

Court _____ **No.** _____ - _____ **18**

Case :- WRIT - A No. - 6702 of 2023

Petitioner :- Digvendra Singh
Respondent :- State Of U.P. Thru. Addl. Chief Secy.
 Panchayatiraj Lko. And 2 Others
Counsel for Petitioner :- Krishna Madhav
 Shukla, Shilendra Kumar, Umesh Pratap Yadav
Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar, J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging communication/order dated 28.12.2021 whereby ex gratia payment to the petitioner on account of death of his mother due to Covid-19 Pandemic has been rejected on the ground that death has occurred beyond a period of 30 days from the date petitioner's mother was sent on election duty.
3. Since all the relevant material including reasoning for rejection of petitioner's claim is already on record, the petition as such is being decided at the admission stage itself without calling for counter affidavit particularly in view of judgment rendered by Hon'ble Supreme Court in the case of ***Mohinder Singh Gill & others versus Chief Election Commissioner, New Delhi & others, reported in AIR 1978 SC page 851*** whereby reasons are required to be indicated and construed from the impugned order itself and can not be supplemented by any affidavit.
4. From a perusal of the impugned order, it is evident that petitioner's case for ex-gratia payment has been rejected on the ground that his mother was sent on election duty on 23.04.2021 and was found to be covid positive in terms of antigen test on 14.05.2021 whereafter as per molecular biology report dated 14.05.2021, she was found to be covid positive and subsequently passed away on 03.06.2021. The impugned order indicates that petitioner's claim for ex-gratia payment is being rejected since death of his mother occurred one day after expiry of 30 days from the date she was sent on election duty. The claim for ex-gratia payment has been made by petitioner in terms of the government order dated 1st June, 2021 which under paragraph 12 indicates circumstances for payment of ex-gratia payment particularly the fact that death should have occurred due to Covid-19 Pandemic within a period of 30 days of the employee being sent for election duty.
5. It is the admitted case of opposite parties as evident from the impugned order itself that petitioner's late mother

passed away owing to Covid-19 Pandemic. The impugned order also indicates her duty being from 14.05.2021 and was found to be covid positive on 14.05.2021. The impugned order also indicates her being found to be covid positive as per molecular biology report dated 14.05.2021. As such it is quite evident that petitioner's late mother was found to be covid positive within a period of 30 days from being sent on election duty. The claim for ex-gratia payment however has been rejected only on the ground that she passed away one day after expiry of 30 days from being deputed on election duty.

6. A perusal of the government order dated 1st June, 2021 clearly indicates the reasons for ex-gratia payment of employees who have been deputed for panchayat elections in 2021. A bare perusal of the government order indicates that provisions indicated therein are beneficial in nature only for the purposes of providing ex-gratia monetary compensation to family members of such employees who contracted and died due to Covid-19 Pandemic as a result of their duties being performed. The purpose of the government order clearly is beneficial in nature and therefore in the considered opinion of this court an expansive definition is required to be given to the parameters indicated in paragraph 12 of the government order.

7. The mere fact that death should have occurred within a period of 30 days from an employee being deputed on election duty, in the considered opinion of this Court can not restrict the beneficial provisions of government order where admittedly death has occurred due to Covid-19 Pandemic being contracted by the employee in the line of duty. Once it is already admitted that the employee contracted Covid-19 disease in the line of duty with laboratory result being indicated within a period of 30 days from being deputed for election duty, the fortuitous circumstance of his death beyond period of 30 days can not deprive the family members of such employees particularly since the date of death is not in the hands of the employee who has contracted the disease. Such stipulation indicated in paragraph 12 of the government order dated 1st June, 2021 is clearly arbitrary and unreasonable and is therefore violative of Article 14 of Constitution of India.

8. Learned counsel for petitioner has also placed reliance on judgment rendered by Division Bench of this court in the case of **Kusum Lata Yadav and others versus State of U.P. and others**, writ C No. 28249 of 2021 wherein also this court has deprecated the yardstick of 30 days as indicated in the government order dated 1st June, 2021 primarily on the ground that provisions are beneficial in nature and full extent of such a beneficial provision is required to be granted.

9. Hon'ble Supreme Court in the case of **Bangalore Turf Club Limited versus Regional Director, Employees' State Insurance Corporation** along with connected civil appeals reported in (2014) 9 Supreme Court Cases 657 has already held that in cases of beneficial statutes or provisions, expansive and not a restrictive definition is required to be given for ensuring the purpose for which the beneficial statute or provision has been enacted or notified. Consequently, any limitation or provision which not only restricts but makes a beneficial provision redundant has to be abjured.

10. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is quite evident that the purpose of government order dated 1st June, 2021 is clearly beneficial to provide monetary succour to family members of employees who have passed away as a result of contracting covid-19 disease in the line of duties.

11. In such circumstances, the provision in paragraph 12 of the government order dated 1st June, 2021 restricting benefit of ex-gratia payment to cases where death has occurred within 30 days from date of employee being deputed on election duty is clearly violative of Articles 14 & 21 of Constitution of India and as such reasoning indicated in impugned order dated 29th June, 2021 for rejection of petitioner's claim for ex-gratia payment is also clearly violative of aforesaid constitutional provision.

12. Consequently rejection of ex-gratia payment to petitioner as communicated vide order/letter dated 28.12.2021 is **quashed** by issuance a writ in the nature of Certiorari.

13. A writ in the nature of Mandamus is issued commanding the opposite parties to ensure payment of ex-gratia payment to petitioner in terms of the government order dated 1st June, 2021 ignoring the stipulation of 30 days as indicated herein above. The payment of such ex-gratia payment to petitioner shall be ensured within a period of one month from the date a certified copy of this order is produced before the opposite party No.2 i.e. District Magistrate/District Election officer (Panchayat & Urban Body), Raebareli.

14. Consequently, the writ petition succeeds and is **allowed** at the admission stage itself. Parties to bear their own cost.

Order Date :- 12.3.2024
DiVYa