
(2014) 04 AHC CK 0234

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16117 of 2004

Lata Rani

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-04-2014

Acts Referred:

Citation : (2014) 9 ADJ 418 : (2014) 3 UPLBEC 2513

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Atul Tej Kulshreshtha, Advocate for the Appellant

Judgement

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Sudhir Agarwal, J.—Heard Sri Atul Tej Kulshreshtha, learned Counsel for the petitioner and learned Standing Counsel for the respondents. A short question up for consideration in this case, "whether petitioner is entitled for extra ordinary pension under U.P. Police (Extra Ordinary Pension) Rules, 1961 (hereinafter referred to as "Rules, 1961") as amended by U.P. Police (Extra Ordinary Pension) (First Amendment) Rules, 1975".

2. The facts, which are not in dispute, are that petitioner's husband, a Constable in U.P. Police Force, was posted at Aligarh. While returning from performing his duty in office, on the way, suffered pain in chest and thereafter he was admitted in hospital where he was declared dead. The petitioner applied for extra ordinary pension under Rule 1961 as amended in 1975. The application was forwarded with favourable recommendation of Senior Superintendent of Police, Aligarh vide letter dated 13/14.6.2002 (Annexure 1 to the writ petition) but has been turned down by Finance Controller, U.P. Police Headquarter, Allahabad vide letter dated 22.4.2003 holding that petitioner's husband has not died in the course of employment and therefore, petitioner is not entitled for extra ordinary pension under Rules, 1961.

3. A short question, up for consideration in the case in hand is, whether, at the

time when petitioner's husband suffered heart attack and ultimately died, can he be held to be in midst of performing official duty or not.

4. Rule 3, as amended in 1975 of Rules, 1971 read as under:

5. Before such amendment, extra ordinary pension was admissible only if Police Officer, governed by Rules, 1961, has died in encounter with dacoits, armed criminals and foreign insurgencies.

6. In 1975, scope of Rule 3 was enlarged and now rule also apply to gazetted police officer, if they die or killed, performing some other duties. Learned Single Judge (Hon"ble Dilip Gupta, J.) in the judgment dated 11.8.2010 in Writ Petition No. 47802 of 2010 (Smt. Munni Devi v. State of U.P. & Ors.) has taken a view that "Rules should be liberally interpreted in such manner that it gives benefit to Police Officers/employees who killed or die, while performing official duties and it should not be restricted to extra risk."

7. His Lordship has also referred to communication dated 23.1.1980, issued by General Secretary, Government of U.P. to the Accountant General expressing opinion of State Government in the matter relating to payment of extra ordinary pension to one Vijay Bahadur Singh and it says:

"The constable in this case will be said to have died in the course of performance of his duty within the meaning of rule 3 and as such he is entitled to benefit therein. The operation of the rule is not confined to case where a member of police force is killed. It also extends to a case where such a person dies in the course of performance of duty even without an encounter with dacoits or armed criminals etc."

8. Similar view has been taken by this Court also in Civil Misc. Writ Petition No. 55471 of 2009 (Smt. Suneeta Sharma v. State of U.P. & Ors.) decided on 19.4.2011, wherein while returning from duty, Police Official fell from train and died. This Court held that death occurred while discharging "any other duties" and extra ordinary pension under Rule 1961 would be admissible in such a case. The Court, in para 5 of the judgment, further said:

"...It also says that it is not confined only when a police official in the aforesaid circumstances is killed but it also applicable if he die while discharging his duties. The provision is a welfare legislation made for the benefit of police officials who sustain fatal injuries or otherwise lost their life while discharging official duties. There is no reason for restricting the aforesaid provision which has been made much wider by 1975 amendment."

9. Therein, this Court also deprecated approach of Finance Controller in finding ways to deny extra ordinary pension to the survivors of deceased Police Officers by giving a restricted interpretation to Rules 1961 taking an approach of exclusion instead of liberal and beneficial interpretation. In para 7, the Court expressed its view as under:

"7. It is really unfortunate that widow of a member of a disciplined service has to engage in a long drawn litigation for the last almost five years for her sustenance, i.e., for claiming extra ordinary pension under statutory rules which is admissible to her but on account of misconceived notions and traditional mindset of respondents for denying everything to a petty employee or his family that this benefit has not reached her so far. The denial is without any substantial reason. Instead of helping the petitioner, a widow of a police official who sustained fatal injuries while on duty, respondents have tried to find out ways and means to deny benefit of a welfare legislation, compelling her to live life in penury and starvation. This attitude of respondents deserves to be condemned with strongest words. The laxity and an attitude of defiance on the part of respondents is also writ large from the fact that in the impugned order dated 2.7.2006 (Annexure-6 to the writ petition) the Finance Controller has denied benefit observing that petitioner's husband has died in suspicious circumstances and this has been reiterated by Superintendent of Police, Firozabad in its letter dated 11.8.2006 without showing as to what alleged suspicious circumstances were/are. When the petitioner challenges this attitude, in the counter affidavit filed in this writ petition no such defence has been taken and there is not even a whisper that the death took place in suspicious circumstance and on the contrary it is admitted that husband of petitioner died while discharging his duties. In para 9 it has only reiterated the language of impugned letter but nothing has been said about the alleged circumstances which according to respondents were suspicious. This also fortify the recklessness and harassing attitude on the part of respondents to make the bereaved family members of deceased employee to suffer or to surrender for their contentious desires or demand. Learned Standing Counsel despite his best efforts could not give even a single reason to justify denial of extra ordinary pension under 1961 Rules as amended in 1975. In my view the conduct and manner in which the respondents have acted makes them liable to pay not only interest on the dues payable to petitioner but also exemplary costs."

10. In the present case, thus the only question, which has to be seen, whether it can be said that petitioner's husband died while he was discharging his "other official duties" or not.

11. The petitioner's husband was posted in Mounted Police and due to non availability of official accommodation, was residing in a private accommodation. On 27.1.2002, he attended Mounted Police officials counting and thereafter while returning to his private residential accommodation, suffered stroke in his chest and by the time reached his house, his condition became serious. His wife immediately took him to Pandit Dindayal Upadhyay Hospital for treatment but when reached there, doctors thereat declared him dead. The Senior Superintendent of Police, Aligarh has treated this entire process of deceased constables attendance in Mounted Police Constable counting and the period when he was returning to his private residence as a part of official duty and recommended for extra ordinary pension vide letter dated 13/14.6.2002.

However, it has not been accepted by higher authorities. The official duty, as per the version of the respondents, came to an end as soon as counting was over and petitioner left official campus proceeding towards his private residence.

12. The petitioner's Counsel, however, contended that the employee, when comes to join his work and till he reaches his house back, entire period should be counted in the midst of discharging duties. Certain authorities are also relied on for this purpose.

13. In *Indian Rare Earths Ltd. Vs. Subaida Beevi*, , the Court considered the matter arising from Workmen's Compensation Act, 1923 (hereinafter referred to as "Act, 1923"). The workman was residing at about 7 or 8 kilometres away from his work place and for coming to the factory, he used to walk about 3 kilometres from his place of residence to take a bus, and leave him at about 2 kilometres away from the plant where again he used to go by using bicycle. On 1.4.1977, he started from his residence to his work place and when on the National Highway, on his way to work place, met an accident and sustained injuries, ultimately died on 2.4.1977. The question was whether this accident can be treated to be one which has arisen "out of and in the course of his employment". The Court said that residence of workman was not on any bus route wherefore he cannot travel major portion of his way to his work-place by bus. Thus, it is a case where exigencies of his employment and circumstances obliged him and the company allowed him to ride a bicycle to reach the work-place. Otherwise, it was an implied condition on his employment that he may travel to his work-place from his residence and back home by a bicycle. The Court thus said that when car dashed him on public road, he was there by virtue of his status as a workman working under the industrial employer and therefore, it was in the course of his employment. The Court further said:

"It is by now well settled that the expression "in the course of employment" connotes not only actual work but also any other engagement natural and incidental thereto, including "the course of employment" reasonably extended both as regards work-hours and work-place applying the doctrine of national extension as regards time and place, as laid down by the several decisions."

14. Another decision is *Director (T and M), D.N.K. Project Vs. Smt. D. Buchitalli*, . The deceased employee while coming out of factory premises, attending to his duty in morning hours, fell down at the main gate and on being removed was declared dead. The question was, whether it is arising out of and in course of employment or not. The Workman Commissioner took a decision against employer that death has taken place out of and in the course of employment. The Court agreeing with the above view, said as under:

"In the present case, no doubt, the evidence is that the deceased had a heart disease earlier, but on the fateful day, as the evidence disclose, the deceased worked for four hours inside the factory premises and while he was coming out of the factory, he profusely sweated and by the time he was taken to the hospital,

he was found dead. The stress and strain of the four hours of work the deceased had must be taken to be an accelerating factor in giving the final blow on account of which the deceased died."

15. In *Administrator, Municipal Council Vs. Uma Devi*, , the workman died as a result of accident when he was going to join his duties in the mid-night. The Court held that since workman was going to join his duties at the octroi out post of Municipal Council, it has to be held that it is an accident in the course of employment i.e. during course of his employment.

16. *Surajbai v. Cement Corporation of India Ltd. and another*, 1991 (1) TAC 140, was also a case where workman was going to join duties and met a fatal accident. The accident took place between the sump-pit and the office of the employer i.e. within the premises of the undertaking of industrial unit. The road had been built by Cement Corporation of India Limited for use of its employees. Thus, as a matter of fact, the Court found that accident took place within the premises of undertaking but before the workman could reach his place of duty. Construing the provisions of Act, 1923, liberally, being a welfare legislation, the Court said:

"It was at one time thought that an accident arose out of and in the course of employment only if the workman was injured at the place of his employment. There is of course, no difficulty in accepting such an accident as an accident arising out of and in the course of employment. But this narrow interpretation has not been able to satisfy new challenges created by modern methods of working of industrial undertakings to determine the exact place of employment of a workman in the context of modern industrial development, is in itself a difficult task. A pilot who is responsible for flying the aircraft is supposed to be working at the cock-pit of the plane and his place of work would be the place wherever the plane flies. A light house workman, particularly in cases where light-house is situated in the middle of sea on some tiny island, is required to be taken to that island by some method before he can actually start working. An underground mine worker reports at the opening of the mine and travels underground to reach his actual place of work. These are the instances of modern industries and such instances can be multiplied. The Mines Act, 1952, provides that a workman joins his duty before he has reached the place of his actual work. Industrial Jurisprudence treats the air-craft pilot and a light-house worker as on duty even before he has actually started working. The modern management methods do not even require a work-man to work. Some of them are kept waiting to be available whenever there is work. These developments had made it wholly unnecessary to consider a workman on duty only when he reaches his place of work or starts working. For purposes of workmen's compensation the law has adopted what is known as "the principle of notional extension of employer's premises". If the place of accident by application of this doctrine can be said to be the place of duty of the workman concerned, the workman is held entitled to compensation even if he had not reached his actual

place of work."

17. Thereafter, relying on a decision of Apex Court in General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, , the Court held that accident in question was in the course of employment entitling the heirs of workman for compensation under the said Act. The passage from the Apex Court decision in General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes (supra), relied on by Madhya Pradesh High Court in Surajbai v. Cement Corporation of India Ltd., (supra), reads as under:

"The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. Though at the beginning the word "duty" has strictly construed, the later decision have liberalized this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are, therefore, of little assistance, except in so far as they laid down the principles of general application. Indeed, some of the laws words expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to travel public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority."

18. There is another decision of Apex Court in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, , where the Court said:

"The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words, there must be a casual relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the one of special danger, the injury would be one which arises "out of employment". To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the

workman has exposed himself to an added peril by his own imprudent act."

19. In *Western Railway Vs. Chandrabai and Another*, , Madhya Pradesh High Court again following the decision in *General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes* (supra) held that notional extension of employer's premises must be applied and therefore, if an employee has died while he was going to join his duty from his house due to an accident, it must be deemed that it was "in the course of his employment".

20. The last decision cited is *Senior Divisional Controller, North West Karnataka Road Transport Corporation v. Shoba & Ors.*, 2003 (1) TAC 561, of Karnataka High Court. There also the employee was on his way to report his duty when suddenly collapsed and taken to hospital where he died. The Court held that since death has taken on the road and not within the place of employment, it cannot be held that it was during the course of employment.

21. All the decisions are in the context of Act, 1923. However, I find that there is a three Judges judgment of Apex Court in *Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another*, . Therein the matter has been dealt with in detail on a reference made by a two Judges Bench to larger Bench. The Court relied on two decisions, one is the decision of Court of Appeal in England in *Regina v. National Insurance Commissioner, Ex Parte, Michael*, (1977) 2 All. ER 420 and another, an earlier decision of itself in *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others*, . The following passage from observation of Lord Denning in *Regina* (supra) was quoted with approval:

"Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something "reasonably incidental" to his employment. But if he has an accident on the way, it is well settled that it does not "arise out of and in the course of his employment". Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely "reasonably incidental" to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment. It needed a special "deeming" provision in a statute to make it "deemed" to arise out of and in the course of his employment."

22. Similarly, following observation of Hon"ble S. Jafer Imam in *Saurashtra Salt Manufacturing Co.*, (supra) was also quoted with approval:

"It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present

case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment."

23. Following the above, the Court in Regional Director, E.S.I. Corporation (supra) held that following factors have to be proved:

- (i) There was an accident;
- (ii) The accident had a casual connection with the employment; and
- (iii) The accident must have been suffered in course of employment.

24. The Court distinguished the decision in General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes (supra) by observing:

"It was held by Subba Rao and Mudholkar, JJ. (Raghubar Dayal, J. dissenting) that the bus driver was given facility by the management to travel in any bus belonging to the undertaking. It was given because efficiency of the service demanded it. Therefore, the right of the bus driver to travel in the bus was to discharge his duty punctually and efficiently. This was a condition of service and there was an obligation to travel in the said buses as a part of his duty. It was held that in the case of a factory, the premises of an employer was a limited one but in the case of a City Transport Service, the entire fleet of buses forming the service would be "premises". This decision in our view, does not come to the assistance of the employee's case. An employee of a Transport Undertaking was travelling in a vehicle provided by the employer. Having regard to the purpose for which he was travelling and also having regard to the obligation on the part of the employee to travel in the said buses as a part of his duty, the Court came to the conclusion that this journey was in the course of his employment because the entire fleet of buses formed the premises within which he worked."

25. In view of above binding decision of Apex Court, I find that unless death of deceased constable, in the case in hand, can be said to have caused while he was "in discharge of his other official duties" only then extra ordinary pension would be admissible and not otherwise.

26. As already discussed above, the deceased employee attended his mounted police counting at official premises and left for his residence. It is on way to residence, he suffered chest pain, which ultimately resulted in his death. It is difficult to extend the term "in discharge of official duties" to the extent that employee, when commences his journey from his house to official place and while returning from office to house, both these period should necessarily be deemed to be in discharge of his official duties.

27. There may be some occasions to engulf such a situation, but it is not in the

present case. In fact, Rule 3 of Rules, 1961 is more restricted than what the provision has been in Act, 1923, which came up for consideration in so many cases above. I have no hesitation in saying that some of the judgments of High Court though help petitioner but in the light of binding decision of Supreme Court, I am left with no option but to hold that in the case in hand, petitioner cannot be held entitled for extra ordinary pension under Rules 1961. The writ petition, therefore, lacks merit. Dismissed.