



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 952 OF 2024

1. Kanchan w/o. Sunilappa Hamshette, .. Petitioner
Age. 51 years, Occ. Household,
R/o. Datta Nagar-1, Degloor,
Tq. Degloor, Dist. Nanded.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Finance Department,
Mantralaya, Mumbai.

2. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.

3. The Chief Executive Officer,
Zilla Parishad, Nanded.

4. The Executive Engineer,
Gram Panchayat Water Supply Department,
Zilla Parishad, Nanded.

5. The Block Development Officer,
Panchayat Samiti, Degloor,
Tq. Degloor, Dist. Nanded.

Mr.S.N. Janakwade, Advocate for the Petitioner.
Mr.R.S. Wani, AGP for Respondent Nos. 1 and 2.
Mr.S.B. Pulkundwar, Advocate for Respondent Nos. 3 to 5.

CORAM : RAVINDRA V. GHUGE &
R.M. JOSHI, JJ.
DATED : 28.03.2024

ORAL JUDGMENT [PER : RAVINDRA V. GHUGE, J.] :-

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. This is a case wherein the Petitioner-widow seeks ex-gratia compensation of Rs.50 lakhs from the Government on the ground that (a) her husband was deployed during the Covid-19 on duty, (b) her husband was performing work which fell in essential services and (c) her husband can be called as a Covid Warrior. The petitioner has, therefore, putforth prayer clauses (A), (B), (C) and (D) as under :-

A) By issuing writ of Mandamus or any other appropriate writ, order or directions in like nature, this Hon'ble Court may be pleased to quash and set aside impugned communication dated 06.11.2023 issued by the respondent No.2 rejecting the proposal of ex gratia compensation of Rs.50 lacks due to death of husband of petitioner during covid-19 period.

B) By issuing writ of Mandamus or any appropriate writ, order or directions in like nature, this Hon'ble may be pleased to grant ex gratia compensation of Rs. 50 lacks with interest thereon from the death of husband of petitioner as per Government Resolutions and circulars in the interest of justice and for that purpose may kindly be issue necessary order.

C) By issuing writ of Mandamus or any appropriate writ, order or directions in like nature, this Hon'ble may be pleased to stay to the effect, implementation and execution impugned communication letter dated 06.11.2023 issued by respondent No.2.

D) By issuing writ of Mandamus or any appropriate writ, order or directions in like nature, this Hon'ble may be pleased to grant interim ex gratia compensation during pendency of this writ petition in the interest of justice and for that purpose may kindly be issue necessary order.”

03. The learned Advocate for the Petitioner has extensively canvassed in the light of the 12 grounds formulated in the memo of the Petition. We are reproducing verbatim, the 12 grounds hereunder :-

- I. The impugned communication letter dated 06.11.2023 issued by respondent no.2 is against the facts, evidence on record and against the provision of law.
- II. Husband of petitioner was appointed as Hand Pump helper on 01.12.1996 since from appointment he was regularly going to work and was working during the pandemic period for giving service of Water Supply at public large in rural area. It is not disputed that, the husband of petitioner was on duty before 14 days of covid-19 infection and died on 29.04.2021 during course of employment as per medical report of doctor. Therefore, reason given by the respondent No.2 as per government resolution dated 25.4.2022 is not applicable to the petitioner government resolution is issued subsequently therefore rejection of proposal is not legal and proper and committed error while rejecting proposal of the husband of the petitioner.
- III. The husband of petitioner was on duty before covid-19 positive test as per certificate issued by respondent No.3 to 5. The respondent No.3 to 5 had also issued certificate dated 21.03.2021 to certify that, the husband of the petitioner was serving during covid-19 pandemic period and on 12.04.2021 he was present at Gram Panchayat Madgi for repairing of Hand Pump and also he was present at office on 13.04.2021 and 14.04.2021. He was on medical leave due to covid-19 from 15.04.2021 to 29.04.2021. He was working to repair Hand Pump in rural area to provide water supply in Gram Panchayat circle and he was on duty during covid-19 pandemic period as per copies of register and certificates are issued by concerned authority during that period. Therefore, it is clearly show that, the husband of the petitioner was on duty and he died during course of employment on 29.04.2021 due to covid-19 therefore, reason given by the respondent No.2 while rejecting the proposal his against the certificates issued by respondent No.3 to 5.
- IV. The respondent No.5 has maintained day to day record of the employee and as per record of the respondent No.5, the husband of the petitioner was on duty during pandemic situation of covid-19 therefore, it is not necessary to issue appointment order to the employee by the competent authority during covid-19 period. The water supply department is providing basic facility to provide water to the public and husband of petitioner was working to repair Hand Pump as per direction of respondent No.5 in Gram Panchayat circle to

provide water to the public therefore, the reason given by the respondent No.2 is against record maintained by the respondent No.5 and certificates issued by the respondent No. 3 to 5 and committed error while deciding the proposal of the petitioner.

- V. The purpose of the Government Resolutions dated 29.5.2020 and 14.5.2021 and circulars dated 8.7.2020 and 21.1.2022 issued by the respondent No.1 and 2 is to financially protect the family of the deceased employee who died during course of employment serving for public purpose to provide primary and basic facility of public without any fair of covid-19 pandemic situation and as such Government has financially protected while giving ex gratia compensation of Rs. 50 lacks of family members deceased employee. The Government Resolutions and circulars are squarely applicable to the proposal of petitioner but without considering documents on record and purpose behind above Government Resolutions and circulars, the respondent No.2 has rejected the proposal without application of mind by giving technical reason.
- VI. The respondent no.2 has rejected the proposal of petitioner as per government resolution dated 25.4.2022 on ground that the competent authority was not given appointment to the deceased during Covid-19 but certificates issued by respondent No.3 to 5 clearly show that deceased was on duty during Covid-19 period and before 14 days of covid infection. In fact the reason given by the respondent No.2 as per condition mentioned in the government resolution dated 25.4.2022 is not applicable to the petitioner, the government resolution is issued on 25.4.2022 subsequently after death of husband of petitioner and before that the government resolutions and circulars are issued by the respondent no.1 and 2 for ex gratia compensation of 50 lacks. Therefore, petitioner is entitled for ex gratia compensation of 50 lacks as per earlier government resolutions and circulars.
- VII. To litigate the hardship of family members of Government Employees and other Public servants who died in covid-19 period during course of employment and on active duty, the respondent No.1 and 2 Finance Department and Rural development of Government of Maharashtra had issued Government Resolutions and circulars by taking certain benevolent measures and one of these was payment of one time ex gratia compensation of Rs. 50 lacks to the bereaved family members of the employee. If the proposal is rejected on the technical ground then the purpose of the government resolutions and circulars will not be achieve to financially support the family of deceased employees therefore petitioner is entitled for compensation.
- VIII. The petitioner has submitted all the relevant documents before respondent No.4 through respondent No.5 and also removed objections in the proposal and submitted relevant documents as per directions of respondent No.2 despite that, the respondent No.2 has rejected proposal to grant ex gratia compensation of Rs. 50 lacks on technical reason without going to the documents on record and without considering purpose of Government

Resolutions and circulars to financially protect the family members of deceased employee who died during course of employment in covid-19 period.

- IX. The husband of petitioner was working regularly and was on duty during pandemic situation without taking any care of his family members and given service to repair Hand Pump in Gram Panchayat circle and he lost his life due to covid-19. Therefore, the petitioner is entitled for ex gratia compensation of Rs.50 lacks as per Government Resolutions and circulars issued by respondent No.1 and 2.
- X. The petitioner is wife of deceased employee and she has no any source of income. Deceased was karta of the family and the petitioner and her family members are facing financial crises to fulfill the basic needs in day today life due to death of her husband but the respondent No.2 without considering documents and purpose of Government Resolutions and circulars rejected the proposal of petitioner on technical ground and committed error.
- XI. The husband of petitioner died on 29.04.2021 and since from death petitioner is perusing before respondents for grant of ex gratia compensation of Rs. 50 lacks but the respondent no.2 has rejected proposal after lapse of more than 2 years and as such petitioner could not get the amount in spite of submitting all relevant documents therefore, ex gratia compensation of Rs. 50 lacks may kindly be granted in the interest of justice.
- XII. The impugned communication issued by respondent No.2 dated 6/11/2023 is without application of mind, without assigning any proper reasons and against the evidence on record.”

04. In paragraph No.15, the Petitioner has canvassed that her husband was a Hand-pump Helper and was a senior most experienced person to repair hand-pumps. He died due to Covid-19 infection and his claim cannot be denied on the ground that there is no evidence that he was deployed in the Covid-19 duty or that he was not a Covid warrior. It is further canvassed that the Zilla Parishad has taken a hyper technical view and has rejected her application for payment of compensation of Rs.50 lakhs.

05. The learned Advocate for the Petitioner has drawn our attention to the following documents :-

- a) A report of a Radiologist from a hospital, by name, Life Care, from Tal. Udgir.
- b) Death Summary by Kshema Cancer and Research Center (un-dated), which is situated at the Station Road, Nizamabad.
- c) A service certificate dated 20.05.2021 issued by the Block Development Officer.
- d) An undated certificate issued by a Committee of CEO, Zilla Parishad, Executive Engineer, Zilla Parishad and Block Development Officer, Panchayat Samiti, Degloor.
- e) One more certificate dated 21.03.2023 issued by the same Committee comprising of CEO, Zilla Parishad, Executive Engineer, Zilla Parishad and Block Development Officer, Class-I, Panchayat Samiti, Degloor.
- f) Government Resolution dated 18.03.2020.
- g) Government Resolution dated 29.05.2020.
- h) Government Resolution dated 14.05.2021.
- i) Government Resolution dated 25.04.2022.
- j) Government Resolution dated 08.07.2020.
- k) Judgment of this Court in Mayuri Krishna Jabare Vs. General Manager, BEST & Anr., 2022 DGLS (Bom) 3782.

- l) Office orders by the Law and Justice Department dated 06.10.2023 and 23.06.2023.

06. The learned AGP has drawn our attention to the Affidavit-in-reply dated 17.02.2024 through the Dy. Commissioner (Establishment), Office of the Divisional Commissioner, Chhatrapati Sambhajinagar (Aurangabad). It is contended that the deceased was Hand-pump *Madatnis* (Helper) to the Hand-pump Operator. Unless an employee who is deployed exclusively during the Covid pandemic as a part of deploying work-force in an activity, which can be said to be Covid related duty, a claim for ex-gratia payment of Rs.50 lakhs cannot be made. Reliance is placed on the Government Resolution dated 29.05.2020, which carries the subject "Regarding insurance cover/ex-gratia assistance to employees in case of death on account of Covid during the course of Covid related duties". The learned AGP further points out the following contents of the said Government Resolution:-

"2. In this regard Ministry of Health and Family Welfare, Government of India vide order dated 28.3.2020 has provided an insurance scheme for health workers and healthcare related staff.

3. However, besides healthcare staff a lot of other staff (District administration, Police, Home guards, Anganwadi workers, Finance and Treasury, Food and Civil supply, Water supply and Sanitation, Employees of various departments deputed for house to house survey work etc.) have also been involved in Covid related duties. Therefore, with a view to supporting such personnel in their active line of duty in fighting Covid-19 pandemic and to stand by their families in the event of their unfortunate loss of life, the State Government has taken the following decisions.

- A. The government will provide a comprehensive personal accident

cover of Rs 50 lakhs to all employees who are on active duty relating to survey, tracing, tracking, testing, prevention, treatment and relief activities for Covid pandemic. The modalities in this regard are being worked out with insurance companies.

B. Till the time such package is worked out and the insurance scheme comes into force, as an interim measure, all cases of deaths of the employees on duties (survey, tracing, tracking, prevention, testing, treatment, relief activities etc.), on account of Covid, will be covered through an ex-gratia assistance of Rs 50 lakhs subject to following conditions:

- a. The employee should have been on duty within the 14-day period preceding his/her hospitalization or death. The verification/certification in this regard would be done by District Magistrates or any other designated Head of Departments etc.
- b. The medical certification that death is related to Covid-19, would be done on the basis of report of Government/Municipal/ICMR notified Private Hospital /Laboratory.
- c. Employees would include all contractual/outsourced/daily wages/ad-hoc/ honorarium-based staff also.
- d. The budget heads in this regard would be notified by the concerned departments
- e. Similar ex-gratia assistance scheme will also be implemented by all Local Bodies and State Govt. Public Undertakings.”

07. He further submits that those employees who were on active duty during the Covid pandemic, the proposal for ex-gratia assistance can be considered. A Committee of the CEO, Zilla Parishad, Nanded, Block Development Officer, Panchayat Samiti, Degloor and Executive Engineer RWS submitted a certificate dated 21.03.2023 to the office of the Divisional Commissioner mentioning therein that no order has been issued by the Competent Authority regarding the appointment of the deceased on Covid

related duties.

08. The learned Advocate for the Zilla Parishad relies on the Affidavit-in-reply filed through the Chief Executive Officer dated 14.03.2024 and submits that the deceased employee was merely a Hand-pump Helper and was neither a Hand-pump Operator nor a Hand-pump qualified mechanic. He died on 29.04.2021 in Nizamabad. Relevant documents were collected from the widow and were considered for the purpose of coming to a decision. After scrutiny, the claim was rejected. It is specifically set out in paragraph No.8 of the Affidavit-in-reply as under :-

“8. I say and submit that, though the petitioner was working as Hand Pump Helper and during his employment, he suffered Covid infection and unfortunate death has been caused due to Covid infection. Deponent specifically submits that, as per the requirement of condition in Government Resolution dated 25.04.2022, no orders have been issued by competent authority appointing the petitioner on Covid-19 duty. The engagement of husband of petitioner as a regular duty was to the repaired hand pump etc. however, he was not employed on Covid-19 duty by the competent authority. The certificate to that effect has already been issued by the Committee headed by the Chief-Executive Officer which is signed by Block Development Officer, Panchayat Samiti, Deglur, Dist. Nanded and Executive Engineer Rural Water Supply Department, Zilla Parishad, Nanded. The copy of certificate dated 21.03.2023 is already annexed by the petitioner at page No.59 of petition. This shows that, though the petitioner was working his regular duty of hand pump helper, he is infected by Covid-19 Virus, he was not appointed on Covid-19 duty as per the Government Resolution dated 25.04.2022.”

09. There can be no debate that such cases should be dealt with, showing sensitivity, care and caution. On the one hand, such cases have to be

scrutinized thoroughly and on the other hand, it has to be kept in mind that cases which were not qualified for payment of Rs.50 lakhs as ex-gratia payment, cannot be entertained as if such amounts are a bounty. If such cases are dealt with casually and compensation amounts are granted, those who were not eligible for such compensation, will be receiving Rs. 50 lakhs from the tax payers' money. In this backdrop, we have gone through the judgment delivered by this Court in Mayuri Krishna Jabare (Supra) and we noticed the following aspects:-

- (a) The deceased Krishna Jabare was specifically deployed on duty as a Bus-conductor during the first wave of Covid-19 pandemic.
- (b) The record revealed that Krishna was regularly attending duty allotted to him as a Bus-conductor during the first pandemic.
- (c) The cause of death is indicated as acute respiratory distress syndrome, together with influenza like illness, in the death certificate.
- (d) The Doctors certified that it could be a suspected case of Covid-19.
- (e) BEST acknowledged that Krishna was deployed on duty

and he was regularly performing duties during the peak pandemic period.

(f) The post-mortem report indicated suspected case of Covid-19.

(g) It was therefore concluded in paragraph Nos. 14 and 15, which read as under :-

“14. Krishna, despite the first wave of COVID 19 being at its peak in Mumbai, had been discharging his duty as a bus conductor without having any prior history of respiratory distress. No material has been annexed by BEST in its counter affidavit to disprove the contents of paragraph 11 of the petition memo. In such circumstances, the scales would obviously tilt in favour of the petitioner for us to conclude that Krishna, in all probability, died of COVID 19. The standard of proof applicable in a case of this nature cannot be ‘proof beyond reasonable doubt’ but the ‘preponderance of probability’ tending to draw an inference that the fact of death of Krishna due to COVID 19 must be more probable. Thus, merely because there was no RT-PCR report or adequate medical documentation could not have afforded ground to refuse the benefits flowing from the Government Resolution dated 9th May 2020. It would indeed be inhuman on our part if we refrain from interfering in this case and fold our hands to decline relief to the heirs of Krishna who died while answering the call of duty.

15. The argument of Mr. Talsania that the order that we propose to pass would open the floodgates has no substance. We have enquired of him and learnt that apart from this writ petition, no other proceedings are pending at the instance of eight other similarly placed survivors of deceased employees of BEST who have not been considered qualified to receive the benefit of ex gratia compensation as well as accelerated compassionate appointment. Even if any other proceedings were pending, that would not have any bearing on the facts and circumstances of the present case where, for reasons recorded above, we are of the view that BEST acted illegally, unjustly and in an arbitrary manner to deprive the petitioner the benefits of policy decisions taken by the authorities.”

10. In the backdrop of the judicial pronouncement, we have referred to the Government Resolution dated 29.05.2020 (reproduced portion here-in-

above). Clause-3 indicates the object and scrutiny to be performed, when such claims are put forth. It is noted that health care staff, as well as other employees from the District Administration, Police, Home Guards, Anganwadi Workers, Finance and Treasury, Food and Civil Supply, Water Supply and Sanitation, were deputed for 'house to house' survey work and also involved in Covid related duties. To respect such involvement of candidates, which ultimately led to the unfortunate loss of life, that the State Government introduced a comprehensive Personal Accident Cover of Rs.50 lakhs, to those employees, who are on active duty relating to survey, tracing, tracking, testing, preventing, treatment and relief activities of Covid pandemic. All cases of death of employees on such duty on account of Covid, were declared to be covered by the ex-gratia assistance.

11. Below clause 3-B (a to e), the Government provided that the employees should be on duty within 14 days period preceding hospitalization or death. Such verification should be done by the District Magistrate or any other designated head of the Department. A medical certification must correlate with death due to Covid-19 and such certification was to be made in the Governments/Municipal/ICMR notified private Hospitals. The employee

would also include contractual/outsourced/daily wages/ad-hoc/honorarium based staff as well.

12. We now refer to the medical certificates placed on record by the petitioner. The certificate issued by Life Care dated 25.04.2021, indicates that the deceased was not an indoor patient. Certain tests were performed on him, more particularly HRCT test. The Covid score of 15 approximately, was recorded. Pleural spaces, heart and great vessels, trachea and mainstem bronchi and bony thorax, appeared normal.

13. The death summary (undated) issued by Kshema Cancer and Research Center indicates that the HRCT showed Covid positive. The deceased was admitted on 28.04.2021 with complaints of severe shortness of breath disorientation. Patient was put on ventilator. Patient deteriorated and could not be revived. The ECG showed a flat line and on the same day 29.04.2021, the patient passed away at 9 a.m. due to Cardiopulmonary Arrest.

14. An undated certificate issued by the CEO, Nanded, Executive Engineer, Zilla Parishad, Nanded and Block Development Officer, Panchayat

Samiti, Degloor mentions that the deceased was on duty in the 14 days preceding the date of death. The same three officers are said to have issued another certificate dated 21.03.2023, in which it is stated that the deceased was on leave from 15.04.2021 till 29.04.2021, due to Covid. His presence was indicated on 12th, 13th and 14th April, 2021. In the Affidavit-in-reply, the CEO, Zilla Parishad, specifically mentions that the deceased is a Hand-pump Helper and he was not employed in Covid-19 duty by the competent authority. The certificate dated 21.03.2023, is acknowledged to be the certificate issued by the Zilla Parishad Committee to which we have adverted to in the foregoing paragraphs.

15. Having adverted to the Government Resolution dated 29.05.2020, in the backdrop of the certificate dated 21.03.2023, issued by the Committee, headed by the CEO, Zilla Parishad, it appears to us that the deceased was not specifically deployed for water supply or to reach houses or to do house to house survey work or for sanitation purpose. He also is not a qualified mechanic to be considered as being the only mechanic available for repairing the Hand-pumps/motors. The deceased was a Hand-pump Helper. No record of the Zilla Parishad indicates that he was on duty in the 14 days

prior to his death. In-fact, the report dated 21.03.2023, does not state that the deceased was specifically deployed to do such work as would be covered by the contingencies prescribed in the Government Resolution dated 29.05.2020.

16. The Petitioner has not pleaded that the Zilla Parishad has owned responsibility as regards the undated certificate issued by the three members' committee. Nevertheless, the certificate creates a suspicion, since it mentions that the deceased was on duty for 14 days preceding his death on 29.04.2021. The authenticity of this certificate is extremely doubtful. The certificate which is owned-up by the Zilla Parishad dated 21.03.2023, mentions that the deceased was on leave from 15.04.2021 to 29.04.2021.

17. It is, thus, obvious that the Petitioner's husband appears to have passed away due to the Covid-19 infection. However, we do not have enough material before us to come to a conclusion that the deceased was posted specifically during the Covid infection period to perform particular duties. In-fact, the Hand-pump Operators are authorized to operate the Hand-pumps for supplying water. The deceased was a Helper to the Hand-pump Operator.

There is no material before us to indicate that he was specifically issued with an order deploying him as a part of the reduced strength of employees (different batches of employees, which were created for reducing presence of employees on duty) in the period 15.04.2021 to 29.04.2021.

18. In view of the above, we do not find that the impugned order could be branded as being perverse or erroneous. **This Petition, being devoid of merit is, therefore, dismissed.** Rule discharged.

[R.M. JOSHI,J.]

[RAVINDRA V. GHUGE,J.]