

**Most. Taruna Devi Vs. the State of Jharkhand and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/522608](http://sooperkanoon.com/522608)

**Court :** Jharkhand

**Decided On :** Nov-30-2006

**Reported in :** [2007(2)JCR158(Jhr)]

**Judge :** Permod Kohli, J.

**Appellant :** Most. Taruna Devi

**Respondent :** The State of Jharkhand and ors.

**Disposition :** Application allowed

**Judgement :**

ORDER

**Permod Kohli, J.**

1. Petitioner is aggrieved of order No. 78 dated 28th July, 2006, whereby her claim for compassionate appointment has been rejected on the ground that the petitioner's husband, namely, Sahdev Prasad Mehta, has died a normal death and there is no provision for providing compassionate appointment to the legal heir of such a person. It is stated that only if the death is caused in extremists' encounter, compassionate appointment can be granted.

2. Petitioner is the widow of late Sahdev Prasad Mehta, who was enrolled as a Volunteer with the Home-Guard. It is admitted case of the parties that the

deceased husband of the petitioner met with an accident while on patrolling duty along with his co-members and died on 28th January, 2006. The deceased has left the petitioner as his widow, two minor sons and two minor daughters. After the death of her husband, the petitioner applied for compassionate appointment, stating therein, that the deceased was the sole bread-earner of his family and after his death, the family is in miserable condition. Application of the petitioner has been rejected by the impugned letter, referred to above.

3. In the counter affidavit filed also claim of the petitioner is resisted on the same ground, as indicated in the impugned order. Besides, it is stated that the deceased was only a Home-Guard Volunteer and was not a regular government servant. He was entitled to only honorarium i.e. daily allowance admissible and he being not a government employee, petitioner is not entitled to compassionate appointment. It is, however, stated that the petitioner is entitled to a compensation of Rs. 50,000/- as per the rules and instructions have been issued to the concerned authorities for payment of compensation amount vide letters dated 18th August, 2006 and 1st September, 2006. It is reiterated that in terms of letter No. 8/9199 dated 12th October, 2004 suitable dependant of Home-Guard, killed in encounter while on duty with police, is entitled to compassionate appointment. Respondents have relied upon two orders of this Court, passed in W.P.(S) No. 1434 of 2003 (Most. Sita Devi v. State of Jharkhand and Ors.) and W.P.(S) No. 2122 of 2006 (Most. Kailaswa Devi v. State of Jharkhand and Ors.), wherein, this Court has observed that the dependant of deceased Home-Guard can not claim compassionate appointment.

4. On the other hand, petitioner has relied upon the following judgments: In the case of Gayatri Devi v. State of Jharkhand and Ors. reported in 2004(2) J.L.J.R. 132, this Court has observed that a Home-Guard while discharging duties is a public servant and directed consideration of the dependant of such a person for compassionate appointment, where the Home-Guard was killed in extremists' encounter. This judgment was followed in W.P.(S) No. 1352 of 2004, decided by another Coordinate Bench of this Court on 26.01.2005. In this case the Home-Guard was killed in a road accident and this Court held that a Home-guard, killed in discharge of his duties, is entitled to be treated like a member of the regular

force for the purposes of granting compassionate appointment to his dependant. What has been observed by the Court is noticed as under:

In my opinion, no distinction can be made between a person who is killed in an encounter by the extremists and a person who died in road accident while on patrolling duty. The element of duty is involved in both the cases.

5. Similar view has been expressed in a subsequent judgment, rendered in the case of Chanda Devi v. State of Jharkhand and Ors. reported in 2006(4) J.L.J.R. 257. In this case also a Home Guard Volunteer was killed in an accident while on patrolling duty. The Court observed as under:

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.

6. Respondents have relied upon an order dated 5th October, 2006, issued by the Director General-cum-Commandant General, Jharkhand Home-Guard Volunteers, Ranchi, whereby, clarification has been issued that a Home-Guard is only a Self-Volunteer and is distinct from a regular government employee and the rules and facilities for the regular government employees will not be applicable to the Home-Guard Volunteers.

7. Firstly, this clarification was issued on 5th October, 2006 and the husband of the petitioner died on 28th January, 2006 i.e. much before issuance of this clarification. Secondly, compassionate appointment is to be granted under the compassionate appointment scheme, issued by the State Government and the Director General-cum-Commandant General, Jharkhand Home-Guard Volunteers, Ranchi, has no business to clarify the scheme, formulated by the Government and to interpret the same. Only the State has the authority and jurisdiction to interpret and clarify its scheme. In any case, this Court has already interpreted the nature of appointment of Home-Guard Volunteers and held that they are public servants while performing the duties and, thus, in the event of death of a Home-Guard Volunteer his dependant will be entitled to the benefit of compassionate

appointment.

8. In this view of the matter, this writ application is allowed and the impugned order, contained in letter No. 78 dated 28th June, 2006, is hereby quashed. The respondents are directed to consider the case of the petitioner for compassionate appointment through the competent authority and pass appropriate order within a period of three months.

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