
(2011) 02 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3123 of 2006

Smt. Mira Devi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Citation : (2011) 2 JCR 34 : (2011) 1 JLJR 569

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Judgement

J.C.S. Rawat. J.

1. s writ petition has been filed by the Petitioner for seeking a direction to the Respondents to make payment of Rs. 10,00,000/- (rupees ten lakhs) as an ex gratia grant in pursuance of the Police Order No. 23/05 issued by the Respondents vide notification No. 1941 dated 29.4.2005. It is alleged in the writ petition that husband of the Petitioner died on 29.10.2000 in an encounter with the Naxalites during duty hours being an escort party for the security of the Education Minister of the State and thereafter, the son of the Petitioner was employed on compassionate ground in place of the deceased husband of the Petitioner and other benefits of service were given. On 28.10.2000, the Higher Education Minister also sanctioned an ex gratia amount of rupees five lakhs to be paid to the wife of the deceased Constable namely Mira Devi. Thereafter, Circular was issued in which the ex gratia amount has been increased up o Rs. 10,00,000/- (rupees ten lakhs) which has not been given to the Petitioner inpite of her requests. So, the Petitioner feeling aggrieved by the said inaction on the part of the State has preferred this writ petition before this Court.

2. The writ petition was contested by the State. It is alleged that the husband of the Petitioner was killed on 29.10.2000 in encounter with the Naxalites and the Petitioner has been paid Rs. 2.50 lakhs as ex gratia amount. It is further alleged that the provision to pay Rs. 10,00,000/- (ten lakhs) as ex gratia amount as claimed by the Petitioner was enforced w.e.f. 21.3.2001 vide the Government

Order No. 64 of 2000. The encounter had taken place prior to the enforcement of the said order and therefore, the Petitioner is not entitled to claim the said amount.

3. I have heard the learned Counsel for the parties and perused the records.

4. It is apparent from perusal of the Annexure 2 to the writ petition that the Petitioner has been granted ex gratia amount of rupees five lakhs by the then Education Minister. According to para 6 the counter-affidavit, a sum of Rs. 2, 50,000/--has been paid to the Petitioner. The Respondents have not given any reason as to why rest of the amount has not been paid to the Petitioner. From perusal of the order (Annexure A to the counter-affidavit) which was issued on 21.3.2001, it is apparent that if, in encounter with the Naxalites, a police officer or a police personnel or any other Government servant is killed in an encounter, an amount of rupees ten lakhs would be paid to the dependent(s) of the deceased police officer/police personnel or the employee with effect from 21.3.2001. Learned Counsel for the Petitioner could not demonstrate me that this circular is retrospective in its terms. It is a settled position of law that if any order/circular or law is made applicable from a particular date and the said law would be prospective in its application. It cannot be said that the aforesaid circular is enforceable with retrospective effect. Thus, the ex gratia amount of rupees ten lakhs was made applicable with effect from 21.3.2001. In the instant case, the counter took place on 29.1.2000.

5. Learned Counsel for the Petitioner submitted that the encounter took place only six months prior to the said notification dated 21.3.2001 (Annexure A to the counter-affidavit). So, the circular should be relaxed by the Court and the amount indicated in the said Circular should be given to the Petitioner.

6. It is a settled position of law that the Government order should be read as a whole for its interpretation. This order casts a statutory duty upon the Respondents to pay the ex gratia amount of rupees ten lakhs from 21.3.2001. It did not provide any relaxation clause under the Government order. The State has no power to relax the enforcement date. If there is no power to relax the same, no statutory duty is cast upon the Respondents. Thus, there is no statutory duty upon the Respondents to pay the ex gratia amount to the dependents of the deceased who died in encounter prior to 21.3.2001. A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officers concerned and there is failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by the statute and to keep subordinate Tribunals and officers exercising public function within the limits of their jurisdiction. It follows therefore that in order that mandamus may issue to compel the authorities to do something. It must be shown that there is a statute which imposes a legal duty and aggrieved party has a legal right under the same order, circular or statute to enforce the performance. Thus, the Petitioner has no legal enforceable right to get Rs. 10,00,000/- (rupees ten lakhs) as ex gratia under the Government Order

dated 21.3.2001.

7. The Respondents could not demonstrate that the amount of rupees five lakhs was not granted to the Petitioner. In these circumstances, it can be concluded that in view of the Annexure 2 to the writ petition, amount of rupees five lakhs was sanctioned to the Petitioner. The Respondents have stated that Rs. 2.50 lakhs only has been paid to the Petitioner so far. Learned Counsel for the Respondents could not demonstrate whether the rest of the amount has been paid to the Petitioner. Thus, the Respondents have to pay the rest amount of Rs. 2.50 lakhs to the Petitioner. The Respondents are directed to consider to make the payment of Rs. 2,50,000/-(rupees two lakhs and fifty thousand) to the Petitioner expeditiously within a period of four months from the date of receipt/production of a copy of this order.

8. This writ petition is thus disposed of. No order as to costs.