



W.P(MD)No.9425 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9425 of 2015

and

M.P.(MD)No.1 of 2015

D.Leelavathi

... Petitioner

Vs.

1.The Secretary to Government,
Rural Development and Panchayat Raj,
St.George Fort, Chennai.

2.The District Collector,
Sivagangai District,
Sivagangai.

3.The Commissioner / Block Development Officer,
Ilayankudi Panchayat Union,
Sivagangai District.

4.The President,
Kottaiyur Village Panchayat,
Ilayankudi Union,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the Impugned order of the 2nd respondent in Na.Ka. TA4/791/14 dated 16.08.2014 and quash the same and consequently direct the respondents to grant adequate compensation as fixed by this Court.



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For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1, R2&R4

: Mr.S.Chandrasekar for R3

ORDER

Heard the learned counsel on either side.

2. The question that calls for consideration is whether a person engaged in Mahatma Gandhi National Rural Employment Guarantee Scheme work can claim compensation if during the course of employment he or she suffered an injury. The petitioner was eking out her livelihood as an agricultural coolie. She is a resident of Sirupalai Village in Ilayankudi Taluk in Sivagangai District. The petitioner enrolled herself under the aforesaid scheme so that she will get minimum 100 days work in a year. Her NREGS card number is 340. On 02.03.2010, when she was engaged in scheme work at Saligrammam Channel, she slipped and fell down and suffered fracture in her left leg. She was taken in the Government ambulance to Ilayankudi Government Hospital. She was transferred to Madurai Rajaji Government Hospital. She was admitted as inpatient and given treatment and she was discharged on 09.03.2010. The petitioner states that she had to take treatment in a private



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hospital. The petitioner demanded compensation to the tune of Rs.10,00,000/-.

However, the second respondent negated her claim and passed the impugned order on 16.08.2014 holding that the petitioner is entitled to only Rs.350/-. Questioning the order passed by the second respondent, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader took me through its contents. The stand of the respondents is that having regard to the statutory scheme set out in Central Act No.42 of 2005, the petitioner is entitled to the amount determined by the District Collector, Sivagangai. Only if there has been a death or causing of permanent disability by accident arising out of and in the course of employment, the legal heirs of the deceased or disabled as the case may be would be entitled to ex-gratia amount at the rate of Rs.25,000/- or such amount as may be notified by the Central Government. The learned Additional Government Pleader would point out that there is nothing on record to show



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that the petitioner has suffered permanent disability. She has also not enclosed any material indicating incurring of expenditure for taking treatment in a private hospital. The learned Additional Government Pleader pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The National Rural Employment Guarantee Act, 2005 was passed by the parliament with the following objective:-

“an Act to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto.”

While the economists like Amartya Sen and Jean Dreze celebrated the passing of the Act, it has also come in for sharp criticism over the manner in which it has been implemented. Judicial notice can be taken of the fact that it has had adverse impact on agricultural and farming activities. Courts have come across commission of large scale irregularities and corruption. But the issue that arises for consideration is the entitlement of the worker who has suffered fracture, while engaged in scheme work. Clauses 24 to 26 of Schedule II of the Act are as follows:-



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“24. If any personal injury is caused to any person employed under the Scheme by accident arising out of and in the course of his employment, he shall be entitled to free of charge, such medical treatment as is admissible under the Scheme.

25. Where hospitalisation of the injured worker is necessary, the State Government shall arrange for such hospitalisation including accommodation, treatment, medicines and payment of daily allowance not less than half of the wage rate required to be paid had the injured been engaged in the work.

26. If a person employed under a Scheme dies or becomes permanently disabled by accident arising out of in the course of employment, he shall be paid by the implementing agency an ex gratia payment at the rate of twenty-five thousand rupees or such amount as may be notified by the Central Government and the amount shall be paid to the legal heirs of the deceased or the disabled as the case may be.”

The Hon'ble High Court of Chhattisgarh at Bilaspur in the decision reported in **2014 LabIC 3697 (Chief Executive Officer V. Chandrika Bai)** had held that Section 28 of Mahatma Gandhi National Rural Employment Guarantee Act, 2005 shall have overriding effect over the provision of Employee's Compensation Act, 1923 and by virtue of Clause-26 of Schedule-II enacted under Section 5 of MGNREGA 2005, the workman / labourers will be entitled only for ex-gratia payment Rs.25,000/- in case of death, or such an amount as may be notified by Central Government. The substantial question of law that arose before the Hon'ble High Court of Chhattisgarh was whether an application before the Commissioner under the provisions of the Employee's



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Compensation Act, 1923 claiming compensation over and above the amount ex-gratia payable under the scheme of the Act would be maintainable. The Hon'ble High Court of Chhattisgarh answered the question in the negative.

6. But the petitioner herein had not moved any statutory authority. She has invoked the writ jurisdiction of this Court. The right to seek compensation against the State is a constitutional remedy. Section 28 of the MGNREGA, 2005 cannot oust the jurisdiction of the writ Court. When an employee suffers death or injury by accident arising out of and in the course of employment, he / she or the legal heirs are entitled to proceed against the employer. In this case, State is the employer. Merely because the employment is under a statutory scheme, right of the employee / legal heirs cannot be taken away. The ceiling limit incorporated in Section 28 of the Act cannot come in the way.

7. Admittedly, the petitioner fell down while engaged in a scheme work. She suffered fracture. She was an in-patient for over 8 days. In the counter filed by the District Collector, it has been mentioned that on 17.07.2014, the petitioner was able to walk on her own without support but with mild limp and that she suffered pain when the fracture site was touched. Her physical disability was assessed at 10%.

8. The learned counsel for the petitioner states that even today, the petitioner is able to walk only with a walking stick. The only avocation of the



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petitioner was as that of coolie. An injury of this nature would definitely have had an adverse bearing on her income for atleast a few months. She also would have suffered considerable pain.

9. Taking into account all these aspects, the petitioner is definitely entitled to compensation of Rs.25,000/-. The second respondent is directed to pay the same to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. If the second respondent fails to adhere to the time limit, it will carry interest from the date of filing of the writ petition. The order impugned in the writ petition is set aside. The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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