

(1998) 01 DEL CK 0009
In the Delhi High Court
Case No : C.W. No. 1463 of 1995

Bindeshwar Prasad Sinha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 AD 825 : (1998) 71 DLT 586 : (1998) 44 DRJ 490

Hon'ble Judges : R.C. Lahoti, J;J.B. Goel, J

Bench : Division Bench

Advocate : Mr. Jaya Narayan and Mr. Barun K. Sinha, for the Appellant; Ms. Alpana Poddar and Ms. Avnish Ahlawat, for the Respondent

Judgement

J.B.Goel, J.—By this writ petition u/s 226 of Constitution of India the petitioner seeks a writ of in mandamus or other directions to the respondents for payment of Rs.10 lakhs as compensation on account of the death of his son deceased Bijoy Shanker, an I.P.S. Probationer, on 10.11.1992 while he was on training at police Training Centre, Phillaur. The, deceased was appointed on probation as an IPS Officer of 1990 batch. He was allotted to Union Territory of Delhi Cadre and was sent for training in August, 1991. After completing first phase of his training at Mussoorie, National Police Academy, Hyderabad etc. he was sent on second phase of his training at Police Training College, Phillaur, District Jalandhar where he had joined on 4.11.1992. He died by drowning in a swimming pool in the campus of the Training College.

2. The petitioner who is the father of the deceased has claimed compensation alleging that death was caused due to negligence of the authorities of the Police Training College, Phillaur as no safety measures had been adopted at the swimming pool.

3. Separate counter affidavits have been filed on behalf of respondents 1 and 2. The circumstances about the death of the deceased as given in the counter affidavits and the documents placed on record are that the deceased was

undergoing probationer's training Along with other probationers of 1991 batch and on second phase of his training was sent to Police Training College, Phillaur for six weeks PTC attachment training on 4.11.1992. He had failed in the swimming examination conducted by the National Police Academy, Hyderabad where he was required to reappear in the swimming examination. However, swimming classes training was not the part of his training at Phillaur. It is stated that there exists one swimming pool used for training purposes during summer in the Centre Complex at Phillaur but it was dried out during the said period as there is no training during that period. There is also another swimming pool used by officers and the staff in week ends where no coaching classes were ever held. The deceased without informing any instructor or fellow probationers had gone to the aforesaid second swimming pool and perhaps had jumped in the water at about 11.00 a.m. where he drowned in the 10 feet deeper side of the pool unnoticed by anyone, it being a holiday on account of Guru Nanak Dev's birthday on 10.11.1992. At lunch time at about 2.00 p.m. when he was not found in his room, on search his body was found lying in the aforesaid swimming pool, He was rushed to the hospital but he had already died. In the counter affidavit filed on behalf of respondents, it is also stated that the benefits as admissible under the rules namely;

1. DCRG (Rs.13,650),
 2. PLI (Rs.50,000/-),
 3. UTCGE (Rs.1,20,000/-),
 4. Savings in UTCGE (Rs-968/-)
 5. Leave encashment (Rs.4,718/-), and
 6. Affairs of salary (Rs.6,351 /-) i.e. in all Rs.1,95,697/- have since been paid. Liability to pay any amount by way of compensation or otherwise is denied by the respondents as not permissible under any law or rules.
4. After the pleadings were filed, statement was made by the Counsel for the petitioner on 6.5.1997 that the petitioner restricts the claim to Rs. 1.25 lakhs a sex gratia on the basis of guidelines dated 19.6.1990 and the recommendation made by the Commissioner of Police to the Government of Delhi seeking necessary sanction of the Competent Authority for the payment of this amount of Rs. 1.25 lakhs.
5. Copy of the O.M. dated 19.6.1990 and some correspondence relating to this matter have been brought on record.
6. These facts and the cause of the death have not been disputed on behalf of the petitioner in these proceedings.
7. Relying on Section 22 of the Police Act, 1861 the learned Counsel for the petitioner has contended that the deceased being an IPS Police Officer was on duty even during his training period and as a police officer he was to be on active

service always; he must be deemed and held to have died while on active duty. By virtue of Delhi Administration Home Department office memo dated 19.6.1990 a sum of Rs. 1.25 lakhs is payable to the petitioner being the father of the deceased. Whereas learned Counsel for respondents 1 and 2 have contended that the instructions contained in letter dated 19.6.1990 are not binding on the Union of India; that the deceased was only a probationer and not yet appointed on regular service and thus was not on active duty; that the swimming was not a part of his training at the Police Training College at Phillaur and not being a trained swimmer he ought not to have entered the swimming pool without any instructor he died because of his own gross carelessness and negligence for which no one is liable. It is also contended that there is no rule or law on which this claim could be granted by the Union of India.

8. Office memo dated 19.6.1990 has been issued by the Delhi Administration, Home Department forwarding the Minutes of the Meeting of some officers of the Delhi Administration and of the office of the Commissioner of Police presided over by the Home Secretary, Delhi Administration held on 24th May, 1990 where it was decided that it was necessary to work out a scheme in consultation with the Ministry of Home Affairs for payment of ex gratia amount to police and home guard personnel who sustain serious injuries or loss of life while on duty and till such scheme was finalised certain guidelines were prescribed. Recommendation was made by the Committee inter alias to pay Rs. 1.25 lakh as compensation for loss of life in case of death on active duty and Rs.75,000/- in case of non active duty and it was decided that these guidelines will apply till a formal scheme is announced. The Minutes of this Meeting were circulated among the officers of the Delhi Administration and of the office of the Commissioner of Police only. These instructions do not appear to have the approval or sanction of the Government of India, Ministry of Home Affairs or its any other Ministry. As such these instructions are not binding on the Union of India respondent No. 1 herein and they thus cannot be made liable on the basis of these instructions. Commissioner of Police is a functionary appointed by the Central Government and is under the control of that Government. In the absence of their approval the Union of India is not bound by any decision taken by him or having his approval. Respondents No. 1 and 2 thus would not be liable to make any payment in pursuance of these instructions. The Government of India had rejected the request for grant, of financial assistance in this case on the ground that the rules do not permit for grant of such assistance. The aforesaid guidelines, if at all, may be binding on the Government of the National Capital Territory of Delhi and no doubt a recommendation was made by the office of the Commissioner of Police, Delhi to that Government in letter dated 26.5.1993 (Annexure P-6) but that Government has not been impleaded as a party in this writ petition and in their absence their liability cannot be determined. However, thereafter Km. Asha Sinha, sister of the deceased and daughter of the petitioner has been appointed as a sub inspector (Woman) in Delhi Police on compassionate grounds with effect from 21.12.1994.

9. Learned Counsel for the petitioner has not urged during arguments that

respondent Nos. 3 and 4 are in any way liable for any compensation. Thus none of the respondents can be held liable for the claim made in the writ petition. That apart the petition raises disputed questions of fact. No relief can be allowed to the petitioners unless it is decided whether the deceased was on active duty or not; whether going to swimming pool by the deceased could be treated as a part of his training at the PTC; whether the death of the deceased was attributable to his own carelessness or negligence rendering none else liable? Such questions are not fit to be determined in exercise of writ jurisdiction and in the absence of evidence. For these reasons, we are of the opinion that no relief can be allowed to the petitioner in exercise of writ jurisdiction of this Court and that too on the petition as framed. The petition is, Therefore, dismissed though with out any order as to the costs.