

Before Jaswant Singh and Lalit Batra, JJ.

BINA—Petitioner

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No.9962 of 2016

July 23, 2019

Constitution of India, 1950—Arts. 226 and 227—Workmen’s Compensation Act, 1923—Central Civil Services (Extra-ordinary Pension) Rules, 1939—Ex-gratia lumpsum compensation—Petitioner’s Husband—Farm hand at military farm—Died in service—Heart attack or Cardiac arrest—No trying circumstances, risk in performance of duty and accident—No claim for ex-gratia lumpsum compensation.

Held that, the graded structure of ex gratia lumpsum compensation takes into account the hardships and risks involved in certain assignments, the intensity and magnitude of the tragedy and deprivation that families of Government servants experience on the demise of the bread-winner in different circumstances, the expectations of the employer from the employees to function in extreme circumstances, etc. The compensation is intended to provide an additional insurance and security to employees, who are required to function under trying circumstances and are exposed to different kinds of risks in the performance of their duties.

(Para 13)

Further held that, the main condition to be satisfied for the payment of ex gratia lumpsum compensation in the specified circumstances is that, the death of the employee concerned should have occurred in the actual performance of bona fide official duties. To put it differently, a casual nexus should be established between the occurrence of death and Government service.

(Para 14)

Rohit Seth, Advocate
for the petitioner.

Anil Chawla, Advocate
for the respondents-Union of India.

LALIT BATRA, J.

(1) This writ petition has been filed by petitioner-Bina impugning the legality of order dated 09.02.2016 (Annexure P-1), rendered by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter to be referred to as “Tribunal”), in Original Application No.740/PB/2012 titled “*Bina versus. Union of India and others*” (hereinafter to be referred to as “OA”), in terms of which, petitioner had challenged order dated 15.02.2012 (Annexure A-4) passed by respondent No.3, whereby claim of petitioner for grant of *ex gratia* lumpsum compensation on account of death of her husband during the course of employment was declined and the above said OA moved by applicant-Bina (petitioner herein) has been dismissed. Besides that petitioner has also impugned the legality of order dated 03.05.2016 (Annexure P-9) rendered by the Tribunal, in terms of which, Review Application No.060/00016/2016 moved by her in the above said OA, has been dismissed.

(2) Petitioner's case, in brief, is that she is widow of Jagdeva who was working as Farm Hand in the Military Farm Pathankot Cantonment and he died on 17.11.2010 while in service. On the fateful day, he felt acute pain in chest and then his colleagues took him to the hospital but on the way he breathed his last. To this effect colleagues of Jagdeva (since deceased) had informed the Officer In-charge, Military Farm Pathankot Cantonment, vide information (Annexure A-1). Copy of death certificate of Jagdeva is Annexure A-2. Apart from that petitioner had incurred huge amount on the treatment of her husband-Jagdeva (since deceased).

(3) It is pleaded that as per Central Civil Services (Extraordinary Pension) Rules (hereinafter to be referred to as “Rules”) relating to *ex gratia* lumpsum compensation, family of the employee is entitled for *ex gratia* lumpsum compensation of 10 lakhs in case employee dies due to accident in the course of performance of duty. Petitioner had filed application dated 05.12.2011 (Annexure A-3) before authorities concerned, seeking *ex gratia* lumpsum compensation, but her claim was rejected by respondent No.3, vide order dated 15.02.2012 (Annexure A-4), *inter alia* on the grounds that in terms of Rules, *ex gratia* lumpsum compensation is to be sanctioned when a Government servant while performing duty is involved in an accident, whereas in the instant case Jagdeva had died due to heart attack but not on account of accident and, thus, no such *ex gratia* payment is to be given.

(4) Feeling aggrieved with the order dated 15.02.2012 (Annexure A-4), petitioner-Bina had filed OA before the Tribunal, which was allowed, vide order dated 03.07.2013 (Annexure P-3), in terms of which, petitioner was held entitled to *ex gratia* lumpsum payment of 10 lakhs. However, respondents-Union of India feeling aggrieved with order dated 03.07.2013, as detailed above, filed Review Application No.62/2013 and miscellaneous applications, wherein vide order dated 13.01.2014, said review application and miscellaneous applications were allowed, in terms of which, since matter in question has wide repercussions and legal plea has been taken at the instance of Department that cases pertaining to compensation are to be considered under the Workmen's Compensation Act, 1923, and not by the Tribunal and this aspect has not been adjudicated upon as counter reply was not filed on behalf of respondents due to negligence, thus, impugned order dated 03.07.2013 was reviewed and matter was ordered to be heard afresh by a Division Bench of the Tribunal.

(5) In pursuance of above said order, respondents-Union of India filed reply to the OA and in turn applicant had filed rejoinder to the reply. Division Bench of the Tribunal after hearing the parties, dismissed the OA, vide order dated 09.02.2016 (Annexure P-1), *inter alia* on the grounds that as Jagdeva (since deceased) was working as Farm Hand, the job of a Farm Hand is a routine one and does not involve 'trying circumstances' or 'risk in the performance of duty', his (Jagdeva) death on the job due to cardiac arrest having history of illness, cannot be considered to be an 'accident' meriting compensation under the provisions of Office Memorandum F.No.38/37/08-P & PW (A) dated 02.09.2008 (hereinafter to be referred to as "O.M. dated 02.09.2008") relating to *ex gratia* lumpsum compensation to families of Central Employees who die in harness. Still feeling aggrieved with the order dated 09.02.2016, as detailed above, petitioner had filed review application in OA, wherein vide order dated 03.05.2016 (Annexure P-9), said review application was rejected.

(6) Petitioner has challenged above said orders *inter alia* on the grounds that since Farm Hand in a Military Farm is put to do only manual physical work and as such stress of work performed by Jagdeva (Farm Hand) must have led to his heart attack while on duty and further liberal interpretation in respect of words "trying circumstances" is to be given in respect of beneficial legislation of O.M. dated 02.09.2008, and on narrow interpretation of that provision, no family of employee, who dies while performing duty, would ever get any *ex*

gratia lumpsum compensation. In this manner, petitioner has sought dismissal of impugned orders and resultant grant of *ex gratia* lumpsum compensation.

(7) On notice, respondents-Union of India have filed detailed reply wherein it is contended that Jagdeva (since deceased) joined the service on 03.1989. As a matter of fact, petitioner had concealed the material fact as he was having history of illness and availed as many as 92 days' medical leave in the years 2009 and 2010. He suffered heart attack on 17.11.2010 and died. At the relevant time, he was working as Farm Hand in the Military Farm, Pathankot Cantonment. Petitioner herself has admitted that she had incurred huge amount on the treatment of her husband and these facts are clear indicative that Jagdeva (since deceased) was suffering from acute illness. Despite the fact that facilities of Government Hospital/Military Hospital were available to Jagdeva (since deceased) but in order to conceal his disease, he chose to take treatment from private hospital. It is contended that claim of petitioner for grant of *ex gratia* lumpsum compensation was considered and rightly declined vide order dated 15.02.2012 on the ground that Jagdeva had died due to heart attack and not in an accident. Rule 3-A (1) (b) of the Rules, provides that the death of an employee shall be accepted as due to Government service provided it is certified that it was due to or hastened by (i) a wound, injury or a disease which was attributable to Government service; or (ii) the aggravation by the Government service of a wound, injury or disease which existed before or arose during the Government service. For attributability or aggravation, there should be a casual connection with (a) disablement and Government service and (b) death and the Government service. As Jagdeva (since deceased) was having history of illness, as he availed 92 days' medical leave in the years 2009-2010 just before his death and he was placed in the cultivation duty as Chowkidar for protection of crops over small patch of land and as such job of Farm Hand being routine one did not involve 'trying circumstances' or 'risk in the performance of the duty', which work cannot be considered as a hard duty and, thus, cause of death of Jagdeva has no casual connection with the performance of his duty. Further it is contended that as petitioner is claiming *ex gratia* lumpsum compensation and the remedy for grant of said compensation is available under the Workmen's Compensation Act, 1923, before exhausting said remedy instant writ petition is not maintainable. In this view of the matter, Tribunal has rightly declined the claim of petitioner.

In this manner, respondents have categorically denied the claim of petitioner and prayed for dismissal of instant writ petition.

(8) We have heard learned counsel for the parties and have carefully gone through the record of the case.

(9) Learned counsel for the petitioner while substantiating the cause of petitioner has vehemently urged that as per O.M. dated 02.09.2008, it has been specifically prescribed that when death of an employee occurs during the course of performance of his duties, in that eventuality, 10 lakhs would be paid as *ex gratia* lumpsum compensation. He further urged that at the relevant time Jagdeva (since deceased) while posted as Farm Hand in Military Farm was assigned manual physical work and as such stress of physical work must have led to his heart attack while on duty. He further urged that though petitioner had alternative remedy and that too before different forum but she had rightly chosen the forum of Tribunal for redressal of her grievance and as such she was not debarred from approaching the Tribunal. He further urged that since respondents-Union of India as well as Tribunal did not consider the claim of petitioner in right perspective, impugned orders dated 15.02.2012, 09.02.2016 and 03.05.2016 being illegal and arbitrary are liable to be set aside and, thus, claim of petitioner is entitled to succeed.

(10) On the other hand, learned counsel for respondents-Union of India while rebutting the cause of petitioner has urged that Jagdeva (since deceased) was working as Farm Hand in a Military Farm and by no stretch of imagination said posting could be termed as working 'under trying circumstances' and 'exposed to different kinds of risks in the performance of duties'. He further urged that Jagdeva (since deceased) was having history of illness and as such his death due to heart attack and especially in view of nature of job assigned to him, could not be termed as death occurring due to 'accident' in the course of performance of duty. He further submitted that keeping in view above said aspects, claim of petitioner for grant of *ex gratia* lumpsum compensation was rightly rejected vide order dated 15.02.2012 by respondents-Union of India and further vide orders dated 09.02.2016 and 03.05.2016, Tribunal has rightly reiterated the stand of respondents-Union of India.

(11) While having due regard to the contentions of both the parties, it is observed that in a given situation where an employee who has been assigned job of Farm Hand in a Military Farm, death of said

employee in the performance of his *bona fide* official duties, in that eventuality, whether in terms of O.M. dated 02.09.2008 framed under the Rules, family of deceased employee is entitled to *ex gratia* lumpsum compensation or not ?

(12) To proceed further, a cursory glance over the relevant provisions of O.M. dated 02.09.2008 framed under the Rules, providing above said *ex gratia* lumpsum compensation, is quite relevant, which read as under:-

“5. *Ex gratia* lumpsum compensation to families of Central

Government Civilian employees who die in harness

The families of Central Government Civilian employees who die in harness in the performance of their *bona fide* official duties under various circumstances, shall be paid the following *ex gratia* lumpsum compensation.

(a) Death occurring due to accidents in the course of performance of duties..... (10 lakhs)

(b)XXXXXXXX

(c)XXXXXXXX

(d)XXXXXXXX

Above said compensation is intended to provide an additional insurance and security to employees, who are required to function under trying circumstances and are exposed to different kinds of risks in the performance of their duties.

One of the conditions governing payment of *ex gratia* lumpsum compensation prescribes that the death of the employee concerned should have occurred in the actual performance of *bona fide* official duties. In other words, a casual connection should be established between the occurrence of death and Government service.”

(13) The graded structure of *ex gratia* lumpsum compensation takes into account the hardships and risks involved in certain assignments, the intensity and magnitude of the tragedy and deprivation that families of Government servants experience on the

demise of the bread-winner in different circumstances, the expectations of the employer from the employees to function in extreme circumstances, etc. The compensation is intended to provide an additional insurance and security to employees, who are required to function under trying circumstances and are exposed to different kinds of risks in the performance of their duties.

(14) The main condition to be satisfied for the payment of *ex gratia* lumpsum compensation in the specified circumstances is that, the death of the employee concerned should have occurred in the actual performance of *bona fide* official duties. To put it differently, a casual nexus should be established between the occurrence of death and Government service.

(15) Keeping in view above said background and especially Rules framed with regard to grant of *ex gratia* lumpsum compensation to families of Central Government Civilian Employees who die in harness, it is observed that in a given set of facts, at the relevant time Jagdeva (since deceased) was working as Farm Hand in the Military Farm Pathankot Cantonment and he died due to heart attack on 17.11.2010 during the course of his employment. It has come on the record that Jagdeva (since deceased) was having history of illness and availed as many as 92 days' medical leave in the years 2009 and 2010 and that too immediately before his death. Petitioner herself admitted that she had incurred huge amount on the treatment of her husband. It is categorical stand of respondents-Union of India that job of Farm Hand is a routine one and does not involve 'trying circumstances' or 'risk in the performance of duty'. Further it has come on the record that in view of prolonged illness, Jagdeva (since deceased) was put on cultivation duty as Chowkidar for protection of crops sown over small patch of land. In this scenario, job assigned to Jagdeva (since deceased) by no stretch of imagination could be considered under 'trying circumstances' or 'exposed to different kinds of risks' in the performance of his duties. Nature of work assigned to Jagdeva (since deceased) and especially in view of the fact that he was having history of illness and that too prolonged one, cause of death of Jagdeva on account of heart attack does not create any nexus between his death and nature of work assigned to him during Government service. In view of above, claim of petitioner for grant of *ex gratia* lumpsum compensation does not fall within four corners of above said provisions as enshrined in O.M. dated 02.09.2008, framed under the Rules.

(16) Though, learned counsel for petitioner has placed reliance on judgment dated 30.05.2012 rendered by Co-ordinate Bench of this Court in CWP No.10885 of 2012 but the said judgment is distinguishable on facts as in that case employee while performing/discharging official duties fell down from the roof and suffered fatal injuries and in that circumstance *ex gratia* lumpsum compensation was awarded in terms of O.M. dated 02.09.2008 in favour of family of deceased employee. Apart from that learned counsel for petitioner has placed reliance on cases ***Divisional Controller, North East Karnataka Road Transport Corporation, Gulbarga*** versus ***Sangamma***,¹(***Karnataka High Court***) and ***Thengackal Estate*** versus ***Reethammal***² (***Kerala High Court***), however, ratio of above said cases is not helpful to the cause of petitioner as those cases pertained to compensation under the provisions of Workmen's Compensation Act, 1923, whereas in the instant case *ex gratia* lumpsum compensation as enshrined in O.M. dated 02.09.2008 and that too framed under the Rules, is in question.

(17) As a sequel to above said findings, it is held that Central Administrative Tribunal, vide order dated 09.02.2016 has rightly dismissed OA No.740/PB/2012 and further vide order dated 03.05.2016 rightly rejected Review Application No. 060/00016/2016 moved by petitioner (applicant). Tribunal has rightly held that petitioner has no claim for grant of *ex gratia* lumpsum compensation and as such said findings are sustained. In this view of the matter, instant writ petition moved by petitioner (applicant) being devoid of merits is dismissed.

Shubreet Kaur

¹ 2005 (2) SCT 756

² 1996 (3) SCT 212