IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P.A. 14349 of 2018

DIPALI MITRA & ORS.

VERSUS

COAL INDIA LIMITED & ORS.

For the petitioners	:	Mr. Parth Ghosh, Adv. Mr. Amal Kumar Datta, Adv. Ms. Simran Sureka, Adv. Mr. Debashis Das, Adv.
For the Respondents	:	Mr. Shiv Shankar Banerjee, Adv. Ms. Sanchita Barman Roy, Adv.

Last Heard On: September 06, 2023

Judgement On: October 17, 2023

Shekhar B. Saraf, J.:

1. The instant writ petition has been filed by the petitioners, Dipali Mitra (hereinafter referred to as "petitioner no.1"), Partha Pratim Baksi (hereinafter referred to as "petitioner no.2") and Sayani Baksi (hereinafter referred to as "petitioner no.3") praying for a writ of and/or a writ in the nature of Mandamus seeking compassionate appointment for petitioner no.2 or alternatively, petitioner no.3 after death of the father, late Shibdas Mitra, an ex-employee of Eastern Coalfields Limited, Kunustoria Area, Kolkata (hereinafter referred to as "ECL"). The petitioners have prayed for a writ of and/or a writ in the nature of Mandamus to command respondent authority to declare Clause 9.3.3 of National Coal Wages Agreement-VI (hereinafter referred to as the "NCWA-VI") as discriminatory and to mention 'daughter' instead of 'unmarried daughter' in the aforementioned Clause. It has been prayed through a writ of and/or a writ in the nature of Mandamus to set aside the impugned order vide reference no. ECL/LG/HC/KNT/SPL/191 dated February 21, 2018, passed by respondent no.5, that is, the Director (Personnel), Eastern Coalfields Limited (hereinafter referred to as "Director (Personnel), ECL). Finally, the petitioners have prayed for a writ of and/or a writ in the nature of Mandamus commanding the respondent authorities to provide monetary compensation from the date of death of the father, till the date of appointment of either petitioner no.2 or petitioner no.3, and a

compensation to the tune of Rs. 12,00,000/- (Rupees Twelve Lacs only) for delayed employment and harassment suffered.

Facts:

2. I have laid down the factual matrix of the instant case below:

a. Coal India Ltd. (hereinafter referred to as "CIL"), that is respondent no.1, is a Government of India undertaking and ECL is its subsidiary.

b. Shibdas Mitra, an employee of ECL died in-harness on May 26, 2010, leaving behind petitioner no.1, petitioner no.2, petitioner no.3 and Suman Mitra, who are the deceased's wife, son-in-law, married daughter and son respectively. The deceased employee's son, namely Suman Mitra, resides out of India and petitioner no.2 and 3 have been married since May 11, 2004.

c. Petitioner no.1, that is, the wife of the deceased employee made an application vide letter dated November 18, 2010, before ECL seeking compassionate appointment of petitioner no.2. The said letter stated that the deceased employee was the sole earning member of the family and that petitioner no.2, that is, the son-in-law was a dependent.

d. ECL vide letter no. ECL/P67Incl/P&IR/2011/694 dated January 18, 2011, rejected the application of petitioner no.1 seeking compassionate appointment of petitioner no.2. Petitioner no.1 made another application before ECL vide letter dated March 21, 2011, seeking compassionate appointment for herself, which was rejected by ECL twice, vide letters dated April 7, 2011, and November 23, 2011. ECL rejected such prayers of petitioner no.1 on the ground that she had exceeded the age limit of 45 years as required for employment of female dependent under Clause 9.5.0 (ii) of NCWA-VI. She was advised by ECL vide letter dated April 7, 2011, to apply for maintenance allowance/monetary compensation instead of employment as specified in Clause 9.5.0(ii) of NCWA-VI.

e. Petitioner no.1 responded to such rejection vide letter dated April 25, 2011, where she alleged that she had not crossed the age limit of 45 years of age, and she was not able to accept the maintenance allowance/monetary compensation instead of employment as the amount would not be enough to sustain her family. Petitioner no.1 also submitted attestation form dated February 24, 2014, where she stated her age to be 43 years. As per the certificate dated October 28, 2010, signed by a member of Legislative Assembly, West Bengal, petitioner no.1 had stated her age to be 51 years, her daughter, petitioner no.3's age as 26 years old and petitioner no.1's son's age as 28 years old. Furthermore, another certificate dated May 10, 2011, signed by the same member of Legislative Assembly

stated that petitioner no.1's age was 43 years, the married daughter's age was 21 years and the son's age was mentioned as 22 years.

f. Petitioner no.1's son issued a no-objection certificate dated May 10, 2011, stating that he is not interested in getting compassionate appointment and instead prayed for such appointment to be given to petitioner no.1.

g. Petitioner no.1 submitted another application dated October 17, 2014, and November 27, 2014, requesting for compassionate appointment for petitioner no.2 before ECL. Letter dated November 27, 2014, stated that petitioner no.2 and petitioner no.3 lived together with petitioner no.1 and the deceased employee and that petitioner no.2 with his two kids was wholly dependent on petitioner no.1's income arising out of terminal benefits and family pension. Such request was rejected by ECL vide letter dated December 11/15, 2014. The letter dated December 11/15, 2014, highlighted that earlier the Competent Authority has rejected the application of petitioner no.2 for compassionate appointment as well. The said rejection letter cited an older letter reference no. ECL/P6&7 INCLINE/P&IR/2011/694 dated January 18, 2011, which categorically stated "when direct dependent is there, function of indirect dependent does not arise". Petitioner no.1's request for compassionate appointment of petitioner no.2 was

rejected citing the same ground that son of the deceased (that is, the direct dependent) existed and therefore, petitioner no.2 could not be offered such appointment.

h. Since the employment of the son-in-law, that is, petitioner no.2 was not considered by ECL, petitioner no.1 made further representation dated December 24, 2014, and January 16, 2015, before the respondent authority, seeking compassionate appointment of petitioner no.3 (that is, the married daughter). The respondent authorities rejected such request vide reference no. A-KNT/P&IR/ 13/4837 dated January 29, 2015, stating that as per Mines Act, 1952 and Mines Rule there exist certain prohibitions to deploy female employees in some places and also some restriction to offer employment to the female dependent and above all there is no provision to offer employment to the married daughter as per NCWA-VI.

i. Aggrieved by the said order, the petitioners filed a writ petition before a co-ordinate bench of this High Court being, W.P. No. 306 of 2015 for compassionate appointment of either petitioner no.2 or petitioner no.3. The learned Judge passed an order dated March 10, 2017, setting aside the order dated January 29, 2015, with directions to the Chairman, Coal India Ltd. (hereinafter referred to as “Chairman, CIL”) for hearing the petitioners and pass a reasoned order after considering certain pertinent issues which

were not considered in the order of ECL dated January 29, 2015. The relevant paragraphs of the order of the learned Judge dated March 10, 2017, have been reproduced below:

> *"...In this Case certain factual issues have to be investigated before the job can be offered to the daughter or son-in-law.*
> *First, the son has to be contacted and it has to be ruled out that he is not interested in the appointment.*
> *Secondly, the income of the married daughter including the income of her husband has to be investigated. It is to be ascertained whether the daughter and/or the son-in-law were wholly dependent on the deceased for their livelihood and had no significant income of their own.*
> *On the basis of the findings arrived at on these facts, the request of the second and third petitioners for employment had to be considered."*

j. CIL, that is respondent no.1 and ECL preferred separate Review Applications against the said order of the learned Single Judge dated March 10, 2017 where the Review Application filed by ECL was dismissed and the Review Application filed by respondent no.1 was disposed of with modification that the consideration was to be done by respondent no.4, that is Chairman-cum-Managing Director, ECL instead of Chairman, CIL.

k. Finally, the Director (Personnel), ECL issued the impugned order dated February 21, 2018, where the claim of the petitioners was rejected. The impugned order cited many reasons for rejection of

compassionate appointment including that the petitioner no.1 did not accept monetary compensation, the son was posted in Sweden after his Ph.D. therefore a direct dependent was available for consideration and that the voter cards submitted by the petitioners showed that petitioner no.2 and 3 were not residing with the deceased. The Director (Personnel), ECL also noted petitioner no.2's income from the paternal property where he was a CMS Club Member for the year 2016-17 of Life Insurance Corporation of India. The impugned order dated February 21, 2018, stated that the petitioners "*did not come with clean hands and had failed to produce unclenched evidence"* to satisfy the provisions of compassionate appointment.

l. Against the said impugned order, petitioner no.1 filed another appeal vide letter dated March 3, 2018, before respondent no.4, that is, the Chairman-cum-Managing Director, ECL. The respondent authority did not respond to such a letter.

m. Being aggrieved by the aforementioned inaction, the petitioners have filed the instant writ petition under Article 226 of the Constitution of India before this Court.

Contentions:

3. The counsel for the petitioners has made the following submissions:

a. The petitioners have submitted that the impugned order dated February 21, 2018 only considered petitioner no.2's application and stated nothing about the eligibility of the married daughter even though the order of a co-ordinate bench of this High Court dated March 10, 2017 specifically stated that her application ought to be considered by ECL and that the Review Application based on such a question was dismissed.

b. It has been submitted that petitioner no.2 and 3 were still unemployed and resided with petitioner no.1 where sometimes petitioner no.2 would reside in Khandra village with his aged mother, as that is his parental home. Petitioners have argued that both such places are within the same constituency of Raniganj and the distance between such two places is 15 minutes by motorcycle.

c. The petitioners have argued that petitioner no.2 being the son-in-law of the deceased had been residing with the deceased as a Ghar Jamai (that is, a domesticated son-in-law) and currently has no income except LIC Commission.

d. A submission has been made that petitioner no.2's CMS Club Membership for the year 2016-17 did not signify that he earned significant income, and that the family property was not income in reality.

e. The petitioners reject the claim that they had submitted false information to the respondent authority vis-à-vis the age of petitioner no.1, 2 and 3. They instead question the intentions of the respondents as to why they did not bring light to this alleged fabrication in 2014 itself.

f. It is the argument of the petitioners that the word 'unmarried' proceeding 'daughter' in Clause 9.3.3 of NCWA-VI is unconstitutional as it is in violation of Article 14 and 15 of the Constitution of India as was held in the Single Judge Bench of the High Court at Chhattisgarh in ***Asha Pandey Vs. Coal India Ltd. & Ors.*** reported in **(2016) 3 CGLJ 98** and that the Supreme Court in ***Savita Samvedi & Anr. Vs. Union of India & Ors.*** reported in **1996 (2) SCC 380**, held that "a son is a son until he gets a wife, a daughter is a daughter throughout her life". Furthermore, the petitioners have cited Hindu Succession Act, 1956 and general Hindu customs to indicate how married daughters are at par with unmarried daughters. The petitioners have also considered Article 2(b), 2(c), 13, 15 and 21 of the Constitution of India stating that the same give equal rights to married and unmarried daughters as much as sons. Article 39A of the Constitution of India has also been presented before this Court citing the equal rights of women. To further illustrate their argument, the petitioners have submitted that the Convention on the Elimination of All Forms of Discrimination against Women adopted by the UN General

Assembly in 1979 (hereinafter referred to as "CEDAW") upholds the right to equal employment opportunity.

g. The counsel for the petitioners cited the unreported judgement in ***Easten Coalfield Ltd. & Ors. Vs. Anari Devi & Ors.*** **(A.P.O. No. 101 of 2014** and **2014 SCC OnLine Cal 14319)** to argue that son-in-law as a dependent may be given compassionate appointment. Finally, the petitioners have submitted ***Subhadra Vs. Ministry of Coal & Anr.*** reported in **(2018) 11 SCC 201** stating that NCWA is governed by a Scheme as agreed to by the parties and which has become part of the Bipartite Agreement and therefore compassionate appointment is a matter of right under die-in-harness category. It was also submitted that such a right for compassionate appointment has been established further in ***Eastern Coalfields Ltd.& Ors. Vs. Karuna Rani Laha & Ors.*** reported in **2018 (2) Cal LJ 219**.

h. The petitioners have also responded to the argument of the respondents that the instant writ petition is not maintainable as it does not impede trade unions as parties to the petition, where such trade unions are parties to the Memorandum of Understanding/settlement that is the NCWA. The petitioners have submitted that trade unions are neither necessary nor the proper party for the instant writ petition and therefore this is not a case of non-joinder of parties as alleged by the respondents.

i. Finally, the petitioners have argued that under Clause 9.3.3 of NCWA-VI, direct dependents need not prove residential status or financial dependency to the deceased whereas, indirect dependents must prove the same. Such distinction between the two category of dependents is the issue, where a married daughter must also be considered within the scope of a direct dependent such as a wife, unmarried daughter, son, and legally adopted son.

4. The counsel for the respondents has made the following submissions:

a. The respondents have argued that NCWA is prepared by and between the management and representatives of workers like Indian Mines Workers Federation, Hind Mazdoor Sabha, Bharatiya Mazdoor Sangh, Centre of Indian Trade Union, Indian National Mines Federation among others but the petitioners have not made such trade unions a party to the writ petition and therefore the instant writ petition is not maintainable.

b. The respondents have submitted that the petitioners suppressed the letters dated August 16, 2012 and April 25, 2011 where petitioner no.1 stated that she was 53 years of age and 45 years respectively. Furthermore, the attestation forms dated May 10, 2011 and October 28, 2010 filled by petitioner no.1 provide that her age was 43 years.

c. The respondents have further submitted that petitioner no.1 provided two Dependent Certificates signed by the same member of Legislative Assembly dated October 28, 2010 and May 10, 2011 where the ages of the petitioners have been changed. The Dependent Certificate dated October 28, 2010 stated that the ages of petitioner no.1, 2, 3 and the son were 51, 30, 26 and 28 years respectively. Alternatively, the Dependent Certificate dated May 10, 2011 stated that the ages of petitioner no.1, 2, 3 and the son were 43, 30, 20 and 22 years respectively.

d. It has been submitted by the respondents that the no-objection certificate provided by the son of the deceased employee dated May 10, 2011, only spoke of giving compassionate appointment to petitioner no.1 and not anyone else including petitioner no.2 or 3.

e. The counsel for the respondents have argued that as per the NCWA-VI, there are age limitations for the purpose of granting compassionate employment, therefore the respondent authority rightly counselled petitioner no.1 to apply for Monthly Monetary Cash Compensation (hereinafter referred to as "MMCC") instead of employment. Instead of applying for such MMCC, petitioner no.1 deceived the respondents about her age, education qualifications and the fact that petitioner no.2 also had earnings of Rs. 50,000/- (Rupees Fifty Thousand only) per month. Furthermore, the

petitioners did not disclose that petitioner no.2 and 3 do not reside with the deceased employee and petitioner no.1.

f. The respondents have submitted that in ***Putul Rabidas Vs. Eastern Coalfields Ltd. & Ors.*** reported in **(2018) 1 Cal LT 436**, **(2018) 2 Cal LJ 1** and **(2019) 2 CHN 662 (LB)**, the Full Bench of this High Cout stated that there cannot be any deviation from the provisions mentioned under NCWA, and such a finding was affirmed by the Supreme Court in the Special Leave Petition.

g. It was the argument of the respondents that compassionate appointment is not a source of recruitment, nor a right as was specified by the Supreme Court judgement in ***State Bank of India & Anr. Vs. Raj Kumar*** reported in **(2010) 11 SCC 661**.

h. The respondents have highlighted that Clause 9.3.3 of NCWA-VI makes a distinction between direct and indirect dependents, where wife and son of the deceased employee are direct dependents however, a son-in-law is an indirect dependent and the married daughter is not covered at all. Attention was given to the fact that the impugned Clause states *"if no direct dependent is available for employment"* therefore, a son-in-law who resides with the deceased and is almost wholly dependent on the earnings of the deceased may be considered to be dependent, only if no direct dependent is available for such appointment. The respondents have argued that

question of indirect dependents such as petitioner no.2 does not arise, simply because the son of the deceased is a direct dependent who is available, even if he is not willing to seek such appointment. Even though the son does not want the appointment, it has been highlighted that compassionate appointment is not a hereditary right and therefore relinquishing a claim for compassionate appointment does not entitle another family member to get it in their stead. Additionally, the counsel has argued that petitioner no.2 neither resides with the deceased as was proved through the voter cards, nor can he show that he was wholly dependent on the deceased as he is an LIC employee earing Rs. 50,000/- (Rupees Fifty Thousand only) per month.

i. Regarding the issue of married daughter, that is, petitioner no.3, the respondents have submitted that she is dependent on the earning of her husband, that is, petitioner no.2 whose income is sufficient. The gross earnings of petitioner no.2 were provided by the Branch Manager of LIC, India Ukhra Branch Office which state that petitioner no.2 earned Rs. 6,68,071/- (Rupees Six Lacs Sixty-Eight Thousand and Seventy-One only) for the financial year 2017-18. Furthermore, Clause 9.3.3 of NCWA-VI does not mention 'married daughter' as a possible dependent of an employee and therefore, strict interpretation of rules for compassionate appointment would not allow for a married daughter to be considered for such employment. To prove such an argument, the

respondents have presented ***Durgapur Project Ltd. & Ors. Vs. Kumari Purnima Bhui & Anr.*** reported in **(2013) 2 CHN 576** and **(2013) 2 Cal LT 463** where a Division Bench of this High Court stated that a married daughter cannot claim compassionate appointment as a matter of right.

j. The respondents have argued that compassionate appointment is not a matter of right as has been reiterated in the Supreme Court judgement ***Eastern Coalfields Limited Vs. Anil Badyakar & Ors.*** reported in **(2009) 13 SCC 112** which also stated that such appointment cannot be offered after a lapse of 12 years. Furthermore, to prove that direct dependents must also show dependency in cases of compassionate appointment, the respondents submitted the unreported judgement of a co-ordinate bench of this High Court in ***Priyanka Ghosh Vs. South Eastern Coalfields Limited & Ors.*** **(W.P.A. 22327 of 2022)** where the learned Single Judge held that an investigation with regard to dependency was required even in cases of a person being a direct dependent of the deceased employee seeking compassionate appointment.

k. Finally, the respondents have argued that request for compassionate appointment have been denied to dependents on their conduct as per the judgement of a Division Bench of this High Court in ***Babulal Majhi Vs. Eastern Coalfields Ltd. & Ors.***

reported in **(2012) 3 CHN 474**. Considering that the petitioners have not come with clean hands seeking compassionate appointment, rather only wish to get the same on account of greed, rather than need, it is prayed before this Court that the instant writ petition be dismissed.

Observation and Analysis:

5. Before this Court considers the issues presented by the parties it is pertinent to specify the relevant clauses of NCWA-VI. The relevant clauses have been reproduced below:

> *" **9.3.0** **Provision of Employment to Dependents***
>
> *9.3.1 Employment would be provided to one dependent of workers who are disabled permanent and also those who die while in service. The provision will be implemented as follows.*
>
> ***9.3.2*** ***Employment to one dependent of the worker who dies while in service.***
>
> *In so far as female dependents are concerned, their employment/payment of monetary Compensation would be governed by para 9.5.0.*
>
> ***9.3.3*** *The dependent for this purpose means the wife/husband as the case may be,* ***unmarried daughter,*** *son and legally adopted son.* ***If no such direct dependent is available for employment,*** *brother, widowed daughter/widowed daughter-in-law or* ***son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased*** *may be considered to be the dependent of the deceased.*

9.3.4 *The dependents 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.*

* * *

9.5.0 ***Employment/Monetary compensation to female dependent***

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

(i) *In case of death due to mine accident, the female dependent would have the option to either accept the monetary compensation of Rs. 4,000/- per month or employment irrespective of her age.*

(ii) ***In case of death/total permanent disablement due to cause other than mine accident*** *and medical unfitness under Clause 9.4.0, if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment.*

In case the female dependent is above 45 years of age she will be entitled only to monetary compensation and not to employment*."*

6. I have heard the learned counsels appearing for the parties and perused the materials on record. There are four issues that have come before this Court as have been listed below:

(i) **Issue No. 1: Whether compassionate appointment is a vested right.**

(ii) **Issue No. 2: Whether the distinction between 'married' and 'unmarried' daughter as per Clause 9.3.3 of NCWA-VI is ultra vires and is in violation of Article 14 and 15 of the Constitution of India.**

(iii) **Issue No. 3: Whether direct dependents must also show dependency under Clause 9.3.3 of NCWA-VI.**

(iv) **Issue No. 4: Whether petitioner no.2 and 3 can be considered for compassionate appointment.**

7. I will now consider each of the aforementioned issues in detail and put forth the following pertinent points of law.

Issue No. 1: Whether compassionate appointment is a vested right.

8. The petitioners have argued that employment on compassionate ground is a vested right under NCWA as it is governed by a Scheme. To support such an argument, the petitioners have submitted the

Supreme Court judgement in ***Subhadra Vs. Ministry of Coal & Anr.*** **(supra)** and the judgement in ***Eastern Coal Fields Ltd. & Ors. Vs. Karuna Rani Laha & Ors.*** **(supra).** Alternatively, the respondents have argued that in ***Eastern Coalfields Limited Vs. Anil Badyakar & Ors.*** **(supra)** the Supreme Court held that compassionate appointment is not a vested right, rather an exception to the general rule of employment.

9. The case in ***Subhadra Vs. Ministry of Coal & Anr.*** **(supra)** was about a dependent wife seeking compassionate appointment instead of accepting monetary compensation as per Clause 9.5.0 of the NCWA. She later asked for such compassionate appointment to be given to her minor son instead of her, after he reaches the age of majority. This Court does not find any merit in the arguments of the petitioners that the aforementioned judgement states that compassionate appointment is a vested right, rather it is only emphasized that compassionate appointment in this case was governed by a Scheme and the rules of such Scheme give no room for any discretion. The relevant paragraph of the aforementioned judgment has been reproduced below:

> *"5. The learned counsel for Respondent 2 Organisation has invited our attention to the decision of this Court in Canara Bank v. M. Mahesh Kumar [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412: (2015) 2 SCC (L&S) 539] 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 the Bipartite Agreement. ***The terms of the Agreement are very specific and give no room for any discretion.****"*

[Emphasis Added]

10. Since the aforementioned judgement never states or implies that compassionate appointment is a vested right, the argument of the petitioners stands rejected.

11. This Court will now consider the law regarding compassionate appointment as set forth by Supreme Court and judgements of this Court which specifically state that compassionate appointment is not a vested right, rather an exception carved out against the general rule of merit-based recruitment.

12. In ***Ipsita Chakrabarti Vs. State of West Bengal*** reported in **2018 (3) CHN (CAL) 472** and **(2018) 2 Cal LT 117 (HC)** this Court summarized key principles pertaining to compassionate appointment after considering the Supreme Court judgements of ***Umesh Kumar Nagpal Vs. State of Haryana & Ors.*** reported in **(1994) 4 SCC 138** and ***Union Bank of India & Ors. Vs. M.T. Latheesh*** reported in **(2006) 7 SCC 350**. The relevant paragraph delineating the principles of compassionate appointment has been reproduced below:

"10. After going through the judgments passed by the Supreme Court on the issue of compassionate appointment, the following principles emerge:-

(a) Appointment on compassionate grounds is an ***exception craved out to the general rule*** *that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.*

(b) The ***right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer*** *and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.*

(c) Appointment on compassionate ground is ***given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner.*** *When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.*

Compassionate appointment has ***to be exercised only in warranting situations and circumstances*** *existing in granting appointment and* ***guiding factors should be financial condition of the family****."*

[Emphasis Added]

13. The precedents submitted by the petitioners do not take a different stance regarding this issue and therefore, **it is re-iterated that compassionate appointment is not a vested or a hereditary right**.

Issue No. 2: Whether the distinction between 'married' and 'unmarried' daughter as per Clause 9.3.3 of NCWA-VI is ultra vires and is in violation of Article 14 and 15 of the Constitution of India.

14. The petitioners have cited the judgement of a Single Judge bench of the High Court at Chhattisgarh in ***Asha Pandey Vs. Coal India Ltd. & Ors.*** **(supra)** to highlight that the exclusion of married daughters from consideration for compassionate appointment under NCWA is in violation of Articles 14 and 15 of the Constitution of India. The relevant paragraphs of the aforementioned judgement of the learned Single Judge of the High Court at Chhattisgarh have been reproduced below:

> *"28. Thus, from the aforesaid cases it is quite vivid that marriage is a social circumstance and basic civil right of man and woman, and* ***marriage by itself is not a disqualification****. Thus, denial of dependent employment to married daughter of SECL employee is* ***gender biased, unreasonable and violative of Articles 14 and 15 of the Constitution of India*** *and it is clearly impermissible in law, as such,* ***a clause in the National Coal Wage Agreement excluding consideration of married daughter for dependent employment, which has the force of law, is unjust, unfair and opposed to law.***
>
> *29. As a fallout and consequence of aforesaid discussion, the writ petition is allowed and consequently* ***clause 9.3.3 of NCWA-VI, which has been made applicable to clause 9.4.0(f) of NCWA-IX, regarding dependent employment only to the married daughter is held to be violative and discriminatory and the***

said clause to the extent of impliedly excluding married daughter from consideration for dependent employment is hereby declared void and inoperative. *Resultantly, impugned order dated 15.10.2015 Annexure P-1 rejecting the petitioner's claim for dependent employment on the ground of her marriage is hereby quashed being unsustainable in law and* ***it is directed that Clause 9.3.3 of NCWA-VI read with clause 9.4.0 of NCWA-IX be read in the manner to include the married daughter also as one of the eligibles subject to fulfilment of other conditions****....."*

[Emphasis Added]

15. Contrary to the above, the respondents have submitted the judgement of a Division Bench of this High Court in ***Putul Rabidas Vs. Eastern Coalfields Ltd. & Ors.*** **(supra)** where the issue was whether a divorced daughter could be considered as a dependent of a deceased worker under Clause 9.3.3 of NCW-VI. The respondents have laid emphasis on paragraphs 25 and 26 of the judgement but have failed to read it to its entirety where the learned Judge in fact opines that dependency is key in determining who can be included within the meaning of 'unmarried daughter'. In fact, it is dependency that is the pivotal criteria for eligibility in appointment on compassionate grounds and such dependency ultimately allowed for Putul to be considered for compassionate appointment within the meaning of an 'unmarried daughter' and not Sefali who could not prove dependency. The judgement also states that interpretation of a beneficent scheme should be liberally construed. The relevant paragraph of the aforementioned judgement has been reproduced below:

> *"54. That apart, the point as to who could be included within the meaning of 'unmarried daughter' would hinge on the* ***dependency factor, for, dependency is the vital test to be fulfilled in order to be eligible for consideration for compassionate appointment in terms of the NCWA-VI,*** *followed of course by the other eligibility criteria."*
>
> ***[Emphasis Added]***

16. The respondents have also submitted the judgement of a Division Bench of this High Court in ***Durgapur Project Ltd. & Ors. Vs. Kumari Purnima Bhui & Anr.*** **(supra)** where the policy notified by the Government of West Bengal, Department of Power and Non-Conventional Energy Sources, providing compassionate appointment was challenged for using the term 'unmarried daughter' in their compassionate appointment scheme. The learned Judges found that compassionate appointment under this specific policy formulated by the State Government was not in violation of Article 14 and 15 of the Constitution of India by using 'unmarried daughter'.

17. This Court must note that the aforementioned judgement delivered in 2013 had a Division Bench with a two Judge coram and the case in ***State of West Bengal & Ors. Vs. Purnima Das & Ors.*** reported in **(2017) 4 CHN 362** and **(2017) 4 Cal LT 238** was decided by a Full Bench with a three Judge coram and therefore, this Court is bound to consider the latter judgement on the issue of compassionate appointment for married daughters.

18. This Court will now consider the decision of the Full Bench of this High Court in ***State of West Bengal & Ors. Vs. Purnima Das & Ors.*** **(supra)** where the learned Judges addressed the issue of inclusion of 'married daughter within compassionate appointment schemes extensively. The learned Judges of the Full Bench of this High Court stated that Supreme Court remains *res integra* on the issue of inclusion of 'married daughter' within the scope of compassionate appointment schemes and a closer look at the decisions of this High Court would show that each decision was decided upon after considering the meaning of 'dependent/family'. The Full Bench of this High Court noted that the question of constitutionality of a clause for compassionate appointment under a scheme/rule had not yet arisen and therefore, the judgement laid down the law for various aspects of compassionate appointment including, the conditions required for an applicant to be considered for appointment on compassionate grounds and the twin-test of reasonable classification to illustrate that there exists no intelligible differentia for the distinction between 'married' and 'unmarried daughter' as separate classes. The relevant paragraphs of the judgement penned by Dipankar Dutta, J. expanding on the aforementioned aspects of compassionate appointment have been reproduced below:

> *"73. The decision of the Kerala High Court in V. Sunithakumari (supra) seems to be the first in the series of decisions on the issue, rendered twenty-five years back. Thereafter, decisions*

rendered by most of the high courts have come at a steady pace and it is again difficult to say with precision on which side the scales tilt. There may have been other decisions too, which were not cited before us. It is in such a situation that we tried to locate a decision of the Supreme Court directly on the issue which, having regard to its binding effect, would put a quietus to the issue. The point arising for an answer in Vijaya Ukarda Athor (Athawale) (supra), cited by Mr. Mondal, seemed to bear close resemblance to the issue we are seized of. However, the point as to whether a married daughter would be entitled to compassionate appointment was not decided and the same was remitted to the Bombay High Court for fresh decision. ***The issue qua the Supreme Court is, therefore, not yet res integra****. We have found on perusal of all the decisions of the high courts including this Court that each decision turned on the interpretation of the rules/regulations embodying the policy of compassionate appointment under consideration and the definition of 'dependent'/'family' therein. In our view, the facts of each case are important and one additional or different fact may make a world of difference between conclusions in two cases. That apart,* ***except in a couple of matters considered by the high courts, the issue of constitutionality of a clause of the scheme/rules for compassionate appointment did not arise for decision.*** *All the decisions are of immense persuasive value, being decisions of the high courts of the country, and are entitled to respect and reverence. However, we would prefer to discuss only those decisions which we consider imperative in the process of our decision making and omission to refer to any particular decision may not be viewed as avoidance on our part to consider the view expressed therein.*

* * *

75. ***Conditions which are inevitably required to be fulfilled by an applicant for appointment on compassionate ground in terms of a scheme framed in that regard are three-fold: (i) the immediate need for an appointment; (ii) identification as dependent and satisfaction in relation to dependency; and (iii) possessing required qualifications.*** *The first condition i.e. immediate need has to be of paramount consideration for an employer while it proceeds to consider a claim for compassionate appointment. Such need might arise out of a death of an employee or even physical incapacitation of an employee rendering him disabled to continue in service. In either case, it has to be established that unexpectedly the family of the concerned Government employee has been put to extreme financial distress, so much so that but for an appointment of a dependent on compassionate ground, the family members of the deceased employee may not survive. It is, therefore,* ***the need for immediate relief to mitigate the hardships arising out of sudden death of the bread-winner or premature retirement due to physical incapacitation that every policy for compassionate appointment, framed by a public employer, seeks to address.*** *Who would be considered for such appointment and in what manner, are secondary in the scheme of things and form part of the procedure that is laid down in every policy.* ***If the first condition is unfulfilled, question of satisfaction of the other two conditions does not arise at all.*** *Should the immediate need for relief be established, arises the question of identifying who could be regarded as a dependent from amongst family members of the deceased/physically incapacitated Government employee and whether such person was at all dependent on the earnings of the concerned employee prior to his death or premature retirement.* ***It is axiomatic that although the financial distress of the family may be pronounced, compassionate appointment cannot be offered***

to anyone in the family who was not dependent on the earnings of the employee, who is either dead or physically incapacitated, in the real sense of the term. A person dependent would be one who for his survival was entirely dependent on the earnings of the Government employee and should he/she be appointed, is likely to take care of the other family members by his/her earning. It is permissible for the State to categorise persons to be comprised in 'dependent family member'; however, in the exercise of making such categorisation, care must be taken to ensure that no class of dependants is excluded without there being a plausible justification. *The exclusion, if challenged, must pass the test of reasonable classification.* ***Passing of the 'dependency' test is, therefore, no less important.*** *Next, even the immediate need as well as dependency would not clothe the dependent so identified for being favoured with compassionate appointment unless he/she qualifies in terms of the* ***eligibility criteria for such appointment, meaning thereby that he/she must be in the required age-group and possess minimum educational qualifications for public employment. It is in the background of these three conditions that we are to consider whether the policy decision of the State Government to exclude 'married daughters' from the scope of compassionate appointment is constitutionally valid.***

* * *

82. In the celebrated decision of the Supreme Court reported in (1952) 1 SCC 1 :AIR 1952 SC 75 (State of West Bengal v. Anwar Ali Sarkar), Hon'ble S.R. Das (as His Lordship then was), probably, for the first time propounded that ***Article 14 prohibits class legislation but not reasonable classification.*** *In His Lordship's view,* ***to pass the test of reasonable***

classification, two conditions must be fulfilled, namely, that (i) the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from those left out, and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation. *The differentia which is the basis of the classification and the object of the legislation are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary.*

83. Here, the ***differentia that seeks to distinguish those who are included within 'dependent family member' from others is the marital status of a daughter of a Government employee who dies-in-harness. The object of compassionate appointment, as we have noticed earlier, is to save a family from economic distress. It must, therefore, be examined whether the differentia is intelligible and reasonable; if so, whether such differentia has any nexus with the object of the policy for compassionate appointment.***

* * *

88. The ***classification here is brought about by excluding 'married daughters' of a deceased Government employee from the purview of compassionate appointment, and the so called "intelligible differentia" put forward is that***

'married daughters' cease to be part of the family of the Government employee on marriage. *As noticed earlier, the object of appointment on compassionate ground is to save the wrecked family by ensuring that the dependents have a few crumbs of bread and a few yards of cloth. This raises a few important questions. First, as to who could form a class to which the scheme for compassionate appointment would apply? The appropriate answer would be the immediate members of the family of the deceased employee. This question being answered, the incidental question would be who are the immediate family members? For a broad idea of who would constitute the family of a person, the relevant personal laws including family and succession laws may be looked at. However, in the context of compassionate appointment, such laws may not be seen because the purpose thereof is totally different.* ***We are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his/her survival must be considered to belong to 'a class'. Exclusion of any member of a family on the ground that he/she is not so dependent would be justified, but certainly not on the grounds of gender or marital status.*** *If so permitted, a married daughter would stand deprived of the benefit that a married son would be entitled under the scheme.* ***A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be treated equally and at par if it is demonstrated that both depended on the earnings of their deceased father/mother (Government employee) for their survival. It is, therefore, difficult for us to sustain the classification as reasonable.***

* * *

110. … ***Upon marriage no doubt a daughter is regarded as a member of her husband's family but in our view that by itself may not be determinative of whether she could be deprived of even the right to apply and be considered for compassionate appointment, the object of which has need and dependency as paramount considerations for making a departure from the procedure of recruitment in accordance with Articles 14 and 16 of the Constitution.*** *It does not behove the State Government to take a policy decision which, in effect, would be seriously prejudicial to a class of women who may have earlier exercised their right of marriage. Article 15(3) empowers the State to make special provisions for women and there is no reason as to why on the face of such an enabling provision, the Government should at all put in place such a restriction. Despite the marriage of a daughter, the bond of a father/mother with such married daughter is never broken; she continues to live in the heart of her parents. We are ad idem with the view expressed by the Division Bench of this Court in Soleman Bibi (supra) that "a daughter undoubtedly acquires a new relationship on marriage. She does not however lose the old relationship; she remains a daughter. Once a daughter always a daughter: qua relationship she is a daughter before, during and after marriage".* ***We are, thus, not persuaded to hold that once married, the dependency factor altogether ceases.*** *Proceeding on such an assumption, in our humble view, would be a misadventure.*

* * *

116. … ***The restriction on married daughters being eligible to apply and to be considered for compassionate appointment is likely and has, in fact, given rise to a***

legitimate grievance in the minds of married daughters*, who unfortunately are not looked after by their husbands, perforce have to take shelter in their parental/maternal home, survive on the benevolence showered by their fathers/mothers (Government employees) and owing to untimely demise of the Government employees, are left high and dry along with other members of the deceased's family who have to depend on such married daughter to feed and provide the basics to cover their body."*

[Emphasis Added]

19. Taking heed from such discussion regarding the distinction made between 'married' and 'unmarried' daughters, it is essential that this Court considers the twin test of reasonable classification as specified by the Supreme Court in ***State of West Bengal Vs. Anwar Ali Sarkar*** reported in **(1952) 1 SCC 1** and applies the same to the distinction made under Clause 9.3.3 of NCWA-VI. The impugned Clause states that a wife, unmarried daughter, son, and legally adopted son are direct dependents eligible for seeking compassionate appointment. The common ground between all direct dependents for such grouping, seems to be that it is assumed that such individuals are 'dependents of the deceased' who may suffer immediate financial crisis upon the death of the sole-breadwinner. The distinction in question is the use of the term 'unmarried' before daughter which categorically excludes married daughters. The only intelligible differentia that can be conceived by this Court for such distinction is

the assumption that daughters once married can no longer be dependent on their fathers/mothers. It is also pertinent to note that such marital basis of differentiation is only exercised by the impugned Clause for daughters and not sons. Therefore, the only perceivable argument that is left to suggest as to why only daughters are assumed to not be dependent on their fathers/mothers after marriage, is that daughters after marriage are assumed to no longer be an immediate family member. This Court need not consider personal laws for the purpose of compassionate appointment, since the objective of granting compassionate appointment is different from the purpose behind personal laws.

20. As has been re-iterated in a plethora of Supreme Court judgements and the aforementioned case of ***State of West Bengal & Ors. Vs. Purnima Das & Ors.*** **(supra)**, the objective of compassionate appointment is to grant financial relief to family members in financial crisis after the sudden death of the sole-breadwinner. The apparent "intelligible differentia" that a married daughter is not an immediate family member does not have a rational nexus to the objective of Clause 9.3.3 of NCWA-VI, that is, compassionate appointment to family members in dire financial condition due to the death of the sole-breadwinner.

21. This Court must also draw attention to the fact that this inherent misogynistic assumption that marital status of a daughter changes

her dependency from her father/mother to her husband, but the marital status of a son has no bearing on his dependency on the father/mother has been noted by judgements before, including ***State of West Bengal & Ors. Vs. Purnima Das & Ors.*** **(supra)**. The relevant paragraphs discussing this distinction have been reproduced below:

> *"90. Curiously enough, the marital status of the son of a deceased employee is not regarded as germane for telling him off at the threshold. His application for compassionate appointment would be considered and if found that he was not dependent on the earnings of his father/mother (Government employee), then only the application could call for rejection.*
>
> *91. What follows from the aforesaid discussion is that even if a married daughter on the date of death of her father/mother was wholly dependent on him/her, she would have no right under the notifications/SCHEME to even apply and offer her candidature.* ***Without even a bare assessment of the dependency factor, the application of the married daughter would stand rejected whereas such an application at the instance of a married son would be considered and then an appropriate decision taken, based on evidence that is before the employer, whether to allow or disallow the same. This is one area where the learned Judge in the decision in Purnima Das (supra) has taken exception and held that married daughters are subjected to discrimination. We unhesitatingly share such view****."*
>
> ***[Emphasis Added]***

22. Furthermore, this distinction was deemed to be violative of Article 15 of the Constitution of India in ***Smt. Usha Singh Vs. State of West Bengal & Ors.*** reported in **(2003) 1 Cal LJ 407** vis-à-vis compassionate appointment under Primary School Council Rules. The relevant paragraph of the judgement has been reproduced below:

> *"10. The rationale of the rules quoted hereinabove is that the son or the daughter who applies for an appointment in the died-in-harness category should have been dependent upon the income of the deceased so that his untimely death left him/her/them in extreme economic hardship.* ***The Award object of the rules is to provide relief to the family which is in extreme financial hardship and for this purpose an unemployed son can apply whether married or unmarried. Why then is the restriction upon a daughter that she should be unmarried in order to be eligible for appointment?*** *An unmarried daughter can be a divorcee fully dependent upon the father. She may have been an abandoned wife again fully dependent upon the father. She may have been married to an indigent husband so that both the married daughter and the son-in-law would have been dependent upon the income of the bread-winner whose death led them to extreme financial hardship. The concept of a "Ghai Jamai" (one who lives at one's father-in-law's house) is well accepted in Indian society particularly in those families where there is no son.* ***There may be many other probabilities in which a married daughter may be fully dependent upon the income of her father so that death of the father would leave her and the rest of the members of the family in extreme economic hardship. Why should then a distinction be made between a son and a married daughter? An unemployed married son according to the rules is eligible but an unemployed married daughter is ineligible***

irrespective of the fact that they are or may be similarly placed and equally distressed financially by the death of the rather. *Take the case of a teacher who died-in-harness leaving him surviving his illiterate widow, an unqualified married son and a qualified married daughter who were all dependent on the income of the deceased. Following the rule as it is interpreted by the Council and its learned advocate, this family cannot be helped. Is this the intended result of the rule? Or does this interpretation advance the object of the rule? What is the basis for the qualification which debars the married daughter? And what is the nexus between the qualification and the object sought to be achieved? In my view, there is none. If any one suggests that a son married or unmarried would look after the parent and his brothers and sisters, and that a married sister would not do as much, my answer will be that experience has been otherwise. Not only that the experience has been otherwise but also judicial notice has been taken thereof by a Court no less than the Apex Court in the case of Savita v. Union of India reported in (1996) 2 SCC 380 wherein Their Lordships quoted with approval a common saying; 'A son is a son until he gets a wife. A daughter is a daughter throughout her life'."*

[Emphasis Added]

23. Finally, this Court in the order dated November 28, 2019, of the unreported judgement of ***Sulekha Gorain Vs. The State of West Bengal & Ors.*** **(MANU/WB/2038/2019)** relied on ***State of West Bengal & Ors. Vs. Purnima Das & Ors.*** **(supra)** to prove that such a distinction between 'married' and 'unmarried' daughter for the purpose of an amendment made to the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 is in

violation of Article 14 of the Constitution of India. The relevant paragraphs of the aforementioned order have been reproduced below:

> *"6. However, it is to be noted that such a scheme cannot be a scheme that perpetuates arbitrariness and/or inequality. The Supreme Court in the catena of judgments that deal with the compassionate appointment do not lay down any proposition of law that allows a particular scheme for compassionate appointment to be in violation of Article 14 of the Constitution of India. The Full Bench judgment in Purnima Das (supra) authored by Dipankar Dutta, J. examined a similar issue of the denial of appointment on compassionate grounds to married daughters of government employees who died-in-harness on the ground that such daughters are not eligible in terms of the relevant scheme for compassionate appointments.* ***The Full Bench specifically held that the classification of married daughters as a different species cannot be termed as reasonable classification. The full bench categorically held that any classification made on the sole basis of gender in a welfare legislation is unacceptable****. …*
>
> * * *
>
> *8. One may look no further. In the present case also the amendment that has been carried out is with regard to addition of the adjective 'unmarried' before the noun 'daughter'. By the said amendment, all married daughters whether dependent or not, would be excluded from the zone of consideration for compassionate appointment. The legislature has not contemplated situations (a) where married daughters may be separated from the husband; and (b) where the married daughter's husband resides with the daughter's family and both are economically completely dependent on the daughter's*

parents. ***The consideration for compassionate appointment has to be based on the economic dependence and not on the factum of marriage. The socio-economic-cultural argument*** *canvassed by Mr. Bandyopadhyay,* ***in my view, is a patriarchal argument bordering on misogyny and cannot be accepted by this Court. No distinction can be made on the basis of the factum of marriage of a woman.*** *Such a classification clearly is in violation of Article 14 of the Constitution of India."*

[Emphasis Added]

24. From the aforementioned discussion two salient points have been highlighted that are applicable to the present factual matrix. One such salient point of law is that the addition of the word 'unmarried' before daughter is an arbitrary and sexist distinction under Clause 9.3.3 of NCWA-VI which is in violation of Article 14 and 15 of the Constitution of India. Additionally, it is observed that the primary condition for consideration of application seeking compassionate appointment more so than anything else, is to show dependency upon the deceased employee and financial exigency. The proof of dependency of the applicant upon the deceased employee is the condition that adheres with the objective of the providing compassionate appointment, regardless of the married status of the applicant. Therefore, no application for compassionate appointment can be rejected solely on the ground of marital status of a daughter and for the purpose of Clause 9.3.3 of NCWA-VI, the married daughter must be included within the category of direct dependents.

25. This Court finds that the distinction between 'married' and 'unmarried' daughter as per Clause 9.3.3 of NCWA-VI is ultra vires and is in violation of Article 14 and 15 of the Constitution of India.

Issue No. 3: Whether direct dependents must also show dependency under Clause 9.3.3 of NCWA-VI.

26. The petitioners have argued that as per Clause 9.3.3 of NCWA-VI, direct dependents are not required to prove residential status or financial dependency which is only specified in the second category.

27. This Court considers the unreported judgement in ***Priyanka Ghosh Vs. South Eastern Coalfields Limited & Ors.*** **(supra)** passed by a co-ordinate bench of this High Court where the learned Single Judge opined that direct dependents under the NCWA-VI must also show dependency whether one is a married daughter or not. The relevant paragraph of the aforementioned unreported judgement has been reproduced below:

> *"This Court* ***does not agree with the findings made in W.P.(S) No. 6578 of 2021 with regard to the issue that no investigation is necessary in case of a person being a direct dependant of the deceased employee****. In the event such a view is accepted then it will lead to a dangerous situation where the heirs who are direct dependents may be appointed on compassionate ground whether or not the family suffers from immediate financial crisis and the genuine dependents may not*

be able to secure appointments due to the saturation of the job vacancies/capacity of the employer to give further appointments."

[Emphasis Added]

28. The 8th edition of the Black Law's Dictionary defines a 'dependent' as *"one who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else".* The objective of beneficent legislations such as compassionate appointment is to give immediate relief to a family so as to ease their financial crisis upon the death of the sole-breadwinner, therefore, the usage of the scope of the term 'dependent' will limit itself to financial dependency such as the definition in Black Law's Dictionary.

29. An immediate family member cannot receive compassionate appointment simply by virtue of being an immediate family member. As re-iterated above, compassionate appointment is not a hereditary or vested right and therefore, only persons who are financially 'dependent' may be considered for such appointment. Without this pre-requisite of financial dependency being fulfilled one does not even come within the fold of clauses giving compassionate appointment and is accordingly ousted from consideration. This Court also agrees with the findings in ***Priyanka Ghosh Vs. South Eastern Coalfields Limited & Ors.*** **(supra)** that the objective of Clause 9.3.3 of NCWA-VI cannot be that a direct dependent's financial dependency need not be investigated, since such an interpretation would be in direct

contradiction against the objective of compassionate appointment schemes.

30. To highlight the objective of compassionate appointment vis-a-vis financial exigency and dependency, this Court considers its unreported judgement in ***Ankita Saha & Anr. Vs. The State of West Bengal & Ors.*** **(W.P.A 12287 of 2019)** which relied on ***Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B.***, reported in **2022 SCC OnLine SC 1331**. The relevant paragraph of such judgement has been reproduced below:

> *"8. Additionally, this Court must also consider financial exigency of the petitioners today. The Supreme Court in Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B., reported in 2022 SCC OnLine SC 1331, drew attention to* ***the objective of granting compassionate appointment and affirmed that such a favour is contingent on financial exigency of the deceased employee's family.*** *The relevant paragraph of the judgement has been reproduced below:*
>
> > *'18. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases,* ***out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet****, a provision is made in the rules to*

provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. ***The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.*** *' "*

[Emphasis Added]

31. Taking heed of the aforementioned discussion, this Court does not find any merit in the argument of the petitioners that direct dependents need not show financial dependency.

Issue No. 4: Whether petitioner no.2 and 3 can be considered for compassionate appointment.

32. This Court will now discuss the case of petitioner no.2 seeking compassionate appointment vis-à-vis dependency upon the deceased employee.

a. The petitioners have submitted the unreported judgment of a Division Bench of this High Court in ***Easten Coalfield Ltd. & Ors. Vs. Anari Devi & Ors.*** **(A.P.O. No. 101 of 2014** and **2014 SCC OnLine Cal 14319)** where the son-in-law of the deceased employee was provided compassionate appointment. The relevant paragraph of the aforementioned judgement has been reproduced below:

"In terms of the National Coal Wage Agreement, the dependent son-in-law can be provided employment on compassionate ground subject to fulfilment of certain

conditions. In the present case we find that the respondent no. 2, being the son-in-law, fulfilled the conditions for enjoying the benefit of such compassionate employment since the said respondent no. 2, being ***the son-in-law was dependent of the deceased worker and was residing with the said worker along with his wife and children since marriage.*** *Therefore, we have no doubt that the said respondent no. 2 was residing with the deceased worker as a dependent family member at the time of death of the said worker."*

[Emphasis Added]

b. The son-in-law in the aforementioned judgement was residing with the deceased upon the death of the employee and was therefore a Ghar Jamai (that is a domesticated son-in-law). However, in the present case, petitioner no.2 was earning Rs. 50,000/- (Rupees Fifty Thousand only) per month as an employee of LIC and was residing separately from the deceased employee at the time of death of the employee as well. Petitioner no.2 does not fulfil any of the two conditions specified in Clause 9.3.3 of NCWA-VI so as to be considered for compassionate appointment as an indirect dependent.

c. In light of the aforementioned discussion, this Court does not find any infirmity with the impugned order of the Director (Personnel), ECL dated February 21, 2018 in so far as denying compassionate appointment to petitioner no.2 is concerned on grounds that petitioner no.2 was not dependent upon the deceased.

33. This Court will now consider the case of petitioner no.3 seeking compassionate appointment vis-à-vis dependency.

a. The petitioners have argued that the impugned order of the Director (Personnel), ECL dated February 21, 2018 did not consider the case of petitioner no.3 for compassionate appointment even though the order dated March 10, 2017 of a co-ordinate bench of this High Court had categorically stated that the income of the married daughter had to be investigated to ascertain whether she was dependent on the deceased for her livelihood. Conversely, the respondents have argued that the son of the deceased is the only direct dependent and the petitioners have challenged the constitutionality of Clause 9.3.3 for this reason.

b. This Court has discussed in Issue 2 and 3 that the distinction between 'married' and 'unmarried' daughter to be ultra vires and violative of Article 14 and 15 of the Constitution of India and that direct dependents must show dependency as well respectively. Therefore, aside from the son, the married daughter is also a direct dependent who must show financial dependency upon the deceased employee to be considered for compassionate appointment.

c. Before this Court considers financial dependency of petitioner no.3, it must be noted that the respondents have argued that petitioner

no.3 resided with her husband and therefore was not dependent upon the deceased for her livelihood. It is to be noted that cases pertaining to compassionate appointment, including all the aforementioned judgements cited by this Court and the ones cited by both the parties, have deemed residential status as a relevant factor while determining financial dependency of the applicant, even if such residential status is not expressly stated as a material issue to be determined while providing compassionate appointment.

d. It is essential that this Court considers whether petitioner no.3 was financially dependent upon the deceased employee at the time of his death. While this Court does not dispute the findings of the petitioners that the impugned order dated February 21, 2018, despite specific instructions as per the order of a co-ordinate bench of this High Court dated March 10, 2017, did not directly consider the income of petitioner no.3, it is also pertinent to note that the petitioners have not submitted anything to show how petitioner no.3 was financially dependent upon the deceased. In fact, the petitioners have attempted to deceive this Court by filing false affidavits that state that petitioner no.3 had been residing with the deceased even though the voter cards submitted by them have proven otherwise.

e. Ergo, even though the impugned order does not directly consider petitioner no.3's financial dependency, it is to be noted, that the petitioners have not shown anything to prove financial dependency of petitioner no.3 upon the deceased. Furthermore, her husband, that is, petitioner no.2 is earning Rs. 50,000/- (Rupees Fifty Thousand only) per month and she did not reside with the deceased employee. The obvious implication that emerges from the above factual matrix is that petitioner no.3 was independent from the deceased and was in fact dependent on her husband, that is, petitioner no.2. Once the aforementioned findings have been reached by this Court, I find it an absolute fruitless exercise to once again direct the authorities to consider petitioner no.3's case again.

f. In light of the aforementioned discussion, this Court does not find any merit in the argument of the petitioners that petitioner no.3 was dependent upon the deceased employee, and therefore, I hold that she is not eligible for compassionate appointment.

34. This Court further feels compelled to consider the conduct of the petitioners while seeking compassionate appointment as well.

a. The father died on May 26, 2010. Compassionate appointment for petitioner no.2 was sought on November 18, 2010 (more than five months after the death of the father). Compassionate appointment

for petitioner no.3 was sought as late as December 24, 2014 (a little more than four years and six months after the death of the father). The petitioners cannot come before this Court arguing for immediate financial assistance when their conduct itself shows that there was no immediate need for such appointment.

b. The petitioners have lied at several stages of their applications. The petitioners have also submitted wrong ages of petitioner no.2 and 3 in dependency certificates dated October 28, 2010 and May 10, 2011, filed false affidavits stating that petitioner no.2 and 3 resided with the deceased and applied seeking compassionate appointment for petitioner no.3 more than four years after the death of the father.

35. In conclusion, this Court finds that the petitioners have not come with clean hands before this Court, nor were petitioner no.2 and 3 financially dependent upon the deceased employee. Accordingly, petitioner no.2 and 3 cannot be considered for compassionate appointment and no relief should be provided to them under the extra ordinary writ jurisdiction of this Court.

36. Aside from the aforementioned points of law, there are other issues presented before this Court including the issue of maintainability of the instant writ petition submitted by the respondents. This Court does not find any merit in the argument of the respondents that the

instant writ petition is not maintainable on account of non-joinder of trade unions, since NCWA is a binding settlement under Section 18(3) of the Industrial Disputes Act, 1947, and CIL with its subsidiary ECL, is 'State Authority' as per Article 12 of the Constitution, that must act in a fair, reasonable and non-arbitrary manner.

An Afterword:

37. I have found that policies like in the instant case, further illustrate how women's identities are institutionalized in social, economic, cultural and legal structures to rationalize male dominance in policies that are inherently perceived as "natural". Such "natural" order of things has promoted the understanding that women are born as daughters, brought up as sisters, "donated" as wives in practices such as 'Kanyadaan', and are legitimized in the eyes of society as mothers. The inherent belief is that women are objects where their identity (such as a married/unmarried) in society must be constructed and construed around the men in their lives, which is of course preposterous. One can argue that most misogynistic beliefs are not present in existing governing structures because they are grounded with logic/rationale, rather they are promoted with the assumption that it is the way of things, that is, they are "natural". Women, simply by virtue of being women, are not "naturally" deficient in any form, but this inequality between genders is created and promoted because patriarchy is entrenched in institutions. Belief in the "natural" order of

things, begets policies that are assumed to adhere to such "natural" differentiation and are therefore assumed to be logical/rational.

38. The policy in question is an arrogant acceptance of the assumed "natural" order of women and their economic rights. The Periodic Labour Force Survey Report of 2022-23 released by the Ministry of Statistics and Programme Implementation on October 9, 2023, shows that the female labour force participation rate has increased to 37.0% and there is still much headway to be made but, policies such as the one in question, create barriers against increasing the participation of women in the workforce.

39. The Government in efforts to be more cognizant of the aforementioned structural issues has also come out with a plethora of schemes such as the Scheme for Working Women Hostel, Support to Training and Employment Program for Women (STEP), Mahila Shakti Kendras (MSK), Beti Bachao Beti Padhao Scheme etc. that are specifically targeted towards the education and economic rights of women. Furthermore, the Supreme Court has recognized that the language of the Court must be in consonance with ideals of gender justice and released the 'Handbook on Combating Gender Stereotypes'. Such initiatives among others engage in feminist discourse and take a step forward to support the overarching ideals of Article 14 and 15 of the Constitution of India.

40. I would reiterate that patriarchy does not exist solely in the mindset of an individual, rather it is taught since birth and rots in the existing structures of every country. The aforementioned policy is one of many where misogynistic beliefs about a woman's dependency are accepted and promoted. It is the duty of the judiciary to act as social engineers, to investigate whether a policy's distinction based on gender or marital status is a reasonable classification and rectify such abhorrent patriarchal inequities that exist within the legal structures of this country. Additionally, this Court would request the Government to look into such archaic laws/policies that adhere to the aforementioned misogynistic "natural" order of things, and amend the same in accordance with the equal gender principles in Article 14 of the Constitution of India.

Summary and Conclusion:

41. For ease of reference and for the sake of brevity, I have extracted the relevant principles emerging from the aforementioned discussion of the law:

a. Compassionate appointment is an exception to the general rule of merit-based recruitment where the objective of the appointment is to alleviate the immediate hardship faced by the family due to the sudden death of the sole breadwinner.

b. While seeking compassionate appointment, an applicant must prove that there is a pressing need for such appointment, that she is a dependent of the deceased meeting the dependency criteria and that they possess the required qualifications.

c. The application of a married daughter seeking compassionate appointment cannot be rejected solely on the ground that she is married. It must be assessed if the married daughter was dependent on the deceased employee.

d. The impugned Clause 9.3.3 of NCWA-VI is ultra vires and is in violation of Article 14 and 15 of the Constitution of India.

Orders and Direction:

42. In view of the aforementioned discussion, this Court does not find any infirmity in the impugned order of the Director (Personnel), ECL dated February 21, 2018. However, the Court specifically directs the respondents to not discriminate married women and treat them under the first category of dependents in future.

43. Accordingly, this Writ Petition being WPA 14349/2018 is dismissed. There shall be no order as to the costs.

44. I would also like to place on record my appreciation for the assistance provided to this Court by counsel appearing on behalf of both sides and to my Law-Clerk-cum-Research Assistant Ms. Aarya Srivastava for her in-depth analysis and research in the instant case.

45. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J.)