

Maya Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-29-2000

Judge : Radha Mohan Prasad, J.

Appeal No. : C.W.J.C. No. 2688 of 1999

Appellant : Maya Devi

Respondent : State of Bihar and ors.

Judgement :

Radha Mohan Prasad, J.

1. In this writ petition, the prayer on behalf of the petitioner is to issue an appropriate writ, order or direction commanding the respondents to pay due salary, retirement benefits e.g. gratuity, earned leave salary, provident fund amount, besides the payment of salary of her deceased-husband till his date of retirement, i.e., 30.11.2013 and also to enhance the amount of ex-gratia grant and pay its remaining sum.

2. The petitioner is the widow of Late Ramanand CSiri, who was shot dead on 26.11.1989 during the general election of Parliament in the year 1989 while working as Presiding Officer at Polling Booth No. 197 situated at Primary School. Aalahganj within 244 Assembly Makhdumpur constituency. The petitioner's husband at that time was working as Assistant Teacher in Shri Raghav High

School, Anandpur, P.S, karpri in the district of Jehanabad. The deceased left behind him his wife (the petitioner) and three minor children, namely, Viveknand (son), Viinla Kumari and Nirmala Kumari (daughters).

3. In the show cause filed on behalf of the Director, Secondary Education, Government of Bihar, Patna (respondent No. 2), it is admitted that during the said Parliamentary elections, the petitioner's husband was shot dead by some anti-social elements. It is further stated that after the death of the petitioners husband a sum of Rs. 1,00,000/- as ex-gratia grant was paid to her in January and February 1990. besides a sum of Rs. 96,000/- against group insurance scheme. It is also stated that the petitioner has been appointed as an Assistant Teacher in Primary School in the month of September 1991 on compassionate ground. It is admitted that the petitioner submitted the final withdrawal of G.P.P. amount. bin the same was not paid as she has requested the Field Officer not to settle the claim of G.P.F. However, in spite of her request, the final sanction order was issued for payment of G.P.F. amount by the Under-Secretary to the Government. vide letter dated 25.10.1999.

4. From the show cause filed on behalf of the District Magistrate, Jehanabad (respondent No. 4), it appears that a sum of Rs. 38,899/- which was sanctioned towards G.P.F., has been sent to the petitioner by Special Messenger for payment mete Bank Draft No. 919502 dated 30th October. 1999. However, from the photo copy of the authority letter issued by the District Provident Fund Officer, Jehanabad, contained in Annexure 13/1, it appears that I he statutory interest has been calculated only till May 1991. With respect to family pension, gratuity and the amount of unutilised leave, it is stated that the petitioner refused to sign on the necessary papers and, therefore, the same could not be settled. However, from the counter-affidavit filed, on behalf of respondent No. 4 on 22.11.1999, it appears that in compliance to the order of this Court passed earlier, the sanction order for cash payment of unutilised leave of the deceased-husband of the petitioner has been issued, vide Memo No. 1636 dated 30th October, 1999 and the same has been received by the petitioner through Special Messenger on 18.11.1999, vide Annexure E. As regards increase in the ex-gratia amount and payment of full salary for the remaining period of her late husband had he been in active service,

it is stated that the District authorities considered and recommended for increase of the amount and the matter was required to be finally decided by Armgrah Anudan Samiti, for which it was referred to the Finance Department.

5. From the supplementary counter-affidavit filed on behalf of the Finance Secretary, Government of Bihar, Patna (respondent No. 3). it appears that the claim for increase in the amount of ex-gratia has been declined. It is stated that the petitioner was granted the ex-gratia payment of Rs. 1,00,000/- after her husband was killed during the election duty and that this was the maximum amount paid at that point of time. As regards discrimination alleged by the petitioner that on the death of Shri Uevendra Nath Sharma, Assistant Engineer, higher amount was paid on the basis of computation of the expected salary which he would have received, had he been alive till his retirement and also of occurring of special circumstances, due to his death, it is stated that it relates to the year 1995 whereas the petitioner's husband was killed in the year 1989. It is further stated that the allegation of discrimination against the petitioner would, definitely, have some basis if any other employee of the same status killed during the elections in the year 1989 or earlier was sanctioned higher amount of ex-gratia by the Government, but that has not happened. No reply to the said affidavit has been filed on behalf of the petitioner.

6. Learned Counsel for the petitioner has failed to show any rule or Government decision under which the petitioner can claim full salary of her late husband for the period, he would have been in active service till the date of his; retirement. This Court in the case of Smt. Bindhya Basini Mishra v. The State of Bihar and Ors. C.W.J.C. No. 3738 of 1998, disposed of on 13th March, 2000 has considered this aspect and found that no such claim is permissible in the case of the employees of the State service.

7. It appears that the said payment of Rs. 1,00,000/- besides other death-cum-retiral benefits were made on the basis of the Government resolution dated 2nd December, 1986, contained in Annexure F/1 of the supplementary counter-affidavit filed on behalf of respondent No. 3, whereby the Home (Police) Department had taken a decision to provide ex-gratia payment up to Rs.

1,00,000/- to those killed or wounded in violent incidents during active duty. In the case of Devendra Nath Sharma it appears that gradually as the incidents of violence grew and the pay-scales of the employees were also revised, demand for higher and higher grants were made by the employees association and the Government also sanctioned higher amount keeping in view the pay and the position of the employees, hi the counter-affidavit filed on behalf of respondent No. 3 on 6.3.2000, it is stated that in cases where the employee concerned exhibited exemplary courage and bravery in fighting the criminals before losing his/her life, higher amount of ex-gratia was sanctioned. It was thus submitted on behalf of the State that there is no case of discrimination in the present matter. This Court finds substance in the submission of the learned Counsel for the State. However, in this regard this Court wishes to express the desirability of laying down a definite criteria in the matter of grant of ex-gratia.

8. As regards the claim relating to G.P.F., this Court finds no valid justification to pay statutory interest only up to May 1991 on the said amount when actual payment has been made by issuing authority letter on 27.10.1999. Undisputedly, the said amount was kept withheld by the State authorities for no valid reason. This Court finds it difficult to accept the plea that though the petitioner submitted papers well within time, but subsequently requested not to settle the claim of G.P.F. However, if the sanction order could be issued on 27.10.1999 despite, the said alleged request of the petitioner not to settle the claim of G.P.P., this Court finds no justification for the authorities not to settle the same earlier. In any view of the matter, the amount of G.P.F. remained with the State and, thus, the petitioner cannot be denied of the statutory interest till the issuance of authority on 17.10.1999. Accordingly, the District Provident Fund Officer, Jehanabad is directed to issue necessary authorization with respect to the remaining statutory interest of G.P.F., as held above, within two weeks of the receipt/production of a copy of this order.

9. As regards family pension and gratuity, this Court, in the facts and circumstances aforementioned, directs that the petitioner may personally contact the Director, Secondary Education, Government of Bihar, Patna (respondent No. 2), who shall get the necessary papers for completion of the remaining formalities

in her presence so that necessary sanction orders for payment of family pension and gratuity are issued within two weeks of the receipt/production of a copy of this order.

10. Having regard to the fact that on the remaining amount which have been paid only after filing of this writ petition on 18.3.1999 and for which this Court does not find any plausible explanation, the respondents are directed to pay interest at the rate of 10% per annum on the said amount, except on G.P.F. on which the petitionei¹ will be entitled for statutory interest, till the issuance of authority slip, as directed above, from due date till the payment is made. In the facts and circumstances aforementioned, the petitioner shall also be entitled for cost of Rs. 1,000/- (one thousand) which shall be paid along with the interest within two weeks of the receipt/production of a copy of this order. The Accountant-General, Bihar, Patna (respondent No. 5) is directed to issue authority slip with respect to family pension and gratuity within one week of the receipt of the sanction orders. In case any part of the aforementioned order is not complied, the authority concerned shall not. draw his salary and other allowances till the, order is complied.

11. The writ application is, accordingly, disposed of.

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