IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 329 of 2023

Umesh Turi, aged about 41 years, S/o Late Sanicharwa, resident of at-Kedla, P.O. Kedla, P.S.- Mandu, District- Ramgarh, Jharkhand

..… Appellant

Versus

1. Central Coalfields Limited through its Chairman-cum-Managing Director, having its office at Darbhanga House, Ranchi, P.O.-GPO, P.S. Kotwali, District- Ranchi
2. Director (Personnel) Central Coalfields Limited, having its office at Darbhanga House, Ranchi, P.O.-GPO, P.S. Kotwali, District- Ranchi
3. General Manager (MP&IR) Central Coalfields Limited, having its office at Darbhanga House, Ranchi, P.O.-GPO, P.S. Kotwali, District- Ranchi
4. General Manager, Charhi Area of Central Coalfields Limited having its office at Charhi, P.O.-Charhi, P.S.- Churchu, District- Ranchi
5. Project Officer, KOCP under Charhi Area of Central Coalfields Limited, having its office at Kedla, P.O.-Kedla, P.S.- Mandu, District-Ramgarh

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant : Mr. Abhishek, Advocate
For the Respondents : Mr. Arbind Kumar, Advocate

08/ Dated: 25.04.2024

I.A. No. 1672 of 2024:

The instant interlocutory application has been filed for condonation of delay of 35 days.

2. The reason of delay has been assigned as paragraph 4 in the interlocutory application.

3. The appearance has been made on behalf of CCL, however, no objection to the delay condonation application has been filed but learned counsel appearing for the respondent CCL has made opposition to the condoning of delay.

4. This Court heard learned counsel for the parties and perused the delay condonation application, wherein at paragraph 4 the reason has been assigned that after the demise of the father of the petitioner, the entire family members was in financial constrains and as such could not be able to contact the counsel to assail the impugned order within stipulated time.

5. The case is with respect to the denial of the claim of the petitioner which is the dependent of the deceased employee and as such this Court is of the view that the reason as referred at paragraph 4 is considered to be sufficient cause to condone the delay, so as to decide the matter on merit. Accordingly, the delay condoning application is hereby allowed and delay of 35 days in filing the instant appeal, is, hereby condoned.

6. The instant interlocutory application stands disposed of.

L.P.A. 329 of 2023:

Prayer

7. The appeal is under clause 10 of the Letters Patent Appeal is directed against the order dated 26.04.2023 passed by the learned Single Judge of this Court in W.P. (S) No. 3028 of 2022 whereby and whereunder the decision taken by the Authority dated 30th August 2017 by which the claim of petitioner for compassionate appointment under the National Coal Wage Agreement has been rejected, refused to be interfered with by dismissing the writ petition.

Facts

8. The brief facts of the case as per the pleadings made in the writ petition which reads for the event of factual aspect as under:

The father of the petitioner namely Sanicharwa designated as a Sweepar Cat-II in Kedla Open Cast Project under Charhi area of M/s Central Coalfields Limited, died in harness on 28.07.2016. The application preferred for the petitioner by his mother for grant of compassionate appointment to the petitioner in terms of para 9.3.0 of National Coal Wage Agreement.

For that very purpose, a pre-employment age assessment was made by the Medical Board constituted by the Management of M/s Central Coalfields Limited and the age of the petitioner was assessed to be 37½ years thereby

leading to the impugned order dated 30.08.2017 rejecting the claim for compassionate appointment of the petitioner. The petitioner being aggrieved with the said order approached this Court by filing writ bearing W.P.(S) No. 3028 of 2022.

9. It is evident from the factual aspect that the father of the writ petitioner late Sanicharwa, working as sweeper category-II has died in harness on 28.07.2016. The wife of the deceased employee namely Smt. Jhanwa Devi had applied for the petitioner's appointment under the provision 9.3.0 of the National Coal Wage Agreement.

10. The said application has been forwarded for consideration for his candidature for appointment under the aforesaid provision of the national coal wage agreement. The case of the writ petitioner was considered but due to difference in date of birth in the AADHAAR card vis-a-vis official documents the decision was taken for constituting the medical board for the pre-employment age assessment of the writ petitioner.

11. The writ petitioner appeared before the age assessment board and his age was assessed in age between the age of 35-40 years. The Competent authority by taking the mid point i.e. 37½ years has rejected the claim of the writ petitioner on the ground that the maximum age prescribed for consideration of candidature of one of the dependant of the deceased employee for compassionate appointment under National Coal Wage Agreement is 35 years.

12. The petitioner being aggrieved with the same had approached this Court by filing the writ petition being W.P.(S) No. 3028 of 2022. Learned writ Court has called upon the respondents where the ground was taken that the age of the writ petitioner was found to be more than 35 years and hence so far as the maximum age are concerned under the national coal wage

agreement, the writ petitioner was not found to be considered for such benefit.

13. The learned Single Judge agreeing to the said reason has dismissed the writ petition and hence present intra court appeal.

Submission of learned counsel for the Appellant

14. Mr. Abhishek, learned counsel appearing for the appellant writ petitioner has taken the following ground for assailing the impugned order, which reads as under:

(i) The Administrative Authority while rejecting the claim has not acted in just and proper manner, since, the document like PS- 3 discloses the age of the writ petitioner less than 35 years but without considering the said age based upon the declaration given in the PS- 3, the constitution of the medical board for assessment of the age, itself was not warranted but even then the medical board has constituted for the age assessment.

(ii) The medical board has assessed age of the writ petitioner in between the age of 35 years to 40 years and hence the mean point was taken by assessing the age to be 37 ½ years and hence the candidature of the writ petitioner was rejected.

The ground has been taken that there is no basis of taking the mid point age of 37½ years rather the same has been considered based upon the communication/decision taken by the authority on 07.07.1992 wherein the decision was taken by the authority that in the case of discrepancy of date of birth the mid point is to be taken into consideration.

15. The learned counsel for the writ petitioner has taken the ground that the issue of relying upon the circular dated 07.07.1992 has been dealt with by

Division Bench of this Court in the case of ***Lilwa Bhuiyan vs. CCL & others*** **(LPA No. 687 of 2019)** wherein the dealing with the Circular dated 07.07.1992, the Division Bench of this Court has come to the conclusion that the basis of coming to the mid point of age assessment by the medical board is the said circular / decision, and accordingly, Division Bench has come to the finding that the said circular is applicable to the candidates who are seeking appointment on the compassionate ground. The abovesaid judgment has also been laid down that even on the basis of the assessment of the age by the medical board, the maximum age is to be considered as per the assessment by taking into consideration of the fact that the NCWA is a beneficial piece of agreement by way of providing social security measure.

16. The learned counsel for the appellant has further submitted that neither the management authority has appreciated this aforesaid matter nor the learned Single Judge. The ground has also been taken that although a counter affidavit has been filed wherein the reliance has been placed on the age referred in PS-3 Form but even on the basis of the age referred as per PS-3 Form, the age of the writ petitioner cannot be said to be more than 35 years, rather, it is less than 35 years.

17. Learned counsel for the appellant based upon the aforesaid ground has submitted that the decision of the authority rejecting the claim of the writ petitioner and the order passed by the learned Single Judge, therefore suffers from error.

Submission of learned counsel for the respondent

18. Mr. Arbind Kumar, learned counsel appearing for the respondent-CCL has taken following grounds in defending the impugned order:

(i) It has been contended by referring inter alia in the counter affidavit that the decision which has been taken by the authority

by coming to the age as per the assessment made by the medical board of the writ petitioner as 37½ years, the same cannot be said to be suffered from any error since, the same has been assessed on the basis of the circular dated 07.07.1992.

ii) It has been contended that even also this Court has passed the order in the case of ***Lilwa Bhuiyan vs. CCL & others*** (L.P. A. No.687 of 2019) but also passed the order in the case of ***Ganesh Kumar vs. M/s CCL & others*** (LPA No. 311 of 2021) wherein the mid age on the basis of the age assessment by the medical board has been taken into consideration by the Hon'ble Division Bench of this Court.

19. Hence, in that view of the matter, if the decision has been taken on the basis of the mid age in between 35 to 40 years, since 35 years has already crossed and hence applying the judgment passed by the Division Bench of this Court in LPA No. 311 of 2021 in the case of Ganesh Kumar (supra), the decision taken by the authority cannot be said to suffer from any error also.

20. Learned counsel appearing for the respondent CCL based upon the aforesaid grounds have submitted that neither the order passed by the respondent authority nor the judgment passed by the learned Single Judge therefore suffers from an error.

Analysis:

21. We have heard learned counsel for the parties and gone across finding recorded of the learned Single Judge in the impugned order. Facts of the said case is that the father of the writ petitioner has died in harness on 28.07.2016. Thereafter, his widow has made application for the petitioner's employment who is dependent son of the deceased employee claiming himself to be less than 35 years of age but his candidature was also rejected on the ground that

he has been found to be age of more than 35 years of age based upon the age assessment made by the medical board.

22. This Court before proceeding to examine illegality and propriety in the impugned order needs to refer here in the object of the National Coal Wage Agreement (NCWA) which is a social security measure for the purpose of extending the benefits to the worker working under the Coalfields and also to take care of the dependent of the such employee, either in case if the employee dies or suffers any disablement in course of discharging their duty.

23. It is evident that so many provision has been made in the said agreement and one of the provision to which we are concerned herein in clause 9.3.0 of National Coal Wage Agreement (NCWA). For ready reference the said agreement is being referred herein.

> "***9.3.0 Provision of Employment to Dependants***
> *9.3.1 Employment would be provided to one dependant of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows.*
> ***9.3.2 Employment to one dependant of the worker who dies while in service***
> *In so far as female dependants are concerned, their employment /payment of monetary compensation would be governed by para 9.5.0.*
> *9.3.3 the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.*
> *9.3.4 the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of 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."*

24. It is evident from the said clause that it is not that the appointment is to be made on compassionate ground rather the word is 'offer' the appointment case employee has died in harness subject to the condition that the dependent must be under the category as provided under NCWA. The age barrier is also there i.e. less than 35 years. There is no dispute about the fact that the

candidates cannot be appointed dehors/beyond the rules i.e. the candidates having less than minimum age or more than the maximum age cannot be inducted in service.

It also needs to refer herein that the National Coal Wage Agreement (NCWA) is having a statutory fervor, since, the said agreement has been arrived under the provision of Section 18 (1) of the Industrial Dispute Act, 1947 reason being that the said agreement is outside the cancellation proceeding. The said issue of National Coal Wage Agreement (NCWA) having statutory provision has been dealt with the rule in the case of ***Madan Mahto vs. CCL*** reported in **(2007) 8 SCC 549** as para 10. For ready reference, said being referred herein as under:

> "***10.*** *A settlement within the meaning of sub-section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement. No period of limitation was provided in the settlement. We would assume that the respondent had jurisdiction to issue such circular prescribing a period of limitation for filing application for grant of appointment on compassionate grounds. But, such circular was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into by and between the parties. The expanding definition of workman as contained in Section 2(s) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate grounds, subject, of course, to compliance with the conditions precedent contained therein."*

25. Adverting to the facts of the present case herein the consideration is required to be made as to whether the assessment by the medical board with regard to the mid age of the candidate based upon the assessment of the age by the medical board is required to be taken into consideration, for the purpose of acceptance of the candidature of the dependent for appointment under the clause 9.3.0 of the NCWA.

The aforesaid issue before the Division Bench of this Court in the case of ***Lilwa Bhuiyan (supra)*** wherein the ground was taken by the Central Coalfields Limited by relying upon the decision dated 07.07.1992, wherein it

was decided that in the case of the discrepancy in the date of birth such candidate is to be subjected to the medical board for assessment of age and after the said report submitted by the medical board the mid age is to be taken into consideration. The coordinate Division Bench has passed an order by taking into consideration the object and content of the National Coal Wage Agreement (NCWA) policy decision dated 07.07.1992. The Coordinate Bench, therefore has came to the conclusive finding that the basis of the taking mid point of the age of one or other candidate i.e. the policy decision of 07.07.1992 cannot be said to be proper, for ready reference, the relevant paragraph of the said judgment is being referred herein:

> "*14. We have already referred hereinabove about the principle to be followed in a case of beneficial legislation which is to be interpreted liberally so as to give it a wider meaning than a restrictive meaning which would indicate the very object of the Rule and admittedly the Industrial Disputes Act, 1947 is a beneficial legislation and as such, the provisions contained therein may be construed taking the dominant purpose of the statute, intention of the legislature - 16 - and underlying policy. We have also referred hereinabove that the NCWA is by way of providing social security measures by entering into an agreement with the Union under the provision of Section 18(1) of the Industrial Disputes Act, 1947 and the same having the statutory fervor, the object underlying therein is to be considered. The foremost object of the said agreement is to act by way of providing social security measures to the employees and its dependant for which various provisions have been made to provide appointment in case of death of the bread earner as under Clause 9.3.0 and 9.5.0 of the said agreement and, therefore, when the underlying object of the said agreement is to provide social security measures to the employees and their dependants, the same is to be treated by the respondent authorities in a way so that the object and intent of the agreement be achieved. The respondent CCL, however, failed to produce any decision of the authority, in case of consideration of appointment on compassionate ground, to take the midpoint of the age assessed by the Medical Board as has been done in the instant case, rather the document dated 07.07.1992 has been produced to assess the age of an employee by taking the midpoint of the age as has been assessed by the Medical Board but since it is not a case of an employee rather the case of a candidate who is seeking appointment on - 17 - compassionate ground and, therefore, the said circular will not be applicable in the case of the writ petitioner and in that view of the matter, when the respondent authorities have asked the writ petitioner to go for the medical examination wherein the age of the writ petitioner has been assessed in between 35 to 40 years and taking the midpoint the age of the writ petitioner has been assessed as 37½ years of age, cannot be said to be an action to achieve the object and intent of the NCWA to provide social security measures to the dependant*

of the deceased employee, rather the approach of the respondent authorities ought to have been to consider the age of the writ petitioner by taking its lower point so that the object and intent of NCWA be achieved."

26. We are further need to refer herein i.e. the case of ***Lilwa Bhuiyan*** (supra) wherein consideration has given to the age referred in the PS-3 and PS-4 Form, wherein on close scrutiny of the age referred in the PS-3 and PS-4 Form, which is brought on record by the CCL, the age based upon the age referred in the PS-3 and PS-4 Form was found to be less than 35 years. Therefore, the coordinate Division Bench of this Court in the case of ***Lilwa Bhuiyan*** *(supra)* has given a finding negating the assessment of the age based upon mid point age as per the assessment by the present medical board and taking the maximum age i.e. 35 years finding in consonance to the age referred in Form PS- 3 to Form PS- 4. Relevant para 13, 14, 15 are quoted here under:

"*13. We have already referred hereinabove about the validity of the L.T.C. Form-A and further we have come to a conclusion that PS-3 and PS-4 Forms refer the age of the writ petitioner as 18 years as on 28.05.1998, the same being a piece of evidence to substantiate the age of the writ petitioner available on record and which is sole piece of evidence, there was no requirement to constitute a Medical Board for assessment of the age of the writ petitioner as because the reason for constituting a Medical Board as has been admitted by the learned counsel appearing for the respondent CCL that the same is required to be assessed in case of nonavailability of any document pertaining to age of the employee but herein official documents are available by way of PS-3 and PS-4 Forms containing the age of the writ petitioner as 18 years on 28.05.1998. Even accepting the contention of the respondent CCL that there was requirement to constitute a Medical Board and admittedly the Medical Board has assessed the age of the writ petitioner in between 35 to 40 years and respondent authorities have considered the writ petitioner to be the age of 37½ years taking the midpoint of five years but the question is why the midpoint and not 35 years.*

14. We have already referred hereinabove about the principle to be followed in a case of beneficial legislation which is to be interpreted liberally so as to give it a wider meaning than a restrictive meaning which would indicate the very object of the Rule and admittedly the Industrial Disputes Act, 1947 is a beneficial legislation and as such, the provisions contained therein may be construed taking the dominant purpose of the statute, intention of the legislature and underlying policy. We have also referred hereinabove that the NCWA is by way of providing social security measures by entering into an agreement with the Union under the provision of Section 18(1) of the Industrial Disputes Act,

1947 and the same having the statutory fervor, the object underlying therein is to be considered. The foremost object of the said agreement is to act by way of providing social security measures to the employees and its dependant for which various provisions have been made to provide appointment in case of death of the bread earner as under Clause 9.3.0 and 9.5.0 of the said agreement and, therefore, when the underlying object of the said agreement is to provide social security measures to the employees and their dependants, the same is to be treated by the respondent authorities in a way so that the object and intent of the agreement be achieved. The respondent CCL, however, failed to produce any decision of the authority, in case of consideration of appointment on compassionate ground, to take the midpoint of the age assessed by the Medical Board as has been done in the instant case, rather the document dated 07.07.1992 has been produced to assess the age of an employee by taking the midpoint of the age as has been assessed by the Medical Board but since it is not a case of an employee rather the case of a candidate who is seeking appointment on compassionate ground and, therefore, the said circular will not be applicable in the case of the writ petitioner and in that view of the matter, when the respondent authorities have asked the writ petitioner to go for the medical examination wherein the age of the writ petitioner has been assessed in between 35 to 40 years and taking the midpoint the age of the writ petitioner has been assessed as 37½ years of age, cannot be said to be an action to achieve the object and intent of the NCWA to provide social security measures to the dependant of the deceased employee, rather the approach of the respondent authorities ought to have been to consider the age of the writ petitioner by taking its lower point so that the object and intent of NCWA be achieved.

15. It requires to refer herein about the order passed by the Coordinate Division Bench of this Court in L.P.A. No.117 of 2010 dated 01.12.2010 which has been brought on record wherein also the issue fell for consideration about judging the age of appellant on medical opinion and therein it has been observed that if the petitioner's claim that her age is 43 years and the respondents considered that as per the medical evidence her age is 45 years then there always possibility of errors of two years (plus)/(minus) and in that view of the matter the claim of the petitioner's mother could not have been denied on compassionate ground. It has been brought to the notice of this Court by the learned counsel for the appellant that in pursuance to the order passed in L.P.A. No. 117 of 2010 [Md. Rahim v. Project Officer, Kuju Colliery], the appellant namely Md. Rahim has already been provided with the appointment which fact has not been disputed by the learned counsel appearing for the respondent CCL. Further, learned counsel for the appellant has relied upon the judgment passed by the learned Single Judge of this Court in the case of Jagdish v. Central Coalfields Limited & Others in W.P.(S) No. 3339 of 2016 wherein also the dispute about the age has been set at rest by the opinion of the Medical Board after assessment of the age of the writ petitioner in that writ petition which has been questioned by the writ petitioner on the ground that when the age of the writ petitioner is available in other records what is the necessity to go for the Medical Board and in that view of the matter the writ petition was allowed with a direction to appoint the writ petitioner of the said writ petition on compassionate ground. We are taking note of this order even though the same has been passed by the learned Single Judge only due to the reason that the respondent CCL, in pursuance to the said order, has acted upon by providing

appointment to the writ petitioner of the said case without assailing the same before the higher forum and, therefore, according to us, the approach of the respondent CCL, being the machinery of the State, cannot be of pick and choose policy i.e., to assail one order and accept another order on almost same set of facts."

27. However, the Co-ordinate Bench has also decided an issue in the case of the ***Ganesh Kumar vs. M/s CCL and others*** in **LPA No. 311 of 2021** decided on 16.06.2022 wherein the mid age was taken into consideration but that consideration based upon the reference of age made in the PS- 3 Form.

For ready reference relevant para of the said judgment is being referred herein:

"9. This Court, on consideration of the submission made on behalf of the learned counsel for the appellant to the effect about non applicability of the circular dated 07.07.1992, is of the view that the said circular in the facts of the given case will not be applicable, as has been held by us in LPA No.687 of 2019 dated 10.02.2021. But, this Court is required to consider that even if, the said circular is not applicable in the facts of the given case, can the writ petitioner be held entitled for appointment on compassionate ground, on the basis of the declaration furnished by his father at the time of availing the benefit of LTC.

The fact about description of age of the writ petitioner furnished by his father at the time availing LTC has specifically been stated in the counter affidavit as under para 20 and 21 which reads as under:-

"20. That on receipt of above application, the available service records of the deceased employee was verified and found that the name and age of the petitioner recorded in the under mentioned records are as follows:-

As per LTC Option Form of deceased employee Late Brij Lal

Sl. No.	*Name*	*Relation*	*Age as on 31.01.1984*
1.	*Sri Ganesh Kumar*	*Son*	*08 years*

As per PS-3 and PS-4 Form of deceased employee Late Brij Lal

Sl. No.	*Name*	*Relation*	*Age as on 23.12.2007*
1.	*Sri Ganesh Kumar*	*Son*	*31 years*

21. That as per the above service records of the deceased employee the date of birth/age of the Petitioner on the date of application for compassionate appointment i.e. on 26.03.2016 came as follows:-

Service Records of Deceased	*Age as on 26.03.2016*
LTC Option Form	*40 years and 1 month*
PS-3 & PS-4 Form	*39 years and 03 months*

> *It is the further admitted fact that the said averment has not been disputed by the writ petitioner, since, no rejoinder to the counter affidavit has been filed.*
>
> *The aforesaid aspect of the matter automatically compelled us to come to the conclusion that whatever has been stated with respect to details of furnishing the age of the writ petitioner by his deceased father, as has been stated in the counter affidavit as under para 20 and 21 has been admitted.*
>
> *It is evident from the aforesaid stand taken by the respondent CCL that admittedly as on the date of application dated 26.03.2016, the age of the writ petitioner was more than 35 years."*

28. The law is well settled that the application of the applicability of the judgment is to be tested on the basis of the fact governing in each and every case.

Since, there is no universal applicability of the judgment, reference in this regard has to be made in the judgment rendered in the case of ***Subramaniam Swamy vs. State of T.N.*** reported in **(2014) 5 SCC 75** as here under:

> *"47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."*

29. This Court applying the aforesaid ratio and is now proceeding as to whether the judgment passed by coordinate Bench in Lilwa Bhuiyan (supra) will be applicable of the facts of the present case or the judgment passed by the coordinate Division Bench in the case of ***Ganesh Kumar vs. M/s CCL and others*** in **LPA No. 311 of 2021** will be applicable.

The factual aspect which is not in dispute in the case is that the respondents have brought on record a document i.e. P.S-3 Form wherein as per the admitting case of the respondent CCL, the age of the writ petitioner has been referred as 21 years as on 12.09.2002.

30. Learned counsel for the CCL has calculated the said age so as to

apprise this Court as to whether on 05.09.2016, i.e. the date of making application for appointment under the Clause 9.3.0, the age of the writ petitioner was less than 35 years or more than 35 years.

31. Learned counsel for the respondent CCL in all fairness has submitted that by taking the age of 21 years as referred in the PS-3 Form on 12.09.2002, it will be less than 35 years on 04.09.2016 i.e. less than 7 days. The respondents have taken recourse of assessment age of the writ petitioner by constituting a medical board, and the said decision was taken on the ground that there was discrepancy in the date of birth of the writ petitioner. The age of the writ petitioner was assessed in between age 35 to 40 years, the midpoint was taken into consideration that has come to 37½ years which was the ground taken for rejection of the claim of the writ petitioner.

32. The fact of the ***Lilwa Bhuiyan*** (supra) is more or less identical to the present case, since, herein also as per the age referred in the PS- 3 Form which was 21 years as on 12.09.2002 and as such on the date of making application he was less than 35 years.

The fact of the case of Lilwa Bhuiyan (supra) is also that the age as referred in the PS- 3 Form and PS- 4 Form, it was found to be less than 35 years, while on the other hand the fact of the case in Ganesh Kumar (supra) is that the mid-point i.e. 37½ years assessed by the Medical Board has been taken into consideration but that was based upon the fact that even on the basis of the age referred in Form PS-3, it was found to be more than 35 years of age.

33. This Court is therefore of the view that the factual aspect of the present case is more or less identical to the case of Lilwa Bhuiyan *(supra).*

As per the respondent CCL in the PS- 3 Form which is less than 35 years and as such the ratio which is there in the case of Lilwa Bhuiyan *(supra)*

the maximum age as per the assessment of the medical board is to be taken into consideration i.e. 35 years.

34. This Court considering the aforesaid fact is of the considered view that the decision which has been taken by the administrative authority is not justifiable.

The learned Single Judge has also accepted the view taken by the respondent authority but without taking into consideration the fact that the age as mentioned in Form PS-3 is less than 35 years and further the very object and intent of the National Coal Wage Agreement (NCWA) which is the beneficial piece of legislation.

The law is well settled that the beneficial piece of legislation is to be acted upon so far as it possible for the benefit of the category for which such legislation has been brought, reference in this regard has been made in the judgment of the Hon'ble Apex Court in the case of ***Edukanti Kistamma (Dead) through LRs & Ors Vs. S. Venketareddy (dead) through LRs. & Ors*** reported in **(2010) 1 SCC 756**, at paragraph 26 held as under:

> *"26. ..... Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose……"*

35. This Court is therefore of the view that as per the discussion made herein above, order passed by the learned Single Judge needs to be interfered with.

36. Accordingly, the impugned order passed by the learned Single Judge

vide impugned order dated 26.04.2023, passed in W.P.(S) No. 3028 of 2022 is set aside and the order dated 30.08.2017 passed by the respondent authority is hereby quashed.

37. In consequence thereof, the respondents are directed to re-consider the case of the petitioner and take decision within a period of 3 months on the basis of the observation made herein above.

38. The instant appeal stands disposed of with the direction and observation made herein above. Pending I.A., if any, stands closed.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

Pramanik/ A.F.R.