IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble the Acting Chief Justice,
The Hon'ble Justice Dipankar Datta
AND
The Hon'ble Justice Tapabrata Chakraborty

F.M.A. 4401 of 2016

Putul Rabidas
v.
Eastern Coalfields Ltd. & ors.

With

F.M.A. 4403 of 2016

Sefali Banerjee
v.
Union of India & ors.

For the appellant in FMA 4401 of 2016	:	Mr. Siddhartha Banerjee, Mr. Piyush Biswas, Mr. Chiranjib Sinha, Ms. Suchitra Sinha Chatterjee.
For the appellant in FMA 4403 of 2016	:	Mr. Soumyen Datta, Mr. Pinaki Brata Ghosh, Ms. Susmita Mazumdar.
For the Eastern Coalfields Ltd.	:	Mr. Anubhav Sinha, Ms. Sanchita Barman Roy.

Hearing concluded on: July 20, 2017

Judgment on: September 13, 2017

DIPANKAR DATTA, J.:- (for the Hon'ble the Acting Chief Justice and himself)

1. M.A.T. 1299 of 2016, since renumbered F.M.A. 4401 of 2016, is directed against the judgment and order dated May 18, 2016 passed by a learned Judge of this Court (hereafter the said judgment). W.P. 4290(W) of 2016 (Smt. Putul Rabidas v. The Eastern Coalfields Ltd.), presented by the appellant, was dismissed thereby. Noting that the point involved in W.P. 25878(W) of 2015 (Sefali Banerjee v. The Union of India & ors.) was covered by the said judgment, His Lordship dismissed it too by an order dated June 9, 2016. Such order is impugned in M.A.T. 1279 of 2016, since renumbered F.M.A. 4403 of 2016.

2. It appears on a bare reading of the decisions under appeal that the learned Judge refused relief to the appellants (Putul and Sefali) based on the specific finding that a divorcee daughter of an employee of the Eastern Coalfields Ltd. (hereafter ECL) dying-in-harness is not entitled to the benefit of compassionate appointment/monetary compensation in terms of the National Coal Wages Agreement-VI (hereafter the NCWA-VI).

3. By an order dated September 20, 2016, a Division Bench of this Court had directed analogous hearing of these intra-Court appeals. Subsequently, the appeals were mentioned by the learned advocates for the respective parties before such Division Bench for hearing thereof along with F.M.A. 1277 of 2015 (State of West Bengal & ors. v. Purnima Das & ors.). F.M.A. 1277 of 2015 had by then been referred for decision to a larger Bench and this Bench had been constituted therefor. In that appeal, the question whether a married daughter of a State

Government employee dying-in-harness is entitled to be considered for compassionate appointment emerged for decision. These appeals having been directed to be heard along with FMA 1277 of 2015 by an administrative order of the Hon'ble the Acting Chief Justice dated June 6, 2017, the same were placed before us for consideration and decision.

4. We have decided F.M.A. 1277 of 2015 (State of West Bengal & ors. v. Purnima Das & ors.) today by a separate judgment and order, and these appeals shall be decided by this common judgment and order.

5. The only common question that arises for decision on these appeals is, whether a divorcee daughter could be considered as a dependent of a deceased worker in terms of para 9.3.3 in Chapter IX of the NCWA-VI [a settlement within the meaning of section 2(p) of the Industrial Disputes Act, 1947] and thus entitled to be considered for compassionate appointment or monetary compensation, as the case may be, which is envisaged therein.

6. It is not disputed before us that the claims for compassionate appointment/monetary compensation to divorcee daughters of deceased workers arising for consideration are required to be decided on the terms of NCWA-VI as it is and, thus, the appellants would have to succeed on whatever the NCWA-VI provides and not beyond.

7. Chapter IX of the NCWA-VI titled "Social Security" envisages benefits that the employees covered thereby are entitled to. *Inter alia*, paras 9.3.0 and 9.4.0 and its various sub-paras contain provisions relating to employment or monetary

compensation that could be given to a dependant of a worker who either dies while in service or who is permanently disabled rendering him unfit to continue service. Since we are not really concerned with a case where a worker due to permanent disability had to leave service, we need not look into para 9.4.0 in any great detail. However, para 9.3.0 being extremely relevant is required to be read in full and, accordingly, is set out hereunder:

"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 or son-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."

8. Perusal of the aforesaid clauses reveals that so far as female dependants are concerned, employment or payment of monetary compensation to them would be governed by clause 9.5.0. We shall refer to clause 9.5.0 at a later stage of this

judgment after deciding as to whether the appellants were in law entitled to claim benefits as envisaged in clause 9.3.0.

9. As a prologue to our decision, a brief recital of the facts giving rise to the writ petitions, the submissions of the respective parties and what exactly the learned Judge held while dismissing the writ petitions of Putul and Sefali would be in order.

10. The case pleaded in the writ petition by Putul is this. Putul's mother, Geeta Rabidas, was employed as an 'ayah' at Sanctoria Hospital under ECL since September 11, 1975. Geeta passed away on December 14, 2011 while in service. She left behind her, her husband and two married daughters. The husband allegedly had deserted Geeta long back and Putul's sister had been married and leading a peaceful conjugal life at her matrimonial home. Putul was married on June 6, 2000 and a male child was born in her wedlock with her husband. However, the marriage was dissolved by a decree for divorce passed by the competent court on August 4, 2009. Since such dissolution of marriage, Putul and her minor son started residing with Geeta and were wholly dependent on the earnings of Geeta for survival. While in service, Geeta had affirmed an affidavit on September 28, 2008 wherein it was averred that Putul and her son were entirely dependent on Geeta. A prayer was also made by Geeta to strike out, *inter alia*, the names of her husband and other married daughter as dependants and to include the names of Putul and her minor son as her only dependants. Geeta had also nominated Putul to receive all benefits consequent upon her

(Geeta) death. Upon due consideration of the application of Geeta, the concerned authority of ECL by an order dated June 24, 2010 was pleased to incorporate the names of Putul and her minor son in the service book of Geeta as her only dependants. After Geeta passed away, Putul applied for compassionate appointment on February 21, 2012. Since no action was being taken on such application, Putul had invoked the provisions of the Right to Information Act, 2005 and sought for legal opinion of the General Manager (Legal), Coal India Limited, Kolkata on the proposal for her employment. In response to such application, Putul was furnished office notes dated May 2, 2010 and June 5, 2010 whereby opinion had been expressed that Geeta's prayer for incorporation of the names of Putul and her minor child as dependants in the service book of Geeta may be agreed to. However, the notes which were generated in May/June, 2010 obviously did not refer to the application for compassionate appointment dated February 21, 2012, which was made by Putul after Geeta's death in December 2011. While considering the prayer of Geeta, the note dated May 2, 2010 proceeded to record, *inter alia*, as follows:

> "If and when there arise any question of a entitlement of a dependent to get some benefit, say employment the claimed entitlement has to be adjudged against the parameters provided in the NCWA. In the instant case it is premature to delve into the question.
>
> However, for the sake of clarification it may be opined that a 'divorced daughter' falls in the category of 'unmarried daughter' for the purpose of employment of a dependent of the worker who dies while in service/permanently disabled.
> With a legally valid decree of divorce the subject woman is reverted back to her spinster status for all practical purpose. She cannot be equated with a widowed daughter. A widow retains all her rights in her dead husband's family/property while the divorce snaps all her connections thereto. The

divorced daughter comes in the category of first degree dependent like spouse/son/adopted son/unmarried daughter."

11. Since Putul was not being offered compassionate appointment, she had the occasion to invoke the writ jurisdiction of this Court by presenting W.P. 6522(W) of 2015. By an order dated March 25, 2015, the writ petition was disposed of with a direction upon the General Manager (Personnel), ECL to consider Putul's application for compassionate appointment and to communicate a reasoned decision with eight weeks. The General Manager (P & IR), ECL by his order dated May 29, 2015 declined the prayer of Putul for compassionate appointment. Relevant portions of the order dated May 29, 2015 are quoted below:

> "I have gone through the Hon'ble Calcutta High Court Order dated 25.03.2015, application of Putul Rabidas dated 21.02.2012, relevant provisions of National Coal Wage Agreement (NCWA) and found that:
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> a) The petitioner does not fall under the different dependents mentioned in the agreement who can be given employment on compassionate ground.
>
> b) The authorities of the coal companies are bound by such agreement and has no right to outstep such stipulation.
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> c) Moreover as per Clause No. 13.3.0 of the NCWA-IX, it is clearly mentioned that:
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> > 'The management of the Coal Companies on their part will not resort to unilateral interpretations of the Agreement in case any doubt or difficulty in interpretation or implementation of any clause of this agreement, the same shall be referred to and settled by the JBCCI or a Sub-Committee constituted by the JBCCI for the purpose in the spirit of mutual goodwill'.
>
> d) The petitioner has cited an earlier example where one divorcee daughter got employment in similar situation in the respondent company about 9 years back. Though both the cases are relating to employment to 'divorcee daughter' but are not analogous as the earlier case (G.A. No. 1466 of 2006, APO No. 97 of 2006 arising out of W.P. No. 867 of 2005; ECL Vs. Smt. Kisto Dasi & ors.) relates to employment against concerned employee being declared 'medically unfit' under clause 9.4.0

of NCWA-VI whereas the instant claim for compassionate employment is against deceased employee.

It has been settled by Hon'ble Supreme Court of India in catena of judgments that compassionate employment is not a vested right & is provided to mitigate the financial hardship caused to the distressed family due to sudden loss of the sole bread earner of the family and can be provided only upon fulfillment of eligibility criteria prescribed under the scheme for compassionate employment.

In the case of Smt. Kisto Dasi, the Hon'ble High Court has considered the case on the basis of economic condition and the respondent company had consented to provide the employment before the Hon'ble Court. In the instant case, after death of Late Geeta Rabidas, Putul Rabidas was paid gratuity (Rs.5,58,475/-) and CMPF (Rs.14,67,479/-) both amounting to Rs.20,25,954/-(Twenty lakhs twenty five thousand nine hundred and fifty four).

In view of the above and in the absence of any mention of 'divorcee daughter' among the eligible dependents in the enabling provision under NCWA to get compassionate employment, I am unable to consider the petitioner's application dated 21.02.2012 for compassionate employment."

12. The order dated May 29, 2015 was again challenged by Putul by filing a writ petition, out of which FMA 4401 of 2016 arises. The learned Judge in the said judgment noted the background facts leading to presentation of the writ petition. Although in the impugned order dated May 29, 2015 the General Manager opined that National Coal Wages Agreement-IX was the applicable agreement, ECL had referred to NCWA-VI before His Lordship as the applicable agreement and such stand was accepted. Several judgments cited by the rival parties were considered. Reliance had, *inter alia*, been placed on behalf of Putul on the decision of a learned Judge of this Court reported in 2006 (2) CLJ (Cal) 15 [Smt. Kisto Dasi v. Coal India Limited & ors.] and several other decisions that followed the decision in Kisto Dasi (supra). On behalf of ECL, it was submitted before the learned

Judge that the decision in Kisto Dasi (supra) was carried in appeal by ECL by presenting APO 97 of 2006 [Eastern Coalfields Limited v. Kisto Dasi] and that the decision in Kisto Dasi (supra) had been set aside by the appellate judgment and order dated October 26, 2006. The learned Judge in more than one paragraphs of the said judgment referred to setting aside of the decision in Kisto Dasi (supra) by the Division Bench of this Court and ultimately at paragraph 17 quoted only paragraphs 3 to 5 of the appellate judgment in Eastern Coalfields Limited (supra). His Lordship was, however, of the opinion that the appellate order dated October 26, 2006 in Eastern Coalfields Limited (supra) holding that *"the status of a divorcee daughter would be that of an unmarried daughter"* was *"without any discussion or reasons in support thereof"* and having been *"rendered in the context of a claim by a dependent divorcee daughter of a coal miner"*, it had to be seen that *"no further discussion on such aspect was necessary since the concerned coal company agreed to offer the appointment to the divorcee daughter"*. His Lordship was also of the view that since the claim of Putul was founded on a contract or a settlement and not on any statutory or administrative rules, the decisions of diverse Benches of this Court interpreting the rules framed by the employer for compassionate appointment were not applicable. Since a divorcee daughter had not been included in the category of dependent in the relevant clauses of NCWA-VI for compassionate appointment to be obtained by her, His Lordship was of the further opinion that such exclusion *"has to be seen as a conscious and deliberate scheme of the settlement; no more and no less*". His Lordship perceived that *"the task in this extraordinary jurisdiction is to assess the propriety of the impugned*

action by interpreting the clause in a negotiated settlement" and that such *"interpretation does not call for any element of tinkering with the terms of the settlement on the basis of any misplaced sense of sympathy or from a pretentious pulpit of morality"*.

13. The case run by Sefali in her writ petition reveals that her father, Manik Ratan Banerjee, was serving as a pump operator in Girimint Colliery under ECL. On February 23, 2013 Manik had died-in-harness. He left behind him his widow, a son and Sefali as his surviving heirs. Sefali had been married on June 6, 2003 but due to torture and mental agony inflicted on her at her matrimonial home, she returned to her paternal home with her minor son and started living as a dependent of Manik with effect from December 30, 2011. On the day Manik died, Sefali and her son were entirely dependent on him (Manik). After Manik's death, Sefali and her husband filed an application for mutual divorce under section 13-B of the Hindu Marriage Act, 1955 before the competent court on October 3, 2013. The suit was decreed on December 19, 2014. Since the death of Manik had put his family in severe financial distress, Sefali had applied on May 12, 2013 for enlistment of her name in the 'died-in-harness' category together with no objections from her mother and brother. Sefali was called upon to attend a meeting on April 17, 2015, whereafter she was communicated an order dated June 23, 2015 of the Senior Officer (P&A), Bhanora/ Girimint (R) Colliery. Her prayer for appointment on compassionate ground was rejected on the grounds mentioned therein. The grounds for rejection, *inter alia*, were that there were direct dependants of the deceased available for appointment under NCWA-VI,

there was absence of provisions for employment of a divorcee daughter and also that the decree for divorce is a post-death document.

14. Sefali challenged the said order before the writ court. The learned Judge referring to and/or relying on the said judgment delivered by His Lordship on the writ petition of Putul dismissed Sefali's writ petition by a short order.

15. Appearing on behalf of Putul, Mr. Banerjee, learned advocate contended that the learned Judge ought to have granted relief to Putul having regard to the facts and circumstances that were presented vis-à-vis the applicable law, in this case the terms of the NCWA-VI. He contended that clause 9.3.3 carves out two distinct categories of dependants. If a dependant of the nature mentioned in the first category is not available, a dependant in the second category could be considered. In other words, the first category is comprised of 'direct dependants' and the second category comprises dependants who could be termed 'indirect dependants' on the terminology used in the relevant sub-clause. A widowed daughter and a widowed daughter-in-law, according to him, are included in the category of indirect dependants expressly whereas "unmarried daughter" is included in the category of direct dependants. Heavily relying on the decision of the Division Bench in Eastern Coalfields Limited (supra), he submitted that the same operated as a binding precedent on the learned Judge and perhaps, by mistake, His Lordship overlooked paragraph 2 thereof which provided the reasons for the conclusion that an unmarried daughter, in clause 9.3.3, would also include a divorcee daughter. Urging that jurisdiction had been erroneously exercised by His Lordship, it was prayed that the said judgment be set aside

along with the order impugned in the writ petition and that ECL may be directed to offer employment to Putul.

16. Mr. Dutta, learned advocate representing Sefali echoed the contentions advanced by Mr. Banerjee and submitted that the order dismissing Sefali's writ petition being entirely based on the decision rendered on Putul's writ petition, should the judgment and order under challenge in Putul's appeal be not upheld Sefali ought to be directed to be treated at par with Putul and extended similar benefit of compassionate appointment.

17. *Per contra*, Mr. Sinha, learned advocate, appearing for ECL and its officers resisted the contentions advanced on behalf of the appellants by repeating the submissions that were made by him before His Lordship, which were ultimately accepted.

18. According to Mr. Sinha, upon a marriage being solemnised, the daughter ceases to be a member of the family of her father and upon her obtaining a decree for divorce, her status does not revert to that of an unmarried daughter so as to be considered a dependant of her father or mother. It is also contended that there is a difference between an unmarried daughter and a divorcee daughter and a divorcee daughter not having been included in NCWA-VI as one who may be considered to be a dependant of a deceased worker, the concerned officers who dealt with the applications for compassionate appointment of Purul and Sefali were right in refusing their prayer.

19. The submissions which Mr. Sinha had advanced referring to other provisions of law have been aptly summarised by the learned Judge in paragraph 33 of the

said judgment and we can do no better than extract the same for comprehending the exact point sought to be canvassed by him. Paragraph 33 reads as follows:

> "33. Though, strictly speaking, ECL may not be required to justify the relevant clause in NCWA-VI, an erudite endeavour is made to demonstrate why a divorcee daughter may have been excluded from the provision and why the case of a divorcee daughter cannot be equated with that of an unmarried daughter. Section 21 of the Hindu Adoptions and Maintenance Act, 1956 is first placed to demonstrate the classes of persons regarded as dependants thereunder. The Hindu Marriage Act, 1955 is next placed for the distinction between a void marriage and a voidable marriage recognised in Sections 11 and 12 thereof and the provision for dissolution of marriage by a decree of divorce as provided in Section 13 thereof. Similar provisions have been placed from the Indian Divorce Act, 1869 that applies to Christians, the Parsi Marriage and Divorce Act, 1936 and the Special Marriage Act, 1954. ECL also refers to the distinction between *faskh* and *talaq* in the Muslim personal law. The submission is that upon the daughter of a workman covered by the NCWA obtaining a decree for divorce, her status does not revert to that of an unmarried daughter dependent on the father or mother; that an intelligible differentiation is possible between an unmarried daughter and a divorcee daughter; and, such distinction must, per force, be discovered in the relevant clause. ECL has also referred to the express inclusion of divorcee daughters in Rule 54 of the Central Civil Service (Pension) Rules, 1972 and in Section 14K of the West Bengal Land Reforms Act, 1955 to submit that when a divorcee daughter is provided for or included for the conferment of a benefit, there would be a specific reference in such regard."

20. In support of his submission that a daughter upon being married ceases to be a member of the family of her father and that a married daughter is not entitled to appointment on compassionate ground, several decisions (almost two dozen) were cited by Mr. Sinha.

21. Mr. Sinha finally submitted that since there is no error in the decision making process and exercise of jurisdiction by the learned Judge being appropriate, in exercise of our appellate jurisdiction we ought to hold the appeals to be without merit and dismiss the same.

22. The parties have been heard at length.

23. At the outset, we wish to place on record that the decisions cited by Mr. Sinha need not be dealt with in detail since on perusal thereof we are of the considered view that none of them has any direct bearing on the issue with which we are concerned.

24. On the contrary, based on our independent reading of para 9.3.0, with special emphasis on clause 9.3.3, we are inclined to the opinion that indeed Putul, but not Sefali, had set up a strong case for interference. We are also of the opinion that, *inter alia*, the decisions of Division Benches of this Court, to which reference shall be made hereafter, do provide ample guidance to us to tread the right track of paving the way for termination of the long pending disputes between the parties.

25. We agree with the learned Judge to the extent that in a given case a distinction may be made between cases where rules framed by the employer are found to be discriminatory and those cases which considered a clause in a settlement arrived at between the employees and the public employer. That is precisely the reason why no departure from whatever is provided in para 9.3.0 would be warranted. Without any addition or subtraction, the various terms of the NCWA-VI have to be read and the meaning of words used therein gathered from the context. Additionally, since a settlement in view of Section 18 of the 1947 Act (which obviously had duly been arrived at between the parties after protracted deliberations) is binding on such parties, we may have to pin down all the parties including ECL to the terms thereof.

26. Reading of the said judgment as well as Chapter IX of the NCWA - VI inclines us to the view that a shift of perspective is what is called for on facts and in the circumstances, as the woods might have been missed for the tree.

27. An unmarried daughter of a deceased worker, *inter alia*, would be considered to be his/her dependent, being included in the first category of dependants, is what the text of clause 9.3.3 provides. We need to understand the meaning of the word 'unmarried' bearing in mind the resistance to the appellants' claims offered by ECL, which has contended that going by the text of NCWA-VI even a widowed daughter is a dependent, included in the second category, but not a divorcee daughter; and, she having been consciously excluded, is not entitled to be included in either category of dependants.

28. Law seems to be well-settled that the duty of the court in interpreting or construing a provision is to read the section, and understand its meaning in the context. Interpretation of a provision or statute is not a mere exercise in semantics but an attempt to find out the meaning of the legislation from the words used, understand the context and the purpose of the expressions used and then to construe the expressions sensibly. This is the view expressed by Hon'ble Justice Sabyasachi Mukharji (as His Lordship then was) speaking for the Supreme Court in its decision reported in (1984) 3 SCC 127 (Ajoy Kumar Banerjee v. Union of India & ors.).

29. We think that the guidance provided by the aforesaid statement of law in Ajoy Kumar Banerjee (supra), albeit made in course of examining a statute, would be relevant for construing the words "unmarried daughter" in clause 9.3.3. It ought

to be our primary duty to examine the problem not merely in semantics but in the broader and more appropriate context of the object that Chapter IX of the NCWA-VI seeks to achieve.

30. However, before we move on to the main issue, it needs to be clarified that unlike schemes for compassionate appointment that normally come up for consideration before courts of law, compassionate appointment/monetary compensation that is envisaged in para 9.3.0 of Chapter IX is not dependent on the quantum of financial benefits that might have accrued in favour of a worker on his death. Para 9.3.0 or for that matter any other para/clause in Chapter IX does not make receipt of a particular quantum of money by a dependant of a deceased worker because of the latter's death on account of death benefits a disqualification for compassionate appointment/monetary compensation. In that view of the matter, irrespective of the quantum of death benefits that a dependent might have received owing to death of his/her father/mother/father-in-law/mother-in-law/brother/sister, ECL cannot repudiate a claim for compassionate appointment/monetary compensation on the ground that the family, having received substantial death benefits, is not in need thereof. The terms of the NCWA-VI are such that a dependent, if he/she satisfies all the conditions in clauses 9.3.3 and 9.3.4, i.e. he/she is a dependent of a deceased worker and has the requisite qualification for being given employment by ECL, is entitled to claim as of right that he/she ought to be extended the benefit of compassionate appointment or monetary compensation, as the case may be, under Chapter IX.

31. Adverting attention to the main issue, it is seen that the parties to the NCWA-VI elected the English language to reduce in writing the terms of settlement arrived at by and between them but did not define the word 'unmarried' therein. Although 'unmarried' is a word which is often used by us in course of conversation, wherever necessary, we need to brush up our understanding of such word by looking into English dictionaries of some standing.

32. According to the Concise Oxford English Dictionary, 11th edition, 'unmarried' is an adjective meaning 'not married; single'.

33. As per Merriam Webster's Collegiate Dictionary, 11th edition, "unmarried" means 'not now or previously married' or 'being divorced or widowed'.

34. Section 18 of the 1947 Act gives statutory recognition to a bi-partite settlement. Thus, the NCWA-VI partakes the character of a law; and, binds the parties thereto. It is in this scenario that we may also look into Law Dictionaries/Lexicons to trace the meaning of the word 'unmarried'.

35. In Stroud's Judicial Dictionary of Words and Phrases, 7th edition, the primary meaning of 'unmarried' is 'never having been married' or 'without ever having been married' and the secondary meaning is 'having no spouse living at the material time'. It is a word of flexible meaning, and slight circumstances could be sufficient to give the word its secondary meaning.

36. Black's Law Dictionary, 6th edition, says that the primary meaning of 'unmarried' is 'never having been married'; but it is a word of flexible meaning and it may be construed as 'not having a husband or wife at the time in question; eg. widow or widower or divorcee'.

37. Wharton's Law Lexicon, 15th edition, also reveals that 'unmarried' is a term of flexible meaning; *prima facie* it means 'never having been married', but the context may show that it means 'not having a husband or wife'.

38. There could hardly be and, in fact, there is no dichotomy of lexicographic opinion that the word 'unmarried' does not only mean 'never having been married' but, if the circumstances do permit and warrant, it may also mean 'not married on the relevant day'.

39. We may at this juncture refer to two old decisions of this Court where the word 'unmarried', in the context of the enactments under consideration was construed, ~ in the first case, to include a 'widow' and in the subsequent case, to mean 'not remarried'.

40. A Division Bench of this Court in the decision reported in AIR 1933 Calcutta 358 (2) [Soleman Bibi v. E. I. Ry.] was considering a reference made under section 27 of the Workmen's Compensation Act, 1923 by the Commissioner for Bengal. The question referred related to the meaning of the expression "unmarried daughter" in section 2(1)(d) of the 1923 Act. The applicant before the Commissioner was the daughter of the deceased workman. It was not in dispute that she was a widow and was being maintained by her father during widowhood for about 8 years. At the date of death of her father, the applicant was the only relative. The Commissioner had been referred to the decision reported in AIR 1932 Lahore 1 [Moti Bai v. N.W. Ry.] in which it was held that the expression "unmarried sister" included widowed sister. The Commissioner had certain doubts as to whether a

"widowed daughter" could be included within "unmarried daughter", resulting in the reference being made.

41. Referring to several dictionaries – Murray's Dictionary, Johnson's Dictionary and some later ones – Hon'ble Justice Ameer Ali (as His Lordship then was) found the meaning of "unmarried" as "not married" or "single" and another meaning as "never having been married". Stroud's Judicial Dictionary, which was also referred, revealed that there was a definite division into primary and secondary meanings – the primary meaning being given as "never having been married". Thereafter, His Lordship upon consideration of various English decisions that had been cited observed as follows:

> "I would therefore prefer to state the result of the authorities as to the meaning of the word as follows: (1) That the dictionary or grammatical sense of the word is not married; (2) that the popular and more usual sense is never having been married; (3) that the word is commonly used in either sense and is therefore a 'flexible' or equivocal term; (4) that for this reason the meaning must in all cases be discovered from the context; (5) that in the case of deeds and wills where there is no context, where the document is completely colourless, the popular sense will usually be adopted. In other words I think it is putting it too high to say that in all cases there is a primary meaning and a secondary meaning or that the first is the rule and the second is the exception. With regard to the special rules for the construction of Statutes one rule is that words may and normally should be construed in their popular sense: see Maxwell, Edn. 7, p. 47. There is however another rule that words should be construed so as to advance the remedy provided by the Act: see p. 59 and the following. ..... With regard to the context of the word in the present case the view taken by the Commissioner is expressed on the last page of the letter of reference as follows in the following manner:
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> > 'The words in the definition constitute an inclusive list of all the nearer relatives; on marriage a daughter acquires a new relationship * * * and I see nothing in the definition of dependants to warrant a supposition that on the death of her husband she resumes the original relationship.'
>
> The comment which occurs to me is as follows: 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. On the other hand the legislature has attached a qualification or condition that in order to participate a female child must not only be a daughter, but she must be an 'unmarried' daughter. The question is what is the meaning of that qualification. Does it exclude daughters once, but no longer, married? I think not. It appears to me that the important portion of the context to read in connexion with the definition is the operative part of S. 8 which provides for one payment to be distributed at a special time or period – the death of the employee – among particular persons. According to the English authorities and also I think in common conversation, when 'unmarried' forms a qualification in the description of a person who is to receive a sum of money at a definite time or period, the meaning 'not married' appears to be appropriate: see Leshingham Trust 24 Ch. D. 703 and Jarman on Wills in particular at p. 1252. For these reasons I agree with the decision in 13 Lah 228 (1) and construe the expression 'unmarried aughter' (sic daughter) in S. 2, 1(d) of the Act as including widowed daughter."

42. The aforesaid decision was noticed by another Division Bench of this Court in its decision reported in AIR 1963 Calcutta 428 [Mina Rani Majumdar v. Dasarath Majumdar]. The Division Bench was considering whether an application for maintenance under section 25 of the Hindu Marriage Act, 1955 was maintainable despite a petition under section 13 of that Act claiming a decree of divorce had been dismissed. While construing the word "unmarried" in section 25(1) of the 1955 Act, as it stood prior to its omission by Act 68 of 1976 with effect from May 27, 1976, Hon'ble Justice R.S. Bachawat (as His Lordship then was) observed that the word "unmarried" has several meanings and an interesting discussion is found in Soleman Bibi (supra). The popular meaning of the word, according to His Lordship, is "never having been married" and the dictionary meaning is "not married". Having regard to section 25(1), the Bench was of the opinion that "unmarried" in the context cannot mean "never having been married" because the applicant must have been a husband or a wife and, therefore, must have

been married; nor can it mean "not married" for an order under section 25 may be passed in favour of a married woman on the passing of a decree of judicial separation or for restitution of conjugal rights. In the context of section 25(1), His Lordship held that the word means "not remarried".

43. It is, therefore, clear that the word 'unmarried' is used in different senses and defined in dictionaries widely enough, and the flexibility in its meaning has received the judicial imprimatur.

44. Focussing on Chapter IX, we have noticed that married daughters are not completely excluded from the scheme of compassionate appointment or monetary compensation and this is clear from a reading of clause 9.3.3. A widowed daughter/daughter-in-law, included in the second category of dependants, has to be a married woman. The parties to the NCWA-VI never intended to keep a married daughter completely out of the zone of consideration. It is, therefore, inconceivable that a divorcee daughter may not have been in the minds of the parties to the agreement and/or was deliberately excluded from the scheme. We cannot assume, in the absence of any other material to the contrary, that a divorcee daughter who claims to be dependent on the earnings of a deceased worker and, given the opportunity, could prove such claim, should be told off at the threshold on the specious ground that she was once married and thus ceased to be a dependent of her father/mother. Taking a cue from the decision in Soleman Bibi (supra), we can safely hold that when 'unmarried' forms a qualification in the description of a person who may be considered for compassionate appointment/monetary compensation at a definite time or period

and having regard to the object of social security cover that the relevant term (para 9.3.0) seeks to embody, the meaning of 'unmarried' as 'not married on the relevant date' would be more appropriate than putting a constricted meaning on 'unmarried' as 'never having been married'. Since a daughter who 'has never been married' and who 'is not married on the relevant date' are comprehended within "unmarried daughter" in clause 9.3.3, we are convinced that it was not necessary to separately refer to a divorcee daughter as one who could also be eligible as a dependent of a deceased worker to have the benefits extended to her.

45. We are of the further view that if indeed a divorcee daughter was intended to be excluded from the species of dependants, the expression 'daughter, who is a spinster' could more appropriately convey that a divorcee daughter is not entitled to be regarded as a dependent for conferment of benefit envisaged by para 9.3.0.

46. Also, we have noticed the absence of any discussion in the said judgment as to what exactly "unmarried daughter" would connote and whether Putul as a divorcee and dependent on the earnings of Geeta, on her death, could fit in the category of 'dependent' or not; instead, we find that stress appears to have been given on exclusion of a "divorcee daughter" in the species of dependants. In our opinion, a different approach was called for.

47. The question can also be looked at from a different angle and answered.

48. An agreement under section 18 of the 1947 Act is generated upon meeting of minds of two or more parties and such agreement is intended primarily to safeguard the interest of workers, having regard to the fact that such Act is a

beneficent legislation. In industrial law, the benefit of reasonable doubt on law and facts, if there be any, ought to go in favour of the weaker section.

49. The text and the context, in which the words "unmarried daughter" appear, have to be given primordial consideration. If the words "unmarried daughter" are susceptible of two meanings ~ primary and secondary ~ as per the authorities noticed above, there is no reason as to why the secondary meaning of such words may not be looked at and applied so as to further or advance the object of social security cover, i.e. extending benefits of compassionate appointment/monetary compensation to a dependent of a deceased worker, unless of course attributing the secondary meaning produces absurd results. In construing the words "unmarried daughter", such construction that sub-serves common good and not the reverse ought to be adopted; and the words "unmarried daughter", as noticed earlier, are wide enough to take within its fold one who does not have a husband on the material date. There is no earthly reason as to why bearing in mind the purpose or object of the scheme for providing employment opportunity or monetary compensation to a dependent of a deceased worker, the court should cut down the amplitude of the word 'unmarried', which is intelligible and can be given full meaning in the context where it is used.

50. Having regard to the scheme of compassionate appointment as envisaged in Chapter IX of NCWA-VI, we have no doubt in our mind and accordingly, hold that an "unmarried daughter" as appearing in clause 9.3.3 would not only include a daughter who has never been married, but also a daughter who was once married but her marriage has been dissolved by a decree of divorce and she

remains 'not married' on the date of death of her father/mother (the worker). We find no good reason as to why by putting a strained construction on the words "unmarried daughter", a divorcee daughter should be held to have been excluded and, *a fortiori*, ineligible for consideration.

51. Next, we proceed to deal with Mr. Sinha's endeavour to demonstrate why a divorcee daughter may have been excluded from the provision and why the case of a divorcee daughter cannot be equated with that of an unmarried daughter having regard to the legal provisions that were referred to, as recorded in paragraph 33 of the said judgment and extracted supra.

52. For the purpose of construction of the words "unmarried daughter", it is not necessary for us to look into what other statutes provide or do not provide to unmarried/married daughters as to their entitlement. That certain enactments might have excluded divorcee daughters from entitlements and an express entitlement in favour of a divorcee daughter is not referred to in para 9.3.3 of Chapter IX is not decisive and would not necessarily lead to the conclusion that a divorcee daughter is not entitled to be favoured with the benefits that the scheme envisages, in view of the discussions above.

53. 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.

54. It is needless to observe that a widow remains to be part of her husband's family even after the death of such husband, whereas upon the marriage being dissolved, the divorcee daughter does not continue to be a part of the family of her divorced husband and would continue to remain single unless she remarries.

55. Once Putul was married, her dependency on Geeta ceased. It is, however, on record that after her marriage was dissolved by a decree of the competent court, Putul returned to her maternal home and started residing with Geeta. Geeta's prayers for incorporation of the names of Putul and her son in the service records as dependents of Geeta were allowed and ECL has not disputed that Putul and her son were acknowledged to be Geeta's dependents. Also, Putul has been the recipient of Geeta's dues. The dependency factor revived after the decree of divorce was passed by the competent court and Putul returned to Geeta for her survival, which is one other important factor that seems to have not received the consideration the same deserved.

56. There is, thus, no merit in the argument advanced by Mr. Sinha.

57. Finally, we need to notice and examine how the decision of the Division Bench in Eastern Coalfields Limited (supra) was dealt with in the said judgment. That the learned Judge perceived the view taken therein to be "without any discussion or reasons in support thereof" and such decision could be seen "to be on the basis of the concession by ECL". The learned Judge held that:

> "39. * * * However, the appellate order in .... plainly held that the status of a divorcee daughter would be that of an unmarried daughter and such view, without any discussion or reasons in support thereof, was rendered in the context of a claim by a dependent divorcee daughter of a coal miner. But it must also be seen that no further discussion on such aspect

was necessary since the concerned coal company agreed to offer the appointment to the divorcee daughter."

We, however, do not share such view for the reasons that follow.

58. The decision of the Division Bench in Eastern Coalfields Limited (supra) cannot be perceived as one rendered on a concession by ECL. Paragraphs 3 to 5 of the said decision, as we have noted above, were quoted by the learned Judge in the said judgment. After referring to the law that "constitutionality of a term or of a provision has to be considered only where it is imperative", it was held on by the Division Bench, facts, that "it is not necessary to decide that aspect at all since clearly the status of the daughter of the writ petitioner was that of an 'unmarried daughter' on the day when the writ petitioner claimed employment for her". The Division Bench then proceeded to record the submission of the learned senior counsel appearing for ECL that employment would be given to the appellant. Such submission was made obviously upon realisation that appointment in favour of the divorcee daughter could not be stalled by the contentions that were advanced on behalf of the appellant. However, the facts of the case and the ratio of the decision are easily discernible if one proceeds to read the first two paragraphs thereof. The same being extremely relevant for the purpose of a decision on the writ petition filed by Putul, are quoted hereunder:

> "1. The whole controversy in this appeal is as to whether the concerned writ petitioner's daughter did have the status of an 'unmarried daughter'. If she is an 'unmarried daughter' then she can be employed in place of her mother who has been declared medically unfit and whose employment has been terminated on that count or, as the case may be, whose resignation has been accepted. In short, the mother who was an employee of ECL has suffered bad health and there is termination of her employment with ECL. There is a Scheme. Under the Scheme it is provided under Clause 9.3.3 that an unmarried daughter of such person (amongst the other relatives) can be

appointed in her place. ECL, the appellant herein, interpreted this clause as excluding the 'divorced daughter'. This was wholly incorrect. This was challenged before the learned Judge of this Court who found fault with the validity of the term 'unmarried' and declared that as unconstitutional.

2. In our view, that could not have been done. This was a simple case of deciding as to whether the daughter of the writ petitioner was unmarried or not. In our clear opinion she was an 'unmarried daughter' when the writ petitioner applied for her employment. It is not the case of ECL that she had married again. Merely because she was married once and had gone out of the family but was thereafter divorced would not deprive her of her status as an 'unmarried daughter'. In fact, she gets back the status of unmarried daughter the moment she is divorced and her marriage was terminated by a valid decree of divorce or as per the customary law. Here it is an admitted position that she was divorced. She herself has very clearly shown her status as a divorced person. There is nothing to suggest that the divorced daughter of the writ petitioner cannot claim the status of an 'unmarried daughter'. In fact, that is the only status she enjoys. Therefore in our view, it is not necessary to go into the constitutionality or the validity of the term 'unmarried'."

(underlining for emphasis by us)

The aforesaid excerpts from the decision in Eastern Coalfields Limited (supra), in our view, were sufficient to clinch the issue in favour of Putul. However, to say that the Division Bench *"without any discussion or reasons in support thereof"*, held that the status of a divorcee daughter would be that of an unmarried daughter after she is divorced was a bit too harsh. The Division Bench, howsoever briefly, did discuss the status of a divorcee daughter and expressed its opinion that the only status she enjoys is that of an "unmarried daughter". In the absence of any authoritative pronouncement to the contrary, the opinion ought to have been accepted.

59. Mr. Sinha sought to salvage the situation by submitting that the decision in Eastern Coalfields Limited (supra) is contrary to the law of the land and that the learned Judge was right in being critical of such decision. He even went to the

extent of submitting that we should declare the said decision as one which was rendered *per incuriam*.

60. We are afraid the argument of Mr. Sinha is one in desperation and, thus, cannot be accepted. As held above, understanding of the meaning of the words "unmarried daughter" cannot be coloured by reference to personal laws. The views expressed by the Division Bench in Eastern Coalfields Limited (supra) that upon a decree of divorce coming into existence and dissolving a marriage between a couple, the wife gets back the status of being single i.e. not married, and if it is proved by her that she was dependent on the earnings of the deceased worker and otherwise qualifies for appointment/monetary compensation her claim cannot be negatived, does not suffer from any serious error, far less any perceivable defect, for which it should be declared as a decision rendered *per incuriam*. We are *ad idem* with the ratio of such decision and approve the same.

61. For the reasons aforesaid, the judgment and order dated May 18, 2016 passed on the writ petition of Putul stands set aside.

62. The order dated May 29, 2015 of the General Manager (P & IR) having been upheld based on the ground that a 'divorcee daughter' cannot be comprehended within "unmarried daughter" in clause 9.3.3, the other grounds assigned by him were not duly examined although His Lordship did record that "the apparent bounty" received by Putul was "not a relevant consideration". To be entitled to full relief, Putul has to succeed by persuading us to hold that the other grounds so assigned are equally untenable as the ground which found favour of the learned Judge.

63. We do record our approval that Putul should succeed in her challenge entirely. It seems that to anyhow spurn Putul's claim, the General Manager (P & IR) pumped in reasons in his order without even realising whether the same at all could form the foundation therefor. First, he referred to a clause that required reference to a body should there be any dispute arising out of interpretation of the terms of the agreement. Having noticed such term, it baffles us as to how the General Manager (P & IR) himself could unilaterally interpret the words "unmarried daughter" to the prejudice of Putul without making any reference. Secondly, the decision in Eastern Coalfields Limited (supra) was distinguished by the General Manager (P & IR) on the ground that the Division Bench was considering the case of a worker who had been rendered medically unfit to continue in service, whereas Geeta had died while in service. The distinction sought to be made cannot be countenanced at all and no long drawn process of reasoning is required to set it at naught. Medical unfitness or death of a worker is not the real point. Whether a divorcee daughter like Putul claiming to be a dependent of Geeta (a deceased worker) could be comprehended within "unmarried daughter" for employment/compensation, was the point that had emerged for decision. We are dismayed that Putul's claim was dealt with in such a callous manner. Lastly, reliance was placed on decisions of the Supreme Court without even referring to it. In view of the discussion made in paragraph 30 above regarding the scheme envisaged in para 9.3.0, it is immaterial that Putul received substantial money on the death of Geeta. Compassionate appointment/monetary compensation in terms of para 9.3.0 as agreed to by the parties to the NCWA-VI has not been

made dependent on the need for an immediate employment or monetary compensation. Appointment or compensation by payment of money to a female dependent of a deceased worker is automatic upon death (subject to fulfilment of the conditions in clause 9.3.4 insofar as appointment is concerned). Even no application is required to be made. Irrespective of the quantum of death benefits that might have accrued in favour of a deceased worker, her dependent (as defined in clause 9.3.3) would be entitled to consideration for appointment, if she is of the required age, or monetary compensation. None of the grounds assigned for spurning the claim of Putul being of any worth, we set aside the order dated May 29, 2015 of the General Manager (P & IR).

64. Having held that Putul was entitled to be considered for compassionate appointment/monetary compensation under para 9.3.0, we now focus our attention on clause 9.3.2 and para 9.5.0.

65. Para 9.5.0 (i) provides that in case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs.4,000/- per month or employment irrespective of her age. Since Geeta did not die as a result of a mine accident, sub-para (i) has no application. Sub-para (ii) of para 9.5.0 provides as follows:

> "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 dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs.3000/- per month or employment.
> In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment."

66. Having sensed that we were not in favour of accepting his arguments, Mr. Sinha submitted that in view of dearth of vacant posts ECL may be permitted to consider the issue of compensating Putul by money in terms of para 9.5.0(ii). Mr. Banerjee, representing Putul, agreed to the suggestion of Mr. Sinha.

67. In that view of the matter, the appeal (FMA 4401 of 2016) stands allowed with direction upon ECL to calculate Putul's financial benefits in terms of para 9.5.0(ii) within a period of a month from date and to disburse the arrears in her favour within two months from date of such quantification. The current payment shall be released by the first of each month and continued to be paid to her for life.

68. We are, however, unable to grant any relief to Sefali. She was a married lady on the date of death of Manik and, therefore, is not covered in terms of clause 9.3.3. For such reason, dismissal of her writ petition by the learned Judge is upheld and FMA 4403 of 2016 stands dismissed.

69. Parties shall bear their own costs.

Photocopy of this judgment and order, duly countersigned by the Assistant Court Officer, shall be retained with the records of FMA 4403 of 2016.

Tapabrata Chakraborty J.:

I have gone through the well-reasoned judgment of my learned brother and I entirely agree with the same. Expressing my concurrence with the reasons given in the said judgment, I may add a few words, mainly by way of emphasis.

It is a well-settled principle of interpretation that a beneficent scheme should be liberally construed. The reason behind this rule of interpretation is

that the authorities should not whittle down the object and purpose of the scheme by deciding according to the strict letter of the text. The courts will rather consider its fair meaning and will expound the scheme, in order to preserve the intent.

Judiciary has a strong sense of justice and it works to maintain social justice and fairness and it is not separated from feelings of righteousness. The object and purpose of the settlement towards compassionate appointment emanates from the dependency factor. The intent being to mitigate the hardships faced by the dependant upon the loss of the sole bread earner.

Clause 9.3.3 of NCWA-VI runs as follows:

"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 or son-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."

A perusal of the said clause reveals that dependency has been made attributable to a class of direct dependants including an unmarried daughter. It has also been stated in the said clause that if no such direct dependant is available for employment then others mentioned in the said clause may be considered to be the dependants of the deceased.

According to the Webster's Encyclopaedic Unabridged Dictionary the word "*such*", when used as an adjective, means "*of the kind, character, degree, extent of that or those indicated or implied*". In view of inclusion of the word "*such*" as an

adjective to direct dependant, the class of direct dependants cannot be construed to have been restricted only to the persons mentioned as direct dependants in the said clause.

The beneficent scheme underlying the settlement would be thrown out of gear in the event, a restrictive meaning is applied and benefits are not extended to a divorcee daughter, who returns back to her father's family after divorce and cessation of her relationship with her husband. Such interpretation cannot be construed to be an instance of *misplaced sympathy* or to be based upon a *pretentious pulpit of morality*.

With these observations in elucidation of the conclusion arrived at by His Lordship, I agree with the directions issued.

(Nishita Mhatre, ACJ)

(Tapabrata Chakraborty, J.) **(Dipankar Datta, J.)**

Later:

Ms. Sanchita Barman Roy, learned advocate appearing for the Eastern Coalfields Limited prays for stay of operation of the order passed on FMA 4401 of 2016.

We have considered the prayer and find no reason to accept the same. The prayer for stay stands refused.

(Nishita Mhatre, ACJ)

(Tapabrata Chakraborty, J.) **(Dipankar Datta, J.)**