

10.03.2026
M/L No.14
Court No.12
(gc)

**FMA 1761 of 2025
CAN 1 of 2025**

**Utpal Mitra
Vs.
Union of India & Ors.**

Mr. Raghunath Chakraborty,
Mr. Soumava Mukherjee

.....for the Appellant.

Mr. Pulakesh Bajpayee

...for the Respondents/UOI.

1. This appeal arises out of the judgment and order dated August 8, 2025 passed by a learned Single Judge in WPA 2293 of 2018. The writ petition was filed for direction upon the respondents/employer of the deceased husband of the writ petitioner (father of the appellant), to pay a sum of Rs.1, Crore jointly or severally towards compensation and/or damages for committing constitutional tort. The arguments advanced before the learned Single Judge were that an ideal employer ought to have informed the family on time about the entitlement of his wife towards death benefits of the employee who died in harness. The writ petitioner was the wife, who was subsequently substituted upon her death by the son. It was vehemently urged before the learned Judge that, at the first instance, the authority refused to treat the death as died in harness. The appellant had to approach the Central Administrative Tribunal, the High Court and the

Supreme Court in order to establish the right to extraordinary pension and compassionate appointment. The claim for extraordinary pension was made sometime in 2008. The employee expired in 1982 while his date of superannuation was sometime in 1988. Under such circumstances, it was urged that it was the duty of the employer to pay the dues to the family on the date of entitlement and grant compassionate appointment without the family having to run from pillar to post and having to face the harassment of litigation.

2. It appears from the order of the learned Single Judge that, the entire background of the case was meticulously considered. The Court recorded that, all benefits including the extraordinary pensionary benefit were awarded. The Hon'ble Apex Court also awarded interest on delayed payment of extraordinary pension at the rate of 9% per annum on the differential amount from the date of the application, sometime, in 2008. Compassionate appointment was granted to the son. The arguments before the learned Single Judge were violation of Articles 14 and 21 of the Constitution of India as also deprivation of the proprietary right under Article 300A of the Constitution of India. The learned Single Judge discussed the decision in ***Bhupendra Nath Hazarika Vs. State of Assam*** reported at (2013)

2 SCC 516, on the point that the State, as a model employer, was obligated to act fairly and in strict adherence to the rules. Similarly ***State of Haryana Vs. Piara Singh*** reported at **(1992) 4 SCC 118**, was discussed on the issue that the State, as a model employer, must not exploit its employees, but must act fairly, by upholding rule of law and by treating its employees with dignity. Reference was also made to the decision in ***Balram Gupta Vs. Union of India*** reported at **(1987) Supp SCC 228**. On the basis of these decisions, Her Lordship proceeded to decide the claim of the writ petitioner for compensation on the allegation that the respondents had committed constitutional tort.

3. Reference was also made to the decision in ***Common Cause Vs. Union of India*** reported at **(1999) 6 SCC 667**.
4. Her Lordship recorded that the original writ petitioner (wife) was granted family pension in terms of Pension Rules of 1972. Thereafter, extraordinary pension in terms of the Central Civil Services (Extraordinary Pension) Rules, 1939 was also granted with effect from the date as directed by the Court. Interest was provided on the differential amount of pension, pursuant to the direction of the Hon'ble Apex Court. Her Lordship observed that compensation could be awarded by the Writ Court under Article 226 of the Constitution of

India, only when there had been a violation of the fundamental right of a person, based on the principle of strict liability. Her Lordship held that when Court granted compensation under Article 226 of the Constitution of India, there had to be a public wrong, for which the State had to be made liable. Negligence in protecting the fundamental right of a person, was a good ground for awarding compensation. Referring to the decisions of the Hon'ble Supreme Court, Her Lordship recorded that such compensation was not akin to civil damages in private law, but was a broader remedy, for breach of public duty, resulting in violation of a fundamental right.

5. The Division Bench of the High Court, by the order dated February 21, 2011, held that the Central Civil Service (Extraordinary Pension) Rules, 1939 would be applicable with retrospective effect from the date of sanctioning of normal pension. Another Division Bench allowed an interest at the rate of 12% per annum for a period of four months. Finally, the Hon'ble Supreme Court by an order dated January 24, 2014 directed that interest should be paid at the rate of 9% per annum with effect from January 21, 2008, that is the date when the writ petitioner first made the claim for payment of extraordinary pension, and the amount already received by the writ petitioner (appellant's

mother) should be suitably adjusted. It is also a matter of record that, the son of the deceased had been granted compassionate appointment. Her Lordship was of the view that, only because the authority rejected the claim of the wife at various stages, that could not be treated as intentional negligence and wilful inaction. The writ petitioner would not be entitled to a public law remedy for damages, on the principle of strict liability. Her Lordship recorded that the constant stand of the respondents was that, the death of the employee did not occur in discharge of his official duty and also the deceased ought not to have used the vehicle which met with an accident. Her Lordship was of the view that the respondents were within their right to deny the claim. There was no violation of Articles 14 and 21 of the Constitution of India. There was no gross negligence and intentional inaction on the part of the respondents. Reliance was placed on the decision of **Sube Singh Vs. State of Haryana** reported at **(2006) 3 SCC 178** to establish that, a Writ Court could award compensation for violation of rights guaranteed under Article 21 upon answering the following questions:-

- (a) Whether the violation of Article 21 was patent and incontrovertible,

(b) Whether the violation was gross and a magnitude to shock the conscience of the Court,

(c) Whether there was any evidence of intentional negligence and causing the death/harm to the person (in specific to the case 'custodial torture').

6. In other cases, the Writ Court may not compensate as a public law remedy, but relegate the parties to the appropriate forum. Thus, Her Lordship held that before any compensation was awarded, such questions were required to be answered. Her Lordship was of the view that the Court could not attribute any tort of negligence or intentional deprivation of the right of the writ petitioner or failure of duty of the employer towards the family of the deceased. The delay in grant of extraordinary pension was due to rejection of the claim at the first instance. In this intra-court appeal, the scope for interference with the order of Her Lordship is very limited. Her Lordship held that the writ petitioner had abused the process of Court and she should be made liable to pay cost. However, considering her age and ailing condition, the Court restrained itself from issuing any such adverse order.

7. Mr. Chakraborty, learned Advocate for the appellant relies on the Universal Declaration of Human Rights

and Article 17 thereof, to substantiate that everyone has a right to own property and no one shall be arbitrarily deprived of property. Developing his argument on such provision, Mr. Chakraborty submitted that pension was the property of the family, upon the death of the employee and the respondents could not have deprived the appellant from enjoyment of such property. This was an intentional violation of the constitutional protections guaranteed to the appellant.

8. In our view, the pensionary benefits had been paid as per the Pension Rules of 1972. The prayer for extraordinary pension was rejected with reasons. Ultimately, it was allowed by the High Court. Interest was also allowed by the High Court for a period of four months and the Hon'ble Apex Court ultimately granted 9% interest from the date of application for extraordinary pension, that is, from 2008 upon adjustment of the differential amount. Only because the respondents rejected the prayer for extraordinary pension and the appellant had to go through a series of litigations, that could not be a sole ground for the Writ Court to award compensation on the principle of strict liability. This is not a case of failure of public duty towards a citizen. Such aspect has been rightly considered by the learned Single Judge. With regard to

the observations against the appellant we are of the view that these observations will not affect any proceeding, if the appellant approaches the appropriate forum.

9. The proper course of action would have been to approach the competent Civil Court by filing a suit for damages, inasmuch as, the damages suffered by the petitioner on account of harassment, mental agony, delay, etc. will have to be quantified and proved by leading evidence. The jurisdiction of the Writ Court to award compensation are limited. The records must demonstrate patent acts of negligence or failure of duty towards a citizen by the State, which are absent in this case.

10. In *M.C. Mehta v. Union of India* reported in **(1987) 1 SCC 395**, the Hon'ble Apex Court held that, to justify the award of compensation, the infringement must be gross, patent, incontrovertible and ex facie glaring.

11. Remedy of damages is an extraordinary remedy, and is available when there is gross violation arising out of deliberate action or malicious action resulting in deprivation of life and personal liberty. We do not find any illegality in the order impugned.

12. Accordingly, the appeal and the connected application are dismissed.

13. The dismissal of the appeal will not prevent the appellant from approaching the appropriate forum, strictly in accordance with law.

14. We have not entered into the issue of limitation and leave it open to the forum to decide such issue.

15. The observations of the learned Single Judge will not prejudice any such proceeding.

16. There shall be no order as to costs.

17. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)