

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CWP No. 1567 of 2014. [O&M]
Date of Decision: 19th May, 2015.

Jasbir Kaur
Versus
Petitioner through
Mr. H.C.Arora, Advocate

State of Punjab & Ors.
Respondents through
Mr. Aman Bahri, Addl.AG, Punjab.

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

The petitioner's husband – late Major Kanwaljit Singh was commissioned in the Army on 30th June, 1963. He participated in Operation Cactus Lily in Indo Pak War, 1971. Various official documents relied upon by the petitioner are sufficient to infer that Major Kanwaljit Singh was badly injured; captured by Pakistan Army along with 40 soldiers and unfortunately died while he was a war prisoner. Major Kanwaljit Singh was awarded *Shaurya Chakra* posthumously. The Ministry of External Affairs, Government of India vide Memo dated 11th October, 1990 notified the list of missing defence personnel who were presumed to be killed in action. The name of Major Kanwaljit Singh figured in that list.

[2]. It is established on record beyond doubt that Major Kanwaljit Singh was killed in war action and shall be so treated for all intent and purposes.

[3]. It is undeniable that under Rule 4 of the Punjab Package

Deal Property [Disposal] Rules, 1976, the petitioner who is widow of late Major Kanwaljit Singh is entitled to allotment of cultivable land as a part of beneficial scheme launched by the State of Punjab for the widows, parents and children of the soldiers killed in action. Though the petitioner fulfilled the eligibility conditions, yet the Authorities have been reluctant to allot the land to her for two reasons. Firstly, the 1976 Rules were amended vide notification dated 24th December, 2010 [P-7] and Rule 4 has been substituted whereunder a permanently disabled soldier, widow, parents or children of the soldier killed in action are now entitled to cash grant in lieu of land at the rate of one lac rupees per acre of entitlement or **'at such rates as may be fixed by the State Government from time to time'**. The second cause of reluctance appears to be the observations made in a letter dated 05th February, 2015 sent by Army Headquarters to the District Defence Services Welfare Officer, Tarn Taran with reference to a judgment of the Gujarat High Court rendered in Public Interest Litigation holding that the War Prisoners are deemed to have been alive till they attained the age of superannuation so that their families could be paid full salary and emoluments up to such date of superannuation and thereafter the benefit of liberalised family pension etc. could be granted to them.

[4]. The cited judgment, in our considered view, does not curtail rather it enlarges the scope of welfare Scheme(s) meant to compensate the family members of soldiers killed in action. The judgment does not and can not be construed to have restricted the benefit[s] which different State Governments have granted to the war

heroes [or their family members], who went missing and are presumed to be killed. The claim of the petitioner for allotment of land under the 1976 Rules falls in the above stated category and it can not be denied to her on the interpretation of judgment of Gujarat High Court, even if the petitioner was granted 'liberalized family pension' in deference to that decision only.

[5]. We, thus, hold that the petitioner is entitled to the benefit(s) of 1976 Rules formulated by Punjab Government.

[6]. Having held that, we advert to the petitioner's challenge to the *vires* of notification dated 24th December, 2010 whereby the State Government has decided to grant cash amount in lieu of land.

[7]. There can be no quarrel that 1976 Rules speak of a public policy devised for the welfare of several categories of persons including widows, parents and children of the army personnel killed in action. The policy decision was taken by State Government for the welfare of families affected by certain circumstances. The State Government, therefore, is well within its right to modify such policy decision and adopt different means to compensate the affected families. It is quite possible that after the Rules were formulated in 1976, the State Government is not left with sufficient land-parcels for giving effect to its original policy and has thus changed the mode of compensation. In this view of the matter, no fault can be found with the notification dated 24th December, 2010.

[8]. However, Rule 4 of the 1976 as substituted vide notification dated 24th December, 2010 is not static. It contains an in-built pragmatic approach and desired flexibility for the periodical

revision of the compensation amount from time to time. It is for this precise reason that the notification enables the State Government to pay cash amount of one lac rupees per acre of entitlement or “at such rate as may be fixed by the State Government from time to time”. We can not be oblivious of the fact that in State of Punjab there is no revenue District in which the Collector's rate of any cultivable land is ₹1,00,000/- per acre or less. We take judicial notice of the fact that no where in the State of Punjab a willing seller would offer his cultivable land @ an unrealistic low rate of ₹1,00,000/- per acre. Not even 1/8th of acre can be purchased at such a low rate. The State Government has also not lost sight of such ground realities while engrafting its new policy statement through amended Rule 4 of 1976 Rules. It would, therefore, be obligatory on the State to take notice of the facts and figures especially the Collector's rates in different Districts and then to determine the amount of grant to be released to the petitioner in lieu of the land.

[9]. For the reasons aforementioned, we allow the writ petition in part, declare the petitioner to be widow of war prisoner who is presumed to have been killed in war action for all intent and purposes including for allotment of land and/or grant of cash in lieu thereof under the 1976 Rules. The State of Punjab is further directed to determine the revised amount of grant which shall be paid to the petitioner in lieu of land, if no land is available for such allotment. The exercise for determination of rate of cash-grant equivalent to the land per acre shall be completed within three months from the date a certified copy of this order is received and necessary allotment of

land and/or grant shall be made/released within two months thereafter.

[10]. Disposed of. Dasti.

**(SURYA KANT)
JUDGE**

**May 19, 2015.
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**(P.B.BAJANTHRI)
JUDGE**