same land/family.

In view of the above in the instant case the land owner-cum-nominee i.e., Sri Dilip Kr. Roy has crossed the upper age limit of 35 years on 3.2.2000. As such, Sri Dilip Kr. Roy is not eligible for employment under Land Loser Scheme as per guideline circulated recently'.

3. By impugned order Annexure P-9 which has been questioned in the instant writ petition, the petitioner was informed that he is not eligible for employment under Land Loser Scheme as he has crossed the upper age limit of 35 years.

4. In the affidavit-in-opposition it has been stated that there is a panel of candidates for considering the case under the Land Loser Scheme and when the petitioner's turn came for consideration he crossed the upper age limit. In other words, the claim of the petitioner for appointment under the scheme is sought to be denied on the ground that petitioner exceeded the age limit of 35 years on the date of consideration. Reliance has been placed upon the guidelines dated August 26, 2001 and Clause 7 thereof which reads as under:

'7. Age will be below 35 years on the date of offering employment opportunity'.

5. Learned Counsel for the petitioner submitted that the Form referred to as the attestation Form was submitted by the petitioner on or about April 21, 1998. All enquiries had been conducted in respect thereof and the petitioner was at all material times well within the upper age limit of 35 years. The ground taken on behalf of the respondents with regard to crossing the age bar in the impugned order being Annexure P-10 is untenable and arbitrary. It was submitted that for the delay in considering the petitioner's case from April, 1998 till 2000 respondents cannot take advantage on their own delay and default in denying petitioner the employment.

6. On the other hand, the submission of the learned Counsel for the respondents is based on the aforesaid guidelines dated August 26, 2001 wherein it has been stated that the age is to be considered on the date of offering employment.

7. Having heard learned Counsel for the respective parties it is evident that the claim for appointment was made by the petitioner in terms of the scheme then in operation and petitioner was well within the upper age limit prescribed at the relevant time. Petitioner's application made as far back as in 1998 appears to have been considered by the Colliery Officers namely Agent and Manager only on February 17, 2000. The police report had been obtained as can be seen from the office copy at page 42 of the file submitted by the respondents that the police authorities informed the agent that there is nothing adverse found against the candidate in question. No reasons nor any explanation is offered as to why the matter was considered by the Area Land Sale Committee only on June 11, 2001 and not earlier.

8. Be that as it may the Area Land Sale Committee recommended the case for employment. Petitioner is said to have crossed the age of 35 years as on February 3, 2000 and for that reason has been denied appointment based upon the policy dated August 26, 2001. The scheme formulated on August 26, 2001 can at best be applied prospectively. The petitioner's case was required to be considered in terms of the policy obtaining at the time the land was acquired in 1998 and application for appointment had been made. No reasons have been furnished as to why the case could not be processed under the said scheme and kept pending with the authorities until the petitioner crossed the age bar. The case is one of legitimate expectation wherein by the scheme in operation at the material time in 1998 a promise had been held out to persons whose land has been acquired or purchased by the respondent colliery that employment would be offered to such land loser in respect of land of an extent of 2 acres. It has not been established as was sought to be contended on behalf of the respondents that the petitioner's turn for consideration for appointment came up only when he had crossed the upper age limit. Nothing has been placed before Court to show that petitioner had been empanelled for appointment or any list of seniority had been maintained for consideration of applications and when the case of the petitioner was taken up for

offering appointment he had crossed the upper age limit.

9. In my view, therefore, the ground on which petitioner has been denied appointment cannot be sustained. It must therefore be held that the delay has been occasioned by the respondents in considering the case of the petitioner when the application has been made as far back as in 1998 and requisite police report has been obtained as far back as on June 19, 1998. The Form 'B' which was required to be filled in by the Colliery Officers was done only on February 17, 2000. It has taken over 3 & 1/2 years for the respondents to consider the case of the petitioner and for that delay on the part of the respondents petitioner cannot be either penalized nor can the policy which is prospective be made applicable in his case.

10. Accordingly impugned order is set aside and respondents are directed to consider the matter with regard to grant of appointment to the petitioner in terms of the guidelines existing at the time the application of the petitioner was registered, such exercise shall be completed expeditiously and preferably within a period of 4 (four) months from date hereof.

11. Writ petition accordingly stands disposed of.

12. Let urgent xerox certified copy of this judgment and order be furnished to the appearing parties, if applied for, on priority basis.

13. Let the file submitted by the respondents be returned forthwith to the learned Counsel for the respondents.

Later:

14. After the judgment is pronounced, the learned Counsel for the respondents prayed for stay of operation of the judgment. His prayer is considered and rejected.