

(1999) 08 PAT CK 0128
In the Patna High Court
Case No : C.W.J.C. No. 6787 of 1998

Ram Swarup Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Citation : (2000) 1 PLJR 564

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ved Prakash, for the Appellant; B.N. Singh and Ram Priya Sharan Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner, who is father of the deceased-Government servant, has sought for issuance of writ in the nature of mandamus commanding the Respondents to sanction extraordinary pension, gratuity and other post-retirement benefits along with interest @ 18% per annum from the due date till the actual payment is made. Petitioner is father of late Jagat Kumar who was appointed as Constable "Sepoy" in Bihar Military Police 15, Deoghar on 10.6.1975 and was killed in an encounter with Naxalites on 28.5.1996 [sic?1976?] in village Gautpur under Punpun Police Station within Patna district. On his death the Government paid to the family of the deceased-Government servant a sum of Rs. 10,000/- as ex-gratia, as was announced. Admittedly the deceased was unmarried at the time of his death. The Commandant, B.M.P. 15, Deoghar vide Memo No. 2058 dated 8.9.1992 to the Assistant of the Inspector General of Police (Ka), Bihar, Patna (vide Annexure-2) reminded that earlier vide his letter no. 4384 dated 19.11.1976 the case for grant of extraordinary family pension as recommended and several reminders were also sent by the D.I.G., B.M.P., but nothing has been done and he requested to get the matter expedited in the Home (Police) Department for payment of extraordinary family pension to the petitioner. The petitioner also

claims to have filed representation, but of no avail, except that on 12th October, 1992 the Assistant to the Inspector General of Police vide letter no. 2452, contained in Annexure-3 brought to the notice of Deputy Secretary, Home (Police) Department, Bihar, Patna reminding him that no decision on the claim of the petitioner has been taken and a request was made for taking early decision.

2. In paragraph 8 of the counter affidavit filed on behalf of Respondent no. 4, Commandant, Bihar Military Police-15, Deoghar, it is stated that proposal for extraordinary family pension and other benefits on compassionate ground have been sent by the Police Headquarters to the Government and it is sending there.

3. Earlier this matter was heard on several occasions and vide order dated 23.6.1999, this Court directed the State to take a final decision in the matter as early as possible. A counter affidavit has, however, been filed on behalf of Director General of Police, Bihar on 3rd August, 1999 annexing a copy of the letter of the Deputy Secretary to the D.I.G. (Personnel), Bihar, Patna bearing letter no. 9195 dated 31st July, 1999 (Annexure-A). From the said letter, it appears that the claim of the petitioner for grant of extraordinary family pension has been rejected on the ground that the deceased-Government Servant had not completed one year of his service on the date of death. It has been submitted by the learned counsel for the petitioner that the said order, contained in Annexure-A is wholly arbitrary and malafide and contrary to the Rules relating to the grant of extraordinary pension. In this regard, he referred to Memo no. Pen-1042/69/3484 dated 28.4.1970 and Government decision, contained in Memo no. Pen-1055/70/9271F, dated 28.9.1970, placed at page 71 & 72 of Part I of Bihar Pension Rules. A bare perusal of the said provision shows that the benefits in terms of extraordinary pension, contained in Chapter IX of the Bihar Pension Rules are admissible. As per provision, contained in Memo dated 28.9.1970, a gratuity equal to one-half of that which would have otherwise been admissible to a widow under the Wound and Extraordinary Pension has been made admissible to the parents of the deceased- Government Servant without reference to dependence on the deceased Government servant or pecuniary need, in absence of widow and children. Undisputedly, the deceased-Government servant in the present case died unmarried and thus, the said benefit has to go to the parents.

4. Learned counsel for the State, however, has placed reliance on the Government circular, a Photostat copy whereof has been annexed as Annexure-A to the counter affidavit filed on behalf of Respondent no.4. The said Government circular was issued vide Finance Department Memo no. PC. 2-9-4/80-3000 dated 29th July, 1980, which deals with the matter relating to payment of family pension under the Family Pension Scheme, 1964 under which memo the period of one year of continuous service, which was required in 1964 Scheme for grant of family pension to the family of the Government servant was withdrawn with effect from 1st, April, 1980, provided at the time of death the deceased-Government servant was examined by a Doctor and was found fit for

appointment. This Court fails to appreciate that as to how the said Government circular is of any help to the Respondents. The said circular does not deal with the grant of extraordinary pension under the provisions, contained in Chapter IX of the Bihar Pension Rules.

5. In the aforesaid facts and circumstances, this Court is constrained to hold that the action of the Respondents in withholding the payment of extraordinary family pension and gratuity to the petitioner for now over 23 years is malafide and their such action deserves to be deprecated by this Court. The parent of a Constable who was killed in encounter has been kept deprived for his legitimate claim now for over 22 years. This only depicts the inhuman approach of the authorities in the Government. Accordingly, this writ petition is allowed with cost of Rs. 20,000/- which should be paid to the petitioner by the State along with the entire dues of the family pension, gratuity and 18% of interest thereon to be calculated from the due date till the payment is made within two weeks from today.