

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12495 of 2008

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Md.Basiruddin, son of Late Alijan, resident of village- Narayanpatti, Police Station-
Madepura, District-Madhepura

.... Petitioner

Versus

1. The State of Bihar
2. The State Chief Election Commissioner, Bihar, Patna
3. The District Magistrate-cum- the District Election Officer, Supaul
4. The Deputy Election Officer, Supaul
5. The Presiding Officer, Booth No.21, Kishanpur Assembly 111, Supaul
6. The Block Development Officer, Supaul, District-Supaul
7. The Civil Surgeon, Sadar Hospital, Supaul

.... Respondents

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Appearance :

For the Petitioner/s : Mr. NAFISUZZOHA
Mr. Md.Naushaduzzoha

For the Respondent/s : Mr. AC to PAAG-II
Mr. Siddharth Prasad

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 18-04-2017

Heard Mr. Naushaduzzoha, learned counsel for the
petitioner, learned AC to Principal Addl. Advocate General-II as well
as Sri Siddharth Prasad, learned counsel for Respondent no.2.

2. The petitioner, who received injury while on
election duty of State Legislative Assembly, 2005, which was to be
held on 13.11.2005, was constrained to approach this Court by filing
the present writ petition in the month of August,2008, with a prayer to
direct the Respondents to pay compensation in the light of the State
Government resolution dated 20.01.2005 (Annexure-8 to the writ



petition).

3. It has been pleaded that the petitioner was a government employee and posted as Panchayat Sewak(Anusewak) at Block Office, Supaul. For general election of State Legislative Assembly Bihar, 2005, the petitioner was appointed as a 2nd Polling Officer at Polling Booth No.21, Primary School Dudhaila at Kishanpur Assembly 111 and party no.122. He was given Unique Number 4829 vide Annexure-1 to the writ petition. The election was to be held on 13.11.2005. The petitioner, thereafter, had moved for polling booth, for which he was required to cross Koshi river through boat. While moving, accidentally the boat turned down and in the said accident, the petitioner received serious injuries. However, even after receiving injuries, he participated in the election duty. He was examined by the doctor. The petitioner had received fracture injury of 'rib' as well as fracture of his right hand. It is case of the petitioner that in view of government resolution dated 20.01.2005(Annexure-8 to the writ petition), the petitioner was got examined by a Medical Board, headed by the Civil Surgeon-cum- Chief Medical Officer and, thereafter, his case was recommended. By way of referring to Annexure-5, it was submitted that the District Election Officer-cum- District Magistrate, Supaul vide its letter no.32-1 dated 12.03.2006 asked the Civil Surgeon-cum- Chief Medical Officer to constitute a



Medical Board regarding assessment of disablement of the petitioner, which had occurred in an accident. Only thereafter, a Medical Board was constituted and the petitioner was examined. A report of the Medical Board has been brought on record as Annexure-6 to the writ petition. The presiding officer had also given a certificate that the petitioner had received injuries while crossing Koshi river to attend election duty. It has been claimed that firstly, the District Election Officer-cum- District Magistrate had recommended the case for the petitioner for grant of compensation, but one way or the other, no compensation was paid to the petitioner, whereas the petitioner had received injuries, in which his one hand was fractured, besides fracture of the ribs.

4. In this case, a counter affidavit was filed on behalf of the Respondents in the month of February, 2017 and in the counter affidavit, a peculiar stand has been taken that after filing of the writ petition, the District Magistrate constituted another Medical Board vide Memo No.1420 dated 09.07.2009 and an enquiry committee consisting of officers, namely, (i) Dy. Development Commissioner, (ii) Civil Surgeon, (iii) Addl. Collector and (iv) Dy. Election Officer was constituted to examine the claim of the petitioner. While in the year 2006, the petitioner was examined by the Medical Board, the Medical Board had substantiated the claim of the petitioner regarding



injuries and the Medical Board had assessed the injury to the extent of 50%. However, in the year 2009, in the examination of Medical Board, the injury was found to the extent of 20 %. In the counter affidavit, the Respondents have gone to the extent of straight way rejecting the claim of the petitioner on the basis of surmises and conjectures. However, in the counter affidavit, certain documents have been brought on record, which corroborate the claim of the petitioner. Annexure-A to the counter affidavit is a communication dated 29.06.2007 made by the District Election Officer-cum- District Magistrate, Supaul, which was addressed to the Dy. Chief Election Officer-cum- Dy. Secretary, Election Department, Govt. of Bihar. In last paragraph of the said communication, it has categorically been indicated that incident was real and the Presiding Officer had issued certificate, which suggests that it was in relation of the discharge of election duty. The District Election Officer-cum District Magistrate had recommended for payment of compensation to the petitioner. Of course, by the said communication, certain clarification, which was sought for by the office of the Dy. Chief Election Officer, was clarified. Even the Respondent in its counter affidavit has brought on record earlier medical report in respect of the petitioner, which was given by the Medical Board. The said report is at running page 29, which is part of the counter affidavit. The report of the Medical Board



corroborates that the petitioner was having broken 'ribs' as well as fracture of both ribs, which caused stiffness (right shoulder joint). Same counter affidavit contains Annexure-F, which is a certificate issued by the Presiding Officer, which suggests that the accident had taken place, while the petitioner was on election duty. Even thereafter, an untenable enquiry report has been brought on record vide Annexure-B to the counter affidavit to frustrate the claim of the petitioner.

5. Learned counsel for the petitioner has argued that it is arbitrary act of the Respondents. Though the petitioner had received injury, which was about 50 % and his right hand was fractured, which was earlier admitted, but one way or the other the claim of the petitioner has not been settled till date.

6. Learned State Counsel opposing the prayer tried to persuade the Court that that in the enquiry, which was conducted after filing of the writ petition, the claim of the petitioner was not tenable.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the materials available on record, even Annexures-A, B and F to the counter affidavit, the Court is of the opinion that the Respondents, particularly the then District Magistrate, who had constituted a committee after filing of the writ petition, has tried to illegally



frustrate the claim of the petitioner. The action of the Respondents is highly deplorable and it is deprecated. From the counter affidavit, it is very much clear that the District Election Officer-cum- District Magistrate had earlier found the claim of the petitioner as genuine and he had recommended for payment of compensation amount. Annexure-8 to the writ application is the government resolution dated 20.01.2005, which suggests that in case of death during election duty, compensation amount of Rs. 10 Lacs was to be paid to the dependent of the deceased employee. Column-3 of the resolution suggests that in case of partial disablement; such as disablement of one part or more, as per paragraph-1 of the resolution, 50% compensation amount, is required to be paid. However, for such claim, certificate of Medical Board presided over by the Civil Surgeon-cum- Chief Medical Officer was necessary. In the present case, there is specific stand of the petitioner, which has also been corroborated from the materials brought on record to the counter affidavit, that the Medical Board presided over by Civil Surgeon-cum- Chief Medical Officer, had found disability of the petitioner and on the basis of report of Medical Board, earlier recommendation was by the District Election Officer-cum- District Magistrate vide Annexure-8 to the writ petition. Once the District Magistrate on the basis of materials on record has already recommended for payment of compensation amount, at the



subsequent stage, that too after filing of the writ petition, the action of the District Magistrate to constitute fresh Medical Board and conduct fresh enquiry was totally unwarranted. The Court is of the opinion that in view of earlier recommendation dated 29.06.2007 i.e. Annexure-A to the counter affidavit, Respondents are required to pay compensation amount to the petitioner in the light of clause-3 of the government resolution dated 20.01.2005. The Respondents are directed to finalise the claim of the petitioner and pay compensation amount within a period of eight weeks from the date of receipt/production of a copy of this order, failing which the petitioner shall be entitled for interest at simple rate of 8% per annum, which shall be calculated from the date of filing of the writ petition i.e. 21.08.2008.

8. The writ petition, with above observation and direction is allowed.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.04.2017
Transmission Date	

