

(2015) 02 PAT CK 0083

In the Patna High Court

Case No : LPA No. 1089 of 2012 in CWJC No. 4791 of 2007

State of Bihar and Others

APPELLANT

Vs

Anjali Kumari and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 146 FLR 699 : (2015) 2 PLJR 361

Hon'ble Judges : N.P. Singh, J;Jitendra Mohan Sharma, J

Bench : Division Bench

Advocate : Kinkar Kumar, for the Appellant

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.

1. I.A. No. 208 of 2013 has been filed in the present letters patent appeal by one Anar Devi, wife of Ramashish Paswan, who happens to be the mother of the deceased constable No. 670 Ranjit Kumar. She prays to be permitted to intervene in these proceedings for the sake of her grandson Deshratna, who was just of about 15 days old when his father Ranjit Kumar was shot in an encounter with veteran criminals. Having considered the matter, the said interlocutory application is allowed. The sole respondent in this appeal is Anjali Kumari, who was writ petitioner and in whose favour writ petition was allowed. She has been noticed in this appeal and she has appeared, but today in spite of repeated calls, no counsel appears on her behalf. We have heard learned counsel for the State and learned counsel for the intervenor.

2. The present intra court appeal is directed against the order dated 15.10.2011 passed in C.W.J.C. No. 4791 of 2007 (Anjali Kumari vs. State of Bihar and Ors.). It appears that late Ranjit Kumar was a constable in Bihar Police being Constable No. 670. While on patrolling duty at Manjhaul in the district of Begusarai, there was an encounter of Police with veteran criminals. In course of exchange of fire between the two groups, Ranjit Kumar was fatally injured on 4.10.2003. Writ

petitioner Anjali Kumari was the wife of Ranjit Kumar. Anar Devi, the intervenor, is the mother of Ranjit Kumar.

3. In the year 2007, the writ petition being C.W.J.C. No. 4791 of 2007 was filed by Anjali Kumari, alleging that as per Government resolution of the year 2005, she was entitled to a compensation of Rs. 10,00,000/- as a consequence of her husband - a Police man having been killed in an encounter. Before the learned Single Judge, the State had pointed out that the death of Ranjit Kumar having occurred in the year 2003, the Government resolution of 2005 would not ensure to writ petitioner's benefit. Learned counsel for the State also pointed out that in the year 2007, presumably after writ petition was filed, the writ petitioner was paid a compensation of Rs. 2,50,000/-, which was not brought on record in the writ proceeding by the writ petitioner. It was also pointed out that the writ petitioner had been given compassionate appointment, which fact was not stated in the writ petition, though not disputed at the time of hearing. The learned Single Judge disposed of the writ petition by order dated 15.10.2011, which has been challenged before this Court in intra court appeal. The learned Single Judge directed that even though resolution of the Government to grant Rs. 10,00,000/- as compensation came in the year 2005, but as writ petitioner had been given compensation of Rs. 2,50,000/-, belatedly by several years, the resolution of the year 2005 would apply and, accordingly, the State was directed to pay balance of Rs. 10,00,000/- compensation, apart from the compassionate appointment, which she had already received.

4. Learned counsel for the State submits that the right to receive compensation as a consequence of death in encounter does not flow from any Statute. It is the resolution of the Welfare Government from time to time, which gives this benefit to the family of the deceased for the sacrifice made as an employee of the State. He would submit that it is the resolution, that is in force on the day when the occurrence takes place, that would decide entitlement of compensation amount and not a resolution that comes year later unless the resolution provides for its retrospectivity. He further states that in so many words the resolution of the State Government of the year 2005 is prospective in its application. There is no dispute in this regard. He, accordingly, submits that at the time when the occurrence took place, it was 2001 resolution that was in force and according to the said resolution, the writ petitioner was entitled to a compensation of 2,50,000/- only, which was paid and by no analogy the resolution of the year 2005 could be made applicable. The learned Single Judge was, thus, wrong in extending this unfounded sympathy to create legal obligation on the State.

5. The intervenor, on the other hand, has brought certain important facts on record. The writ petitioner has not opposed the same. The facts are thus. Ranjit Kumar was killed in an encounter on 4.10.2003. At that time the writ petitioner Anjali Kumari was his wife. She had just 15 days prior to his death given birth to a male child, who was later named Deshratna. Immediately after death of her husband Ranjit Kumar, she abandoned the child with the intervenor, left him and

went back to her Maika. She then got married to Dhiraj Paswan of Khagaria. Concealing this fact of re-marriage and abandonment of the infant, she sought and got compassionate appointment as lady constable No. 271 at Begusarai. She refused to provide for the son of late Ranjit Kumar Deshratna, who had been all along looked after by the intervenor and her old aged husband. The intervenor, thus, prays that the writ petitioner be directed to adequately provide for the education and maintenance of Deshratna, son of late Ranjit Kumar.

6. Having heard the parties, we are of the view that the order of the learned Single Judge cannot be sustained. The misplaced sympathy cannot take place of law. The law has to apply in its stride. From the facts noted above, it is not in dispute that for the first time the State Government took a decision in the year 1997 to grant compensation to Police Personnel, who died in encounters while performing their duties. In 2001, the compensation amounts were enhanced to Rs. 10,00,000/-, but immediately thereafter it was clarified that this Rs. 10,00,000/- enhanced compensation would only be applicable to Police Personnel being killed in encounter with extremists and not if they were otherwise killed. In other cases, the compensation amount was only Rs. 2,50,000/-. Thus, the resolution, which, though is not a law, but a policy decision of the State, conferring benefits on Police Personnel, the only entitlement to which the writ petitioner was entitled to, was Rs. 2,50,000/- apart from compassionate appointment. Thus, merely because there was a delay in payment of this Rs. 2,50,000/-, the learned Single Judge could not extend the benefits under the resolution of the year 2005 retrospectively when the 2005 resolution in so many terms states that it would apply prospectively alone. We cannot, therefore, uphold the decision of the learned Single Judge and we, accordingly, set it aside.

7. We may, however, note one aspect of the matter. The learned State Counsel points out that as the writ petitioner had sought and got compassionate appointment, she had immediately remarried. She apparently herself did not intimate or claim the compensation because she would be required to disclose about the abandoned infant and her re-marriage. It is only when subsequently in 2005, the compensation amount was substantially enhanced and she had already got compassionate appointment, she claimed compensation. She was given Rs. 2,50,000/-. From this conduct, it is apparent that the writ petitioner had tried to obtain advantage from this Court by concealing material facts. She has obtained benefits from the State without disclosing the material facts. We may note that compassionate appointment and/or compensation, provided/paid by the State, is meant for the family welfare. If the sole bread earner of the family or bread earner of a family dies while performing his duties, it becomes an obligation for the State to provide for the welfare of the family. In such a case, in our considered opinion, the family would not be alone the spouse of the deceased, but would also include the parents of the deceased, who may be dependent upon the deceased and the children of the deceased. It is not just the wife, who would be entitled to all benefits. It is not merely a moral duty but it is a legal obligation towards children and old parents. Having considered this aspect of the matter,

we direct the State to immediately within two months from today enquire into the matter. If it is found that the writ petitioner had remarried and had abandoned the child, then it would be the responsibility of the State to ensure that at least the entire monetary compensation, that had been received by the writ petitioner, must be realized and the same be deposited in a Nationalized Bank in a long term deposit for the beneficial interest of Deshratna, the son of the writ petitioner. The appropriate formalities would be done by the Superintendent of Police. This order, we are passing on the basis of the fact that the widow of Ranjit Kumar had already got compassionate appointment as a lady constable and is already remarried. She need no further benefit and, therefore, monetary benefit has to be recovered from her to safeguard the interest of the infant, whom she abandoned. With the aforesaid observations and directions, this letters patent appeal is allowed and the impugned order dated 15.10.2011 passed in C.W.J.C. No. 4791 of 2007 by the learned Single Judge is set aside.