

Kamla Devi Vs. Union of India and ors.

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Court : Delhi

Decided On : Jan-20-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Appeal No. : W.P.(C) 10674/2009

Appellant : Kamla Devi

Respondent : Union of India and ors.

Advocate for Def. : Mr.Jasvinder Singh, Adv.

Advocate for Pet/Ap. : Mr.S.R.Kalkal, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. The petitioner, who is the widow of late Mukhtiar Singh, employed with ITBP as a Head Constable, has claimed multifarious reliefs against 3 respondents. Her first claim is to be released Liberalized Family Pension; second claim is to ex- gratia payment under a policy decision taken by the Government of Haryana and the third claim is to ex-gratia payment under a policy decision taken by the State of Jammu & Kashmir.

2. It is apparent that the first relief claimed is against the Union of India, the second is against the State of Haryana and the third against the State of Jammu & Kashmir.

3. Factual backdrop leading to the claim is not in dispute. Attached to the 5th Battalion, ITBP, which was stationed near Pantha Chowk, Srinagar, while on duty at the Unit Quarter Guard on 15.6.1999, late Mukhtiar Singh suffered Myocardial Infarction.

4. Disputed facts being that as per the petitioner, her husband had died in an operational area when Kargil war was being fought at the Line of Control between India and Pakistan in the State of Jammu & Kashmir and claims that as per OM dated 3.2.2000 she was entitled to Liberalized Family Pension inasmuch as of the 5 distinct categories, her entitlement fell within the ambit of category E, which reads as under:- "Category E: Death or disability arising as a result of (a) attack by or during action against extremists, anti-social elements etc., and (b) enemy action in international war or border skirmishes and warlike situations, including cases which are attributable to (i) extremists acts, exploding mines etc. while on way to an operation area; (ii) kidnapping by extremists; and (iii) battle inoculation as part of training exercises with live ammunition."

5. Per contra, as per the counter affidavit filed by R-1 to R-3 who are concerned with claim No.1, admitting Mukhtiar Singh having died at the Unit Quarter Guard on 15.6.1999 due to Myocardial Infarction, it is denied that the place was an operational area. It is stated that the area was a disturbed area. It is denied that the ITBP Battalion was involved in the war which was being fought at the Line of Control.

6. In support of the claim of the petitioner, learned counsel for the petitioner relies upon two decisions. The first is a decision of a Division Bench of this Court and the second is a decision of the Division Bench of the Punjab & Haryana High Court.

7. The decision of the Division Bench of this Court is reported as 2005 (3) SCT 458 Mrs.Manju Tewari v. UOI & Ors. In the said decision the admitted fact was that Mrs.Manju Tewaris husband was enrolled as a Combatant Soldier and was

attached with the Kumaon Regiment and during Kargil war i.e. Operation Vijay was deployed at the Pakistan border in Sriganganagar Sector of Rajasthan. It was not in dispute that husband of late Mrs.Manju Tewari was in an area declared Operational. Notwithstanding he not having died at the field when the battle was on and notwithstanding he having died due to Myocardial Infarction, the Division Bench held that claim of Mrs.Manju Tewari would fall within category E of the OM dated 3.2.2000.

8. The decision of the Division Bench of the Punjab & Haryana High Court is reported as 2004(3) SCT 388 Kanta Yadav v. UOI & Ors. Facts noted were that husband of Mrs.Kanta Yadav was attached with the Army Medical Corps and was on duty during Operation Meghdoot on 24.7.2000. On duty, he died due to Pulmonary Embolism.

9. It was noted by the Division Bench that the deceased was on duty at a high altitude in the Siachin Glacier and the deployment was under the military operation Operation Meghdoot. The Division Bench noted that Liberalized Family Pension had been sanctioned and the claim pertaining to grant of ex-gratia payment in sum of Rs.7.5 lacs under a policy which envisaged death occurring during (i) enemy action in international war or border skirmishes; and (ii) action against militants, terrorists, extremists etc." The Division Bench noted that being posted at an operational area during Operation Meghdoot, the claim had to succeed.

10. It is apparent that the ratio of law of both decisions is that the entitlement need not flow from death during a battle or in the field. As long as the deployment is in an operational area and is for or related to a combat, the death of a soldier at the battle front, notwithstanding actual firing not going on, would sustain the claim.

11. Relevant would it be to note that category E of the OM dated 3.2.2000 contemplates death arising as a result of (i) attack by or during action against extremists and anti-social elements; (ii) enemy action in international war or border skirmishes and warlike situations and includes death attributable to extremists acts in Operational Areas. The policy does not contemplate death being the direct consequences of warfare.

12. Needless to state the policy for grant of Liberalized Family Pension is a beneficial provision and thus needs to be construed liberally and as long as the language of the statute permits, to be interpreted favourably to the claimants.

13. Thus, the claim of the petitioner against the respondents needs to be considered in light of the ratio of the 2 decisions noted hereinabove and the OM dated 3.2.2000, as understood by us hereinabove.

14. Admittedly, late husband of the petitioner was not on combat duty; as were the late husband of Smt.Manju Tewari and Smt.Kanta Yadav. The petitioner asserts that her husband was in an operational area, a fact denied by respondents No.1 to 3 who assert that petitioners husband was in a Disturbed Area and not in an Operational Area.

15. It is settled law that the onus lies upon the party who asserts a fact. That apart, we can take judicial fact of the matter that Kargil war was fought on the Line of Control between India and Pakistan and not in Srinagar town. The admission by the petitioner that her husband was attached to the 5th Battalion of ITBP which was stationed at Pantha Chowk near Srinagar in the State of Jammu & Kashmir entitles this Court to presume that the husband of the petitioner was not in an Operational Area.

16. Under category E of the OM, the entitlement to grant of Liberalized Family Pension is contingent upon the death being in an operational area or while on the way to an operational area.

17. Thus, the first claim has to be rejected.

18. As regards claim against the State of Haryana, petitioner relies upon an OM dated 4.1.2006, ignoring that petitioners husband died on 15.6.1999 and thus OM dated 4.1.2006 cannot be the foundation of the claim. We note that as per State of Haryana the policy decision taken by the State of Haryana was as per the OM dated 1.4.1994 which was superseded by OMs dated 17.6.1999, 23.6.1999, 2.7.1999 and 25.7.1999. As per OM dated 30.9.1999 effective from 1.4.1999, ex-gratia compensation payable to family of defence service personnel and para-

military force personnel would be who die in harness in the performance of official duties while serving in operations in Kargil and would be restricted to those families and jawans who were residents of State of Haryana.

19. Suffice would it be to state that as per OM dated 30.9.1999 the ex-gratia payment was contingent upon death while on duty in operational areas in Kargil.

20. It is apparent that the ex-gratia scheme for grant of ex- gratia payment framed by the State of Haryana is to reward gallantry and no more.

21. Similarly, pertaining to the State of Jammu & Kashmir, policy decision taken on 10.7.1990 is restricted when death is a result of violence attributable to the breach of law or order or other form of civil commotion'.

22. It is apparent that the policy decision taken by the State of Jammu & Kashmir is restricted in its operation. It envisages death as a direct result of violence during breach of law and order or other form of civil commotion and does not concern itself with death while on duty in a disturbed area.

23. Noting that as against Ordinary Family Pension, the petitioner has been released Extra-Ordinary Family Pension as her husband died while on duty, expressing our sympathy with the petitioner, being helpless in the matter, we dismiss the writ petition but leave the parties to bear their own costs.

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