

(2004) 02 AHC CK 0204

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3996 of 2004

Sheela Devi (Smt.)

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Citation : (2004) 2 UPLBEC 1736

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Sunil Kumar Mehta, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition the petitioner seeks quashing of the impugned order dated 12.9.2003 (Annexure 1 to the writ petition) passed by respondent No. 3 and order dated 22.8.2003 passed by respondent No. 2.

3. The case of the petitioner is that her husband was posted as Group Commandant (Dal Nayak) of "E" Group in the 20th Battalion of Provincial Armed Constabulary (P.A.C.) Azamgarh. This Group was posted as Battalion Duty Group at Battalion Headquarters, Azamgarh for the period from 1.11.2002 to 13.12.2003. It is alleged that when the husband of the petitioner was dressing himself for the morning parade he suddenly fell down complaining severe pain in his chest and when he was taken to District Hospital, Azamgarh he was declared dead. The petitioner's husband died at his very young age leaving behind the petitioner as his widow. It is submitted that the then Commandant of 20th Battalion, P.A.C., Azamgarh made recommendations for grant of extra-ordinary pension to the petitioner as the husband of the petitioner died during the course of performance of his official duty. By the impugned order the petitioner has been denied the extraordinary pension on the ground that her husband did not die during the performance of his duty.

4. For grant of extra-ordinary pension the Governor has framed rules under Article 309 of the Constitution in exercise of powers know as the U.P. Police (Extraordinary Pension) (First Amendment) Rules, 1975. These rules have been given retrospective effect from 1st April, 1972. The amendment is as under :--

^^m?kj izns" k iqfyl ?vlk/kkj.k isa"ku? ?izFke la" kks/ku? fu;ekoyh] 1975

1- laf{kIr uke vkSj izkjEHk & ?1? ;g fu;ekoyh m?kj izns" k ?vlk/kkj.k? ?izFke la" kks/ku? fu;ekoyh] 1975 dgyk;sxh A

2- ;g fu;e 3 rFkk 5 dk la" kks/ku & m?kj izns" k iqfyl ?vlk/kkj.k isa"ku? fu;ekoyh] 1961 esa] uhps LrEHk 1 esa fn;s x;s fu;eksa ds LFkku ij LrEHk 2 esa fn;s x;s fu;e j[k fn;s tk;sa&&

LrEHk 1 orZeku fu;e

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3- ;g fu;ekoyh jkT;iky ds cukus ds fu;a=.k ds v/khu ,sls leLr vjktif=r iqfyl deZpkfj;ksa ij ykxw gksxh pkgs og LFkk;h :i esa lsok;ksfr gksa vFkok vLFkk;h :i esa] tks Mkdqvksa ;k l" kL= vijkf/k;ksa vFkok fons"kh izfrjksf/k;ksa ls yM+us esa ej tk;sa&& izfrCU/k ;g gS fd ,sls deZpkjh ds ifjokj dks ftls bl fu;ekoyh ds v/khu vfHkfu.kZ; fn;k x;k gks] m?kj izns" k flfoy lfoZlst ?,DLV?k vkfMZujh isa"ku? :Yl ds v/khu dksbZ vfHkfu.kZ; ugh fn;k tk;sxk vkSj u ;w-ih- fycjykbTM isa"ku :Yl] 1961 vFkok ;w-ih- fjVk;jesaV :Yl] 1961 ds v/khu dksbZ ikfjokfjd isa"ku@vkuqrksf"kd vkSj u ;w-ih- d.V?hC;wVjh isa"ku Q.M :Yl ds v/khu ljdkjh va"knku fn;k tk;sxk A

3- ;g fu;ekoyh jkT;iky ds cuk;s fu;e ls fu;fU=r gksus okys LFkk;h ;k vLFk;h :i esa lsok;ksfr lHkh iqfyl vf/kdkfj;ksa vkSj deZpkfj;ksa ?jktif+=r vkSj vjkif=r nksuksa? ij ykxw gksxh tks Mkdqvksa ;k l" kL= vijkf/k;ksa ;k fons"kh izfrjksf/k;ksa ls yM+us esa ;k fdLh vU; d?kZO; ikyu djus ds nkSjku ekjs tk;sa ;k ftudh e`R;q gks tk;s&& izfrCU/k ;g gS fd ,sls iqfyl deZpkjh ds ifjokj dks ftls bl fu;ekoyh ds v/khu vfHkfu.kZ; fn;k x;k gks] m?kj izns" k flfoy lfoZlst ?,DLV?k vkfMZujh isa"ku? :Yl ds v/khu dksbZ vfHkfu.kZ; ugha fn;k tk;ssxk vkSj u ;w-ih- fycjykbTM isa"ku :Yl] 1961 vFkok ;w-ih- fjVk;jesaV osfufQV :Yl] 1961 ds v/khu dksbZ ikfjokfjd isa"ku@vkuqrksf"kd vkSj u ;w-ih- d.V?hC;wVjh isa"ku Q.M :Yl ds v/khu ljdkjh va"knku fn;k tk;sxk A

4- ,slh e`R;q ds lECU/k esa dksbZ vfHkfu.kZ; ugha fy;k tk;sxk] tks fdLh jksx vFkok ,sls dkj.k ls gqbZ gks tks Mkdqvksa rFkk l" kL= vijkf/k;ksa ;k fons"kh izfrjksf/k;ksa ls yM+us esa pksV yxus ls fHkUu gksa 4- dksbZ vfHkfu.kZ; fu;e 3 esa mfYyf[kr dkj.kksaa ls fHkUu fdLh dkj.k ls gqbZ e`R;q ds lECU/k esa ugha fn;k tk;sxk A**

5. From the aforesaid rules it is clear that the eligibility for grant of extraordinary pension accrues when a police personnel is killed in fighting with dacoits, armed criminals or foreign mercenaries. Clause 4 provides that no adjudication would be made for grant of extraordinary pension except for the reasons given in Clause 3 of the Rules.

6. Even if it is admitted that the petitioner's husband expired during performance of his duty due to heart attack while dressing himself for parade, the petitioner does not become entitled for grant of extraordinary pension as her husband was not killed in encounter with dacoits or armed criminals or during operation with foreign mercenaries. The words have to take colour from each other. Death in line of duty or in an encounter is different from death on duty. The case of the petitioner does not fall in this category, as he was not killed in an encounter in line of duty.

7. In this view of the matter, there is no illegality or infirmity in the impugned order. Thus, the petitioner is not entitled to any extraordinary pension.

8. The petition is accordingly dismissed. No order as to costs.