
declaration of law made by nine Judges Bench in *Mafat Lal Industries Ltd. etc. vs. Union of India etc.* (supra) and if they are so read, it is not possible to discover any conflict of opinion in the various decisions of the Apex Court and even if, there is one, the decision of the smaller Bench will have to be read as confined to the facts of these cases.

(23) For the reasons mentioned above, we hold that the petitioners are not entitled to the refund of Development Cess paid to respondent no. 2. The writ petitions are liable to be dismissed. Ordered accordingly.

R.N.R.

Before Jawahar Lal Gupta & Bakhshish Kaur, JJ.

DR. SHARANJIT KAUR,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 15824 of 2000

30th May, 2001

Constitution of India, 1950—Art. 226—Administration of Punjab War Heroes Families Relief Fund Rules, 1999 — Ris. 2(d), 3 & 10(b)—Death of a member of Armed Force in an accident in the course of performance of official duty— 1999 Rules provide for the grant of benefit to the families of the defence personnel who die while performing their duties— Army authorities describing the death as a 'Physical casualty' and not a 'battle casualty'— Denial of benefits— Rules do not recognise the expression 'Battle' or 'Physical' casualty—Provisions of the rules fully applicable— Family entitled to the grant of benefits admissible under the rules.

Held, that the 1999 Rules have been promulgated to provide relief to the families of those who die in the performance of their duties. These rules embody provisions calculated to confer certain benefits on the family of persons who shed their blood for the nation and die while discharging their duties. These rules have to be construed liberally. In any way, a death due to accident is clearly covered by the provision of rule 2(d). The rules do not recognise the expression 'Battle' or 'Physical Casualty'. These only provide for the grant of benefit to the families of persons who die while performing their duties. Petitioner's husband

had laid down his life in the bona fide performance of his duties. Thus, the benefits under the rules are clearly admissible.

(Paras 13 and 14)

T.S. Dhindsa, Advocate for the Petitioner.

S. K. Bhatia, DAG, Punjab for respondent Nos. 1 and 2.

S.K. Sharma, Advocate for respondent Nos. 3 and 4.

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) The petitioner is an unfortunate widow. Her husband was a member of the Armed Force Medical Corps (Dental Wing). He was deputed to attend a conference. On his way back, he met with a road accident on 25th December, 1999 which proved fatal. He died instantaneously. The petitioner claims that she is entitled to the grant of benefits under the provisions of the Administration of Punjab War Heroes Families Relief Fund Rules, 1999. Her representations having met with no success, she has approached this Court through the present writ petition with a prayer that a writ of *mandamus* be issued directing the respondent-State of Punjab and others to grant her the admissible benefits.

(2) The State of Punjab contests the petitioner's claim. It had been pleaded that the "family members of only those martyrs are eligible for these benefits whose death occur on or after 1st January, 1999 in the specified area of operational responsibilities due to enemy action—". It has been further stated that when a person dies in enemy action while performing his duties, the death is termed as a battle Casualty. In the present case the army authorities have notified the "death of Capt. Davinder Pal Singh as Physical casualty. Therefore, the case of the petitioner is not covered under the present policy of the State Government—".

(3) Counsel for the parties have been heard. Mr. Dhindsa, learned counsel for the petitioner contends that in terms of the rules framed by the State Government, the benefit, as claimed by the petitioner, is clearly admissible.

(4) Mrs. Bhatia, appearing for the State of Punjab contends that the petitioner's case is not covered under the rules. Mr. Sharma, learned counsel for Union of India etc. has stated that the petitioner was a Commissioned Officer in the Dental services of the Indian Army.

He had been recruited on 2nd July, 1997. He had been deputed to attend the conference on 25th December, 1999. He had met with an accident near Rajbagh on National Highway No. 1-A. He had died "in the course of performance of *bona fide* military duty". Terminal benefits have been released to the family. The case for special family pension is under consideration. So far as the benefits under the rules framed by the Punjab Government are concerned, learned counsel submits that the matter has to be decided by the Court.

(5) The short question that arises is—Is petitioner entitled to the benefits under the rules framed for the Administration of Punjab War Heroes Families Relief Fund notified by the Government on 26th June, 1999 and amended on 10th August, 1999 ?

(6) Rule 2(d) defines death as under :—

“Death occurring on or after 1st January, 1999 in the specified area of operational responsibilities due to enemy action. It also includes death in harness in the performance of duties due to accident, act of violence by terrorist or anti-social elements, border skirmishes, action against militants etc.”

(7) The Objectives of the Fund, as given in Rule 3, were initially in the following terms :—

The funds will be utilised for the following purposes :—

- (a) For giving *ex-gratia* grant to next of kin of Defence/Para-Military personnel from Punjab irrespective of the rank held by the War Heroes who may lose their lives or suffer disability of different magnitude in the specified area of operational responsibility within the country in the following order :—
 - (i) 50% to the widowed spouse and children and 50% to the dependent parents.
 - (ii) In case none of those in (i) above is alive then in equal share to brothers, sisters and deceased’s widowed daughter-in-law or her children.
 - (iii) The above order can be altered and other kin can be given the *ex gratia* grant in special cases by the Committee.
- (b) For paying Rs. 5 lacs on the reserve price of one plot in any estate of the Punjab Urban Authority or Improvement Trust, the remainder of the reserve price to be paid by beneficiary or Rs. 5 lacs in lieu of the plot at reserve price.....”

(8) This provision was amended by the notification dated 10th August, 1999. Sub rule (a) of Rule 3 was deleted. For Sub rule (b), the following provision was substituted :—

“In the case of death or disability between 75% to 100%, a grant of Rs. 5 lacs out of the Punjab War Heroes Families Relief Fund shall be given for the construction of a house or a residential plot available in any of the Colonies set up by PUDA shall be allotted at reserve price and an amount of Rs. 5 lacs shall be paid out of the Punjab War Heroes Families Relief Fund as a price of the plot, the remaining amount of reserve price shall be paid by the allottee himself/herself.”

(9) Rule 10(b) gives the purpose for which the fund can be utilised. It is in the following terms :—

“The fund will be utilised for the Welfare of the Families of Defence and Para-military personnel who die in harness in the performance of their *bona fide* official duties who are residents of Punjab or have some link with Punjab or suffer disability [as indicated in rule 10(a)] in action while engaged in the defence of the country on or after 1st January, 1999.”

(10) On a perusal of the above provision, it is clear that the fund has to be utilised for the Welfare of Families of the Defence personnel who die “in the performance of their *bona fide* official duties.....”. The second condition which has been laid down in the rules is that the deceased should be a residents of Punjab or should have some link with the State. Still further, death does not mean merely an end of life “due to enemy action”. Even when a person dies in an accident which occurs in the course of duty his case is covered by the provisions of the rules.

(11) What is the position in the present case ? In the written statement filed on behalf of the Army authorities, it has been categorically averred that a Court of Inquiry was held. During the course of evidence, it was found that the petitioner’s husband had been asked to proceed to Mamun to attend a conference on 25th December, 1999. He had died in the accident “in the course of performance of *bona fide* military duty”. His identity card bearing machine No. 576215 was destroyed due to burning in the accident. Thus, it is not a case where the petitioner’s husband was travelling for some private work or going for a holiday. In fact, he had met with an accident in the course of performance of official duty. It has been specifically found by the authorities that he had died while performing military duty. Thus, the provisions of the rules shall be fully applicable to the case and the

benefits admissible thereunder should be granted to the family.

(12) Mrs. Bhatia submits that death due to accident should be given a restricted meaning. It should be interpreted to mean death during the course of an Army operation.

(13) The rules have been promulgated to provide relief to the families of those who die in the performance of their duties. These rules embody provisions calculated to confer certain benefits on the family of persons who shed their blood for the nation and die while discharging their duties. These rules in our view have to be construed liberally. In any way, a death due to accident is clearly covered by the provision of rule 2(d). We cannot read down the rule in the context in which it appears. The interpretation as sought to be placed on the provision by the counsel for the State of Punjab, if accepted, would do violation to the plain language of the rule. Thus, the contention raised by counsel cannot be accepted.

(14) Mrs. Bhatia submits that the death of the petitioner's husband has been described by the Army authorities as a Physical Casualty and not a Battle Casualty. Thus, the petitioner should not be granted any benefit. We cannot accept this contention. The rules do not recognise the expression Battle or Physical Casualty. These only provide for the grant of benefit to the families of persons who die while performing their duties. In the present case the petitioner's husband had laid down his life in the bona fide performance of his duties. Thus, the benefits under the rules are clearly admissible.

(15) No other point has been raised.

(16) In view of the above, we allow the writ petition. We direct that the petitioner shall be paid an amount of Rs. 5,00,000.00 or she would be allotted residential plot in a colony set up by PUDA at the reserved price and the amount of Rs. 5,00,00.00 shall be paid towards the price of the plot out of the relief fund. The remaining price shall be paid by the petitioner. She would also be paid an amount of Rs. 2,00,00.00 by way of *ex gratia* grant as contemplated under the rules.

(17) If the petitioner applies for a job, her claim shall be considered in accordance with the rules.

(18) The needful shall be done within two months from the date of the receipt of a certified copy of this order.

(19) The petitioner shall also be entitled to her costs, which are assessed at Rs. 5,000.00.

R.N.R.