
(2015) 02 JH CK 0145
In the Jharkhand High Court
Case No : WP(S) No. 1940 of 2007

Kavilash Devi

APPELLANT

Vs

The Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Citation : (2015) 3 AJR 213 : (2015) 2 JLJR 149

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Bijay Kumar Sinha, for the Appellant; Ram Subhag Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Pramath Patnaik, J.

1. In the instant writ petition, the petitioner has initially prayed for direction upon the respondents to pay compensation to the petitioner, whose husband was murdered by the miscreant, while discharging his duty as Chowkidar in the Central Store on 31.12.2005 and further direction upon the respondents to consider the representation of the petitioner, which was pending before the Director, Personnel and the General Manager-cum-Engineer, Singhbhum, Jamshedpur and also for direction upon the respondents to pay pension to the petitioner. During pendency of the writ application, an Interlocutory Application, being I.A. No. 3523 of 2009, was filed by the petitioner praying therein for amendment in the prayer portion of the writ petition for quashing of Memo No. 991 dated 10.4.2008, whereby representation of the petitioner dated 10.3.2008 was rejected. The said Interlocutory Application for amendment was allowed vide order dated 3.11.2014 and the respondents were directed to file counter affidavit with respect to the amended prayer.

2. Again the matter was listed on 1.12.2014, wherein the respondents were directed to apprise the Court regarding the definition of hazardous nature of

work and to file counter affidavit within two weeks. The matter was again listed on 27.1.2015 and at the request of learned counsel for the respondents-Board, the matter was adjourned to be listed in the week commencing from 9th February, 2015 and finally on 13.2.2015 with the consent of both the sides, the matter was finally heard.

3. The factual matrix, as delineated in the writ application, is that while the deceased-husband of the petitioner, namely, late Lajit Mahto was on duty as Chowkidar on the fateful night i.e. on 31.12.2005 at Central Store of Jharkhand State Electricity Board, Jamshedpur he was murdered by unknown miscreants, for which First Information Report, under Annexure-1, was lodged and the police submitted Final Form, as revealed in Annexure-2, in which the occurrence was found true but no clue was traced out about the looting by the miscreants.

4. During pendency of the writ application, the petitioner has filed supplementary affidavit bringing on records Resolution No. 244 dated 30.6.1988 of Bihar State Electricity Board, Patna, which is commonly known as "Accident Compensation Scheme, 1988. For ready reference, relevant Clause 3 of the above-referred Resolution, is quoted herein below:--

"3. Scope of the Scheme.--Where an employee of the Board dies in an accident in the discharge of duty assigned to him in an authorized manner by competent authority the dependants of the deceased employee shall be entitled to the following benefits:--

(a) Cash Relief:--(i) Employee drawing basic pay upto Rs. 1,600/- per month.

In case of deceased employee drawing basic pay upto Rs. 1,600/- per month, a cash relief of Rs. 1 Lakh shall be paid by the Board. This amount of cash relief of Rs. 1 Lakh shall be in addition to the compensation payable under Workmen's Compensation Act, 1923. If the deceased employee is not covered by the Workmen's Compensation Act, 1923, compensation payable to his dependant shall be calculated as if he is governed under the Workmen's Compensation Act and such additional amount shall be paid to his dependant in addition to the cash relief of Rs. 1 Lakh referred to above. The ceiling of amount payable as compensation, cash relief and additional amount if any, referred to above will be Rs. 2 Lakhs. In cases where the compensation payable under the Workmen's Compensation Act, exceeds Rs. 2 Lakhs no further cash relief shall be paid by the Board.

(ii) Employee drawing basic pay exceeding Rs. 1600/- per month: Where the basis pay of the deceased employee exceeding Rs. 1,600/- per month, the dependants of such employees shall be paid a sum of Rs. 2 Lakhs as cash relief which shall be inclusive of the compensation payable under the Workmen's Compensation Act. But if compensation under the Workmen's Compensation Act exceeds Rs. 2 Lakhs, no further cash relief shall be paid by the Board, if the deceased employee is not covered under the Workmen's Compensation Act, a cash relief of Rs. 2 Lakhs shall be paid by the Board.

(iii) Pensions: The dependants, as per pension rules, of the deceased employee shall get by way of family pension, the same amount which the deceased employee was drawing as his salary (i.e. basic pay, D.A., A.D.A., and interim relief) on the day of the accident and this sum shall be paid upto the date on which such deceased employee would have superannuated had he not died on account of fatal accident on duty. From the date of the deceased employee would have superannuated the dependant of the deceased will get family pension admissible under the rules.

(iv) Gratuity and other terminal benefits: The dependants of the deceased employee shall get gratuity and other terminal benefits as per rules.

(b)(i) House facility: If the deceased employee is in occupation of the Board's quarter prior to the accident his dependants shall be allowed to remain in quarter for one year from the date of accident on payment of normal rent.

(ii) Employment of dependant: One of the dependents of the deceased employee shall be given employment in the Board to a Class-III or Class-IV post, accordance with his qualifications under the existing rules.

Subsequently, the Scheme dated 30th June, 1988 has been amended vide resolution dated 15.1.1999 and the scope of the scheme, under Clause 3, has been amended, as under:--

"3. Scope of the Scheme--"Where an employee of the Board dies in an accident at the work place in course of discharge of duty assigned to him in an authorized manner by competent authority and the death occurs due to hazardous nature of work and the safety measures as required under the rule have properly been applied, the dependant of the deceased employee shall be entitled to the following benefits:--"

5. Heard learned counsel for the petitioner and learned counsel for the respondents-Board.

6. Learned counsel for the petitioner submitted that since the petitioner was murdered while on duty and his work was hazardous nature of work since the death of the petitioner's husband occurred while discharging his duty as Chowkidar, hence, on the basis of aforesaid scheme, the petitioner has prayed for the appropriate direction for redressal of his grievance. Learned counsel for the petitioner further submitted that only due to resistance, husband of the petitioner was murdered and property of the Board could be saved, hence "no report of loss" cannot be a ground for refusal of compensation. Hence, the impugned order dated 10.4.2008 denying the compensation is liable to be quashed and set aside.

7. Counter affidavit has been filed on behalf of respondents repelling the averments made in the writ petition. The main thrust of the arguments advanced by learned counsel for the respondents is that murder of the petitioner's husband is not coming within scope and ambit of for compensation as per

paragraph 3 of notification of 1988, which has been amended vide Memo No. 63 dated 15.1.1999. The General Manager-cum-Chief Engineer vide Memo No. 991 dated 10.4.2008 refused to pay the compensation on the ground that there is no report of loot of Board's property during the duty hour of deceased employee.

8. On perusal of the writ application, counter affidavit, the above-referred scheme and rivalised (sic--rival?) submissions, the question that falls for determination before this Court is as to whether the work of Chowkidar is hazardous or not, as per the amendment of the resolution dated 15.1.1999 so as to entitle the petitioner for compensation.

9. The dictionary meaning of Hazardous", as has been defined in the Oxford Advanced Learner's Dictionary, New 8th Edition, speaks that: "hazardous: ad involving risk or danger, especially to sb's health or safety".

10. It appears that the duty of Chowkidar, which was assigned to the deceased, was to guard the property of the Board kept in store taking all necessary precaution. On a plain reading of the definition of word "Hazardous", there cannot be any shadow of doubt or debate that the nature of work of the deceased-employee is hazardous one and indisputably the husband of the petitioner died in course of discharging his official duty and the factum of his murder stands proved, as revealed from the final report. Furthermore, the impugned order of rejection of the representation vide Annexure-C to the counter affidavit as contained in Memo. No. 991 dated 10.4.2008 rejecting the representation of the petitioner denying the claim of compensation appears to be based on flimsy and baseless ground and not in consonance with the Accident Compensation Scheme, 1988 of the Board. After having given my anxious consideration to the lis relating to award of compensation, I am of the considered opinion that the rejection of the representation of the petitioner vide order dated 10.4.2008 passed by General Manager-cum-Engineer, Singhbhum, Jamshedpur, under Annexure-C to the counter affidavit, is illegal and unsustainable and hence, is hereby quashed. The respondents are hereby directed to award compensation to the petitioner, as due and admissible and strictly in accordance with aforesaid scheme within a period of four months from the date of receipt/production of copy of this order.

The writ petition is allowed with the aforesaid directions.