
(2009) 09 AHC CK 0096

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Writ Petition (S/S) No. 516 of 1996

Lilawati Devi (Smt.)

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: Sept. 9, 2009

Hon'ble Judges: Devi Prasad Singh, J

Final Decision: Allowed

Judgement

Devi Prasad Singh, J.

Heard Sri Kapil Dev, learned Senior Counsel assisted by Sri Abhishek Yadav, and learned standing Counsel as well as perused record.

2. Short question involved in the present writ petition relates to payment of extraordinary pension under the Uttar Pradesh Police (Extraordinary Pension) (First Amendment) Rules, 1975 in short "the Rules". Submission is that on 26.2.1994 the petitioner's husband was going from Allahabad to Faizabad along with inspector Sri A.P. Singh. The movement of the petitioner's husband from Allahabad to Faizabad was with regard to certain investigation. The police jeep on which the petitioner's husband was moving along with the Inspector, met with an accident and in consequence thereof, he died. Thereafter, an application was moved for payment of extraordinary pension. By the impugned order the application has been rejected.

3. Petitioner's Counsel invited attention to Rule 3 as amended and enforced from 1.4.1972, which provides that in case any police personnel dies during course of duty, shall be entitled to extraordinary pension. Petitioner's Counsel relied upon the judgment of Hon'ble Supreme Court reported in 1995 Supp. (2) Supreme Court Cases 601, Rajanna v. Union of India, in that case Hon'ble Supreme Court held that in case a person is on duty and while going for official duty some injury is caused and the employee succumbs to injury, then he is also entitled for extraordinary pension. Relevant para 9 and 13 of the Rajanna's case are reproduced as under:

"9. The admitted facts clearly show that the appellant sustained injuries resulting in his permanent partial disablement in a motor accident when he was traveling from the staff quarters to the Sought Block for duty in the official SPG vehicle provided for that purpose. This road journey was not in his private vehicle or a public transport in which any member of the public could travel but in an official SPG vehicle meant for carrying the SPG personnel on duty. On these facts, it cannot be doubted that there would be notional extension of the actual duty to include the journey of this kind in the official SPG vehicle between the staff quarters and South Block. The principle under the Workmen's Compensation Act for determining whether an accident arose out of and in the course of the employment of the workman should be equally applicable to the circular since both have the same object. It is, therefore, useful to refer to some decisions of this Court on the point under the Workmen's Compensation Act.

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13. There can be no doubt that there was a casual relationship between the accident in which the appellant sustained the injuries and his employment in the SPG for actual VIP security duty; and it was an incident of his employment to travel from the staff quarters to the South Block in the SPG vehicle according to the official arrangement. In our opinion, the meaning of the expression "actual VIP security duty" in the above circular must be the same as that of the words "in the above circular must be the same as that of the words "in the course of the employment" in the Workmen's Compensation Act; and, therefore, the test for determining the liability for payment under the circular should also be the same. In our view, the Tribunal was in error in making an unduly strict and narrow construction of the expression used in the circular."

4. Another judgment of learned Single Judge of this Court has been relied upon by the petitioner's Counsel reported in [2003 (21) LCD 264], Smt. Noor Jahan v. State of U.P. and others, in which learned Single Judge while deciding the controversy observed that in case a person dies because of accident at the time of going or coming back after official duty, such person shall be entitled for extraordinary pension. Relevant para 5 of the said judgment is reproduced as under:

"5. From the above conspectus, it is explicit beyond any vestige of doubt that petitioner's husband was on official duty and he was on way back to Lucknow from Bareilly, when the accident occurred. It thus brooks no dispute that the husband of the petitioner was on official duty when he succumbed to his injuries as a result of accident. It would further transpire that earlier applications made for sanction of extraordinary pension came to be rejected ostensibly in oblivion of Rule 3 of the Amended Niyamawali, 1975 and the Government order referred to above a bare perusal of which bespeaks in no Delphic terms that the family of the deceased Lal Mohammad was entitled to Asadharan Pension in the above perspective, the authorities were wholly unjustified in declining the benefits to the family of the deceased on the hypothesis that the deceased though on official duty, was performing the journey by a truck. That apart, I would not for bear from observing

here that the provisions of extraordinary pension were formulated with the avowed object of providing succour to the family of a deceased police official and the authorities should have placed equity before technicalities and proceeded in the matter hearing in mind the aforestated objects underlying the rule."

5. Learned Counsel for the petitioner invited attention to the various recommendations copies of which are filed as Annexure No. 5 and 6 to the writ petition sent by Superintendent of Police, Basti.

6. Learned standing Counsel submits that since the petitioner did not die during course of any official duty, he was not entitled for payment of extraordinary pension and he has also not shown any exemplary courage of bravery. The argument of learned standing Counsel does not seem to be correct. Under the amended Rules, it has been specifically provided that in case a person dies during course of discharge of duty, then he or she shall be entitled to extraordinary pension.

7. So far as courageous work is concerned, that is different aspect and deals with different situation for which a police personnel may also be given extraordinary pension.

8. Apart from the above, a bare perusal of the impugned order shows that the claim of the petitioner has been rejected merely by stating that he is not entitled for extraordinary pension under the Rules. The impugned order does not reveal the ground relying upon which the petitioner's claim has been rejected. The authorities should have passed a speaking and reasoned order assigning reasons for rejection of petitioner's claim. In the case reported in (1978) 1 SCC 405; Mohinder Singh Gill v. Chief Election Commissioner, Hon'ble Supreme Court ruled that every order may stand on its own leg and may not be defended by additional ground raised in affidavit.

9. In the present case, the impugned order is not a speaking order and does not disclose reason for rejection of application. In view of the above, the writ petition deserves to be allowed.

10. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 5/12.9.1995 contained in Annexure No. 7 with consequential benefits. A writ in the nature of mandamus is issued directing opposite parties to reconsider petitioner's case for payment of extraordinary pension keeping in view the observations made here in above, expeditiously and preferably within three months from the date of receipt of certified copy of this order and communicate decision to the petitioner.