

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 13623 / 2015

1. Usha Verma W/o Lt. Sh. Ummed Singh, aged about 50 years, R/o 139, Marudhar Colony, Opp. Mahila Police Thana, Bikaner.

2. Deeresh Verma S/o Lt. Sh. Ummed Singh, aged about 26 years, R/o 139, Marudhar Colony, Opp. Mahila Police Thana, Bikaner.

3. Tarun Verma S/o Lt. Sh. Ummed Singh, aged about 26 years, R/o 139, Marudhar Colony, Opp. Mahila Police Thana, Bikaner.

----Petitioners

Versus

1. State of Rajasthan through the Secretary, Department of Public Health Engineering, Govt. of Rajasthan, Secretariat, Jaipur.

2. The Chief Engineer (Administration), Public Health Engineering Department, Govt. of Rajasthan, Jaipur.

3. The Executive Engineer, Public Health Engineering Department, Bikaner Circle, Bikaner.

----Respondents

For Petitioner(s) : Mr. Nimesh Suthar.

Mr. Shafi Mohammad Chouhan.

Mr. Sharad Rajpurohit.

For Respondent(s) : Mr. N.K. Mehta.

Mr. N.S. Rajpurohit.

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

12/03/2018

This writ petition has been filed by the petitioners aggrieved against the order dated 24.9.2013 (Annex.12) passed by the Chief Engineer, PHED, whereby, the application made by the petitioners for payment of ex-gratia amount under Rule 75 of the Rajasthan Civil Services (Pension) Rules, 1996 ('the Rules of 1996') has been

rejected.

It is, inter alia, indicated in the writ petition that husband / father of the petitioners – Mr. Ummed Singh Verma, who was working on the post of LDC with the respondent-Department, when he was returning back from Jaipur from official work in a private Bolero RJ-07-UB-2211 alongwith Assistant Engineer – Mr. Ghansyam Meghwal and Mr. Dinesh Choudhary, the vehicle met with an accident resulting in death of Mr. Ummed Singh due to injuries suffered by him. An FIR was lodged on 7.8.2012, inter alia, indicating that the deceased Ummed Singh alongwith other officers had gone to Jaipur for official work and while returning back, the accident occurred, resulting in the injuries to / death of the occupants of the vehicle.

Whereafter, the petitioner No.1 was granted family pension vide PPO dated 19.9.2012. The prayer / application made by the petitioners under Rule 75 of the Rules of 1996 seeking grant of ex-gratia amount on account of death of Mr. Ummed Singh on official duty, was recommended / forwarded by the Executive Engineer on 19.2.2013 with the following observations:-

“श्रीमान अधीक्षण अभियंता

जन स्वा.अभि.विभाग,

वृत्त बीकानेर।

विषय :- राजस्थान सिविल सेवा पेंशन विभाग 75(2)(ख) के अन्तर्गत अनुग्रह राशि स्वीकृत करने बाबत।

प्रसंग :- आपका पृष्ठांकन संख्या 16240 दिनांक 19.2.13 उपरोक्त विषयान्तर्गत प्रांसगिक पत्र के क्रम में निवेदन है कि स्व. श्री उम्मेदसिंह वर्मा कनिष्ठ लिपिक दिनांक 6.8.12 को मुख्यालय जयपुर में खंड का मासिक लेखा प्रस्तुत करने एवं अन्य राज कार्य हेतु राजकीय यात्रा पर निजी वाहन से जयपुर गये थे, तथा दिनांक 6.8.12

को वापिस लौटते समय रतनगढ़ के पास वाहन दुर्घटना में इनका स्वर्गवास हो गया था।

राजस्थान सिविल सेवा पेंशन नियम 75(2)(ख) में वर्णित परिस्थिति में स्वर्गवास होने के कारण राज्य सरकार के आदेश क्रमांक एफ12(11) एफ डी/रूल्स/2009 दिनांक 26.5.11 के अनुसार रु. 20.00 लाख (अखरे रूपया बीस लाख मात्र) अनुग्रह राशि स्वीकृति की अभिशंषा की जाती है।

संलग्न :- मूल प्रकरण

सही /—

अधिशायी अभियंता
जन स्वा.अभि.विभाग,
जिला ग्रामीण खंड द्वितीय बीकानेर ”



The Additional Superintending Engineer forwarded the application to the Additional Chief Engineer. The Additional Chief Engineer in turn forwarded the same to the Chief Engineer vide letter dated 1.3.2013. Both the authorities specifically indicating that the death occurred while the Government Servant was on official duty.

By the impugned order dated 24.9.2013, the application made by the petitioners has been rejected. The order dated 24.9.2013 reads as under:-

“उपरोक्त विषयान्त आपके प्रांसगिक पत्र से प्रेषित प्रकरण के क्रम में लेख है कि राजस्थान सिविल सेवा पेंशन नियम 1996 के नियम 75(3)(1) में निम्नांकित बिन्दु की संतुष्टि अनिवार्य है :-

“कार्मिक की मृत्यु ड्यूटी पर रहते हुए हुई हो, इसमें कोई सन्देह न हो तथा अभिलेख से प्रमाणित होता हो”

उक्त प्रकरण में कार्यालयाध्यक्ष एवं उच्चतर अधिकारियों द्वारा पत्र में कार्मिक को दिनांक 06.08.2012 को खण्ड का मासिक लेखा प्रस्तुत करने एवं अन्य राजकीय कार्य हेतु राजकीय यात्रा पर निजी वाहन से जयपुर जाना एवं वापस लौटते समय रतनगढ़ के पास वाहन दुर्घटना में मृत्यु कारित होना अवगत करवाया है।

प्रकरण में उपलब्ध करवाये गये तथ्यों/दस्तावेजी साक्ष्य अभिलेख से कार्मिक का ड्यूटी पर रहते हुए दुर्घटना में मृत्यु की पुष्टि नहीं होती है।”

It is submitted by learned counsel for the petitioner that the respondents were not justified in rejecting the application filed by the petitioners based on the ground that from the facts and documents available on record, it is not proved that the death occurred while on duty. It is submitted that the said finding is ex-facie incorrect, inasmuch as, the FIR was lodged immediately after the accident indicating the fact that the deceased-LDC was returning back alongwith two engineers after submitting record at Jaipur when the vehicle met with an accident resulting in death of said Ummed Singh.

Besides the said FIR, the application made by the petitioners was duly endorsed by the Executive Engineer, Superintending Engineer and Additional Chief Engineer and, therefore, there was no reason for the Chief Engineer to reject the said application by doubting the recommendations / endorsements made in this regard. It is submitted that the order impugned deserves to be quashed and set aside and the petitioners be granted ex-gratia payment alongwith interest.

Learned counsel for the respondent - PHED supported the order impugned. It was submitted that from the material available on record, it was not proved that the accident occurred while deceased was on duty and, therefore, the petitioners are not entitled to grant amount of ex-gratia.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The relevant provisions of Rule 75 of the Rules of 1996 read as under:-

"75. Ex-gratia grant to the family of a Government servant.-(1) Subject to the provisions of this Chapter except as otherwise provided, an 'ex-gratia grant' shall be admissible under sub rule (2) to the family of a Government servant who dies while on duty in one of the following circumstances namely

(a) in an accident,"

Further sub-Rule 2 provides that under Clause (a) of sub-Rule 1, the amount of ex-gratia grant would be Rs.20,00,000/-.

Sub-Rule 3 provides for the conditions in which, the amount would be admissible, which reads as under:-

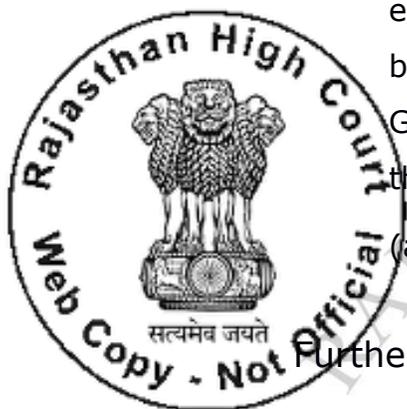
"(3) The Ex-gratia grant under sub-rule (2) shall be admissible to the member of family who is entitled for grant of family pension subject to the fulfilment of the following conditions, namely:-

(a) that the death has either taken place on the sport of the accident or during the course of treatment of injuries caused in such an accident prior to him/her being declared fit by the authorized medical attendant for resumption of duty;

(b) that a government servant is killed due to his/her official position subject to the condition that there is a directed connection between occurrence of death and his/her official position;

(c) that it is clearly established on record and certified in the sanction that the death of the government servant has taken place while on duty and this fact is not subject to any dispute; and

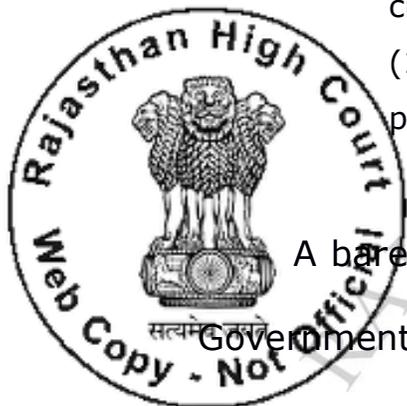
Explanation:(i) an accident means sudden and unavoidable mishap while government servant was on



duty;

(ii) in the case of death of a government servant while on duty by violence attributable to service, means death as a result of encounter with criminals or in the course of confrontation with mob or crowds of an unlawful assembly during agitation, riot or Civil commotion or communal disturbances etc;

(iii) the death of a government servant in the circumstances other than that mentioned in sub-rule (1) shall not be treated as death on duty for this purpose."



A bare look at the provisions clearly indicates that in case, a Government Servant, while on duty, dies in an accident and the death occurs on the spot or during the course of treatment / injuries in such accident, the person entitled to family pension would be granted ex-gratia grant.

In the present case, the FIR, which has been lodged immediately after the accident i.e. on 7.8.2012 at 1:30 hours when the accident had taken place on 6.8.2012 at 23:00 hours specifically indicated that the occupants were returning back from Jaipur where they had gone for official work and on account of accident, Mr. Ummed Singh suffered injuries and when he was taken to hospital he succumbed to the said injuries.

The fact that the FIR, which was lodged on 1:30 a.m. indicating death of Mr. Ummed Singh clearly indicated that the death occurred on account of the accident, wherein, he had gone on official duty and the Executive Engineer while forwarding the application filed under Rule 75 clearly indicated that the accident occurred while returning back from official duty resulting in death

of Mr. Ummed Singh, which letter and the fact of accident on official duty, was endorsed by the Superintending Engineer as well as the Additional Chief Engineer, the order passed by the Chief Engineer indicating non-availability of any material to indicate death of Mr. Ummed Singh while on duty, is ex-facie baseless and in ignorance of the material, which was available on record including the FIR as well as three forwarding letters given by the Executive Engineer, Superintending Engineer and Additional Chief Engineer, which material could not have been rejected by the Chief Engineer in a cursory manner as no contrary material was available. In view thereof, the order dated 24.9.2013 (Annex.12) cannot be sustained.

Consequently, the writ petition filed by the petitioners is allowed. The order dated 24.9.2013 (Annex.12) is quashed and set aside. The respondents are directed to accord ex-gratia grant under and in terms of Rule 75 of the Rules of 1996 to the petitioner/s within a period of four weeks from today. The petitioner/s would also be entitled to interest @ 6% per annum from 1.10.2013 (from the date the recommendation was made by the Executive Engineer) till the date of actual payment.

(ARUN BHANSALI)J.