
(2017) 01 AHC CK 0200
In the Allahabad High Court
Case No : Writ-A No. 54667 of 2004

Smt. Nirmala Devi

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Uttar Pradesh Police (Extraordinary Pension) Rules, 1961 — Rule 3, Rule 9(2)

Citation : (2017) 2 ADJ 123 : (2017) 4 AILLJ 259 : (2017) 2 AllWC 2161 : (2017) 121 ALR 547

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : K.K. Srivastava, G.K. Khanna, H.P. Mishra, H.P. Pandey, M.C. Tripathi and Rakesh Kr. Shukla, Advocates, for the Petitioner; C.S.C., Satish Chaturvedi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—; Heard Sri Rakesh Kumar Shukla, counsel for the petitioner, learned standing counsel for the State-respondents and Sri Pankaj Srivastava, holding brief of Sri Satish Chaturvedi on behalf of respondent no.2.

2. The petitioner is widow of Late Baikunth Narayan Pandey, who was a constable in U.P. Police. He died on 14 October 2000 while in harness. The petitioner laid claim for award of pension to her under the provision of the Uttar Pradesh Police (Extraordinary Pension) Rules, 1961. The claim made by the petitioner has been turned down by the impugned communication dated 16/30 November 2011 by the second respondent, i.e., the Accountant General and hence the instant writ petition.

3. In the impugned communication, a reference has been placed to a letter dated 4 September 2003 by the Chief Medical Superintendent, District Hospital, Jaunpur stating that cardio respiratory arrest and heart attack are not the same. It has been opined that heart attack could be the cause of cardio respiratory arrest. There is also a reference to two medical certificates dated 13 October

2000 and 14 June 2004 issued by the doctors of Banaras Hindu University, Varanasi disclosing the cause of death as "large in cerebral haemorrhage with cardio respiratory arrest". It has been concluded therefrom that the death of the husband of the petitioner had not occurred due to cerebral thrombosis or heart disease and consequently the petitioner is held not entitled to award of extraordinary pension under the Rules. Accordingly, the second respondent has declined to forward the papers relating to grant of extraordinary pension to the State Government.

4. Counsel for the petitioner submitted that under the Rules, the dependent of the deceased employee becomes entitled to extraordinary pension in case the employee dies in course of performance of duties irrespective of the fact whether the death took place in encounter with the dacoits or armed offenders or not. In this regard, reliance has been placed on a clarificatory letter dated 23 January 1980, issued by the State Government in relation to grant of extraordinary pension to the dependents of deceased constable Vijay Bahadur Singh. It has further been submitted that under Rule 9, it is the State Government which is competent to take decision in this regard whereas in the instant case, the second respondent has illegally rejected the claim of the petitioner. It is thus sought to be submitted that the impugned decision by the second respondent is without jurisdiction.

5. Learned counsel for respondent no.2 submitted that the husband of the petitioner was rightly not found entitled to extraordinary pension as her husband did not die either due to heart disease or cerebral thrombosis. In this regard, reliance has been placed on the report of the doctors referred to in the impugned communication.

6. Learned standing counsel adopted the argument made by learned counsel for respondent no.2. He submitted that since respondent no.2 has rejected the claim of the petitioner after examining the entire evidence and thus the writ petition deserves to be dismissed.

7. Rule 3 of the Rules which contemplates the award of extraordinary pension reads as under :-

"3 ;g fu;ekoyh jkT;iky ds cuk;s fu;e ls fu;af=r gksus okys LFkk;h ;k vLFkk;h :i ls lsok;ksftr IHkh iqfyl vf/kdkfj;ksa vkSj deZpkfj;ksa jktif=r vkSj vjktif=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; drZO;ksa dk ikyu djus ds nkSjku ekjs tk;sa ;k ftudh e`R;q gks tk;sa

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] mRrj izns"k flfoy lfoZlst ,DLV~k vkfMZujh isa"ku :Yl ds v/khu dksbZ vfHkfu.kZ; ugha fn;k tk;sxk vkSj u ;w0ih0 fycjykbTM isa"ku :Yl] 1961 vFkok ;w0ih0 fjVk;jesaaV csuhfQV :Yl] 1961 ds v/khu dksbZ ikfjokfjd isa"ku@vkuqrksf"kd vkSj u ;w0ih0 dUV~hC;wVjh isa"ku izkfoMsUV Q.M :Yl ds v/khu ljdkjh va"knku fn;k tk;sxA"

8. The Rule as it exists on date, was amended in the year 1975. Prior to the amendment, the Rule was in following terms :-

"3- ;g fu;ekoyh jkT;iky ds fu;e cukus ds fu;a=.k ds v/khu ,sls leLr vjktif=r iqfyl deZpkfj;ksa ij ykxw gksxh pkgs og LFkk;h :i ls lsok;ksftr gksa vFkok vLFkk;h :i esa] tks Mkdqvksa ;k l"KL= vijkf/k;ksa vFkok fons"kh izfrjksf/k;ksa ls yM+us esa ekjs 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] mRrj izns"k flfoy lfoZlst ,DLV~k vkfMZujh isa"ku :Yl ds v/khu dksbZ vfHkfu.kZ; ugha fn;k tk;sxk vkSj u ;w0ih0 fycjykbTM isa"ku :Yl] 1961 vFkok ;w0ih0 fjVk;jesaaV :Yl] 1961 ds v/khu dksbZ ikfjokfjd isa"ku@vkuqrksf"kd vkSj u ;w0ih0 dUV~hC;wVjh isa"kuQ.M :Yl ds v/khu ljdkjh va"knku fn;k tk;sxkA

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"

9. A comparison of the Rule as it exists today with the one earlier would clearly evince the legislative intent. The provision for grant of extraordinary pension was made liberal by the amendment, so as to include even cases of such employees who may not have died while fighting dacoits or armed offenders or foreign adversaries but also for other reason while discharging their duties. Thus, emphasis is on the death of an employee in course of performance of his duties. By Government order dated 19 July 1978, a clarification has been issued in regard to the said Rules which is as under :-

"mi;qZDr fo"k;d vkids i= la[;k ih0vkj0 1@91666@76&77@1988] fnukad 23 tuojuh] 1977 ds lUnHkZ esa eq>s ;g dgus dk funsZ"k gqv k gS fd mRrj izns"k iqfyl vlk/kkj.k isa"ku fu;ekoyh] 1961 dk fu;e 3 ftls vf/klwpuk la[;k 1406 ih&vkB&6&1000@17] 65] fnukad 7 tqykbZ] 1975 }kjk izfrLFkkfir fd;k x;k gS] esa fd;s x;s izkfo/kku fdlh vU; drZO; dk ikyu djus ds nkSjku ekjs tk;s ;k ftudh e`R;q gks tk;s dh O;k[k ;k ,oa {ks= ds lECU/k esa yksd lsok vk;ksx mRrj izns"k rFkk "kklu ds U;kf;d foHkkx ls ijke"kZ fd;k x;kA mudh jk; dh izfr layXu gSA bl lECU/k esa eq>s ;g dguk gS fd vkids mi;qZDr i= esa la"kkf/kr fu;eksa dk lECU/k ,DLV~k fjLd ls tksM+k x;k gS] tks lk/kkj.k rFkk mRrj izns"k flfoy lfoZlst vlk/kkj.k isa"ku fu;ekoyh] 1941 ds vUrxZr isa"ku fn;s tkus ds fy;s vko";d "krZ gksr gSA mRrj izns"k iqfyl (vlk/kkj.k isa"ku) fu;ekoyh] 1961 fu;e 3 dks 1975 esa mijksDrkuqlkj la"kkf/kr djus dk "kklu dk ;gh vfHkizk; Fkk fd bu fu;eksa dks bruk mnkj cuk fn;k tk;s fd bls vUrxZr os lHkh ekeys vk tk;sa ftuesa iqfyl vf/kdkjh@deZpkjh lsokjr drZO; ikyu ds nkSjku ekjk tk;s ;k ftldh e`R;q gks tk;sa bl izdkj mDr fu;ekoyh dk fu;e 3 dk la"kkf/kr djds bldk {ks= foLr`r fd;k x;k gS vkSj izkfo/kkuksa esa ",DLV~k fjLd" ds rRo dks lEEfyr djuk mfpr ugha gSA"

10. The State Government, by a letter dated 23 January 1980 in reference to the claim for grant of extraordinary pension by the dependent of late constable Vijay Bahadur Singh has clarified that the cases of such employees who die on account of heart disease or cerebral thrombosis is also covered under the Rules.

11. The medical certification of the death by the doctors of S.S. Hospital, BHU, Varanasi reveals the cause of death as Intra Cerebral Haemorrhage. Subsequently, the Senior Superintendent of Police, Jaunpur by communication dated 18 July 2003 informed the second respondent that there is no contradiction in the reports relating to cause of death of constable Baikunth Narayan Pandey. While placing reliance on the report of the Chief Medical Superintendent, Jaunpur, it was clarified that Intra Cerebral Haemorrhage is a disease whereas the immediate cause of death was cardiac respiratory arrest. Accordingly, by letter dated 30 October 2013, the Police Headquarter at Allahabad forwarded the matter relating to award of extraordinary pension to the State Government through the prescribed channel i.e., the office of the Accountant General.

12. Sub-rule (2) of Rule 9 which is relevant is as under :-

"(2) When a claim for any family pension arises the head of the office or of the department in which the deceased police official was employed will forward the claim through the usual channel to the State Government with the following documents :

(i) A full statement of circumstances in which the death occurred.

(ii) A report of the Accountant General, Uttar Pradesh, as to whether an award is admissible under the Rules, and if so, of what amount.

(3) Every claim referred to in sub-rule(2) shall be made in the form set out in the Schedule II.

13. Thus, where a claim for extraordinary pension has been made, the same is to be forwarded to the State Government through usual channel with the full statement of circumstances in which the death occurred as well as the report of the Accountant General, U.P. as to whether the award is admissible under the Rules and if so, of what amount. The claim is to be made in the form prescribed under Schedule II. It is clear from sub-rule (2) of Rule 9 that the Accountant General, U.P. has to submit his report as regards the admissibility of the claim. However, he has not been conferred with the power to take a final decision in the matter. The same is in the province of the State Government.

14. However, by impugned communication, the second respondent instead of forwarding the matter to the State Government alongwith his recommendation returned the entire file to the Police Headquarter holding that the claim is not admissible. This, in the opinion of the Court, was wholly illegal, especially in the circumstances of the instant case, where there was a difference of opinion between the Police Headquarter and the second respondent regarding admissibility of the claim of the petitioner. Consequently, the stand taken by the second respondent in the impugned communication cannot be sustained and is hereby quashed.

15. The writ petition is disposed of by directing the second respondent to forward

the claim of the petitioner for grant of extraordinary pension, to the State Government alongwith his recommendation within a period of one month from the date of receipt of the certified copy of this order. The State Government, on receipt of the documents, shall take final decision, in accordance with law, expeditiously, and preferably within a period of next three months.

16. The writ petition stands allowed to the extent indicated above.