

Asha Devi Vs. Home Department

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Court : Jharkhand

Decided On : Apr-28-2017

Appellant : Asha Devi

Respondent : Home Department

Judgement :

1 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 5040 of 2014 with W.P. (S) No. 5228 of 2016 Rekha Devi, wife of Late Mukesh Prasad Petitioner[In W.P.(S) No. 5040/2014] Asha Devi, widow of Late Jagdeo Ram Petitioner[In W.P.(S) No. 5228/2016] VERSUS1 The Union of India through the Secretary, Ministry of Home Affairs, North Block, Jaisalmer House, New Delhi.

2. The State of Jharkhand through the Chief Secretary.

3. The Deputy Commissioner, Latehar. ... Respondents. [In W.P.(S) No. 5040/2014] 1. The State of Jharkhand.

2. The Principal Secretary, Home Department, Government of Jharkhand.

3. The Director General of Police, Government of Jharkhand.

4. The Inspector General of Police (Headquarter), Jharkhand, Ranchi.

5. The Deputy Commissioner, Ranchi.

6. The Superintendent of Police, Ranchi. ... Respondents. [In W.P.(S) No. 5228 /2016] CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK For Petitioner :Mr. Rakesh Kumar, Advocate [In W.P.(S) No. 5040/2014] Ms. Ritu Kumar, Advocate [In W.P.(S) No. 5228 of 2016] For Respondents:Mr. Ajit Kumar, Advocate. Mr. Sundaram, Advocate. Mr. Rajiv Anand, GP-IV Ms. Rakhi Rani, JC to GP-IV C.A.V. On 03/02/2017 Pronounced on 28/04/2017 Dr. S.N.Pathak, J.

Both writ petitions arise out of similar nature of facts and as such have been taken up together and are being disposed of by this common Judgment.

2. Heard learned counsel for the parties. Facts of W.P.(S) No. 5040 of 2014

3. In the instant writ application, the petitioner has prayed for quashing the order dated 18.03.2011, as contained in Letter No. 1 - 2/2011, passed by the Deputy Commissioner, Latehar whereby and whereunder her claim has been rejected without appreciating whole aspect of the case. Petitioner has further prayed for a direction upon the respondents to pay adequate compensation i.e. Rs.1,00,000/- (Rupees One Lac.) through the State Government and Rs.3,00,000/- (Rupees Three Lac.) through the Government of India as per decision of both the Governments to the petitioner as her husband was killed by the extremists on 31.08.2010. Petitioner has further prayed for protection of her life and property and to provide employment to the petitioner on the ground that her family has suffered loss of life and property at the hands of the extremists. 2 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016

4. The factual exposition as has been delineated in this writ petition is that on 31.08.2010, petitioner's husband was murdered by the extremists. It is also supported by news published in the daily news paper Prabhat Khabar of Palamau edition dated 01.09.2010 in which it was clearly mentioned that the petitioner's husband was brutally beaten by the extremists of Jharkhand Janshakti Parishad. The petitioner's husband was done to death as he was dealer of 'Jan Bitran Pranali'. After death of her husband, the petitioner filed a representation before the Deputy Commissioner, Latehar. The said representation filed before the Deputy Commissioner was rejected on 18.03.2011 on the ground that petitioner's husband had a criminal antecedent and as such, the prayer as made in the writ

petition cannot be entertained. As per report of the Deputy Commissioner, the deceased husband of the petitioner was involved in three cases namely (i) Latehar P.S. Case No. 01/2005 corresponding to G.R. No. 05/2005 in which the deceased - husband of the petitioner was acquitted by the Session Judge. (ii) Latehar P.S. Case No. 122/2009 corresponding to G.R. No. 509A/2009 in which deceased - husband of the petitioner was granted bail by the learned court below; (iii) Latehar P.S. Case No. 9/2010 corresponding to G.R. No. 77/2010 and the case was registered under Section 7 of the Essential Commodities Act in which the deceased/husband of the petitioner was granted bail and the case was committed to the Court of Session. During pendency of the aforesaid two criminal cases, the petitioner was killed by the extremists on 31.08.2010. The petitioner has filed this Writ Petition in view of the rejection order dated 31.08.2010 by the Deputy Commissioner. Facts of W.P.(S) No. 5228 of 2016

5. The petitioner has approached this Court with a prayer to appoint her on compassionate ground as her husband died in naxalite/ extremist movement or to provide her adequate compensation as per the relevant Government Schemes and guidelines.

6. The factual exposition as has been delineated in the writ petition is that on 16.04.2006 husband of the petitioner Jagdeo Ram along with his brother Sahdeo Ram was killed by Naxals belonging to Karma Oraon group at village Hulsu, Lapung. A fardbayan in this regard was instituted by nephew of the deceased in Lapung Police Station, Ranchi as Lapung P.S. Case No. 23/2006 under Sections 302/ 120-B/ 34 of the Indian Penal Code and Section 27 of the Arms Act. It has been stated that the deceased husband of the petitioner was the sole bread earner of the family of the petitioner and their minor children were entirely dependent upon him as after death of husband of the petitioner, their survival became very difficult and as a result thereof, the children were sent to orphanage and the petitioner started earning her daily bread doing odd chores in other houses. The petitioner met the 3 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 respondent authorities on several occasions along with the villagers for providing adequate compensation and also for compassionate appointment but only oral assurance was given to her. It is case of the petitioner that she filed a

representation on 02.09.2014 before the Incharge, Lapung Police Station and the Block Development Officer, Lapung requesting them to provide her employment as per the new policy of the State of Jharkhand whereby the survivors of the persons killed in naxal/ extremists were entitled for compassionate appointment. In the news paper, the article published on 03.12.2014 also reflect death at the hands of extremists of several villagers in which name of petitioner's husband also find mention. The Officer Incharge asked for a report relating to the petitioner who are dependent of the deceased. The Officer-Incharge also submitted chargesheet under Sections 302/ 120-B/ 34 of the Indian Penal Code and Section 27 of the Arms Act against certain accused persons in the case of Jagdeo Ram who was killed in naxal attack. It was also mentioned that murder has been committed by the PLFI of naxal group. When nothing was heard, the petitioner again filed representation before the OSD of the Chief Minister, requesting him for needful regarding grant of compensation and employment in the event of death of her husband in naxal action. Regarding scheme and notification for providing compensation, employment to the dependent of the persons killed in naxal movements, a Public Interest Litigation was filed before this Court vide W.P.(PIL) No. 2584 of 2011 [Gopi Nath Ghosh Versus State of Jharkhand and another] for a direction upon the State to immediately settle all claim for compensation and employment as per the existing Schemes for civilian deaths that might have happened in naxalite movements. Said writ petition was heard at length by the Division Bench of this Court and vide order dated 10.01.2014, a direction was given to the State Government to ensure strict observant of payment to the victim of naxal movements as per Central and State Schemes. It was also directed that in future if any application for compensation is received, the same shall be decided within a period of six months from the date of receipt. It is also evident from the order dated 10.01.2014, passed in W.P.(PIL) No. 2584 of 2011 that a Circular No. 423, dated 16.02.2006 has been issued by the State of Jharkhand wherein provision has been made for payment of Rs.1 Lac. in case of death, Rs.50,000/- in case of permanent disability and Rs.10,000/- in case of serious injury as compensation to the victim of naxal violence or their dependents and the said circular was effective for naxal incidents occurred between 16.02.2006 and to date. It was also mentioned in para- 19 of the said order that the State of

Jharkhand clearly stated that even for the incident which has taken place prior to 29.06.2009 where no payment has been made, the dependent shall be covered by the new Scheme. Till date nothing has been done by the respondents in this regard which has caused serious prejudice and 4 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 trouble to the petitioner who is in verge of starvation and hence this writ petition has been filed.

7. Mrs. Ritu Kumar, learned counsel appearing for the petitioners submits that inaction on the part of the respondents has caused serious prejudice and trouble to the petitioners who are in verge of starvation and whole purpose of appointment on compassionate ground is to mitigate hardship of the family due to premature death of the sole bread earner of the family and as such it cannot and should not be procrastinated or kept pending for indefinite period of time. Learned counsel submits that as per the Government's Circular dated 24.11.2008 and further Circular No. 423 dated 16.02.2006, 09.06.2011, 21.04.2014 and 05.06.2015 and the order passed by the Hon'ble Court in W.P.(PIL) No. 2584 of 2011, the petitioners are entitled for compassionate appointment and also for compensation. Learned counsel further submits that though there is a clear direction by this Court for providing compensation and also for compassionate appointment, the respondents authorities are sitting tight over the matter and not passing any order regarding claim of compassionate appointment and compensation.

8. On the other hand counter affidavit has been filed. Mr. Rajiv Anand, learned GA-IV assisted by Mr. Sundaram appears on behalf of respondents - State. Learned AAG vehemently opposes the contention of the learned counsel for the petitioners. He further argues that petitioners are not entitled for any relief whatsoever in view of the Judgment of this Court in W.P.(PIL) No. 2584 of 2011. He further submits that there are specific guidelines and directions given to the State Government and terms and conditions have been mentioned under which the compensation or compassionate appointment can be extended to the civilians who are killed at the hands of extremists. Learned AAG further draws attention of this Court towards para-9 Clause-4 Sub Clause (x) of the Judgment which mentions The perpetrators of violence or their family will not be entitled to any assistance under the scheme. Learned AAG further submits that in view of the

aforesaid Clause, the petitioner is not entitled for any amount of compensation or appointment on compassionate ground as the petitioner is perpetrator of violence in view of the enquiry report of the Police and in view of the fact that husband of the petitioners, who were criminals and had involvement with Jainath Sahu Group, an FIR was lodged against him vide Lapung P.S. Case No. 10/200, dated 30.07.2000, under Sections 384/ 386 of the Indian Penal Code and chargesheet was submitted vide Chargesheet No. 36/2000 and as such, in view of the latest Government Circular of the State of Jharkhand, dated 21.04.2014 and 05.06.2015, the petitioner is not entitled for any relief and the writ petition is liable to be dismissed. 5 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 9. Be that as it may, having gone through rival submission of the parties, this Court is of the considered view that case of the petitioners needs consideration on the following grounds: (I) Admittedly the petitioner's husband, who were killed at the hands of extremists, to which FIR had been lodged and is not disputed; (II) Criminal case was lodged against the petitioner's husband, which is still pending and in which trial is still pending and in the midst of the trial, he was done to death at the hands of the extremists. (III) The petitioner's husband was never convicted and as such because of pending trial, he cannot be branded as a criminal or his involvement cannot be proved in absence of any concrete proof or conviction by a competent court.

10. The issue regarding compensation fell for consideration by the Division Bench of this Court in W.P.(PIL) No. 2584 of 2011 and this Court, after hearing the matter at length, took cognizance of different Schemes and Policies floated by the State Government as well as the Central Government to grant compensation to the victims/ dependents of naxal violence. Para-6, 7, 8 and 9 of the said Judgment reads as under:

6. It is seen from the supplementary counter-affidavit that on the date creation of the State of Jharkhand (i.e. on 15.11.2000), only the State Government had policy to grant compensation to the victims/dependents of Naxal violence as per the circular of the State of Bihar No.1972 dated 9.8.2000, by which provision had been made for payment of compensation of Rs.50,000/- to the victims of Naxal violence/dependents. After creation of the State of Jharkhand, the Government of

Jharkhand issued circular no.3002 dated 8.11.2001 by which provision has been made for payment of compensation of Rs.50,000/- in case of death, Rs.10,000/- in case of permanent disability and Rs.2000/- in case of serious injury to the victims of Naxal violence or their dependents and the said circular was effective for Naxal incidents occurred between 8.11.2001 and 16.2.2006. The State of Jharkhand had issued another circular no.423 dated 16.2.2006, wherein provision had been made for payment of Rs.1,00,000/- in case of death, Rs.50,000/- in case of permanent disability and Rs.10,000/- in case of serious injury as compensation to the victims of Naxal violence or their dependents and the said circular was effective for Naxal incidents occurred between 16.2.2006 and to date. According to the respondent-State, during the said period, compensation has been paid to the victims as per the said circular of the State Government.

7. Central Government, vide letter no.11044/11/2011-VTV dated 29.6.2012, issued guidelines with effect from 22.6.2009, wherein provision has been made for payment of Rs.3,00,000/- in case of death/permanent incapacitation (50% and above) as compensation to the affected family under the scheme and the said amount of compensation will be paid by the Central Government. As per the said circular, in case the employment is given to any family member of a victim of terrorism/Naxal violence, the dependent will not be entitled to the assistance under the scheme. It further provided that in case, employment has already been given after release of assistance under the scheme, the assistance amount shall not be withdrawn from the victims of Naxal violence/terrorism.

8. As per the said guidelines of the Central Government, with effect from 22.6.2009, provision has been made to constitute a District Level Committee under the chairmanship of District Magistrate/ Collector/Deputy Commissioner/District 6 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 Superintendent of Police/District Medical Officer/District Welfare Officer/District Child & Women Development Officer and the officer who may be nominated by the State Government as its member and the said Committee shall identify beneficiaries and verify eligibility of the beneficiaries for assistance under the scheme. In the said guidelines of the Central Government, with effect from 22.6.2009, provision has been made for examining eligibility claims of the

beneficiaries; the District Committee has to see the police report/FIR/death-cum-postmortem certificate in case of permanent incapacitation, birth certificate of the claimant (if minor) and any other documents as may be considered necessary for determining the rightful beneficiaries/claimants. The guidelines of the Central Government provided that the District Committee shall send its recommendation to the Joint Secretary, Ministry of Home Affairs, New Delhi, in the prescribed form with a copy to the Home Department of the State Government. According to the respondents, during the said period, recommendation for payment of compensation has been made for the victims of Naxal violence as per the guidelines of the Central Government effective from 22.6.2009.

9. Circular of the Central Government, vide letter no.11044/11/2011-VTV dated 29.6.2012 (with effect from 22.6.2009), provides for the assistance to the victims of Naxal violence/terrorism. The following guidelines have been provided therein:-

4. Eligibility i) The financial assistance would be given to the family member(s) in the event of death or permanent incapacitation of the victim, in terrorist, communal or naxal violence. ii) Assistance would be given to the surviving spouse in case of death/permanent incapacitation of the husband or the wife, as the case may be. However, if both the husband and the wife die in same incident of violence, the family would be entitled to get the assistance, in each case. iii) Families of the victims would be eligible to get assistance under the scheme even if they have received any other assistance, by way of payment of ex-gratia or any other type of relief from the Government or any other source except when a similar scheme is already being implemented by the Central Government. iv) Next of kin of employees of Central Government, CPSEs, Autonomous Institutions and other Government Organizations including State Governments/State PSEs and similar organizations of State Governments will also be eligible to receive financial assistance of Rs.3 lakhs in case of death/permanent incapacitation (50% and above) on account of incidents of Terrorist/communal/naxalite violence. v) The total compensation amount, available in the SRE states/districts would be Rs.4 lakhs(Rs.1 lakh from SRE and Rs.3 lakhs from the Central Scheme). In the other areas, the assistance would be limited to Rs.3 lakhs. vi) Foreign Nationals and NRIs shall also be eligible/covered under the scheme w.e.f 1.4.08 i.e. the date

from which this scheme has been made effective. vii) Those permanently incapacitated, and the members of the family of the victims killed/permanently incapacitated in the terrorist, communal or naxal violence would be given a health card by the District Health Society, functioning under the National Rural Health Mission. This card would entitle them to free medical treatment in respect of injuries due to violence and all other major illnesses. Medical care will also be provided to the beneficiaries of the scheme as a special case under the on-going schemes of the Ministry of Health and Family Welfare, viz. Rashtriya Arogya Nidhi and the National Trauma Care Project. viii) Children in the family would continue to be entitled for assistance admissible under the project Assist, implemented by the National Foundation for Communal Harmony (NFCH) of the MHA. 7 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 ix) No other criteria regarding income of the family would be considered for the eligibility under this scheme. x) The perpetrators of violence or their family will not be entitled to any assistance under the scheme. xi) The eligible claimants can file their claims in prescribed proforma (Annexure-I) within 3 years of the relevant incident of terrorist, communal or naxal violence through the concerned DM/State Government. The time limit however can be relaxed in deserving cases by the Central Government on the recommendations of the State Govt. or by the Central Government suo motu.

5. Assistance i) An amount of Rs.3 lakh would be given for each death or permanent incapacitation to the affected family under the scheme. ii) The amount of Rs.3 lakh would be put in a fixed deposit account [Joint or Single in the name of the Family member(s)] in a Nationalized bank. (If there is no nationalized bank within the vicinity of the beneficiary, account may be opened in any scheduled commercial bank.) It would have a minimum lock-in period of 3 years or if there are only minor children in the family, till the eldest child attains the age of majority, whichever is later. iii) The interest on the above sum would be credited directly by the bank to the beneficiary's saving account on a quarterly basis. iv) At the end of the lock-in-period, the principal amount of Rs.3 lakh would be transferred directly to the saving account of the beneficiary, if the beneficiary is the spouse of the victim. v) In case of death or permanent incapacitation of the beneficiary, his or her Next of Kin would operate the account. vi) In case of permanent incapacitation, the victim himself/herself would be the beneficiary. However, if he/she is not in a

position to operate the account, then his/her nominee would operate the account.

6. Procedure to be followed at the District level i) A District Level Committee, under the chairmanship of District Magistrate/Collector/Dy. Commissioner, and having as its members the District Superintendent of Police, District Medical Officer, District Social Welfare Officer, District Child and Women Development Officer and an officer who may be nominated by the State Government would identify beneficiaries and verify their eligibility for assistance under the scheme. ii) While examining eligibility claims, the District Committee would look into the Police Report/FIR, Death-cum-Postmortem Certificate in the event of death, and Medical Certificate in the event of permanent incapacitation, birth certificate of the Claimant (if minor), and any other documents as considered necessary for determining the legitimate claimant. iii) In case of permanent incapacitation, a certificate from the District Medical Officer would be required to show that the victim has suffered 50% and above disability, which is of permanent nature and there are no chances of variation in the degree of disability, and the injury renders the victim unfit for normal life for the rest of his life. iv) In choosing the beneficiary in the family, the NOK (Next of Kin) concept would be applied. v) The District Committee will satisfy itself that the victim has suffered/died due to terrorist, communal or naxal violence, as the case may be, and the beneficiary has been identified as per the scheme. It would also verify that the victim has not suffered/died due to any incident of crime or natural reason. vi) The District Committee would, so far as possible, make its recommendation in (Annexure-II) within 15 days of receipt of claim for assistance to victims/family of terrorist or communal violence. vii) The District Collector may, on his own, recommend assistance under 8 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 the scheme with suitable justification. viii) The processing of the application, as per the provisions of the scheme, shall be completed within 3 weeks, including the recommendations of the District Committee. ix) The sanction order will be issued by the DM/DC on behalf of the State Government. A copy of the sample sanction order which is presently being issued by the MHA is at annexure - III. A copy of the Sanction letter will be sent to the Home Department in the State. A copy of the sanction order will be endorsed to IS-II Division Ministry of Home Affairs New Delhi. x) The DM/DC will issue the cheque in the name of the beneficiary. Whenever feasible the assistance shall be disbursed by way of

electronic transfer to the victims/NOK bank account. xi) The State Government shall undertake to widely disseminate information about the scheme, and to undertake its publicity.

7. Procedure to be followed after the issue of cheque i) The District Collector/District Magistrate/Dy. Commissioner, as the case may be, would deposit the cheque in the FD account of the beneficiary, with instructions to the Bank that no premature withdrawal may be allowed. ii) Standing instructions would be given to the Bank to credit the quarterly interest during the lock-in-period and the principal amount after the lock-in-period, directly into the account of beneficiary.

8. Procedure to be followed by Ministry of Home Affairs i) After the DM/DC has made the payment to the NOK of the victims of terrorist/communal/naxal violence under the Scheme, the State Government may submit the proposal to MHA for reimbursement in the prescribed proforma (Annexure-IV) on half-yearly basis (by 31st December & 30th June of each year). ii) The reimbursement will be considered on the basis of audited accounts in this regard. However, to ensure that the State does not suffer because of delay in audit of accounts, ad hoc releases will be made on the basis of accounts furnished by the State Government and due scrutiny by IFD, MHA. These ad hoc payments will be adjusted after final audited accounts are made available. The Central Government will make 70% payment immediately and balance 30% after receipt of audit verification report by the Internal Audit Wing of MHA. iii) The States shall ensure that the amount claimed under the Central Scheme for Assistance to civilian Victims of Terrorist, Communal and Naxal violence is not claimed under any other scheme of the Government of India i.e. there shall not be duplication of the claim. The States shall give an undertaking/certificate that no reimbursement has been claimed for these items under any other scheme. iv) The revised guidelines will be applicable from the financial year 2012- 13. v) The State Government/UTs shall incur all expenditure (which will be reimbursed by MHA), with respect to proposals in connection with incidents which occur from April,2012 onwards. Proposals in respect of incidents which have taken place prior to April,2012 and which have not so far been sent by the State Governments to MHA will also be considered by the concerned State Governments for approval and reimbursement by MHA. The

proposals which have been sent to MHA but are pending for want of complete documents from the State Government will also be considered by State Government for approval and subsequent reimbursement from MHA.

9. Saving Clause In case of any clarification required/difficulty faced in implementation of the scheme, suitable orders/clarifications will be issued by the Internal 9 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 Security - II Division of the MHA. In the aforesaid facts and circumstances, the said writ petition was disposed of by Division Bench of this Court with the following directions:

11. In the above facts and circumstances, this Public Interest Litigation is disposed of with the following directions:- (I) The respondents are directed to ensure strict observance of payment of compensation as per the Central Scheme, vide letter no.11044/11/2011-VTV dated 29.6.2012 and letter no.11021/1/2013-VTV dated 24.10.2013 and also as per the applicable State schemes. (II) The first respondent is directed to settle the compensation claims in respect of the pending applications in various districts and dispose of the same within a period of six months and not later than one year. (III) In future, as and when application is received claiming compensation/benefits of the Scheme, the first respondent is directed to ensure that the application is considered and disposed of within a period of six months from the date of its receipt by the respective District Magistrate/Deputy Commissioner/District Committee. (IV) The first respondent is directed to circulate this order along with the Guidelines on Central Scheme for Assistance to Victims of Terrorist and Communal Violence issued vide letter No. 11044/11/2011-VTV dated 29.06.2012 (w.e.f. 22.06.2009) to Home Secretary, Director General of Police and to all the Deputy Commissioners/Superintendents of Police, who, in turn, shall ensure its circulation to all the Sub- Divisions/Blocks/Police Stations for strict observance of the guidelines. (V) The Registrar General of the High Court is directed to forward a copy of this order along with the copy of the Guidelines on Central Scheme for Assistance to Victims of Terrorist and Communal Violence issued vide letter No. 11044/11/2011-VTV dated 29.06.2012 to Jharkhand Legal Services Authority (JHALSA) and JHALSA is directed to circulate copy of this order along with the Central Scheme for Assistance to Victims of Terrorist and

Communal Violence to all District Legal Services Authorities (DLSA) and also to Sub-Divisional Legal Services Committees with a direction to create awareness by holding intensive legal awareness camps at all the levels including District/Sub-Divisions/Blocks/Panchayats/Villages/ Tola/Mohalla/Basties about the Central Scheme available to the victims of terrorist and communal violence.

11. In view of observations and directions of the Division Bench, this Court is of the considered view that the petitioners deserve for compensation as well as appointment on compassionate ground. The legal impediment, as pointed out by the learned Senior Counsel regarding Clause 10 of para-9 The perpetrators of violence or their family will not be entitled to any assistance under the scheme, does not come to the rescue as the deceased-husband of the petitioners cannot be considered as perpetrators of violence as they have never been convicted by any competent Court nor there was any findings by the competent authorities regarding their involvement in any naxal activities rather it has been brought on record that they were the civilians and were done to death by the extremists. The clause which deals perpetrators does not apply in the instance case as there is no finding to the extent that the deceased-husband were criminals or the perpetrators of violence. The 10 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 term Perpetrator has been explained in Black's Law Dictionary as it generally denotes the person who actually commits a crime or delict, or by whose immediate agency it occurs. But, where a servant of a rail-road company is killed through the negligence of a co-employee, the company itself may be regarded as the perpetrator of the act, within the meaning of a statute giving an action against the perpetrator. Violence has been defined by the World Health Organisation in the WRVH as the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death psychological harm, maldevelopment or deprivation. This definition emphasises that person or group must intend to use force or power against another person or group in order for an act to be classified as violent. Violence is thus distinguished from injury or harm that results from unintended actions and incidents. This definition also draws attention not only to the use of physical force but also to the use of threatened or actual power. Such power or force may be used against oneself, against an

individual or against a group or community, as in gang violence or repression of ethnic groups. Violence is defined not only as resulting in physical injury but as being present where psychological harm, maldevelopment or deprivation occurs; acts of omission or neglect, and not only of commission, can therefore, be categorised as violent.

12. Going through the legal definition of violence and the word perpetrator, this Court finds that husband of the petitioners cannot be termed to be perpetrators. The husband of the petitioners died during proceedings and as such becomes a case of abatement. Though the abatement word is not there in criminal law but the purpose and meaning being followed before coming to Constitution and that law survives in view of Article 372(1) of the Constitution of India. The abatement is a part of common law which has been imported from England and approved and followed by our legal judicial system. Halsbury Laws of England and Advance Law Lexicon by Aiyars edited by former Chief Justice of India Hon'ble Chandrachud, has submitted the theory of law enforce will apply support has been taken from the judgment in the case of The State of Uttar Pradesh Vs. Seth Jagamander Das and others [AIR 1954 SC683 and as such, if the accused died during the proceeding, the same would abate. The law of abatement was applicable before enforcement of the Constitution, so it will apply. In criminal offence, once the accused died, it goes extinguished, does not remain in a dormant stage or suspended. Once it dies, always it dies. The criminal court has no jurisdiction to make an enquiry on the complicated question of facts and law. Since it is a beneficial legislation, it has to be extended to a situation not specifically covered by the legislation. 11 W.P(S) No. 5040 of 2014 with W.P.(S) No. 5228 of 2016 13. The law of the land, various circulars, guidelines and amendments from time to time, intended at providing succor to the family in distress who have lost their bread earner. Benefits of the beneficiary legislation must be extended to the victim families even if minor deficiency, description is noticed in the claim for awarding compensation/compassionate appointment. Even if the deceased was involved in a criminal case, which has not been proved and after his death, it cannot be proved and hence only on the ground that the deceased was involved in a criminal case, the legal heirs cannot be deprived of the fruits of beneficiary legislation. In the instant case, either compensation or appointment on compassionate ground, has to be

considered in providing succor to the family in distress who have lost their bread earners. Even the State Government is providing jobs and/or compensation to the hard core naxalites after their surrender before the Government as per the policy of the government. The State Government should take a lenient view and consider case of the petitioners for providing livelihood in case of family in distress who have lost their bread earners.

14. As a cumulative effect of the aforesaid rules, guidelines, beneficial schemes and the judicial pronouncements, the impugned order dated 18.03.2011, as contained in Letter No. 1 - 2/2011, passed by the Deputy Commissioner, Latehar [in W.P.(S) No. 5040 of 2014] is hereby quashed and set aside and the respondents are directed to reconsider case of the petitioners (in both writ petitions) for compassionate appointment and monetary benefits in view of the Government Circular and order passed by this Court in W.P.(PIL) No. 2584 of 2011. (Dr. S.N. Pathak, J.) RC/

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