

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

(Through Video Conferencing)

LPAOW No. 47/2018

Reserved on: 27.02.2020

Pronounced on: 11.05.2020

State of Jammu and Kashmir and OthersAppellant (s)

Through :- Mr. B. A. Dar, Sr. AAG.

V/s

Mst. TajaRespondent(s)

Through :- Mr. Lone Altaf, Advocate.

HON'BLE THE CHIEF JUSTICE

Coram:

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, JUDGE

JUDGMENT

GITA MITTAL, CJ

1. The instant appeal has been filed by the State praying for quashing of the order dated 09th March 2016 passed by the learned Single Judge in OWP No. 741/2007 quashing the communication dated 30th July 2007 which was sent by the Deputy Commissioner, Srinagar to the Principal Secretary to the Government, General Administration Department, J&K, Srinagar. By the impugned order, the learned Single Judge had further directed the appellants to consider one of the family members of the private respondent for employment in terms of Rules notified vide SRO No. 43 of 1994 and further to pay ex-gratia relief to the private respondent within four weeks from the date of receipt of copy of the order.

2. We have heard Mr. B. A. Dar, learned Sr. AAG for the appellants and Mr. Lone Altaf, learned counsel for the respondent at length.

3. OWP No. 741/2007 was filed by Mst Taja- the respondent herein on the plea that she was an old destitute lady whose husband was stated to be hearing impaired and unable to sustain the respondent and her family. This couple had a thirty year old unmarried grown-up daughter. The family was living in abject poverty with no source of sustenance. In her writ petition, Mst. Taja has stated that she and her husband had been blessed with one son Gulzar Ahmed Mir, who was killed at the age of 14 years in the year 1992 by some unknown militants/persons. Despite his age, the child was stated to be supporting the family from his work as a bus conductor.

4. The writ petitioner stated that her 14 years' old son had disappeared on 22nd July 1992 and after a painstaking search, Mst Taja had gained information from police personnel that her son had been killed by unidentified persons. She has alleged that his body was lying buried at Police Station Handwara.

5. The first representation in this regard was made by the writ petitioner in the year 1996 to the office of Deputy Commissioner, Srinagar, for grant of ex-gratia relief in terms of Government Order No. 723-GR (GAD) of 1990.

6. The writ petitioner has placed on record a communication dated 29th March 1996 issued from the office of the Deputy Commissioner, Srinagar to the Senior Superintendent of Police, Srinagar on the subject of the grant of ex-gratia relief in favour of next of kin of the deceased Gulzar

Ahmed Mir and seeking a report of the actual position of the incident and involvement/non-involvement of the person in any kind of militant related activities.

7. As nothing substantial resulted from the representation, the writ petitioner lodged a complaint with the State Human Rights Commission, Srinagar. After the Commission took cognizance, the office of the Superintendent of Police, Handwara, submitted a report dated 04th April 2002 to the Commission which was to the following effect:

*“In this connection a **report** has been obtained from **Sub Divisional Police Officer Handwara** vide his letter No. PA-04-02/819 dated 1-04-2002 which reveals that on **21-07-1992 one Gulzar Ahmad Mir was lifted by some unknown militants from his house at Kant Paristan Safakadal**. Later his father namely Ghulam Rasool Mir came to know that the above named individual (his son) has been killed by the unknown militants. The report further reveals that the complaint lodged by the father of the deceased person in Police Satiation Handwara does not contain the date of occurrence/month. However no such occurrence/incident has taken place in the jurisdiction of Police Station Handwara and no unidentified dead body was recovered from the jurisdiction of Police Station Handwara. Moreover no complaint with regard to the death of above named Gulzar Ahmad stands lodged in Police Station Handwara and the complainant later on produced a complaint which did not show the place of occurrence and no such dead body of the person having his name as Gulzar Ahmad has ever been taken into custody by Police Handwara.”*

(Emphasis by us)

8. It appears that since the above report did not make any disclosure about the antecedents of the child, the State Human Rights Commission referred the matter to the Additional Director General of Police (CID) directing him to submit a report in this regard. Pursuant to these directions, the Director General of Police has also submitted a report dated 03rd March 2003 to the J&K State Rights Human Rights Commission which

was extracted in its order dated 01st April 2003 and was to the following effect:

*“Since the police had not mentioned anything about the antecedents of the missing son of the complainant. The commission, therefore, referred the matter to the Additional Director General of Police (CID) directing him to report about the antecedents of the missing boy. **The Director General has submitted his report in this behalf on 03.03.2003 wherein he has stated that the son of the complainant namely Gulzar Ahmad Mir S/o. Gh. Rasool Mir R/o Kanthparistan Safakadal Srinagar who was of 14/15 years of age and was Middle Pass was working as a Conductor in 1992. It is further stated that his whereabouts are not known after he had left his home in the month of August 1992. The enquiries of the police have revealed that the missing person for that matter any member of his family was not involved in any illegal or subversive activity as there is nothing adverse found against them.”***

(Emphasis by us)

9. In view of the above report, the J&K State Human Rights Commission passed an order dated 01st April 2003 holding that the son of the writ petitioner was an innocent boy who was missing for the last more than ten years. It was held that the writ petitioner was entitled to ex-gratia relief as envisaged in the government order No. 723-GR (GAD) of 1990 dated 10th July 1990 read with Circular No. Home-62/98/relief dated 12th July 1999. The Human Rights Commission recommended to the Government to pay an amount of Rs. 1.00 lakh as ex-gratia to the next of kin of the family, i.e., the writ petitioner who was the mother of the missing boy and that she should also be given the benefit of SRO 43 of 1994.

10. It appears that instead of implementing the order of the Commission dated 1st April 2003, the Commissioner/Secretary to the Government, General Administration Department, sought a fresh report

from the office of the Deputy Commissioner, Srinagar vide letter No.GAD/AmDM/ 111/227/ 2007 dated 29th June 2007. The office of the Deputy Commissioner by an order dated 30th July 2007, relying on the report received from Additional Director General of Police, CID, J&K, dated 24th December 2003, rejected the case of the petitioner. In this background, the writ petitioner filed OWP No. 741/2007 assailing the order dated 30th July 2007 and seeking a direction to the respondents to process the case for grant of ex-gratia relief in terms of the order 01.04.2003.

11. The respondents had filed objections referring to a letter received from the Dy. Superintendent of Police (CID) to the Additional Director General of Police, Srinagar dated 29th December 2003 that the subject was not traceable since 1992; that reportedly he had crossed to PoK for getting illegal weapon training and, since, then has not returned back. Along with the objections, a letter dated 20th August 2016 from the Dy. S.P. Headquarters to the ADG, Srinagar was enclosed stating that field investigation revealed that the respondent's son Gulzar Ahmad Mir was aged about 15 years and was a conductor by profession; that in the year 1992, he left from his home towards POK/PAK for acquiring Arms/Ammunition training and did not return. Since then his whereabouts are not known whether he is alive or dead. The grant of the prayer for the writ petitioner was opposed on this ground.

12. The stand of the parties was carefully considered by the learned Single Judge and the writ petition stands accepted by the order dated 09th March 2016. The Ld Single Judge placed reliance on the afore noticed report of the Additional Director General of Police dated 03rd March 2003

confirming that neither the missing boy nor any member of his family was involved in any illegal or subversive activity. Based on this report, the learned Single Judge had passed the directions in the order dated 09th March 2016 which are noted above.

13. The appellants have assailed the order of the Ld Single Judge by way of the present appeal before this Court placing reliance on the report of the CID dated 29th December 2003.

14. A careful perusal of the objections filed by the appellants in the writ petition as well as the entire appeal placed before this court would show that the respondents do not challenge the report of the Director General of Police dated 03rd March 2003, wherein he had certified that neither the missing boy nor any member of the family was involved in illegal or subversive activity.

15. In fact, the admitted position is that the mother of the child, i.e. the writ petitioner had been pressing her representation for relief since 1996.

16. The submission of Mr. B. A. Dar on behalf of the appellant is that no formal complaint was lodged regarding the child going missing. This submission has to be examined in the context of the circumstances of this poor writ petitioner. Other than a hearing impaired husband, the missing child was the only male member of her family. Even the Dy.SP (Hqrs.) in his letter dated 20th Aug 2016 has confirmed that the child was working as a conductor. The fourteen year old missing child has been confirmed to be the bread-winner of the family. The illiterate and impoverished woman would be facing many barriers in approaching the authorities.

17. The child had gone missing on 31st July 1992. It is noteworthy that even if there had been no missing report in the year 1992, however, since the year 1996, the writ petitioner had been representing, for the reliefs which were prayed for in the writ petition. The writ petitioner had approached the J&K State Human Rights Commission on 01st October 2001 which had called for the report from the respondents.

18. The Director General of Police had also submitted a report on 03rd March 2003 before the State Human Rights Commission where a clean chit was given to the missing person as well as the writ petitioner and her family. There is not a single report with regard to the missing child being involved in any illegal or subversive activity. On the contrary, the report of the DGP on 03rd March 2003 confirmed his antecedents.

19. It is only after the State Human Rights Commission granted relief to this beleaguered writ petitioner that, for the first time, on 29th December 2016, the Dy. SP, CID has stated that the child had crossed to PoK for getting arms training. This report with regard to events which occurred twenty four years prior in 1992, is not supported by any material. The report has been issued more than thirteen years after the child went missing. In this background, the reference to '*field investigation*' in the letter of Dy. SP dated 29th December 2016 without any supporting material or details placed on record or source of information is clearly a mala fide act intended to deprive the writ petitioner of her legitimate entitlement. This report also does not dispute the report of the Director General of Police dated 03rd March 2003 certifying the antecedents of the child and his family.

20. Before us as well, Mr. B. A. Dar, learned Sr. AAG is unable to controvert or tender any explanation for the report dated 03rd March 2003. He is also unable to explain the basis of the report of 29th December 2003.

21. Appearing for the writ petitioner/respondent herein, Mr. Lone Altaf, learned counsel has drawn attention to the order dated 10th July 2015 in *SWP No. 190/2013* titled '*Mohammad Sultan Sofi v. State of J&K and others*' wherein also the learned Single Judge has upheld a similar recommendation as has been made by the State Human Rights Commission in favour of the writ petitioner.

22. In *Mohammad Sultan Sofi*, an amount of ₹1,00,000/- was released in his favour but the compassionate appointment was denied on the same grounds as are asserted to deny the entitlement of the respondent before us. In that case as well the learned Single Judge had pointed out the previous report of the police to the effect that Altaf Ahmed Sofi was not involved in any subversive activity and disbelieved the subsequent report. The respondents were directed to extend the benefit of compassionate appointment to Altaf Ahmed Sofi based on his qualification in terms of SRO 43 of 1994.

This judgment was not challenged and has attained finality.

23. Mr. Lone Altaf learned counsel has also placed reliance on Section 108 of the Indian Evidence Act, 1872 whereby, the burden of establishing that the writ petitioner's son, Gulzar Ahmed Mir is alive would shift on the appellants for the reason that it stands established that he had not

been heard of for 7 years by those who would have naturally heard of him if he had been alive.

The appellants have not been able to support that Gulzar Ahmed Mir was surviving with any material. The child has to be believed to be dead.

24. Mr. Lone Altaf learned counsel has also placed before us copy of the order No. 723-GR(GAD) of 1990 dated 10.07.1990 wherein, so far as civilians are concerned, it was directed as follows:-

“Order No.723-GR (GAD) of 1990

Dated: 10.7.1990

Notwithstanding anything contained in any order or rule or regulation on the subject, following ex-gratia relief shall be payable in respect of killed or Permanently/Partially disabled directly as a result of violence attributable to the breach of law and order or any other form of civil Commotion:-

x x x x

(D) PERSONS OTHER THAN GOVERNMENT EMPLOYEES

1.	<i>For Death (Civilians)</i>	...	Rs.1.00 lakh
1.	<i>For Death (IB/LoC)</i>	...	Rs.1.00 lakh
1.	<i>For Death (Surrendered Militants)</i>	...	Rs. 1.00 lakh
1.	<i>For Death (Militants turned informers)</i>	...	Rs. 1.00 lakh
2.	<i>For Permanent disability</i>	...	Rs. 0.75 lakh
3.	<i>For serious injury i.e hospitalization and more than 24 hrs</i>	...	Rs. 0.05 lakh
4.	<i>Injury (hospitalization less than 24 hrs)</i>	...	Rs. 0.01 lakh
5.	<i>Minor Injury (discharged after first aid)</i>	...	Rs 500.00

NOTE 1

Ex-grade relief shall be available in respect of persons who:-

- a) *Where not directly or indirectly involved in actual violence or instigation thereof.*
- b) *Were killed innocently.*

NOTE 2

Ex-gratia relief shall be sanctioned by the Government in the Home Department and the disbursement shall be made as per the procedure in vogue in the Revenue Deptt. In terms of Govt. Order No: 121 (R V) of 1919 dated: 1-5-1919.

In case where direct and conclusive evidence of death of a person covered by the foregoing provisions is not forthcoming but he is reported to be missing or his dead body has not been identified, the ex-gratia relief as may be admissible will be sanctioned by the competent authority subject the following:-

- a) a report of personal enquiry made by the District Magistrate of the concerned District about the circumstances in which the death of the concerned person can be reasonably presumed to have occurred;*
 - b) the recipient of the ex-gratia amount furnish an indemnity bond as well as surety bond of the person Magistrate to the effect that the amount of ex-gratia relief shall be refunded in the event of any subsequent event which proved that the death had not in fact taken place. The form or indemnity bond and the surely bond shall be prescribed separately by the General Administration Department.*
- xxxxx”*

*Sd/
Comm./Secretary to Government
General Administration Department*

No: GAD(Adm) 11/90-Rav-ER-1

Dated: 19.07.1990”

(Emphasis by us)

25. In view of the above discussion, the present appeal is clearly without any merit. Our attention has been drawn to the report dated 1st April 2002 of the Sub Divisional Police Officer Handwara dated 01.04.2002 to the effect that on 21.07.1992 one Gulzar Ahmad Mir had been lifted from his house at Kant Paristan Safakadal by some unknown militants. The above report was submitted by the office of the Superintendent Police, Handwara in his report dated 4th April 2002 before the State Human Rights Commission.

26. We find no reason at all to differ from the report dated 03rd March 2003 of the Director General of Police before the State Human Rights Commission stating that neither the missing boy nor any member of his family was involved in illegal or subversive activity. The subsequent

communication of the CID in December 2003, which is not supported with any evidence, and, does not doubt the previous report dated 03rd March 2003, is clearly baseless and cannot be relied upon.

27. The challenge by way of the instant appeal is baseless, devoid of legal merit and is hereby *dismissed*.

28. The appellants are directed to forthwith process the case of the writ petitioner/respondent herein for appointment of ex-gratia in terms of the 723-GR (GAD) of 1990 dated 10th July 1990 within a period of six weeks from the date of receipt of this order.

29. The appellants shall consider the family member of the respondent/writ petitioner for compassionate appointment in terms of SRO 43 of 1994 uninfluenced by the report dated 29th December 2003 from the Additional Director General of Police (CID), J&K.

30. The appellants shall within six weeks from today ensure payment of the amount of ₹1 lakh awarded by the order dated 1st April 2003 of J&K State Human Rights Commission, if not already paid to the respondent.

31. In as much as the amount has not been paid for almost 16 years, the respondent shall be entitled to simple interest at the rate of 8% per annum on the compensation. This amount shall also be calculated and paid within four weeks from today.

32. A compliance report shall be filed by the respondents within eight weeks from today. If the Compliance report is not filed as ordered, the Registrar Judicial shall place the matter before the court for orders.

(DHIRAJ SINGH THAKUR)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Srinagar.
11.05.2020
Raj kumar

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

