

(2018) 10 J&K CK 0086

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 955 Of 2009, IA No. 1232 Of 2009

Pyar Singh @APPELLANT@Hash State Of Jammu & Kashmir And other

Date of Decision : 26-10-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Constitution Of Jammu And Kashmir, 1956 — Section 103

Citation : (2018) 10 J&K CK 0086

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : K. D. S. Bandral, Raman Sharma

Final Decision : Disposed Off

Judgement

1. The petitioner, through the medium of instant writ petition, filed under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir inter alia seeks writ of mandamus commanding the respondents to pay an amount of Rs.5.00 lacs as compensation to the petitioner on account of his permanent disability (loss of complete vision of right eye sight in an encounter).

2. Brief facts of the case are that the Government has constituted Village Defence Committees (VDCs) in Tehsil Banihal and the petitioner is the member of VDC, Kot Sujmatma. On the intervening night of 1st /2nd August, 2003, an encounter took place in which petitioner suffered the injury in his right eye; the petitioner was admitted in Govt. Medical College, Jammu for treatment. However, he has lost complete vision of his right eye; a report regarding the incident was also lodged at Police Post Ramsu. It is further stated that the respondents are under an obligation to pay compensation, however, the compensation was recommended by the Police Department to Deputy Commissioner, Doda, who in turn, on the other hand informed the respondent No.4-Senior Superintendent of Police, Ramban that such type of compensation was payable by Police Authorities. It is further stated that the matter remained lingering on because of the aforesaid dispute. It is further contended that the respondent No.4, however,

has told the petitioner that his case has been recommended to higher police authorities and the sanction was being awaited. The case of the petitioner has not been settled for last six years. In these circumstances, the petitioner has no other efficacious remedy except to approach this Court.

3. Objections on behalf of the respondents have been filed by the State counsel, wherein it is stated that the idea of VDCs took place when the terrorists were targeting the soft target and killing the innocent people. In order to deter the forces from carrying out synchronized offensive against terrorists on voluntarily basis, ex-servicemen and well bodied persons came forward for constitution of VDCs. As such the VDC of Village Kot Halwagan (Sujmatma) was constituted and 303 rifles were provided to them. Some basic training was also imparted to them. The concept of VDCs was based on voluntarily services for protection of life and property of their village. It is further submitted that as per enquiry conducted by SDPO Banihal and SHO Banihal, it was concluded that there was no movement of the terrorists that day and night in their village and area. The complainant fired with his rifle which hit on a stone and due to which a piece of stone hit on the eye and arm of complainant, as a result of which the petitioner sustained injuries. So the firing was not because of terrorists attack. Hence, the grounds pleaded by the petitioner being false and without proof. It is further stated that as per the enquiry, it is clear that the injuries caused to the petitioner were due to his own negligence, regarding that aspect SP, Ramban had intimated the then D.C. Doda vide letter dated 21.10.2004. So the grounds pleaded in the petition are based on misrepresented facts and misconceived. The respondents are not under an obligation to pay compensation for petitioner's own negligence. In these circumstances, the respondents prayed that the instant petition may kindly be dismissed with costs.

4. Vide order dated 01.02.2016, the application of the petitioner with regard to placing on record the supplementary affidavit was allowed. In the supplementary affidavit, it is stated that the stand taken by the respondents in their objections that "there was no movement of terrorists and the petitioner fired with his rifle which hit on a stone and due to that the petitioner suffered injuries" is without any material. In this behalf it is submitted that the Incharge Police Post, Ramsu after investigation submitted a report dated 04.02.2004. The said report was based on the investigation and the statements of the witnesses. Therefore, it can safely be concluded that the stand taken by the respondents is without any material and is baseless.

5. Heard learned counsel for the parties and gone through the case file meticulously.

6. It is fact that petitioner was a member of Village Defense Committee which was established to fight against militancy. The copy of Roznamzcha no. 15 dated 02.08.2003 of P/P Ramsu (Annexure-A) clearly reveals that petitioner reported to police that he along with other members of VDC was performing his duty in intervening night of 1st/ 2nd of Aug., 2003 and due suspicious movement in the

area he fired with his rifle; due to fire some pieces of stone struck in his eye. Medical certificate (Annexure -B) dated 21.8.2003 also reveals that petitioner was admitted in GMC, Jammu as a c/o Perforating corneal injury right with traumatic cataract right following. This certificate further reveals that petitioner suffered injury on 02.08.2003 and injury was repaired on 05.08.2003; Medical certificate of GMC, Jammu dated 14.6.2004 (Annexure-D) would reveal that petitioner has suffered 30% permanent visual disability.

7. The Govt. order no. 125-GAD of 1997 dated 27.1.1997 reads as under:-

"Government of Jammu and Kashmir, General Administration Department.-.-

Subject: Enhancement of Ex-gratia relief in favour of persons permanently disabled due to militancy related incidents and other forms of civil commotion.

Reference: Cabinet Decision No.6/1 dated 06.01.1997 -.-

Government Order No:

Dated :

125 GAD of 1997

27.01.1997-.-

In partial modification of Government Order No.723-GR of 1990 dated 10.7.1990 issued vide General Admn. Department endorsement No: GAD (Adm)11/90-Rev/ER-1 dated 10.07.1990, sanction is accorded to the enhancement of ex-gratia relief from Rs.25,000/- to Rs.75,000/- (Rupees seventy five thousand only) in favour of the persons who are disabled permanently as a result of violence attributable to the breach of law and order or any other form of civil commotion.

This order shall take effect from 06.01.1997. This issues with the concurrence of Finance Department conveyed vide their U.O. No:FC-13/96-Rev-3 dated 27.09.1996.

By order of the Government of Jammu and Kashmir.

Sd/-

Under Secretary to Government,

General Administration Department."

8. Bare perusal of this order, it is evident that petitioner qualifies conditions for grant of ex-gratia relief of Rs.75,000/-. Even SSP Ramban has vide his letter dated 05.03.2004 (Annexure-F) has recommended the case for grant of ex-gratia relief to the Additional Deputy commissioner Ramban.

9. The objections taken by the State that as per enquiry conducted by SDPO and SHO that there was no movement of terrorist in area on that day, is not tenable, because report of SDPO would reveal that he has not conducted any inquiry

himself; his report is based upon the report furnished to him by SHO. The report of SHO also reveals that on relevant day petitioner was performing the duty along with his gun and in the meantime other VDC members started firing; petitioner also fired due to which he sustained injury on eye on relevant day due to striking of fire on stone. But on enquiry, SHO came to know that there was no movement of militants. This report is in contradiction to the letter written by SSP Ramban (Annexure-F), whereby he has recommended the case of petitioner on the grounds that due to suspicious movement on relevant day, petitioner suffered injury. While granting ex gratia relief respondents should have considered probability of facts and not definite existence of factum of militant's movement. It is the case of petitioner that there were suspicious movements on that very relevant day.

10. So far prayer for compensation of Rs. 5 lakh is concerned that is not tenable, because respondents cannot be directed to give more compensation than prescribed under Govt. order. Petitioner has based his claim for compensation of Rs.5 lakh on disputed question of facts, which cannot be appreciated in writ petition.

11. In view of above discussion, this petition is allowed to the extent that respondents shall pay Rs.75,000/- as ex-gratia relief in terms of Govt. order no. 125-GAD of 1997 dated 27.01.1997 along with interest @ 6% p.a. from the date of filing of this petition till its realization, to the petitioner. However, petitioner is at liberty to approach Civil Court for rest of compensation.

12. Writ petition stands disposed of in the afore mentioned terms.