

(2013) 04 JH CK 0136
In the Jharkhand High Court
Case No : WP (S) No. 626 of 2003

Kaliman Bibi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 161, 21
Hindu Marriage Act, 1955 — Section 16, 16(3)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34
Workmens Compensation Act, 1923 — Section 21(1)(b)

Citation : (2013) 3 AJR 427 : (2013) 2 JLJR 356

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.N. Pathak and Rishikesh Giri, for the Appellant; Manoj Kumar Choubey for the State, for the Respondent

Judgement

S. Chandrashekhar, J.—The sole question involved in this case is whether the benefit of the Resolution dated 21.3.2001 can be extended to the petitioner whose husband died in extremist/maoist attack. It is unfortunate that the petitioner has been forced to knock the door of this Court. The petitioner, an illiterate lady who lost her husband in an incident in which her husband was killed by extremists, has been denied adequate support, which the State of Jharkhand ought to have given her in terms of its own policy guidelines dated 21.3.2001.

2. The husband of the petitioner was working as Chowkidar in Bhandra Police Station. He was killed by the extremists in the night of 26.1.2001. An F.I.R. being Bhandra P.S. Case No. 6 of 2001 under Sections 147/148/149/364/302/34 I.P.C. and Section 17/18 of C.L.A. Act was registered at the instance of the son of the petitioner namely, Mr. Khalil Ansari. The matter was investigated and the incident was found true. The incident was widely published in the newspapers in the State of Jharkhand also. The matter was referred to the higher authorities for grant of compensation, employment to the dependents of the victims etc. The petitioner

was not paid adequate compensation and therefore, she submitted her representation to the higher authorities for grant of benefit under Resolution dated 21.3.2001 of the Government of Jharkhand. However, the petitioner was not extended the benefit under the Resolution dated 31.3.2001 and therefore, she has moved this Court by filing the present Writ Petition.

3. A counter-affidavit has been filed in which a plea has been raised that the time when the occurrence took place, the 1997-Guidelines of the State of Bihar was in force and in terms of the said guidelines the petitioner has already been paid compensation of Rs. 2.50 lacs and therefore, this writ petition is liable to be dismissed. It has further been stated that the representation of the petitioner was also dismissed vide letter dated 13.3.2003 whereby she has been informed that she was entitled for the compensation of Rs. 2.5 lacs only in terms of Resolution No. 25/97 dated 5.5.1997 of the Finance Department, Government of Bihar, which has already been paid to her.

4. Heard learned counsel for the parties and perused the documents on record.

5. The learned Sr. Counsel appearing for the petitioner has raised a plea that though the husband of the petitioner died prior to coming into force the Resolution dated 21.3.2001 of the Government of Jharkhand, the matter for grant of compensation to the petitioner was finally approved when the new policy guidelines of the State of Jharkhand had already come into force and therefore, the petitioner is entitled for grant of all the benefits as contained in Resolution dated 21.3.2001. In support of his contention the learned Sr. Counsel has relied on a decision of the Hon"ble Supreme Court in " Shashikalabai (Smt) Vs. State of Maharashtra and Another, .

6. On the other hand, learned counsel for the respondent-State of Jharkhand has contended that the Resolution dated 21.3.2001 cannot be given retrospective operation. The date on which the resolution came into force, is the date from which it would start to operate. In any event the petitioner has already been paid compensation of Rs. 2.50 lacs in terms of the 1997-Guidelines which was in operation at the time when the incident took place. On these grounds he has submitted that the writ petition is liable to be dismissed.

7. I find that the incident dated 26.1.2001 has been found true and the matter for grant of compensation to the petitioner was referred to the higher authorities. In view of the high number of casualties which were taking place during the encounter or attack by the extremists/maoists, the Government of Bihar had initially formulated a policy for grant of compensation of Rs. 2.50 lacs to the family of the victim. On 15.11.2000, a new State namely, the State of Jharkhand was created and thereafter vide Resolution dated 21.3.2001, it was decided to extend support in various measures to the family of the victims who had died during encounter with the extremist or in extremist's attack. At this juncture, it would be useful to notice the object mentioned in Resolution dated 21.3.2001 which is extracted below:--

Subject: Compensation and other benefits to the police personnels and other Government employee killed in naxal/extremists activities.

Sir,

It is learnt that police personnels and other employees of the State are killed or grievously injured in the naxal/extremist activities. In these circumstances, if proper care is not taken for them or the dependants of the police personnels/employees, it not only adversely affects the concerned employee and his family members, it largely affects the morale of other employee working in the State of Jharkhand. To meet immediate requirement, a Circular was issued by the State of Bihar vide Resolution No. 25/97-55 dated 5.5.1997 in which injured/dead employee/police personnels were given certain benefits. After lapse of time, it was felt that the benefit extended to the police personnels/employees was not sufficient and the procedure adopted for the same was lengthy and complicated due to which compensation to the affected employee and their families could not be given on time. As a result of which the employees are dissatisfied which has affected the working capacity and efficiency of the administration in the State. Therefore, the State Government after proper consideration has taken a decision that henceforth police personnel killed/injured in naxal/extremist activities will be given compensation/benefits on the following terms and condition;

8. It is also clear that under Resolution dated 21.3.2001 various benefits have been extended to the victim's family. These are;

(I) Ex-gratia compensation of Rs. 10 lacs without any discrimination on account of post or grade,

(II) Payment of salary for the balance period of service i.e., till the victim officer would have attained the age of superannuation,

(III) Immediate appointment of the dependant on the post other than a Gazetted post on which appointments are made by the recommendation of the Public Service Commission,

(IV) Permission to retain the Government quarter for one year without any rent and if the family/dependants are residing in a rented house or own house, rent for one year to be paid,

(V) Free education facilities alongwith the hostel expenditure for a maximum of two children with certain conditions, and

(VI) Provisions for treatment of the injured Government employee.

9. It is thus clear that the main object for formulating the Guidelines as contained in Resolution dated 21.3.2001 was to encourage and boost the morale of the members of the police force/government employees and to extend adequate support to their families in the event of their death during extremist attacks/encounters. Undisputedly, this is a beneficial policy and therefore, it needs to be construed and applied liberally.

10. The law relating to construction of beneficial provision is well settled and the Hon"ble Supreme Court has repeatedly stressed that a beneficial provision should be given wider meaning and it should be given a purposive interpretation to further and not to frustrate the desirable social purpose.

11. Lord Denning, L.J. has observed in "Seaford Court Estates Ltd. vs. Asher" reported in (1949) 2 ALL ER 155, "..... a Judge must not alter the material on which the Act is woven, but he can and should iron out the creases". This oft-quoted rule of construction has been approved by the Hon"ble Supreme Court in " M. Pentiah and Others Vs. Muddala Veeramallappa and Others, and several other cases.

12. The learned Sr. Counsel for the petitioner has relied on a decision of the Hon"ble Supreme Court in "Shashikalabai (Smt.) vs. State of Maharashtra & Anr." (supra) in which the benefit of higher compensation under the subsequent circular was extended to the family of the victim. In the said case the Maharashtra State Electricity Board initially issued a circular dated 5.4.1979 prescribing a compensation of Rs. 30,000/- for the family/dependants of the victim who died by coming into contact with live electric wire however, another circular dated 28.1.1993 was issued enhancing the compensation to Rs. 60,000/- with immediate effect subject to the condition that cases already closed should not be reopened. The victim in the said case had died on 18.3.1991 however, there was correspondence between the parties and the case was considered only after the introduction of the new circular dated 28.1.1993. The Hon"ble Supreme Court has held that "since the present case was not closed on the date of the circular coming into effect, the appellant should have been granted benefit of new circular."

13. In Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others, , the Hon"ble Supreme Court has taken a view that welfare legislation should be given a purposive interpretation, safeguarding the rights of the have-nots rather than giving literal construction and in case of doubt the interpretation in favour of the workers should be preferred.

14. While interpreting Section 21(1)(b) of the Workmen's Compensation Act, 1923, which contains provision regarding "venue of proceedings and transfer", the Hon"ble Supreme Court in Morgina Begum Vs. Managing Director, Hanuman Plantation Ltd., , has held that an application for compensation can be filed at the place where claimant's parents had moved after death of their son. Taking a view that labour statutes are for the welfare of the workmen, the Hon"ble Supreme Court has observed thus:--

7. The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claim not necessarily at the place where the accident took place but also at the place where they ordinarily reside. This amendment was introduced in the Act in 1995.

This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for the claimants to pursue such a claim petition because of the financial and other hardship. It would entail the poor claimant travelling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen.

15. In " Madan Singh Shekhawat Vs. Union of India and Others, , the Hon''ble Supreme Court has held that, "it is the duty of the Court to interpret the provision especially the beneficial provision, liberally so far as to give it a wider meaning rather than restrictive meaning which would negate the very object of the Rule". In the said case expression "at public expense" in Rule 48 of the Defence Services Regulation has been construed by the Hon''ble Supreme Court to mean travel which is undertaken "authorisedly". It has been held that:--

18. Applying the above rule, we are of the opinion that the rule-makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of the journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself.

19. We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorized to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, the same will not be issued if the person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly, meaning thereby that if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised.

16. When Section 16(3) of the Hindu Marriage Act, 1955 was reconsidered by the Hon''ble Supreme Court in " Revanasiddappa and Another Vs. Mallikarjun and Others, , the Hon''ble Supreme Court held that since the children born out of illegitimate marriage have been declared legitimate by virtue of Clauses (1) & (2) of Section 16, the children born out of illegitimate marriage also would be at par with other legitimate children and would be entitled to all the rights in the property of their parents, both self-acquired and ancestral. After reiterating that the Hindu Marriage Act is a beneficial legislation and it intends to bring in social reforms, the Hon''ble Supreme Court has observed as under:--

40. It is well known that this Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children. In doing so, the Court must have regard to the equity of the statute and the principles voice under Part IV of the Constitution, namely, the directive principles of State Policy.

17. In cases relating to premature release of lifers when a question arose as to applicability of the Government policy/instruction in force at the time of conviction by the Trial Court and the Govt. policy/instruction in force when the case of the convict came up for consideration, the Hon"ble Supreme Court in " State of Haryana and Others Vs. Balwan etc., , has taken a view which is as under:--

5. Ordinarily, when an authority is called upon to exercise its powers that will have to be done consistently with the legal position and the government decision/ instructions prevalent at that time. However, in order to see that a lift convict does not lose any benefit available under the remission scheme which has to be regarded as the guideline, it would be just and proper to direct the State Government to treat the date on which his case is/was required to be put up before the Governor under Article 161 of the Constitution as the relevant date with reference to which their cases are to be considered.

18. In " State of Haryana and Others Vs. Jagdish and Harpal, , again the issue of premature release of life-convicts came up before the Hon"ble Supreme Court and the Hon"ble Supreme Court has further clarified that, of all the possible applicable policies, the one which is more liberal or beneficial to the convict should be applied. The Hon"ble Supreme Court has held.

54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof.

19. From the aforesaid discussion, it is thus clear that the Hon"ble Supreme Court has stressed that a liberal and beneficial construction must be given to a welfare provision. The Hon"ble Supreme Court has also approved that the Government Policy/guideline which is more beneficial and applicable on the date when the case is considered and decided, should be adopted by the authorities.

20. With a view to ascertain the true facts, when the matter was listed on

15.3.2013, this Court directed the Respondent-State to produce the original records, which has been produced in the Court today. I find that the grant of compensation to the petitioner was approved on 22.1.2001 and the final communication was sent to Accountant-General on 13.2.2002. It is thus clear that on 21.3.2001 when the new policy came into force, the case of the petitioner was not closed.

21. On consideration of the materials on record which clearly indicate that the day on which the Resolution dated 21.3.2001 came into force, the case for grant of compensation to the petitioner was not closed and therefore, I am of the view that the petitioner is entitled for the grant of benefits as contained in Resolution dated 21.3.2001.

22. Accordingly, the writ petition is allowed. The respondents are directed to extend all the benefits under Resolution dated 21.3.2001 to the petitioner within a period of eight weeks from the date of production of the order.

23. There is however, one more aspect of the matter which should not be left unattended. It has been informed by the learned Sr. Counsel for the petitioner that after the death of her husband, the petitioner's family has been living in a miserable condition. Neither adequate compensation was given to her family nor any appointment on compassionate ground was given to any member of her family. The writ petition was filed on 29.1.2003 and till today, the respondents did not take any step in the matter. There is no doubt in my mind that had the benefits under Resolution dated 21.3.2001 been granted to the petitioner and her family, it would have helped the petitioner's family immensely. There can be no manner of doubt that proper and timely action by the authorities form part of the concept of public accountability.

24. The petitioner is an illiterate lady. The affidavit which has been filed in support of the writ petition is dated 24.1.2003 and it bears the thumb impression of the petitioner. The writ petition was filed on 29.1.2003 in which a copy of the representation of the petitioner has been annexed. In the counter-affidavit filed on behalf of the State of Jharkhand, a plea has been taken that the representation of the petitioner was received in the office on 10.3.2003 which appears incorrect on the face of the record. Since the learned Sr. Counsel appearing for the petitioner raised a plea of discrimination, the Respondent-State of Jharkhand was directed to disclose the name of other persons who had died/grievously injured in the incident dated 26.1.2001. However, no such affidavit has been filed on behalf of the Respondent-State of Jharkhand. The State as a litigant cannot play hide and seek with the Court.

25. It is the duty of the Court to protect the right of citizens and ensure that every one is able to live with dignity. Denial of benefit to the petitioner under Resolution dated 21.3.2001 is in contravention of the protection under Articles 14 and 21 of the Constitution of India. In view of the aforesaid facts, it would be appropriate to saddle the State of Jharkhand with cost of Rs. 50,000/- which

would be paid to the petitioner. In view of the award of cost, no separate order for interest on the balance amount from Rs. 10 lacs is being made by this Court. The writ petition is disposed of in the aforesaid terms.