

(1998) 08 OHC CK 0055

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8517 of 1996

Smt. Puspa Gurang

APPELLANT

Vs

Joint Assistant Director (Welfare) C.R.P.F. and Others

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) 86 CLT 379 : (1998) 2 OLR 373

Hon'ble Judges : Susanta Chatterji, J;P.K. Mohanty, J

Bench : Division Bench

Advocate : D.N. Nayak, for the Appellant; Standing Counsel (Central) and U.C. Panda, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—This is a very unfortunate case indeed. The facts of the case shock the judicial conscience of this Court. Petitioner Smt. Puspa Gurang, wife of Late Chhatra Bahadur Gurang, has filed this writ application seeking the following reliefs :

".....that Hon"ble Court shall be gracious enough be admit the writ application and to issue a writ of mandamus by way of directing opposite parties 3 and 4 to produce the related particulars in up-to-date of her missing husband;

And

The Hon"ble Court equally be gracious enough on the score of non-production of authenticated details of her missing husband and direct opposite party No. 1 to extend rehabilitation employment of Class IV under opp. party No. 3 including the appropriate compensation towards irreparable mortal loss of her husband to neutralise mental hardship and anxieties;

And

In addition to the same the substantial effective financial measure may be taken

for the release of the total termination benefits of her from the opposite parties within any short stipulated date as deemed just and appropriate."

2. It is stated in details in the writ petition that the petitioner, a victim household wife, was solely dependent on her husband Chhatra Bahadur Gurang, a commissioned Sepoy who was working in the 30th Battalion, C.R.P.F., at Imphal in Manipur under the opposite parties. Chhatra Bahadur Gurang had a long service career and he had been transferred to Orissa Unit and had been stationed at Bhubaneswar since 1986. He was however transferred to Imphal in July, 1988 but the petitioner and her two school going daughters remained at Bhubaneswar as it was not possible for the petitioner's husband to take them to Imphal.

3. It is placed on record that the husband of the petitioner was deployed on task force operation in certain remote region of Imphal. He was missing while on duty. The petitioner however collected the monthly salary of her husband for three months and was kept in dark by the authorities of her husband as to what had happened to him. The petitioner made a representation to opposite party No. on 28.10.1989 to be intimated about her husband, but the said opposite party by his reply in November, 1988 failed to supply any information. Thereafter the petitioner lodged an FIR with the police but the Officer-in-charge of Bamore Police Station, Imphal in Manipur Central by his letter to the petitioner dated 7.9.1989 expressed his inability to trace out the missing husband of the petitioner. A copy of the said letter is Annexure-2 to the writ petition. The petitioner has alleged that being in helpless condition she approached the authorities of her husband, namely, the opposite parties, but she was kept in dark at all material points of time.

4. It transpires that the area where the petitioner's husband had been deployed was full of extremists and he was not traceable from the operation site. Without any co-operation of the opposite parties to trace out the petitioner's husband, for the sake of her survival the petitioner had to approach the authorities of her husband at Bhubaneswar and with humiliation had to work as a part-time Safai Karmachari under them at Bhubaneswar. A copy of the letter of appointment of the petitioner is Annexure-3 to the writ petition.

5. The petitioner was however intimated by opposite party No. 3 subsequently that she was disengaged from her part-time employment. It is alleged that the opposite parties without taking effective steps to rescue her missing husband, took arbitrary steps on disciplinary grounds against him and moreover the petitioner was forced to vacate the quarters in cold December, 1993. The petitioner was completely misled by the opposite parties and was not allowed to know what had happened to her husband while he was engaged in the operation to flush out extremists. She was denied any employment by way of rehabilitation on compassionate ground and was also denied the financial dues on account of missing of her husband in course of duty. It is stated that to her great surprise and misfortune the petitioner was asked by opposite party No. 3 to produce a proper and undisputed proof of death of her husband in order to be entitled to

receive the financial dues receivable by her. It is alleged that for long over eight years the petitioner is undergoing acute misery and untold agony for the actions and inactions of the opposite parties, therefore she has been compelled to come to the writ Court seeking the reliefs as already indicated above.

6. The writ petition is opposed by the opposite parties by filing a counter affidavit being sworn by one N.P. Srikumar, working as Addl. D.I.G.P., Group Centre, C.R.P.F. at Bhubaneswar. It is disclosed therein that the petitioner's husband was enlisted in C.R.P.F. in 1968 and was posted to D/Coy-39th Bn. from August, 1987. On 10.10.1988 AN he was relieved to further report to Bn. Headquarters for his onward despatch to 26th Bn. on transfer. He came in the Unit vehicle to the Bn. Headquarters and reported to BHM, 39th Bn. of C.R.P.F. who directed him to keep his kit items at the Battalion Headquarters Line and further report to G.I. (A) Office for depositing the Movement Order. But it was noticed at 5 P.M. that day that he had neither deposited his Movement Order to S.I.(A) nor did he report to him. The husband of the petitioner was not found inside the campus. A search was made and in spite of all efforts he could not be traced out. It is alleged that the husband of the petitioner was not missing in course of discharging his duty, but he had deserted the line deliberately. He was therefore declared a desorter from service since 10.10.1988 and ultimately dismissed from service with effect from 30.6.1989. The fact of desertion of the petitioner's husband was intimated to the petitioner vide letter dated 7.11.1988, Annexure-A to the counter affidavit. It is also stated that when the petitioner's husband deserted the line from 10.10.1988 and was not traced out, a warrant of arrest was issued through the S.P., Darjeeling (W.B.). The question of lodging any FIR did not arise as it was a case of desertion. The petitioner had lodged an FIR through opposite party No. 3 which was forwarded to Imphal. After receiving the FIR, the Bomlai PS. under Imphal intimated that the petitioner's husband could not be traced out which fact was made known to the petitioner, vide Annexure-2. It is further stated in the counter affidavit that there was no lack of responsibility of opposite party No. 4 and as a result of desertion, the husband of the petitioner was dismissed from service. Payment of the savings of the petitioner's husband could not be made due to non-production of the necessary documents by the petitioner. Thus none of the opposite parties were at fault. As the husband of the petitioner was dismissed from service, the question of rehabilitation appointment to the petitioner on compassionate ground does not arise and there is a prayer for dismissal of the writ petition.

7. It is also stated that by temporary arrangement the petitioner had been engaged on some work under opposite party No. 4, but she cannot ask for a regular employment and she was asked to vacate the quarters as she was not entitled to occupy the same.

8. At the time of final hearing, we had asked the opposite parties to produce the relevant documents as to the steps taken by them to find out the husband of the petitioner who was admittedly in a protected area and was on duty. It is

unequivocally found from the materials on record that the petitioner's husband was engaged in active service to defend the country. He had taken the risk of life being engaged in an operation to flush out the extremists. The area of work in Imphal at the material point of time needed serious operation to flush out the extremists and the petitioner's husband was engaged in job in which his personal risk was involved. It is not appreciated by this Court on perusal of the averments made in the counter-affidavit as well as the records produced before us how under such circumstances the petitioner's husband would be declared a deserter. He was in an active job and was within a protected zone. If he was missing, it should have struck the mind of the concerned authorities to find him out either alive or dead. Nothing has been produced to show what efforts were made to trace out the Jawan as there was every likelihood of his ambushing by the extremists. This Court takes judicial notice that in an operation to flush out extremists there was kidnapping, abduction, killings and assault on the Jawans and the security people.

9. It is not appreciated by this Court also how the opposite parties took it for granted that the husband of the petitioner had deserted. Further it is not appreciated that while Chhatar Bahadur Gurang was missing, no FIR was lodged with the local police and issuing a warrant of arrest to Darjeeling declaring him a deserted was an act after-thought which show utter negligence, carelessness and lack of responsibility on the part of the opposite party authorities. Such negligence on the part of the said authorities is really shocking. A Jawan who risked his life being engaged to defend the country and was posted to an area infested by extremists if was missing while on duty, his own countrymen in high positions in life would not take proper steps to find him out either dead or alive and know whether he was kidnapped or ambushed is also very shocking. It appears that instead of taking necessary steps, the opposite parties have brandished the missing Jawan as a deserter and by taking disciplinary steps without any communication to anybody have terminated his service. We have no words to express our displeasure in deprecating the acts and actions on the part of opposite parties by proceeding arbitrarily, whimsically and capriciously to dismiss a bona fide person who was missed while discharging his duties. Dismissal of the petitioner's husband from service was not only irregular and illegal, but the same was inhuman. The said action is deemed to be non set in the eye of law besides being unjust, unfair, inhuman and irrational and is quashed.

10. Since the opposite parties have not taken any steps to trace out Chhatar Bahadur Gurang and after a lapse of more than eight years it is presumed that there was a civil death of Chhatar Bahadur Gurang, such death is by operation of law. In consequence thereof, Chhatar Bahadur never forfeited his right so far as his financial dues like Pension or other admissible dues which are to be received by his successors-in-interest, namely, the petitioner and his two unfortunate, hapless and helpless daughters. Since we are of the clear view that Chhatar Bahadur Gurang had never deserted but had died in harness while in duty and he

would have continued in job until his death or cessation of his job otherwise, he being not traceable for more than eight years and there is civil death, the petitioner along with her two daughters are entitled to all financial dues on account of death of Chhatar Bahadur Gurang without any blemish whatsoever. Since there is a scheme for rehabilitation appointment on compassionate grounds, we are of the view that the opposite parties should consider to offer a suitable appointment to the petitioner at the Bhubaneswar Unit as the petitioner is still trying to survive with her daughters and chill penury is faced by them from all sides of life.

11. We allow the writ application directing the opposite parties to offer rehabilitation appointment to the petitioner within three months of communication of the writ. The opposite parties will also take effective steps to calculate all financial dues admissible to deceased Chhatar Bahadur Gurang and release the same in favour of the petitioner and her two daughters within the said period of three months. We also direct that on account of negligence on the part of the opposite parties to trace out the missing husband of the petitioner who was in active service loss having occurred to the petitioner and her children, a compensation of Rs. 3 lakhs (Rupees Three Lakhs) be paid to them by the opposite parties within two months hence. Issue appropriate writ. We make no separate order as to cost.

P.K. Mohanty, J.

12. I agree.