

Neutral Citation No. - 2024:AHC-LKO:69395-DB

Reserved

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 447 of 2022

Appellant :- Smt. Poonam Tyagi

Respondent :- State of U.P. Thru. Prin.Secy.Deptt. of Home,
Civil Sectr. U.P. Lko. and others

Counsel for Appellant :- Sheshnath Bhardwaj

Counsel for Respondent :- C.S.C., Gopal Kumar Srivastava

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Jaspreet Singh,J.

(Per : Arun Bhansali, CJ)

1. This special appeal is directed against the order dated 05.09.2022 passed by learned Single Judge in Writ-A No. 9562 of 2019 whereby the writ petition filed by the petitioner, seeking extraordinary pension under Uttar Pradesh Police (Extraordinary Pension) Rules, 1961 ('the Rules') has been dismissed.

2. The writ petition was filed by the appellant aggrieved of the order dated 03.08.2018 passed by Principal Secretary, Home Department, U.P. whereby the claim for grant of extraordinary pension under the Rules was rejected, *inter alia*, on the ground that as in the viscera examination report of appellant's husband, cause of death was found poisoning, under the Rules, extraordinary pension was not payable.

3. It was indicated in the petition that husband of the appellant, Ashok Kumar Tyagi, was working as Sub-Inspector in Railway Police and was posted under the Superintendent of Police, Railways, Moradabad. On 24.10.2001, while performing the duties, he died and considering the fact that he died on duty, an application was filed for grant of extraordinary

pension. It was submitted that cause of death of appellant's husband was got inquired into by Superintendent of Police, Railways wherein a report dated 06.12.2001 was submitted by Deputy Superintendent of Police, Railways, Bareilly indicating that husband of the appellant, while conducting investigation in case No.81-82-83/2001 under Section 4/25 of Arms Act had gone to GRP Station, Bhojipura at around 4.30 p.m. and had subsequently departed for police station GRP, Bareilly City. He reached Railway Station, Izzatnagar at around 9.30, when he was about to leave for home he suddenly fell ill and immediately thereafter other Head Constables took him to his official residence where his condition deteriorated and he was taken to Mission Hospital in Bareilly where it was recorded that he has been 'brought dead'. The viscera report dated 02.02.2002 indicated 'Aluminum Phosphide', however on an objection made, a second viscera report was obtained on 27.11.2002, wherein the report indicated 'Ethyl Alcohol Poison'. As the claim of extraordinary pension was not granted, based on the second viscera report, the appellant made several representations for grant of extraordinary pension, however, when no order was passed, Service Single No. 17202 of 2018 was filed by her, which came to be decided on 02.07.2018 by learned Single Judge requiring the respondents to decide representation. As noticed hereinbefore, the representation was decided by order impugned dated 03.08.2018 rejecting the claim.

4. In the petition, it was claimed that in terms of provision of Rule 3 of the Rules, if a Police Officer dies while performing his duties, the extraordinary pension is payable and as appellant's husband had died while on duty, pension was payable and the denial was not justified.

5. Learned Single Judge, after hearing the parties, came to the conclusion that only in case, a person fulfils the circumstances, as mentioned in Rule 3, he can be entitled for grant of extraordinary pension and as in the present case husband of the appellant was only conducting an investigation and there was no mention of intervention by any other person responsible for his death, the provisions of Rule 3 were not applicable and, consequently, dismissed the petition.

6. Learned counsel for the appellant made vehement submissions that the respondents as well as learned Single Judge were not justified in rejecting/dismissing the claim/writ petition. Submissions have been made that admittedly the appellant's husband was on duty, when he fell ill and was taken to home and from there to hospital where he was declared 'brought dead' and, therefore, the provisions of Rules were very much applicable and denial of extraordinary pension is wholly unjustified. Reliance has been placed on **Malti Devi Vs. State of U.P. : Special Appeal No. 231 of 2014** decided on 18.04.2017.

7. Further submissions have been made that learned Single Judge has referred to provisions of Amendment of 2015 in the Rules, which would have no application as the death in the present case occurred in the year 2001.

8. Learned counsel for the respondents vehemently opposed the submissions. It was indicated that provisions of the Rules pertaining to the death during performance of duties has to be read *ejusdem generis* with the preceding part of the Rule which provides, "in case the police personnel dies, while fighting dacoits or armed criminals or foreign missionaries", and, therefore, mere death during performance of duties cannot entitle family of a deceased employee to claim extraordinary

pension and, consequently, the order impugned passed by learned Single Judge does not call for any interference. Reliance was placed on **Gyanwati Devi Vs. State of U.P. and others : Special Appeal No. 33 of 2019**, decided on 24.10.2019.

9. We have considered the submissions made by counsel for the parties and have perused the material available on record.

10. The relevant provisions of the Rules, *inter alia*, read as under:

“3. यह नियमावली राज्यपाल के बनाये नियम से नियंत्रित होने वाले स्थायी या अस्थायी रूप से सेवायोजित सभी पुलिस अधिकारियों और कर्मचारियों (राजपत्रित और अराजपत्रित दोनों) पर लागू होंगी, जो डाकुओं या सशस्त्र अपराधियों या विदेशी प्रतिरोधियों से लड़ने में या किसी अन्य कर्तव्यों का पालन करने के दौरान मारे जायें या जिनकी मृत्यु हो जाये।”

“5. कोई अभिनिर्णय नियम 3 में उल्लिखित कारणों से भिन्न किसी कारण से हुई मृत्यु के सम्बन्ध में नहीं दिया जायेगा।”

11. In the present case, it is an admitted case of the parties that husband of the appellant, post investigation, when he was preparing to leave for home, suddenly fell ill with pain in his body and was taken to his official residence and from there to the hospital where he was declared ‘brought dead’. The viscera report, initially, indicated presence of 'Aluminum Phosphide', i.e., ‘Salphas’ and on a re-check at the instance of the appellant, 'Ethyl Alcohol' was found in the viscera. The claim made by the appellant pursuant to the second viscera report, as contained in Annexure-10 to the writ petition, *inter alia*, reads as under:

“प्रयोगशाला द्वारा पुनः परीक्षण किये जाने पर मेरे पति की विसरा रिपोर्ट में “एथाइल एल्कोहल” पाया गया जो कि दर्द निवारक दवायें व अन्य एल्कोहल मिश्रित दवायें खाने के कारण आता है। साथ ही प्रयोगशाला द्वारा पहली रिपोर्ट में लापरवाही बरतने के सम्बन्ध में गलत परीक्षण करने वाले कर्मियों के खिलाफ कार्यवाही किया जाना भी अंकित किया गया है।

उपरोक्त परिस्थिति को देखते हुए चूँकि मेरे पति की मृत्यु ड्यूटी के दौरान अचानक तबियत बहुत ज्यादा खराब होने के कारण हुई थी तथा

विष के कारण नहीं हुई थी। उक्त परिस्थिति को देखते हुए मेरी असाधारण पेंशन स्वीकृति किया जाना न्यायोचित होगा।

अतः आपसे अनुरोध है कि मेरी असाधारण पेंशन का केस उपरोक्त मृत्यु के आधार पर अपनी संस्तुति के साथ दुबारा स्वीकृत कराने का प्रस्ताव भेजने की कृपा करें।

श्रीमान् जी की महान कृपा होगी।”

12. From the above assertion made by the appellant, it is apparent that it is nobody's case that the presence of either 'Aluminum Phosphide' or 'Ethyl Alcohol', as found in the viscera of the deceased, had anything to do with the performance of his duties. It is also nobody's case that during the course of the investigation, anything happened which led to the administration of the said poisonous substance to the deceased.

13. The presence of ethyl alcohol, as per 'A Textbook of Medical Jurisprudence and Toxicology' by Modi, Twenty Seventh Edition, Chapter 9 pertaining to 'Inebriant Cerebral Poisons' under 9.1.1 relating to **Ethyl Alcohol**, *inter alia*, indicates as under:

“9.1.1 Acute Poisoning

Acute poisoning may result from the consumption of an alcoholic beverage in small doses at short intervals or in an excessively large dose at a time, sometimes poisoning may occur even by the inhalation of alcoholic vapours. Ethanol is rapidly absorbed across both the gastric mucosa and the small intestines, reaching a peak concentration 20-60 minutes after ingestion. Once absorbed, it is converted to acetaldehyde by the enzyme alcohol dehydrogenase. Acetaldehyde is then converted to acetate, which is converted to acetyl CoA, and ultimately carbon dioxide and water.”

14. A Division Bench of this Court in the case of **Gyanwati Devi (supra)**, wherein the personnel died due to brief illness, post-heart-attack suffered during duty, analysed the provisions of Rule 3 and came to the following conclusion:

“The question is whether the writ petitioner's late husband's death fell within any of the categories of fatal situations/contingencies as enumerated above. The first three fatal situations/contingencies as stated in Rule 3 of the 1975 Rules, are those who are killed in action while fighting with dacoits, armed criminals or foreign insurgents. The other category, “...या किसी अन्य कर्त्तव्यों का पालन करने के दौरान मारे जायं या जिनकी मृत्यु हो जाय”; English translation:- “...whose death have been caused or who have died while performing any other duty.”, simply cannot be read in isolation of the first three categories of fatal situations/contingencies and has to be necessarily read on the construction canon of ejusdem generis.

The reason is, when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those already listed. In the instant case, the listed category/class includes only those killed in action while fighting dacoits or armed criminals or foreign insurgents. As such, the death of appellant/writ petitioner's late husband due to illness following a heart attack which he suffered on 13th January, 1993, while on duty, cannot be in any manner remotely relatable to the listed category/class of fatal situations/contingencies as stated in Rule 3 of the 1975 Rules.

For the purpose of grant of extraordinary pension under Rule 3 of 1975 Rules, death has to result directly from a fatal situation/contingency faced by the police personnel concerned in the line of duty in a hostile environment akin to the listed category/class. The appellant/writ petitioner's husband may have died on duty, but his death was due to natural causes and certainly not due to a fatal situation/contingency faced by a police personnel in the line of duty in a hostile environment akin to the listed category/class as specified in Rule 3 of the 1975 Rules.

If we proceed to give such a wide interpretation to Rule 3 of the 1975 Rules -- in the manner as submitted by the learned advocate for the appellant -- there would perhaps be no necessity of Rule 3 of the 1975 Rules to specify the three contingencies/fatal situations required for the purpose of grant of extraordinary pension. The legislature, in its wisdom, would have simply stated that any death occurring during the course of duty would entitle the family of the concerned police personnel to claim extraordinary pension in terms of

the Rule 3 of the 1975 Rules. That possibly could not have been the intention of the legislature by any stretch of imagination in the facts of the instant case.

As such, we direct the concerned authority of the State to enforce Rule 3 of the Rules of 1975 strictly with an even hand and not allow similar claims to surface or grant such claims surreptitiously.

The Special Appeal stands dismissed subject to observations made hereinabove.”

15. From a perusal of the provisions of Rule 3, quoted hereinbefore, and the judgment in the case of **Gyanwati Devi (supra)**, it is apparent that not every case of death of a police personnel while performing duty for any cause, whatsoever, would entitle the widow/family to extraordinary pension. The cause of death of the personnel has to have some causal connection with the performance of his duties. As noticed hereinbefore, in the present case it is nobody's case that the death occurred on account of any event/cause during the course of investigation, which resulted in presence of poison in the viscera of the deceased, either 'Aluminum Phosphide' or 'Ethyl Alcohol' and, therefore, apparently the case of the appellant would not be governed by the provisions of Rules for grant of extraordinary pension.

16. So far as judgment in the case of **Malti Devi (supra)** is concerned, the said judgment has essentially dealt with the aspect of 'course of employment' and with reference to the judgments under Workmen's Compensation Act, 1923, came to the conclusion that where an employee, in the course of discharge of his official duties, has been sent from his place of posting to another station for the period such an employee continued at another station, it can not be said that he is not on official duty and the same has already come to an end and came to the conclusion that the notional extension theory would

apply. The determination made by the the Division Bench on plain reading of the provisions of Rule 3 reads as under:

“9. In 1975, scope of Rule 3 was enlarged and now rule also apply to a police officer, if he die or killed, performing some other duties.”

17. The Division Bench referred to the amendment introduced in the year 1975 whereby the applicability was extended to death during course of performance of duties and not confined to fighting dacoits, armed criminals or foreign insurgencies, however, the extent of such applicability and the causal connection has not been dealt with and, therefore, the said judgment cannot be read as laying down a proposition of law that in every case, if death of an employee occurs while on duty for whatever reason, the case would be covered under the provisions of Rule 3, as sought to be submitted on behalf of the appellant in the circumstances of the present case.

18. In view of the above discussions, there is no substance in the appeal. The same is, therefore, dismissed.

Order Date :- 15.10.2024.

P.Sri.

(Jaspreet Singh, J) (Arun Bhansali, CJ)