

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9004 of 2016

Meena Devi wife of Late Shashi Bhushan Rai resident of Road No. 1, Sanjay Gandhi Nagar, P.O. Bahadurpur Housing Colony, Police Station - Patrakar Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, State of Bihar, Patna.
3. The Principal Secretary Ministry of Home, Govt. of Bihar, Patna.
4. The District Magistrate-cum-District Election Officer, Bhojpur, Bihar.
5. The Chief Election Officer, State of Bihar, Sardar Patel Marg, Patna - 15.
6. The District Programme Officer, Bhojpur.
7. Block Education Officer, Piro, Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sarva Deo Singh, Advocate
For the Respondent/s : Mr.Birju Prasad, GP-13
For Respondent No.5 : Mr. Sidharth Prasad, advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 06-08-2019 Heard learned counsel for the petitioner and the respondents.

2. The widow is before this Court raising a grievance of denial of ex-gratia amount/compensation and medical expenses incurred on the treatment of her late husband. The reason for rejection is that the husband of the petitioner was not engaged in active election duty. His duty as Block Level Officer (BLO) was in the matter of distribution of Voters awareness pamphlet.

3. The brief facts for the purpose of deciding the



present writ application are set out herein below:

4. On 12.09.2015, the husband of the petitioner was issued letter. Annexure-3 by the District Election Officer-cum-District Magistrate, Bhojpur. Since this has relevance, therefore, it would be appropriate to quote the letter (Annexure-3):

“ Election Urgent

ANNEXURE-VIII (CHAPTER-III, OF PARA 3.9.3)

ORDER OF APPOINTMENT OF 1ST POLLING OFFICER

(FIRST APPOINTMENT LETTER)

ASSEMBLY ELECTION 2015

In pursuance of sub-section (1) & sub-section (3) of 26 of Representation of the People Act, 1963 (43 of 1951), I, **DR. BIRENDRA PRASAD YADAV** (IAS), District Election Officer-cum-District Magistrate, Bhojpur, hereby appoint the following officer specified in the column 1 of the table below as duty mentioned in the corresponding entry in column 2 of the table below:

| Name & address of the Officer | | Duty |
|-------------------------------|---|---------------------------------|
| 1 | | 2 |
| PIN No. | 2905589 | 1 st Polling Officer |
| Name | SHASHI BHUSHAN RAI | |
| Designation | TEACHER | |
| Office Name | BLOCK EDUCATION OFFICE, PIRO (HRD-062) 200352 | |
| Address | BLOCK- PIRO DIST-BHOJPUR | |
| Contact No. | 7739714487 | |

TRAINING DETAILS

Training schedule attached in separate sheet.



IMPORTANT

1. Participation in training on all the above mentioned dates are compulsory.
2. All 1st Polling Officer should ensure their digital, photography at the training centre during first training.
3. Failing to do so will invite strong legal action under relevant provisions of Representation of the People Act, 1951 and other laws relating to the conduct of elections.
4. Second appointment letter will be issued later on for each phase of election indicating date, time and place of joining to perform poll duty.
5. Final appointment letter (revealing tagged polling station) and polling materials shall be provided to them before their departure for the assigned polling station.
6. Those person whose photograph is correct or missing, must ensure for photography by the photographer deputed at training centre.
7. Please ensure the correctness of your mobile no. in the attendance sheet. Please enter the mobile no. if it is missing or correct it if it is incorrect in the attendance sheet your are signing.

Date 12-Sept-2015

Place Bhojpur

Authorised to issue
Officer I/c

District Election Officer
-cum-District Magistrate
Bhojpur”

5. From Annexure-3, it is manifest that the District Election Officer-cum-District Magistrate, Bhojpur has appointed the husband of the petitioner in connection with conduct of 2015 Assembly Election. The husband of the petitioner was appointed as 1st Polling Officer vide Annexure-3. After Annexure-3, the husband of the petitioner started performing his responsibility. He was engaged as Block Level Officer, from before whose job



is to prepare, improve and modify the voter list. It is continuing process and it is not one time exercise, but the main responsibility of BLO was to prepare and improve the voter list. Husband of the petitioner was also assigned the responsibility of educating the voters by distributing the Voters awareness pamphlet.

6. It is submitted by the counsel appearing on behalf of the petitioner that the husband of the petitioner was engaged in educating the voter and distributing the Voters awareness pamphlet, after notification of election, he met an accident and during course of treatment he died on 12.10.2015. Learned counsel for the petitioner submits that after the death of the husband, the petitioner approached pillar to post for consideration of the case for grant of ex-gratia and also for payment of expenses incurred in the treatment on her late husband. The Election Officer, 196 Tarari Assembly on 17.02.2017 reported the District Election Officer, Bhojpur, Ara that although husband of the petitioner was appointed as 1st Polling Officer and for the purpose of training in connection with poll duty letter was issued on 12.09.2015 and the husband of the petitioner was asked to distribute Voters awareness pamphlet, which is not considered **as active election duty**. In



the report of the Election Officer, Tarari Assembly Constituency, has admitted that from the record, it appears that the Voter slip was received on 11.10.2015 by the Block Development Officer and before the receipt of Voter slip the husband of the petitioner met an accident and he died during the process of distribution of Voters awareness pamphlet, which has no causal connection with the active election duty. Based on the report of the Election Officer, Tarari, the District Election Officer-cum-District Magistrate has submitted that the husband of the petitioner died in accident while performing the duty as BLO and distributing Voters awareness pamphlet. Relevant part of the comment of the District Election Officer-cum-District Magistrate, Bhojpur, Ara is quoted herein below:

“6. श्री राय 196—तरारी विधानसभा निर्वाचन क्षेत्र के मतदान केन्द्र संख्या 7 मनरेगा भवन पीरो के लिए मतदान केन्द्र स्तरीय पदाधिकारी के रूप में प्रतिनियुक्त थे अपने नियमित कर्तव्य निर्वहन के दौरान श्री राय बी0एल0ओ0 के रूप में अपने नियमित कर्तव्य पर एवं उनके द्वारा मतदाता जागरूकता अपील पर्ची वितरण हेतु पर्ची प्राप्त किया गया था। उसी दौरान सड़का दुर्घटना में श्री राय की मृत्यु हुई। चूँकि श्री राय की मृत्यु मतदाताओं के जागरूकता से संबंधित अपील पर्ची वितरण के क्रम में हुआ है जो बी0ए0ओ0 के रूप में प्रतिनियुक्त कर्मी का सामान्य कार्य हैं इसे सक्रिय मतदान कर्तव्य के निर्वहन की श्रेणी में नहीं माना जा सकता है। विदित हो कि श्री राय को मतदान



दल पदाधिकारी प्रथम के रूप में प्रथम नियुक्ति पत्र जारी किया गया था परंतु उनकी मृत्यु प्रशिक्षण अथवा निर्वाचन के किसी अन्य कर्तव्य के दौरान नहीं हुई है। निर्वाची पदाधिकारी-सह-अनुमंडल पदाधिकारी, पीरों का जाँच प्रतिवेदन (पत्रांक 10/निर्वा0 दिनांक 17.02.2017) की प्रति पत्र के साथ संलग्न।

अतः श्री राय को नियमानुकूल अनुग्रह अनुदान की अनुशंसा नहीं की जा सकती है।”

7. The Deputy Chief Election Officer, Bihar on the basis of the report of the District Election Officer-cum-District Magistrate and other materials came to a conclusion that the death of the husband of the petitioner occurred not in relation to active election duty and, therefore, the application of this petitioner was rejected for grant of ex-gratia vide order dated 01.03.2017.

8. Mr. Sarva Deo Singh, learned counsel for the petitioner submits that the respondents have rejected the claim of the petitioner for ex-gratia payment and expenses incurred on the treatment of the husband only on the ground that the duty discharged by the husband of the petitioner was not active election duty. In other words, the distinction was drawn by the respondents in active election duty and other election duty. The report of the Election Officer and the District Election Officer, which was the basis for rejecting the claim of the petitioner for



ex-gratia is indicative of the fact that the Officers of the State of Bihar instead of adopting pragmatic approach adopted most conservative and narrow approach in consideration of the case of the petitioner and they have rejected the application for grant of ex-gratia notwithstanding the fact that they have admitted the fact that the husband of the petitioner was engaged in election related duty.

9. Learned counsel appearing on behalf of the petitioner submits that the Election Officer and the District Election Officer have arbitrarily drawn distinction between the active Election Duty and other Election Duty.

10. Referring to the report of the Election Officer and the District Election Officer, learned counsel for the State submits that the duty performed by the husband of the petitioner does not fall in the category of active election duty and, therefore, the ex-gratia is not admissible.

11. Mr. Sidharth Prasad, learned counsel appearing on behalf of the Election Commission submits that the Election Commission has taken the decision on the basis of the report submitted by the respondent officials of the District Administration. He has drawn the attention of this Court to the letter no. 5628 dated 29.09.2015, which was addressed to all the



District Election Officers-cum-District Magistrate, Bihar. In the letter dated 29.09.2015, the District Election Officers were directed to submit recommendation for grant of ex-gratia in the manner indicated in the letter dated 29.09.2015.

12. In the aforesaid letter dated 29.09.2015, Item no.6 of the requirement is clear recommendation of the District Election Officer in Papatra-I, which was lacking in this case and therefore there is no infirmity in the decision of the Election Commission rejecting the claim for grant of ex-gratia amount.

13. Learned counsel for the petitioner submits that the Election Process commence with the notification of the Election and after commencing of the Election process, the husband of the petitioner was issued first appointment letter, which was indicative of the fact that he was engaged in election related process/duty.

14. The scheme of ex-gratia in connection with election duty was introduced having regard to the risk involved in discharge of election duty. It is one of the social security measure adopted by the respondents to provide relief to the family members of the deceased, who died in discharge of election related duty. The scheme of social security measure is construed in a liberal manner to extend the benefit and not to



adopt narrow meaning of the scheme to defeat the benefit.

15. From the materials available on the record, it is evident that the death of the husband of the petitioner is not in dispute. It is not in dispute that the husband of the petitioner was engaged in connection with the election duty. The distinction drawn by the respondents to reject the claim of the petitioner is based on the finner distinction between the active election and other election duty. The respondents while considering the case of the petitioner has noted in so many words that the husband of the petitioner was engaged in election duty. He was involved in distribution of Voters awareness pamphlet, which is also the responsibility in connection with fair election. To ensure distributing Voters awareness pamphlet in the election process. According to this Court is one of the most important responsibility in connection with fair election process, yet the respondents have ignored the process of educating the people and respondents submitted that the petitioner's husband was not engaged in the active election duty and therefore not entitled to grant of ex-gratia.

16. In the opinion of this Court, the approach of the respondents is not in tune with the construction of welfare scheme, which requires liberally construction, to the contrary



they have adopted most conservative and narrow approach and defeated the claim of the petitioner.

17. The action of the respondents, in the totality of the facts situation, is unreasonable and is not in tune with the object of welfare scheme. Accordingly, the Court has no hesitation in holding the action of the respondents unsustainable. The decision, which is primarily based on the report of the District Magistrate is unsustainable, as the District Magistrate-cum- the District Election Officer and the Election Officer, whose prime responsibility was to inform about the accidental death during election duty have misconstrued the scheme of the election duty and in their narrow consideration the activities of the husband of the petitioner was not related to active election duty and based on such report the election commission has taken the decision rejecting the claim of the petitioner.

18. The Court as indicated herienabove does not approve the report of the Election Officer, which was the basis of the District Election Officer-cum-District Magistrate to forward the case of the petitioner for appropriate decision by the Election Commission.

19. Since the Election Commission has relied upon the decision of the District Election Officer and as such the



decision of the Election Commission dated 01.03.2017 suffers from the same vice. It is accordingly quashed. The respondents are directed to consider the case afresh treating the responsibility discharged by the husband of the petitioner as Election related duty and take fresh decision in the matter of grant of ex-gratia and also for payment of expenses incurred in treatment of the husband of the petitioner.

20. Necessary fresh decision in this regard may be taken by the respondents Election Commission within a maximum period of three months from the date of receipt/production of a copy of this order.

21. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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A.F.R.

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