

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13431 of 2007

=====

Hiramuni Debi, w/o Late Ganesh Singh, resident of village- Mahuli , P.S. -Ara
(Mufassil) , District -Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna
2. The Secretary cum Home Commissioner, State of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. The Inspector General of Police (Hqrs) & Administration, Patna
5. The Deputy Inspector General, Munger
6. The Superintendent of Police, Lakhisarai

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Sri Sanjiv Sharan

For the Respondent/s : Sri Anil Kumar Verma, AC to AAG – 9

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 27-02-2017

Heard Sri Sanjiv Sharan, learned counsel for the petitioner
and Sri Anil Kumar Verma, learned AC to AAG No. 9.

The petitioner, who is widow of Ex -Army personnel and
while serving as Special Auxiliary Police (hereinafter referred to as
“S.A.P.”) in the State Government and died, has approached this
Court invoking its writ jurisdiction under Article 226 of the
Constitution of India, with a prayer to issue writ of mandamus
directing the respondents to pay Rs. 10,00000/- (Rupees Ten Lacs
Only) as ex -gratia amount.

As pleaded, the husband of the petitioner namely Sri
Ganesh Singh, who was Ex -Army Personnel after the scheme was
launched by the Government of Bihar for appointing Ex- Army



personnel as S.A.P. applied and appointed and he was provided S.A.P. No. 199. While the husband of the petitioner was posted in Lakhisarai he had shown many example of his ability and bravery and as such, he had become eye sore of local anti -social elements. On 23.5.2006 while the husband of the petitioner was on duty he was killed by criminals / anti- social elements brutally and he was beheaded. The headless dead body of the husband was subsequently found. Thereafter an F.I.R. vide Lakhisarai P.S. Case No. 193 of 2006 was registered for the offence under Section 302, 201, 120(B) of the Indian Penal Code against unknown. Since it was death on duty the concerned Superintendent Of Police vide Annexure -‘2’ to the writ petition i.e. an order contained in letter no. 1733 dated 12.7.2006 recommended the case of the husband of the petitioner for grant of ex- gratia amount to the tune of Rs. 10,00000/- (Rupees Ten Lacs Only) . It has been pleaded that the said recommendation was made in view of Government Resolution dated 12.11.2005 which speaks about payment of Rs. 10,00000 /- (Rupees Ten Lacs Only) ex- gratia amount in case of death while on official duty by extremist or any criminal activity. Even though the Superintendent Of Police had found the case for grant of ex- gratia and recommendation was made, no payment was made. Thereafter, the petitioner was constrained to approach this Court by filing the present writ petition which was filed



on 8.10.2007. After filing of the writ petition a counter affidavit on behalf of the respondent no. 6 i.e. Superintendent Of Police, Lakhisarai was filed on 14th February 2008 and communication issued by the Under Secretary, Home (Police) Department addressed to the Inspector General of Police (Personnel) has been brought on record as its annexure. The claim was rejected on the ground that death had not occurred during official duty. A plea was taken in the counter affidavit that after registering F.I.R. in respect of death of husband of the petitioner, the case was thoroughly investigated and during investigation it was found that the husband had visited a village where he consumed intoxicant and in course of intoxication some altercation had taken place with local people and in the said incident he was done to death. Initially, first charge-sheet was submitted against two accused persons and investigation was kept pending.

This case was taken up on number of dates. Learned counsel for the petitioner submits that on earlier occasion in view of plea taken in the counter affidavit that the husband of the petitioner was done to death while he had taken intoxicant, it was argued that in the post - mortem examination report no such material was found and as such, a Bench of this Court by its order dated 08.02.2017 permitted the learned State counsel to file supplementary counter



affidavit and bring on record viscera report. Thereafter, supplementary counter affidavit was filed on behalf of the respondent no. 6 and it has been indicated that cause of death was found in the post- mortem examination report as due to hemorrhage and shock as a result of anti mortem injuries caused by very heavy and hard blunt substance as such, no viscera was preserved. It would be appropriate to quote paragraph nos. 5 and 6 of the supplementary counter affidavit filed on 17th February 2017 on behalf of the respondent no. 6 as follows:-

“5. That it is stated that on 22.07.2006 the investigating officer has received the post – mortem report in which doctor has opined that due to hemorrhage and shock as result of antimortem injuries caused by very heavy and hard blunt substance, the death had been caused, post – mortem report is noted by the I.O. in para – 90 of case diary. The post mortem report has been submitted in court by the I.O.

6. That it is further most humbly and respectfully that as post mortem report is clear at the point of cause of death and as such no viscera was preserved by the doctor and as there is viscera report and the post mortem report as copied out by I.O. in this case diary is being brought on the record of the case.”

Taking the plea that during investigation material was found that the husband of the petitioner was done to death while he



was not on duty, a plea has been taken that as per Government Resolution the petitioner is not at all entitled to get any ex- gratia amount. Learned counsel for the petitioner while replying to the contention of the State counsel has argued that it is not in dispute that petitioner was a S.A.P. Jawan and there was nothing on record that he on the date of occurrence was on leave. Meaning thereby, that the husband of the petitioner being Police Officer was on duty for 24 Hours. It was further submitted that since the husband had shown his bravery on several earlier occasions, he had become eye sore for extremist or anti -social elements and this was the reason that he was done to death. He was beheaded and from the place of occurrence body without head was recovered and subsequently chopped up head was also recovered. In sum and substance it has been argued that as per government Resolution Annexure -‘3’ to the writ petition it was a fit case for grant of ex – gratia which was prima-facie found correct by the Superintendent Of Police vide Annexure – ‘2’ to the writ petition i.e. letter no. 1733 dated 12.7.2006.

Besides hearing learned counsel for the parties I have perused the materials available on record. After going through the record the Court is satisfied that there is no material to show that the husband of the petitioner at the time of occurrence was on leave. Meaning thereby that he was on duty and once on duty he was



beheaded and brutally killed it can be inferred that he was done to death and in view of Government Resolution contained in Clause 4 (1) i.e. Annexure – ‘3’ to the writ petition the petitioner is entitled to get the ex- gratia amount. Moreover, first authority who was well competent to examine regarding the claim of ex -gratia was the Superintendent Of Police who himself had made specific recommendation vide letter no. 1733 dated 12.7.2006 for granting the benefit of ex -gratia amount of Rs. 10,00000/- (Rupees Ten Lacs Only) to the petitioner. Moreover, once a plea was taken by the respondents that he was done to death while he was in intoxicant condition , it was duty on the part of the respondents to satisfy the court whether in the post -mortem examination report any material was collected to indicate that the deceased at the time of death was in intoxicant state of mind.

After filing of the first counter affidavit whereby respondent/ State had brought on record Annexure – ‘B’ to the counter affidavit a communication whereby claim of ex- gratia was rejected by the Under Secretary, Home (Police) Department, the petitioner earlier had filed an interlocutory application vide I.A. No. 2643 of 2015 for quashing of the same and by order dated 07.04.2015 this court had directed to treat the interlocutory application as part of the writ petition.



In view of the facts and circumstances the order contained in letter dated 22nd May 2007 (Annexure – ‘B’ to the counter affidavit) is hereby set aside.

Considering the facts and circumstances particularly taking sympathetic approach in favour of the petitioner for just decision in the matter it is required to allow the writ petition with direction to the respondents to pay ex -gratia as prescribed by the State Government vide its resolution dated 12.11.2005 i.e. Rs. 10,00000/- (Rupees Ten Lacs Only) to the petitioner. The amount of ex -gratia must be paid within a period of two months from the date of receipt / production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02-03-2017
Transmission Date	NA

