

Roshini Devi Bahuguna Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Jul-10-1992

Reported in : (1992)2CALLT418(HC)

Judge : Khwaja Mohammad Yusuf, J.

Acts : [Constitution of India](#) - Articles 32, 226, 226(1) and 311; ;Evidence Act - Section 107

Appeal No. : C.O. No. 9760 (W) of 1990

Appellant : Roshini Devi Bahuguna

Respondent : State of West Bengal and ors.

Advocate for Def. : Sankar Mukherjee, Adv.

Advocate for Pet/Ap. : Mukul Prokash Banerji, Adv.

Disposition : Application allowed

Judgement :

Khwaja Mohammad Yusuf, J.

1. The Hon'ble the Chief Justice received an application with two annexures from one Smt. Roshini Devi Bahuguna of Balori in the district of Pauri Garhwal in Uttar Pradesh supported by an Affidavit affirmed on 30th August, 1990 before

S.D.O./S.D.M., Keerti Nagar. His Lordship treated the said application as a writ petition and the formalities of the court fees, etc. have been waived. His Lordship the Chief Justice assigned the matter to me.

2. From the application supported by Affidavit dated 30th August, 1990 it appears that the petitioner Roshini Devi Bahuguna is the wife of Kusalanand Bahuguna (NK/396) who was employed in the State Armed Police, 9th Battalion, Sandhya, Krishnagar in the district of Nadia. She states that her husband seems to have been admitted to Krishnagar Police Hospital for treatment on 10th June, 1979 as appears from Annexure I and he was found absent from the Hospital on 13th June, 1979. A Notice was sent to the husband of the petitioner at his native village Balori, Patti Chalanayun in the district of Pauri Garhwal in Uttar Pradesh under registered cover. As the petitioner is an illiterate lady, her father-in-law received the letter and was shocked to learn that the petitioner's husband was ill and was admitted to the hospital and that he left the hospital abruptly. The near-relations of the petitioner's husband went to West Bengal in search of Kusalanand Bahuguna but could not come to know except that he was last admitted in the Hospital. Since then the lady is running from pillar to post and wrote letters to the Chief Minister of West Bengal, Chief Secretary, Home Secretary, I.G. of Police, all of West Bengal, and Commandant of the State Armed Police, 9th Battalion at Sandhya in Krishnagar under whom he was last posted.

3. The petitioner very much feels that her husband is no more surviving as he has not come to his native village since he left on 13th June, 1979 (according to the authorities) almost 11 years back. She also states that the personnel of the District Police of her native place Garhwal (Srinagar) came many times to locate her husband and was told by the Prodhan (Patel) of the Village Ratouri and other responsible persons of the area that her husband had not come for the last many years. She very emphatically states that he was a man of good character, affectionate to her and his newly born son, and respectful to his parents and there was no cause that he would abandon his wife, child and parents, though in 1985 his father died out of sorrow and grief. She has every reason to believe that either her husband has been killed in any accident while on duty or died because of negligence in Hospital while serving the State of West Bengal.

4. She wrote to the State Armed Police authorities that the General Provident Fund and other benefits of her late husband be given to his legal heirs but without any effect. It is her definite case that the authorities have admitted that Kusanand was working under the State Armed Police, fell ill and was admitted to the Hospital. She contends that now it is required to be enquired why an ailing person had to leave the Hospital and under what circumstances. There is every possibility that he died due to negligence of the Hospital authorities or died on duty and now the authorities are saving their skin.

5. The petitioner has very frankly stated that she is a very poor lady, living in a hilly area of U.P., and has no means to go to Calcutta and/or to support herself and her only son and almost both of them are starving on road. She appeals to the Hon'ble Calcutta High Court to come to their rescue and give them justice and appropriate relief.

6. The said application is annexed with two Annexures, first is the charge of being absent unauthorisedly since 13th June, 1979 till date i.e. 26th November, 1981 and the other is the statement of allegation which refers to the notice dated 16th June, 1990 directing him to return to duty.

7. After perusing the papers, i.e. the application, the annexures and the Affidavit, it appears to me that there is some wrong somewhere because till date, no serious attempt appears to have been made by the State authorities concerned either to trace out Kusanand Bahugana or pay his outstanding dues including Provident Fund to his legal heirs nor any communication in this respect was ever addressed to the petitioner. This is not expected from the State Government which stands for the poor and the oppressed. At least she ought to have been informed about the correct happenings and the legitimate dues of Kusanand Bahugana should have been given to his legal heirs.

8. The petitioner was last working as a Naik under the Commandant of the State Armed Police of the 9th Battalion, Sandhya, Krishnagar, and the said Commandant is bound to explain under what circumstances the petitioner fell ill and disappeared and what steps the Commandant did take to search him out or to apprehend him. He is also to let the Court know the nature of the disease and/or

the cause of injury with which the Kusalanand Bahuguna was suffering and under what circumstances he was. admitted to the Krishnagar Police Hospital. The silence of the Commandant concerned not to intimate anything to the petitioner Roshini Devi casts a cloud on the entire matter. It is also pertinent that the charge indicates that he was found absent from Hospital bed as reported by M.O., Police Hospital, since 13th June, 1979 and the charge was framed on 26th November, 1981. Why such a long delay was necessary and in between what inquiries or investigations were made to trace out Kusalanand I think this is an appropriate case where this Court should interfere for the ends of justice.

9. On 30th October, 1990 this Court suo moto directed (1) the State of West Bengal through the Home Secretary ; (2) the Director-General of Police, Government of West Bengal ; and (3) the Commandant, State Armed Police, 9th Battalion, Sandhya, Krishnagar ; to file separate Affidavits stating true and correct facts. The State was directed to file Affidavit as to what steps the State took in response to the letters addressed to the Chief Minister, the Chief Secretary and the Home Secretary ; and the Director-General of Police should explain the position at length as the head of the West Bengal Police Force. The Court requested Mr. Mukul Prokash Banerji, Senior Advocate, to assist the Court as Amicus Curiae and he readily agreed.

10. It must be stated that this matter was taken very lightly by the Government of West Bengal. On behalf of the State the Assistant Secretary to the Government of West Bengal filed an Affidavit stating that he was well acquainted with the facts and circumstances of the case. In paragraph 4 he stated that there was no specific reference of the petitions submitted by Smt. Roshini Devi Bahuguna to the Chief Minister, the Chief Secretary and the Home Secretary as referred to in the order of 30th October, 1990 and the matter could not be ascertained in the absence of specific reference. But at the same time in the sub-para of that very paragraph it is admitted by this Assistant Secretary that the petition addressed to the Chief Minister was however received by the Director-General and Inspector-General of Police, West Bengal, through the Chief Minister's Secretariat vide Memo No. 539/30862-CMS dated 10th August, 1982 but the same is untraceable. The Court takes paragraph 4 as self-contradictory and an attempt to shut the truth.

11. The Affidavit by the Inspector-General of Police, West Bengal, states that Naik 396, Kusalnand Bahuguna of SAP 9th Battalion was admitted to Krishnagar Police Hospital on 10th June, 1979 for treatment. On 14th June, 1979 the Medical Officer of the Hospital reported that the said Naik was missing from the Hospital from 13th June, 1979. The local Police Station was informed to find out the whereabouts of the missing Naik and the Inspector-in-Charge of Kotwali Police Station, Nadia, sent message to the Officer-in-Charge of Srinagar Police Station in the district of Pauri Garhwal in Uttar Pradesh requesting him to trace out the missing Naik from his residence at Village Balori Patti. The Officer-in-Charge of Srinagar Police Station reported on 27th August, 1979 that the Naik was not found at his residence. The Inspector-in-Charge of Kotwali Police Station reported on 7th February, 1980 that he had enquired at all probable places but could not trace the missing person. A Proceeding No. 10/81 was drawn up against the missing Naik for his gross misconduct and he was discharged from service with effect from 3rd April, 1982. The deponent i.e. the Inspector-General of Police, West Bengal, further states in his Affidavit that from the missing persons' records maintained in the Office of S.P., D.E.B., Nadia, it would appear that a message was sent to the S.S., C.I.D., on 10th October, 1983 requesting him to take further action in tracing the Naik. This message according to the deponent is not traceable at this stage in the C.I.D., rather it is said on oath that no record in this regard is available at all. It is stated by the Inspector-General of Police that request, have been made to the D.I.G., C.I.D., to initiate fresh enquiry in tracing the missing Naik by deputing a responsible C.I.D. Officer. The Court wants to point out that this Affidavit was affirmed on 25th January, 1991 and the hearing concluded on 12th December, 1991 but till then no information was conveyed to the Court regarding this fresh enquiry. This deponent also records that Smt. Bahuguna's letter to the Chief Minister was received in the I.G. Office and the Commandant, S.A.P. 9th Battalion, was asked to send a detail report vide Memo No. 1752 dated 2nd July, 1982 but the action taken on the basis of the report from the Inspector-General's Office is not traceable. The Commandant of the 9th Battalion was being asked to take step for payment of G.P.F. and other insurance money if any at the credit of the Naik to his legal heirs but at the same time it is stated that pensionary benefits are not admissible as he was discharged from service on the basis of a regular -

departmental proceeding.

12. The Affidavit-in-Opposition of respondent No. 3, the Commandant, State Armed Police, 9th Battalion, states that Kusanand Bahuguna joined the 9th Battalion, State Armed Police, Sandhya Unit, on 1st April, 1976 from S.A.P. 4th Battalion and he was promoted to the rank of Naik of this unit. He reported himself sick on 10th June, 1979 and he was admitted to Krishnagar Police Hospital for treatment. On 14th June, 1979 the Medical Officer of the Hospital reported to the Commandant about his unauthorised absence since 13th June, 1979 and also forwarded the copy to the Inspector-in-Charge of the Kotwali Police Station, Krishnagar, for information and necessary action. It must be commented here that in Annexures 1 and 2 no word 'unauthorised' occurs. After much delay i.e. on 27th July, 1979, almost after the expiry of one month the deponent wrote to the I.C. of the Kotwali P.S. about the result of enquiry as to the missing of one Kusanand Sarna (not Bahuguna). Then again on 22nd August, 1979 a reminder was sent to the Police Station. It is stated in the Affidavit that a R.T. message was sent on 6th July, 1979 from the Officer-in-Charge of Kotwali Police Station to the Superintendent of Police, Pauri Garhwal, and the Officer-in-Charge of Srinagar Police Station in Uttar Pradesh to trace Bahuguna from his residential address at Village Balori Patti. It must be stated that though 6th July, 1979 has been given as the date of R.T. but the same does not appear from Annexure 5. It is further stated on the basis of Annexure 6 that information was received from Srinagar Police Station revealed that Bahuguna was not found at his home address and is not there for three years. On 28th November, 1979 the Commandant wrote to the Inspector-in-Charge, Krishnagar Police Station, to take necessary action as to the whereabouts of Kusanand Bahuguna. This was done on receiving from the Deputy Inspector-General of Police, Armed Police, West Bengal, a copy of petition received from Atma Ram Bahuguna, the father of Kusanand Bahuguna. A reminder was sent on 15th January, 1980 to the Krishnagar Police Station (not Kotwali) about the result of the enquiry by the Commandant. On 15th January, 1980 (not 7th February, 1980 as stated in the Affidavit) a reply was received from Kotwali that no trace was found of the person concerned who was admitted in the Police Hospital on 10th June, 1979 and absconded from the Hospital from 13th June, 1979. On 13th April, 1981 the Commandant wrote to the Deputy

Commissioner, Pauri Garhwal, in Uttar Pradesh, that Kusanand Bahuguna of State Armed Police, 9th Battalion, was found absent from the Krishnagar Police Hospital without taking any permission from the M.O.-in-Charge and remained untraced. Searches have been made without result, and therefore it was requested to make enquiry by the local Police at his home address to ascertain if the aforesaid Naik has since been reported there and was staying with his family at his native village. From Srinagar Police Station came the reply that he was not seen in his house for the last six years and the Deputy Commissioner intimated that Naik Bahuguna was not back to his home for about five years. As appears from page 4 of the Affidavit of the deponent, in sub-paras (m) and (n) one also finds difference of one year in the statement of the Srinagar Police and the Deputy Commissioner. It is further stated in the Affidavit that a proceeding being Proceeding No. 10/81 dated 26th November, 1981 was drawn up against Naik/396 Kusanand Bahuguna for his gross misconduct as he was found absent from the Hospital bed and absent unauthorisedly from 14th June, 1979 till date. The notice was issued at his home address directing him to return to duty but to no effect. The Assistant Commandant of S.A.P. 9th Battalion held the enquiry into the charge and because of the delinquent's non-cooperation with the enquiry the enquiry proceeding was conducted ex parte. The Enquiry Officer after considering the facts recommended the discharge of the delinquent from service.

13. It will not be out of place to comment on the enquiry and finding report which is Annexure 13 of the Affidavit of the Commandant and was also placed before the Court in original where it was found below the signature of Mr. O. P. Gupta, Enquiry Officer, that the date is over-written and interpolated. The day, the month and the year have been over-written in the said annexure, and the same is clear in the original and it appears that it should be 3rd April, 1982 instead of as shown in Annexure 13. Here the Enquiry Officer held that the charge against the delinquent was proved beyond all reasonable doubt. On the basis of the enquiry the Commandant discharged from service Kusanand Bahuguna Naik/396 with immediate effect but Annexure 14 which contains the order of discharge does not contain any date at all but the date is mentioned in the Affidavit on page 5 sub-para (q) as 3rd April, 1982. After the closure of the enquiry and the discharge of the delinquent from the service the interest of the Commandant did not cease

against Bahuguna and he wrote to the Super-intendent of Police, Nadia, to know if a reference was made to the Missing Person Squad of the District Police Force and whether necessary correspondence was carried out with C.I.D. for publication of this information. By letter dated 26th August, 1983 the Commandant sent to the Officer-in-Charge of the Missing Person Squad, Nadia, through District Enforcement Branch the particulars of the delinquent.

14. The Medical Officer of Krishnagar Police Hospital filed an Affidavit on the direction of the Court. He stated the same story as was narrated earlier with the addition that the bed ticket etc. i.e. the papers relating to the patient Bahuguna, have been destroyed by the insects and as such he was unable to mention the name of disease of the patient. He also stated that he joined as Medical Officer on 1st May, 1990 but when the incident occurred one Mr. H. C. Routh was the M.O. who retired from service long back. He could not disclose any further detail.

15. On behalf of the Director-General of Police, West Bengal, the Assistant Inspector-General of Police, West Bengal, affirmed the Affidavit-in-Opposition. He repeated the old story and added nothing new but admitted that the petition dated 4th February, 1982 of Smt. Roshini Devi Bahuguna, wife of Kusalnand Bahuguna, addressed to the Chief Minister of West Bengal was received in the office of the Commandant, S.A.P. 9th Battalion, and he was asked to send a report but action taken on the basis of the report from the office of the Director-General of Police could not be known as no file on the subject could be traced. This statement made on oath by Mr. Damodar Sarangi, the Assistant Inspector-General of Police, West Bengal, on behalf of the Director-General of Police, West Bengal, is a direct slur on the police force and police administration of West Bengal. It is a matter of shame that a query asked by the Secretariat of the Chief Minister of the State goes un-answered on the most flimsy plea that action taken on the basis of the report could not be known as no file on the subject could be traced and as such the whole thing was taken so very lightly.

16. Mr. Sankar Mukherjee appearing for the respondents submitted that Rules relating to Article 226 of the Constitution as framed by the High Court have not been followed in the instant petition. This is not an application but a letter and no

ground is given and no prayer has been made nor any writ has been asked for. The Affidavit filed by the petitioner does not contain the age of the petitioner which is highly irregular and as such the petitioner's letter is not maintainable. Next he submitted that about nine years have lapsed before the matter came up in the Court and there was no explanation of delay in the letter in question and should not be entertained on this ground. It is submitted that a relief in a civil suit has standard of its own and the delay beyond the period of limitation is unreasonable. No Court Fee has been paid and as such the letter cannot be accepted as writ petition and also there was no statement as to whether any writ petition was moved in this Court or elsewhere. He submitted that the wife of Kusalnand Bahuguna who wrote the letter did not file any document showing that she is the legally married wife of Bahuguna and without any proof the petitioner has no right to claim anything. The fact of the death is to be proved by the petitioner beyond doubt and in this connection he cited Section 107 of the Evidence Act which deals with the presumption of the continuance of life and Section 108 deals with the presumption of death. It is submitted that when a person's existence is taken in question it should be shown that he have been living at the given time within thirty years and there is nothing to suggest the probability of his death but the continuance of life would be presumed and the person who would assert the contrary has the burden to prove the same. It is submitted that the fact of the case can be proved in a suit on evidence and cannot be done by the Writ Court. Some illogical argument has been made by Mr. Mukherjee as the writ petitioner must have a personal right and in the present case it is not a personal right and also that the right of the person must be legal one and must be subsisting on the date of the petition. According to him in the present case the right is of the Government servant and not of the petitioner and as such a personal right is barred by long delay and is no more subsisting on the date of the petition and the petition is liable to be rejected. But one thing the learned Advocate admits and that is that the power under Article 226 of the Constitution is discretionary and the remedies which are granted in extraordinary circumstances are not as a matter of right. This must be borne in mind by Mr. Mukherjee that this Court is exercising its discretionary power and wielding it under most extraordinary circumstances.

17. The preliminary points taken by the learned defence Advocate is like a fort made of cards and shall crumble down in no time. It must be borne in mind that it is the inherent power of the High Court to exercise extraordinary constitutional power under Article 226 even upon a letter or post card as was done by the Hon'ble Supreme Court of India. The technical points taken by the learned Advocate of the State is argument for argument's sake without any basis whatsoever. The petitioner has every legal right to knock the door of the High Court for the redress of her grievances and the poor lady in a hilly area of Uttar Pradesh has no way out but to send an application supported by Affidavit with some papers to the Hon'ble the Chief Justice of Calcutta High Court for appropriate relief when a cold shoulder was shown to her by the respondents. The Preamble of the [Constitution of India](#) guarantees to every citizen 'JUSTICE, social, economic and political' ; and it should be the guiding star in its interpretation to give relief to a poor lady who has no means to come down to Calcutta and have a legal dual with the respondents. This part of the Preamble as quoted hereinbefore shows the general purpose behind the Constitution. The Indira Gandhi's case : [1976]2SCR347 is a pointer to this direction. The Post-Gopalan decisions of the Supreme Court demonstrate that the court is now inclined to take a larger cognizance of the Preamble as setting forth the goal of our society and to expand the ambit of judicial interference. It must also be noted that out of the five Affidavits filed in the Court, not even a single respondent raised any objection on the maintainability of this writ petition or questioned the right of the High Court to entertain it.

18. The Supreme Court entertained a letter and treated it as a writ petition and proceeded with it in the absence of support by affidavit or verification (Bandhu Mukti Morcha v. Union of India and Ors., : [1991]3SCR524). On the basis of a letter received by the Supreme Court a writ petition was registered (Banwasi Seva Ashram v. State of U. P. and Ors., : [1992]1SCR857). Where a letter is addressed by an aggrieved person who by reason of poverty, disability or socially and economically disadvantaged position finds it difficult to approach the Court for redress, the Supreme Court or the High Court would be justified, may bound, to treat the letter as a writ petition (State of Himachal Pradesh v. A. Parent of a Student of Medical College, Shimla and Ors., : [1985]3SCR676). In another case

the Supreme Court laid down the principle even if a letter is addressed to an individual Judge of the Court, it should be entertained, provided of course, it is by or on behalf of a person in custody or on behalf of a woman or a child or a class deprived or disadvantaged position (M. C. Mehta and Anr. v. Union of India and Ors., : [1987]1SCR819).

19. The second part of Mr. Mukherjee's argument narrated the facts which have already been mentioned hereinbefore through the mouths of the various respondents as spelt out by their Affidavits and there is nothing new. In his submission he has harped upon the contention that the petitioner is claiming to be the legally married wife of Kusalanand Bahuguna but she is to prove it and also prove the death of her husband and only a civil court of competent jurisdiction can decide it on evidence. He defended the chargesheet and submitted that 'The State has no objection to the getting of the legal dues of Sri Kusalanand Bahuguna by a proper person according to law.'

20. The Court now proceeds to pronounce its verdict in the matter after very careful consideration of all aspects of the case. The audacity of an Assistant Secretary to the Government of West Bengal, Mr. Prafulla Kumar Chatterjee, travelled beyond the act of decency and decorum when he questioned that there was no specific reference of the petition (in the order of the Court) submitted by Smt. Roshini Devi Bahuguna to the Chief Minister and as such the matter could not be ascertained in the absence of specific reference. But at the same time he stated that the petition of Roshini Devi addressed to the Chief Minister, however, was received by the D.G. & I.G.P., West Bengal, through C.M.'s Secretariat, being Memo No. 539/30862-CMS dated 10th August, 1982 but the same was untraceable in his office. This statement of Mr. Chatterjee made in paragraph 4 of the Affidavit is self-contradictory and at the same time evasive and false. In one tune he says that there is no specific reference of the petition stated to have been submitted by ' Roshini Devi to the Chief Minister and at the same time he admits that the D.G. & I.G.P., West Bengal, received a petition addressed to the Chief Minister through Chief Minister's Secretariat and give the particulars as well. Obviously with the intention to erase evidence it was said that the same is untraceable. It must be recorded that Mr. Prafulla Kumar Chatterjee, Assistant

Secretary to the Government of West Bengal, Home Department, made a deliberate misleading submission on oath to confuse the Court.

21. Keeping in view the statement made by Mr. Simon John Philip, Inspector-General of Police, West Bengal, respondent No. 2, in the Affidavit, it can safely be said that if Naik Kusanand Bahuguna was missing and could not be traced out then certainly it cannot be said that the Naik absented himself and committed misconduct not by taking leave for absence and not joining the office and naturally the entire disciplinary proceeding was mala fide. The Commandant, State Armed Police, 9th Battalion, is also quite vague in his Affidavit and he has simply narrated like a parrot the words tutored to him by an interested lobby that Bahuguna slipped out of the Hospital in an unauthorised manner and remained absent. He was discharged from service with effect from 3rd April, 1982 and thereafter on 26th August, 1983 a Memo was sent to the Officer-in-Charge of Missing Persons Squad (Annexure 16) filling up the proforma at the initiation of the O.C., M.P.S. A significant point which requires attention is that Annexure 1 mentions that Bahuguna was absent since 13.6.79 A.M. morning. It is well-known that after 12 midnight A.M. starts and continues upto 12 noon. There is no indication save and except A.M. morning, The A.M. starts from 12-01 night. What was the time in the morning Was it 4 A.M., 5 A.M., 6 A.M., 7 A.M., 8 A.M., 9 A.M., 10 A.M., 11 A.M. or 11-59 A.M. or any other time in-between This is not the proper way of the Police authorities to deal with a Naik who is serving in the Armed Police Force. Further the Medical Officer has very significantly used the word 'absconded' for Bahuguna. Now the question is who abscond The case is that Bahuguna was missing from a particular date. He was a patient admitted in the Hospital. He was not a criminal who would abscond. He was found not in the bed on 13th June, 1979. The Inspector-General of Police uses the term 'missing' and in the original letter it is mentioned as 'absent'. Grave doubts, undoubtedly, emerge about Kusanand Bahuguna whether he died of negligence or was the victim of some conspiracy and his body was removed and all the records of his illness were destroyed and new records were manufactured as appears from the conduct of the respondents. The Medical Officer has boldly stated that the papers including the Bed Ticket have been destroyed by the insects and as such were not available to mention the name of the disease from which the patient suffered. Whether the papers of the

patient in the Hospital destroyed by the insects or were eaten up by the officials, the question is who was in-charge of the patient to make out such strong plea of 'absent' of Bahuguna.

22. It is admitted that the Naik was hospitalised on 10th June, 1979. It may safely be presumed that he was seriously ill otherwise he would not have been admitted in the Hospital and the non-disclosure of the nature of his illness increases manifold the doubt whether he was really ill and was hospitalised or he was the victim of some conspiracy. There appears to be no earthly reason why a patient gone to the Hospital himself left the Hospital unnoticed and never returned for years. There is also doubt whether he was administered a wrong medicine which killed him. There is further indication of evil intention because his family was informed about his absence from duty much after his so-called 'missing' from the Hospital.

23. Now let me come to the disciplinary proceeding being proceeding No. 10 dated 26th November, 1981 containing the charge which is enclosed with the letter of the widow, Roshini Devi Bahuguna, as Annexure I. It reads as follows :-

'You Offg. NK/396 Kusanand Bahuguna of S.A.P. 9th Bn., Sandhya, Krishnagar, Nadia is hereby charged for gross misconduct in that :-

You were admitted to Krishnagar Police Hospital district Nadia for your treatment, on 10-6-79 morning. You were found absent from your hospital bed as reported by M.O., Police Hospital vide his No. PH-704, dated 14.6.79 since 13-6-79 morning. Since then you remained absent unauthorisedly till now. Notice was issued vide this office Memo No. 192 dated 16.6.79 at your home address directing to return to duty but to no effect.

Hence the charge.

You are hereby directed to submit your written statement of defence within 7 days of receipt of this charge and statement of allegation and also to state in writing, if you plead guilty of the charge in full or part thereof, or not and that you want an open enquiry and to be heard in person.'

24. This charge is signed by the Commandant of the State Armed Police, 9th Battalion, Sandhya, Krishnagar, Nadia. The Significant feature is that the Commandant in his Affidavit has not annexed the charge-sheet which was sent at the residential address of Kusanand Bahuguna but simply annexed Enquiry Report and the Order as Annexures 13 and 14. The charge is to remain absent unauthorisedly till now i.e. 26th November, 1981 and he was given only seven days time to send written statement of defence of the receipt of the charge which itself is not possible from a hilly area of the district of Pauri Garhwal in Uttar Pradesh. Further the Notice being Memo No. 192 dated 16th June, 1979 written to Bahuguna at his home address as indicated in the chargesheet was never placed before the Court by the Commandant as was done in the case of the charge itself. So far Bahuguna's act of missing is concerned from the chargesheet it appears that he was absent from Hospital bed, from the Affidavit of the Medical Officer it appears that, he absconded, from the Affidavit of the Commandant of the State Armed Police, 9th Battalion, it appears that the M.O. of the Hospital wrote by letter dated 14th June, 1979 about the unauthorised absent of Bahuguna from Hospital, the Inspectod-General of Police in his Affidavit said that Bahuguna was missing as reported by the M.O. of the Hospital on 14th June, 1979. Now which of the statements of the respondents is correct and accurate. It is apparent that no one is correct and accurate as to what actually happened to Kusanand Bahuguna and everybody is making a different statement at different times in the same forms. It is also to be noted that Bahuguna is said to be absent since 13th June, 1979 A.M. morning. Everything stands in a confused way and indicates towards a well-laid conspiracy to eliminate Bahuguna once for all. The high-ups are themselves confused as what to say and what not to say and how to save their skin from the blood of Bahuguna, The Enquiry Officer tried Bahuguna in absentia according to the whims of the respondents and by declaring that the term 'absented' is used in a broad sense, he came to the conclusion that the charge against the delinquent proved beyond all reasonable doubt and the delinquent absented himself unauthorisedly. The Enquiry and its Findings by Mr. O. P. Gupta, Enquiry Officer, Assistant Commandant of the State Armed Police, 9th Battalion, mutilated and interpolated the date of the report of the Enquiry and Findings which is apparent to any naked eye. When the original record of this Enquiry and Findings was

produced before the Court the correct date appeared 3rd April, 1982 and not the mutilated '15/3/82'. The Commandant of S.A.P. 9th Battalion, Krishnagar, passed his order dated Nil as appears from his Affidavit and discharged Kusanand Bahuguna from service with immediate effect. The Commandant was fully satisfied that a notice issued to him at his home address was not complied with by him and thereby he violated the lawful order and also he was satisfied that the 'notices sent to him were received by him'. Only the Commandant knows on what basis and on which evidence he came to the 'magnificent' conclusion that the notices were duly received by Bahuguna. This finding itself is absurd and without any foundation and the order passed by the Commandant cannot stand under any circumstances. The Enquiry and the Findings as well as the order both are perverse and bad in the eye of law.

25. There is a further point that if the findings of the Enquiry went against him on 3rd April, 1982 and subsequently he was discharged from service then what was the reason that the Commandant should write once again on 27th July, 1983 to the Superintendent of Police of Nadia enquiring about the dismissed Naik. From the facts discussed hereinbefore it is crystal clear that Kusanand Bahuguna was a victim of conspiracy at the 9th Battalion Camp of the State Armed Police at Krishnagar and all the papers were wilfully and deliberately destroyed to erase all evidence of his unnatural death. One thing is certain that Bahuguna died. The cause of death might have been the negligence of the Medical Staff of the Hospital and the wrong treatment for which purpose all the records were destroyed or that he was hacked to death in the Hospital itself when he was in service and within the custody of the Hospital authorities. The net result is that his life was terminated when he was under the direct control and supervision of the Commandant, State Armed Police, 9th Battalion at Krishnagar.

26. It should also be noted as I earlier pointed out as admitted position on oath that the widow of Bahuguna, Roshini Devi, wrote to the Chief Minister about her husband and the Chief Minister's Secretariat by Memo dated 10th August, 1982 sent a communication to the Director-General and Inspector-General of Police, West Bengal. But the Police authorities in spite of receiving a communication from the Chief Minister's Secretariat did not act upon the same or collect information

and it is now pleaded before the Court even by the Home Secretary that the same is untraceable in the office. It is strange how the Police Administration of West Bengal could sit so very calmly and coldly and take a careless attitude to a communication from the office of the Chief Minister of West Bengal. This Court is sure that this communication from the Secretariat of the Chief Minister as well as all the other papers referred to hereinbefore were not placed before the Court for the simple reason that the cat will be out of the bag and these officials particularly the Police authorities, the Commandant of the 9th Battalion and the Krishnagar Police Hospital authorities will be equally liable for the consequences thereof as they all conspired in eliminating Kusanand Bahuguna. I must state that the State-respondents have defended this case in a shameless manner and gave a bad name to the Government of West Bengal by their individual acts even disregarding the query from the Chief Minister's Secretariat. Unfortunately the consequences will have to be borne by the State. It may also be noted that Regulation 1030 of Police Regulations of Bengal, 1943 was given a go-by in this particular case and I do not find a trace of it in defence. It is now clear as day-light that Bahuguna was eliminated once for all and the departmental proceeding was a mere eye-wash.

27. It further appears from the application of Roshini Devi Bahuguna that she has a minor son and there is no one to look after them. The issue of Kusanand Bahuguna now must be around 12 years as appears from the application of Roshini Devi Bahuguna. It is also revealed from the said application that the father of Kusanand Bahuguna losing all hopes of his son died in 1985. The petitioner writes : 'I was under shock having a child in my lap and was totally unable to cover a distance of more than 1000 kilometres from my remote village situated in the far flung hills of Uttar Pradesh and unable to reach West Bengal without any help and financially totally broken.' She has expressed many apprehensions in the said application relating to her husband who after so many years must be presumed as dead. She prayed to the Court for the grant of General Provident Fund and other retiring benefits for herself and the son. There is no denying that Roshini Devi, widow of Kusanand Bahuguna, suffered severe torture, agony and mental oppression since 1979 and she is so suffering till this date. This suffering has taken a long time of more or less twelve years and it practically ruined the small family of Naik Bahuguna and the future of his young son.

28. This Court finds that prima facie there are enough materials on record to reach an affirmative conclusion that Kusalnand Bahuguna is not alive and has met with an unnatural death and the respondents cannot disown the responsibility in this behalf. I have discussed in detail the circumstances leading to the disappearance once for all of Naik Bahuguna and the mysterious story around such disappearance as was concocted by each of the respondents including the Director-General of Police, West Bengal, the Inspector-General of Police, West Bengal, (as two different Affidavits were filed), the Commandant, State Armed Police, 9th Battalion, Krishnagar, the Superintendent of Police Hospital, Krishnagar, through the Medical Officer and the Home Secretary, West Bengal, through an Assistant Secretary of the Department. All are singing in one uniform tone with no proper defence at all. This case can very much be decided on the principles laid down in the decision of Sebastian M. Hongray v. Union of India reported in AIR 1984 SC 1026 = 1984 Cri LJ 830. The jurisdiction of the writ court is wide enough to give substantial relief to the petitioner even though not specifically asked for. Article 226 of the Constitution confers on the High Courts very wide powers which were never possessed before and as the powers under this Article are discretionary, no limit can be placed upon discretion, but, of course, the discretion must be reasonable and not arbitrarily. The power can also be exercised for a non-fundamental right. The concluding words of clause (1) of Article 226 'and for any other purpose' make the jurisdiction of the High Courts quite extensive than that of the Supreme Court because these words are absent from Article 32. It has been laid down in the case of P. J. Irani v. State of Madras : [1962]2SCR169 that the High Court under the jurisdiction like those of the Supreme Court under Article 32 is not confined to the prerogative writs and the High Court while issuing directions and orders can travel beyond the contents of the writs which are normally issued. The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice. I have taken a serious view of this case where the poor lady and her innocent son was held at ransom for years together and the respondents were responsible for negligence and carelessness with the career of a young member of

the State Armed Police as well as the poor lady and his minor son who have no means of subsistence at all.

29. In that view of the matter I direct the respondents and each one of them to pay by way of compensation as consequential relief a sum of Rs. 100,000/- (Rupees one lakh) to Smt. Roshini Devi Bahuguna, the widow of Naik/396 Kusalnand Bahuguna, of Village Balori, Patti Chalanayun, P.O. Jaletha, Dist. Pauri Garhwal in the State of Uttar Pradesh, within 30th September, 1992. The money shall be given to Roshini Devi Bahuguna for self and her minor son through an Account Payee Cheque on proper identification of Roshini Devi Bahuguna by the Officer-in-Charge of Srinagar Police Station or the local police station where she presently resides in the district of Pauri Garhwal waiving all other formalities. In this connection I direct that the Superintendent of Police of the district concerned shall render all possible help. I further direct the respondents to pay all the retiring benefits of Kusalnand Bahuguna to Roshini Devi Bahuguna including General Provident Fund and pensionary benefits within the aforesaid date and term.

30. I hereby quash the order in Proceeding No. 10/81 drawn against Naik/396 Kusalnand Bahuguna discharging him from service with immediate effect and also the Enquiry and Findings by the Enquiry Officer relating thereto.

The writ application is accordingly allowed without costs. The Court is grateful to Mr. Mukul Prokash Banerji, Senior Advocate, for extending his valued assistance as *amicus curiae*.

31. The, Registrar, Appellate Side, is directed to communicate xerox copy of this Judgment to the petitioner, Roshini Devi Bahuguna, only under registered cover with A.D., and to all the respondents and the Chief Secretary to the Government of West Bengal without delay by messenger.

Let xerox copy of the Judgment be made available to the parties on usual undertaking and upon compliance of necessary formalities.