

Chanda Devi Vs. the State of Jharkhand and ors.

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Court : Jharkhand

Decided On : May-19-2006

Reported in : [2006(4)JCR465(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Bihar Home Guard Act, 1947 - Sections 3, 6, 9, 12 and 13; [Police Act, 1861](#) ; Indian Penal Code (IPC) - Sections 21; Bihar Home Guards Rules, 1953 - Rules 19 and 21

Appeal No. : WPS No. 1390 of 2006

Appellant : Chanda Devi

Respondent : The State of Jharkhand and ors.

Advocate for Def. : Sheela Prasad, GPIV

Advocate for Pet/Ap. : Moti Gope and Rajiv Anand, Advs.

Disposition : Application allowed

Judgement :

ORDER

M.Y. Eqbal, J.

1. In this writ application the petitioner seeks a direction upon the respondents to consider her case for compassionate appointment.
 2. The case of the petitioner-widow is that her husband namely, late Brijnandan Singh was appointed as Home Guard in 1989. In 2002 while he was in patrolling duty he met with an accident and died in harness on 25.5.2002 leaving behind his wife (petitioner), two minor daughters and one minor son. It is stated that after the death of her husband she alongwith her minor children are facing much difficulties and are starving. Petitioner, therefore applied for compassionate appointment but till date no decision has been taken.
 3. A counter affidavit has been filed by the respondents in which it is stated that Home Guard Force is Volunteer Service Organization, which has been created to meet and tackle emergent unforeseen happenings and not to provide employment. It is further stated that the Home Guard Volunteer Services are guided by Home Guard Rules. Respondents' further case is that deceased Brijnandan Singh was not permanently appointed against any substantive vacancy and as such petitioner cannot claim compassionate appointment.
 4. It has not been disputed by the respondents that petitioner's husband Brijnandan Singh entered in the service of Home Guard in 1989. It has also not been disputed that he died while he was on patrolling duty. As against the averments made by the petitioner that in similar circumstances, on the death of Home Guard, compassionate appointment was given, it is stated by the respondents that it was done pursuant to the order passed by the High Court in the writ petition.
 5. Now the only question that falls for consideration is as to whether Home Guard when killed in an encounter with the extremists or while on patrolling duty his dependents are entitled to get compassionate appointment. This question has been decided by a Bench of this Court in the case of Gayatri Devi v. State of Jharkhand (2004)2 JLJR-132. His Lordship observed :
- Before appreciating the submission of learned Counsel I would like to discuss the relevant provision of Bihar Home Guard Act, 1947. Section 3 empowers the State

Government to constitute in each area Home Guards who shall discharge such function in relation to the protection of persons, the security of property or public safety in the area. The Home Guards in the State Government shall be deemed to be a single force and the District Magistrate having jurisdiction over the area may call out any Home Guards for the discharge of any duty assigned to them Section 6 provides that when Home Guard called out in aid of the police force they shall be under the control of the officers of the police forces. Section 9 provides that a Home Guard, when on duty as such in so far as such duty is not inconsistent with the act be Mutatis Mutandis subject to the [Police Act, 1861](#). Section 12 provides that Home Guard acting in the discharge of his function under the Act shall be deemed to be public servant within the meaning of Section 21 of the Indian, Penal Code. Section 13 empowers the State Government to make rules for carrying out the purposes of the Act.

The State Government framed rules called Bihar Home Guards Rules, 1953, Rules 19 and 21 of the said rules is worth to be quoted herein below:

Inspection by Higher Authorities:

The Inspector General of Police, Commissioner of the Division, Deputy Inspector General of Police, Armed forces and the Range Deputy Inspector General of Police shall periodically inspect the Home Guards and submit minutes or inspection to the State Government.

Standing Orders: The Inspector General or the Commandant may issue standing orders relating to the discipline, morale and sense of duty of the force. The Commandant will invariably maintain very close contact with the District Magistrate, Superintendent of Police, Range Deputy Inspector General of Police and Inspector General of Police, Armed Forces.

It is therefore, clear that the Home Guard while on duty shall be deemed to be a public servant and the provisions of Bihar Police Manual shall be applicable to the Home Guards excepting such provision which is repugnant to any of the provisions of Bihar Home Guard Acts and the rules made thereunder.

6. His Lordship further observed :

'The very object of compassionate appointment of a dependent of the deceased employee, who died in harness, is to relieve unexpected immediate hardship and distress caused to the family by sudden demise. It is well settled that appointment on compassionate ground is an exception to the equality clause under Article 14 and it forms a class by themselves. The word 'compassionate' itself denotes a sorrow for the suffering of another. Compassionate appointment means appointment because of suffering and pitiable condition.

It is not disputed by Mr. Jerath, learned Counsel appearing for the respondents that provision has been made for giving compassionate appointment in case of death of regular police officer in the discharge of his duty. In my considered opinion, therefore, a Home Guard when killed in an encounter with the extremist will get the benefit of compassionate appointment particularly when the provision of police manual which are not inconsistent with the Home Guards Act will be applicable to the Home Guard also. In the instant case as noticed above the petitioner's husband was killed in an encounter with the extremists. After the death of the only bread earner the petitioner has been put in a very pitiable condition and she claims appointment in Class IV post. Such a benefit should be allowed to the petitioner.

7. In the instant case, it has not been disputed by the respondents that the deceased husband of the petitioner while patrolling duty met with an accident and died. In my view therefore, following the ratio decided in the case of Gayatri Devi(Supra), petitioner's case is to be considered for compassionate appointment.

8. For the aforesaid reason, this writ application is allowed and the respondents are directed to consider the case of the petitioner for appointment on compassionate ground and take a decision within a period of two months from the date of receipt/production of a copy of this order.