

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 1320 of 2023

Shipra Tewary, aged 35 years, daughter of Late Birendra Nath Tewary,
resident of Gandhinagar Panchgachia, P.O. Kanyapur and P.S. Asansol
(N), Dist.- Paschim Bardaman, West Bengal ... **Petitioner**

-Versus-

1. M/s Coal India Limited, a company registered under the Companies Act having its office at Policy Cell Coal Bhawan, Premise No.04, M.A.R. Plot No. AF III, Rajahat, Kolkata, P.O. & P.S. Kolkata, Dist.- West Bengal through its Chairman cum Managing Director
2. The Chairman cum Managing Director, M/s Coal India Ltd., having its office at Policy Cell Coal Bhawan, Premise No.04, M.A.R. Plot No. AF III, Rajahat, Kolkata, P.O. & P.S. Kolkata, Dist.- West Bengal
3. The Eastern Coalfields Ltd., having its office at Sanctoria, P.O. & P.S. Dishergarh, Dist.- West Burdwan, West Bengal-713333
4. The Chairman cum Managing Director, M/s Eastern Coalfields Ltd., having its office at Sanctoria, P.O. & P.S. Dishergarh, Dist.- West Burdwan, West Bengal-713333
5. The Director Personnel, M/s Eastern Coalfields Ltd., having its office at Sanctoria, P.O. & P.S. Dishergarh, Dist.- West Burdwan, West Bengal-713333
6. The General Manager, Pandevssar Area of M/s Eastern Coalfields Ltd., having its office at Pandevssar, P.O. & P.S. Pandevssar, Dist. West Burdwan, West Bengal- 713346
7. The Personnel Manager (P&A), Kankartoal Colliery, Pandevssar Area of M/s Eastern Coalfields Ltd., having its office at Pandevssar, P.O. & P.S. Pandevssar, Dist. West Burdwan ... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Mahesh Tewari, Advocate
For the CIL : Mr. Amit Kumar Das, Advocate
Mr. Shivam Utkarsh Sahay, Advocate
For the ECL : Mr. Rajesh Lala, Advocate

10/14.08.2024 Heard Mr. Mahesh Tewari, learned counsel for the petitioner, Mr. Amit Kumar Das, learned counsel for the Coal India Limited and Mr. Rajesh Lala, learned counsel for the Eastern Coalfields Limited.

2. The prayer in the writ petition is made for direction upon the respondents particularly respondent no.4 to provide employment to the petitioner, namely, Shipra Tewary, D/o Late Birendra Nath Tewary being the

land looser of the land situated at Plot Nos.113, 114, 115, 116, 117 and 118, measuring area of 0.40 decimals, 0.15 decimals, 0.51 decimals, 0.19 decimals, 3.00 acres and 0.81 decimals respectively, put together 5.06 Acres, Mouza Nawadih, P.S. Nala, District- Jamtara. Later on, the petitioner came to know about the letter dated 17.11.2020 by which the employment to the petitioner has been denied, which was challenged by way of filing I.A. No.2419 of 2024 and the said I.A. was allowed vide order dated 24.07.2024. Thus, the letter dated 17.11.2020 is also under challenge in this writ petition.

3. Mr. Mahesh Tewari, learned counsel for the petitioner submits that during the pendency of the present writ petition, petitioner no.2 has left for her heavenly abode and in view of that, the name of petitioner no.2 was deleted vide order dated 28.06.2024 and, as such, now this petition is confined to petitioner no.1 only, namely, Shipra Tewary. He further submits that the Eastern Coalfields Limited entered into an agreement with the father of the petitioner for use of the land/extracting the coal in respect of Plot Nos.113, 114, 115, 116, 117 and 118, measuring areas of 0.40 decimals, 0.15 decimals, 0.51 decimals, 0.19 decimals, 3.00 acres and 0.81 decimals respectively, total comes to 5.06 acres. According to Mr. Tewari, initially steps were taken for acquiring the land in question and in this regard, a proposal for procurement of land was also initiated vide Reference dated 18.09.1992, but the General Manager advised the Agent/Manager to make an agreement with the land owners. He then submits that the land of the father of the petitioner was used for extracting the coal on the basis of

the agreement. He submits that earlier the father of the petitioner has moved before this Court in W.P.(C) No.5089 of 2005, which was allowed by the learned Single Judge vide order dated 26.04.2006 directing the Eastern Coalfields Limited to pay compensation as well as employment to the dependent of the father of the petitioner, which was challenged by the Eastern Coalfields Limited in L.P.A. No.81 of 2007 and the said L.P.A. was dismissed vide order dated 18.11.2013 and in the said L.P.A., direction was issued to the Eastern Coalfields Limited to ascertain the amount of compensation and to pay the same along with the interest @ 6% per annum within a period of three months from the date of receipt of a copy of that order. The Eastern Coalfields Limited was further directed to provide opportunity of employment to the dependents of the land losers within a period of six months from the date of receipt of a copy of that order. He further submits that a portion of compensation has been received, however, employment is not provided. He also submits that the employment has not been provided to the petitioner in spite of the order of the Division Bench of this Court is there.

4. Mr. Tewari, learned counsel for the petitioner draws attention of the Court to the counter affidavit filed by the Eastern Coalfields Limited particularly paragraph 30 thereof and submits that the ground has been taken that female candidate cannot be provided employment and only male candidate can be provided employment. He submits that however the said ground is not disclosed in the letter dated 17.11.2020 and it is only observed therein that in light of the earlier decision, the employment is

denied. He also submits that so far as this aspect is concerned, that has already been set at rest in many cases and it has been held that even female candidates are eligible for appointment. He relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Secretary, Ministry of Defence v. Babita Puniya and others**, reported in **(2020) 7 SCC 469**. He refers paragraphs 67 and 85 of the said judgment, which read as under:

"67. The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of non-discrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in matters of public employment under Article 16(1). The policy statement of the Union Government must therefore be construed as a decision which enforces the fundamental right of women to seek access to public appointment and to equality of opportunity in matters of engagement relating to the Army. The fundamental right is recognised in the specified streams where women are permitted to seek engagement as equal members of the Armed Force that the Indian Army represents. With the Union Government having recognised the induction of permanently commissioned women officers in its policy decision dated 25-2-2019, we are of the opinion that the submissions which have been made by the Union of India betray a lack of understanding of the plain consequences of the decision. The decision of the Union Government to extend the grant of PC to other corps in the support arms and services recognises that the physiological features of a woman have no significance to her equal entitlements under the Constitution.

G. Blanket restriction on criteria appointments

85. The next aspect of the policy decision relates to the restriction which has been imposed on women officers being granted PCs save and except for staff appointments. Such a restriction was not imposed when the JAG and AEC branches were opened up for the grants of PCs for women SSC officers in the past. The consequence of this, is an implicit acceptance by the Army that women can, in certain situations, receive criteria or command appointments. An absolute bar on women seeking criteria or command appointments would not comport with the guarantee of

equality under Article 14. Implicit in the guarantee of equality is that where the action of the State does differentiate between two classes of persons, it does not differentiate them in an unreasonable or irrational manner. In this sense, even at its bare minimum, the right to equality is a right to rationality. Where the State, and in this case the Army as an instrumentality of the State, differentiates between women and men, the burden falls squarely on the Army to justify such differentiation with reason. An absolute prohibition of women SSC officers to obtain anything but staff appointments evidently does not fulfil the purpose of granting PCs as a means of career advancement in the Army. Whether a particular candidate should or should not be granted a criteria or command assignment is a matter for the competent authority to consider having regard to all the exigencies of service, performance and organisational requirements. In the present case the Army has provided no justification in discharging its burden as to why women across the board should not be considered for any criteria or command appointments. Command assignments are not automatic for men SSC officers who are granted PC and would not be automatic for women either. The absolute exclusion of women from all others except staff assignments is indefensible. If the Army has cogent reasons for excluding women from a particular criteria or command appointment, it may provide them to the relevant authorities and if necessary, to future courts. However, such a justification must take place on a case-to-case basis, in light of the requirements and exigencies of a particular appointment. The blanket non-consideration of women for criteria or command appointments absent an individuated justification by the Army cannot be sustained in law.”

Relying on the above judgment, he submits that an absolute bar on women seeking criteria or command appointments would not comport with the guarantee of equality under Article 14 of the Constitution of India.

5. Mr. Tewari, learned counsel for the petitioner further submits that relying on the aforesaid judgment, Kerala High Court has further passed the order in W.P.(C) No.25092 of 2020(J), vide order dated 09.04.2021. On these grounds, he submits that appropriate order may kindly be passed.

6. Mr. Rajesh Lala, learned counsel for the Eastern Coalfields Limited

submits that in view of the order dated 26.04.2006 passed by the learned Single Judge in W.P.(C) No.5089 of 2005, employment proposal was examined properly in light of extant rules and after doing the same, it was found that employment proposal for offer of employment with respect to the male candidate can only be processed further and employment proposal with respect to female candidate i.e. the petitioner was regretted due to the reason that on relevant date when proposal was examined for employment, there was specific norms of the Eastern Coalfields Limited that employment against land should be provided to males only in view of the limited employment opportunity in mining. He then submits that in exceptional case where there is no male nominee, the proposal for female employment should be placed before the Board for its consideration. He further submits that the father of the petitioner Late Birendra Nath Tewary initially nominated his son-in-law, namely, Amlendu Mishra, however, later on he further introduced the name of the present petitioner and in view of that, the employment was not provided. He also submits that at the time of acquiring the land, the petitioner was aged about 6 years. According to him, there is no jurisdiction in the State of Jharkhand as the respondent-Company is situated at West Bengal.

7. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that admittedly the land of the father of the petitioner was used for extracting the coal by the respondent-Eastern Coalfields Limited. In the first round of litigation, the father of the petitioner has moved before this Court in W.P.(C)

No. 5089 of 2005, which was allowed by the learned Single Judge vide order dated 26.04.2006, which was challenged by the Eastern Coalfields Limited in L.P.A. No.81 of 2007 and the said L.P.A. was dismissed by the Division Bench of this Court with direction to the Eastern Coalfields Limited to pay the amount of compensation and provide opportunity of employment to the dependents of the father of the petitioner. Admittedly, the petitioner is the daughter of Late Birendra Nath Tewary, who was the petitioner in W.P.(C) No.5089 of 2005 and the order passed in the said L.P.A. is set at rest and that has attained finality. Once the order is passed by the Division Bench, that order is required to be complied with in its letter and spirit, however, in the case in hand in spite of the order passed by the Division Bench of this Court, that has not been complied with and by the impugned letter dated 17.11.2020, the employment was regretted and only direction was issued to pay compensation i.e. against the order of the Division Bench.

8. Further, denial of employment to the female candidate is against the provision made in Articles 14 and 15 of the Constitution of India. The Court further finds that in paragraph 30 of the counter affidavit itself, it is stated that in exceptional cases where there is no male nominee, the proposal for female employment was being considered by the Eastern Coalfields Limited and, as such, on the basis of gender, denying the employment is against the mandate of the Constitution of India. The Constitution of India is the fountain of the statute and this aspect has been dealt with by the Hon'ble Supreme Court in the case of ***Secretary, Ministry of Defence v. Babita Puniya and others (supra)***.

9. So far as contention of the learned counsel for the Eastern Coalfields Limited with regard to 6 years of age of the petitioner at the time of acquiring the land is concerned, there is no statement in the counter affidavit and even if the argument of the learned counsel for the Eastern Coalfields Limited is accepted that the petitioner was aged about 6 years at that time, the direction of the Division Bench was there to provide employment to the dependent of the petitioner and it was incumbent upon the Eastern Coalfields Limited to request the father of the petitioner to nominate another person for employment; the Eastern Coalfields Limited has failed on that point and, as such, that argument is not acceptable to the Court. Further, it has been pointed out in the course of argument that in many cases, the Bharat Coking Coal Limited/Eastern Coalfields Limited have appointed the persons in dispute like this even after 16 to 18 years, as such, that contention is, hereby, rejected. Further, this plea was not taken in the earlier round of litigation, which has been affirmed up to the Division Bench and that order has attained finality.

10. It is admitted position that the land in question is situated in Santhal Pargana Division particularly in Jamtara district. Thus, the cause of action is also there in the State of Jharkhand.

11. In view of the above facts, reasons and analysis, the letter dated 17.11.2020 issued by the Eastern Coalfields Limited is, hereby, quashed. Respondent nos. 4 to 7 are directed to pay remaining part of compensation to the petitioner, if it is not yet paid, within a period of four weeks from the date of receipt/production of a copy of this order.

12. In view of the above discussion, the petitioner, namely, Shipra Tewary shall be provided employment by the Eastern Coalfields Limited within the aforesaid period.

13. Accordingly, this petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/ A.F.R.