

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15622 of 2006

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Most. Prabha Devi wife of late Kamta Prasad, Resident of village Kadi Bigaha, P.O. Bhagan Bigaha, P.S. Rahui, Dist. Nalanda.

.... Petitioner

Versus

1. The State of Bihar
2. The Chief Election Officer, Bihar-cum-Secretary to the Government, Cabinet (Election) Department, 7 Mangls Road, Bihar, Patna-800015.
3. The District Election Officer-cum District Magistrate, Nalanda.
4. The Additional Collector (Nuxal)-cum-senior Officer Election, Nalanda.
5. The Deputy Election Officer, District Election Cell, Nalanda.
6. The General Manager, District Industry Centre, Nalanda at Biharsharif.

.... Respondents

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Appearance :

For the Petitioner : Mr. Satish Chandra Mishra Advocate.

For the State : Mr. Amaresh Kumar Sinha, AC to GA-9

For the respondent no.2 : Mr. J.P. Karn, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 29-04-2015

Heard the parties.

Counter affidavit(s) on behalf of the respondent no.2
and respondent-District Magistrate-cum-District Election Officer
have been filed. Petitioner has filed replies thereto.

The petitioner herein is the wife of late Kamta Prasad
who during the relevant period was posted as Steno in the District
Industry Centre, Nalanda. The petitioner has claimed ex -gratia
grant/compensation in the sum of Rs. ten lacs on the strength of the
policy decision of the State Government as contained in memo no.
5682 dated 17.10.2005 (Annexure-2) which, inter alia provides in
para 1 thereof that the employees deputed for the purpose of the



State Assembly General Election to be held in 2005 shall be given ex- gratia grant/compensation of Rs. 10 lacs in case of death occurred due to violence, accident or due to any other reason during their work for the election. The entitlement thereto was made dependent on the recommendation made in this regard by the District Magistrate-cum- District Election Officer or by the Chief Election Officer (respondent no.2). According to the writ petitioner, by virtue of an order contained in Annexure-3 issued by the respondent- District Election Officer –cum- District Magistrate under purported exercise of his power under Sub Section 1 and Sub Section 3 of Section 26 of the Representation of the Peoples Act, 1951 (for short ‘the Act’) her husband was appointed as Presiding/Polling Officers 1/2/3/4 for the poling station to be specified later on. He was commanded to present himself for training which was scheduled on 04.10.2005 between 9 am to 1 pm in the North Block of the Nalanda College. It would be relevant to notice here that the actual date of polling was 19.11.2005. It is further case of the petitioner that a list of employees including the husband of the petitioner was prepared and furnished by the General Manager, District Industries Centre, Nalanda on 27.7.2005 to the Officer of the District Election officer in pursuance whereof her husband was requisitioned to discharge the election duties and the appointment letter (Annexure-3) for taking



part in the training programme was issued. In paragraph no.8, it has been stated that while receiving the election materials/articles at the election office, Town Hall, Biharsharif, Nalanda on 17.11.2005 the husband of the petitioner owing to the ailment with which he was suffering died. The doctor was summoned by the administration who examined the body of the husband of the petitioner at 4 pm. on 17.11.2005 and found him clinically dead. On the strength of the aforesaid facts, the instant writ petition has been filed seeking a direction upon the respondents to make payment to her, being the dependant of the deceased employee, a sum of Rs. ten lacs as ex gratia grant/compensation.

In the counter affidavit filed on behalf of the respondent no.2 the following statements have been made in paragraph nos. 5 and 6 thereof:-

“5. That it is stated that appointment of Polling staff for election the representation of the People Act, 1951 empowers the District Election Officer-cum-District Magistrate under section 26 to appoint a presiding officer for each Polling Station. It follows that each polling personnel is issued two appointment letters by the concerned district authority before he/she is actually involved in the conduct of election at the polling station. The first appointment letter pertains to the training of the personnel vide the second appointment letter is issued for the actual conduct of election on the concerned polling station. However, it is not mandatory that every

personnel who has participated in the election training on receipt of the first appointment letter, be issued the second appointment letter.

6. That it is stated that a counter affidavit has been filed by the District Election Officer-cum-District Magistrate, Nalanda, Respondent no.3, wherein it has been stated in para 6 that it is significant to mention herein that before the issuance of the second and final appointment letter the authorities of the personnel cell constituted the committee for the purpose of conduct of State Assembly General Election, 2005 came to know that Kamta Prasad was suffering from cancer disease, therefore after randomization by the observer his name was deleted from the list and final appointment letter was also not issued to him (deceased husband of the petitioner). Hence, the claim of the petitioner is not admissible. Further in para 7 it has been stated therein that the husband of the petitioner was not appointed as the polling officer and his presence to receive the polling materials on 17.11.2005 was not required. It is apparent from the perusal of the extract of alphabetical list of k letter as well as list of unique no. 1216 (the no. assigned to sri Kamta Prasad) was not included in the final list and accordingly second and final appointment letter was also not issued to late Kamta Prasad for participating the State Assembly General Election, 2005.”

Similar fact has been stated in the counter affidavit filed on behalf of the respondent –District Magistrate. In reply to the counter affidavit in para 5, the petitioner has stated that statements made in paragraph nos. 4 and 5 are matters of record.



Counsel for the petitioner has submitted that the policy decision of the government as contained in Annexure-2 is to grant ex-gratia grant/compensation to those employees who were engrafted in the election process for smooth conduct of the election and in course of the conduct of the election if the employee dies of any reason he/she would be entitled to ex-gratia grant/compensation. In the case at hand, admittedly, the husband of the petitioner was appointed for the training which was to be conducted prior to the actual conduct of the election and, as a matter of fact, her husband was present at the camp election office on 17.11.2005 i.e. two days prior to the date of polling when he died owing to the disease (cancer) he was suffering from. In such circumstance, this Court should direct the concerned respondents to pay the ex gratia grant/compensation to the petitioner who is dependant of the deceased.

Per contra, Mr. Karn and learned AC to GA-9 for the State have submitted that on bare reading of the resolution of the government (Annexure-2) it would appear that any employee or personnel who during the actual conduct of the election dies of an accident or in the election violence and also for any other reason would be entitled to the payment of the ex gratia compensation/grant. Any injury or disablement occurring during the actual conduct of the



election would also entitle to ex-gratia grant if clause 2 thereof is read entirely. Referring to the averments which this Court has already noticed hereinabove, it has been submitted that after the training programme which was conducted at least a month before the actual resumption of the election duty in which the husband of the petitioner was not summoned and was given the appointment letter. Once the personnel who are proposed to be engrafted in the election duty are trained the District Election Officer has to issue another letter of appointment either appointing the personnel as the Presiding Officer or the Polling officer. In the case at hand even as per the case of the petitioner no such second appointment letter appointing the husband of the petitioner either the Presiding Officer or Polling Officer was issued. Learned counsel for the State has referred to the statements made in the counter affidavit filed on behalf of the respondent – District Magistrate wherein similar stand has been taken.

On a consideration of the rival pleadings what appears to this court is that the husband of the petitioner was initially engrafted for training but subsequent thereto no appointment letter appointing him as the Presiding Officer/Polling Officer for the conduct of the election was issued. The resolution of the Government if read between the lines is to the effect that those personnel/employees who died in election violence or accident or



any other reasons during the discharge of his election duties would only be entitled to payment of ex gratia grant /compensation. To the similar effect is clause 2 of the resolution which provides for payment of ex gratia in case the election personnel /staff or security personnel in course of election duty receive any injury causing disability.

Having regard to the aforesaid, in the considered opinion of this court, it cannot be said that the husband of the petitioner suffered death in course of discharge of the election duties. The question whether death due to ailment during discharge of the election duties would entitle a personnel to the ex gratia grant/compensation is left open since the same is not required to be examined in this case. Once this Court holds that the husband of the petitioner was actually not engrafted in the discharge of the election duties inasmuch as no appointment letter appointing him either as Presiding Officer/Polling Officer was issued the petitioner would not be entitled to the relief. That apart, the payment of ex gratia amount/compensation has been made dependent upon the recommendation made in this regard by the District Election officer. No such recommendation in the case of the husband of the petitioner was made and there is no prayer for directing the District Magistrate to make such recommendation and thereafter to direct the respondents

to pay her ex gratia payment.

For the reasons aforesaid, This Court finds no merit in the application. Dismissed.

No order as to costs.

(Kishore Kumar Mandal, J)

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