IN THE HIGH COURT OF JHARKHAND AT RANCHI
L. P. A. No. 258 of 2013

The State of Jharkhand through its
Deputy Secretary Home Department
having its office at Project Building,
P.O.- Dhurwa, P.S.- Dhurwa, District- Ranchi ..... Appellant/respondent no.1

Versus

1. Kaliman Bibi wife of late Md.
Rozid Ansari, resident of Bhandra P.O.
+ P. S. -Bhandra District-Lohardaga...Respondent no. 1/Petitioner.

2. Chief Secretary, Government of Jharkhand
having its office at Project Building, P.O.- Dhurwa,
P. S. Dhurwa, District- Ranchi.

3. The Director General of Police, Government of Jharkhand
having its office at Project Building, P.O.- Dhurwa,
P. S. Dhurwa, District- Ranchi.

4. The Superintendent of Police, Lohardaga
having its office at P.O. + P. S. + District-Lohardaga.

5. The Deputy Commissioner, Lohardaga,
having its office at P.O. + P. S. + District-Lohardaga.

6. The Officer Incharge, Bhandra Police Station
having its office at P.O. - Lohardaga P. S. -Lohardaga,
District-Lohardaga ----- Respondents/Proforma Respondents.

CORAM: HON'BLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE
HON'BLE MR. JUSTICE APARESH KUMAR SINGH

For the Appellant : Mr. Abhay Kumar Mishra, S. C.III
For the Respondents : M/s. Dr. S.N. Pathak, Sr. Advocate,
Birju Thakur, Advocate.

Order No. 14: Dated 23rd January, 2015
Per: Aparesh Kumar Singh,j

The appellant being aggrieved by judgment dated 5th April, 2013 passed in W. P. (S) No. 626 of 2003 by learned Single Judge is before this Court in the present appeal as while allowing the writ petition the respondent/appellant was directed to extend all benefits to the writ petitioner(hereinafter referred to as petitioner) under Resolution dated 21st March, 2001 and a cost of Rs. 50,000/- was also imposed to be paid to the petitioner.

2. A short question which was before the writ court and is also now the bone of contention is whether the petitioner is entitled to the enhanced benefit of compensation to the tune of Rs. 10 lakhs under the Resolution dated 21st March, 2001 or not? The contention of the

appellant is that since the husband of the petitioner died as a Chaukidar in Bhandra Police Station on being killed by extremists in the night of 25th January, 2001, the petitioner would be entitled to compensation of Rs. 2.5 lakhs only (which has already been paid to her) under the scheme/circular of 5th May, 1997, Annexure-1 applicable and not on the basis of circular dated 21st March, 2001, which came into force after the death of petitioner's husband.

3. The short facts, which are material for deciding this issue and admitted by the parties is that the husband of the petitioner died on 25th January, 2001 being killed in extremists violence while working as Choukidar under Bhandra Police Station which led to the institution of an F.I.R. being Bhandra P. S. Case No. 06 of 2001 under Sections 147, 148,149,364,302/34 of the Indian Penal Code and Section 17/18 of C.L.A. Act on 26th January, 2001. The scheme for enhanced compensation up to the extent of Rs. 10 lakhs came into force from 21st March, 2001, (hereinafter referred to as the “New Scheme”), Annexure-2 issued by Home Department, Government of Jharkhand. The decision to pay compensation of Rs. 2.5 lakhs to the petitioner was taken on 13th September, 2001 on issuance of sanction letter to the Office of Accountant General for payment of the same. The office of Accountant General issued the payment order on 13th February, 2002 and the payments were received by the petitioner of Rs. 2.5 lakhs on 9th April, 2002.

4. Learned Standing Counsel No. III, Mr. Abhay Kumar Mishra relying upon the circular dated 31st March, 2001 submitted that the circular is prospective in nature by its language and cannot be intended to retrospectively apply to cover the cases like that of the petitioner whose husband died before coming into force of the instant circular on 21st March, 2001. Therefore, the case of the petitioner should have been dismissed by learned Single Judge as she could not avail the benefit of enhanced compensation under the new circular. Learned counsel for the State has submitted that the learned writ court has erroneously relied upon the judgment which are inapplicable to the facts of the case such as in the case of ***Shashikalabai (Smt.) Vs. State of Maharashtra & Anr.*** reported in (***1998) 5 SCC 332***, which was under Fatal Accidents Act and not relevant for the present case. Learned writ court has also erroneously relied on the judgment

rendered by Hon'ble Supreme Court in a case arising under the Workman's Compensation Act, 1923 reported in ***(2007) 11 SCC 616***. The other judgments relied upon by learned writ court while giving a liberal and beneficial construction to the instant scheme/circular as a welfare provision are also not applicable to the facts of the instant case. Counsel for the appellant has, however, relied upon the judgment rendered in the case of ***Pepsu Road Transport Corpn., Patiala through its General Manager Vs. Kulwant Kaur and Ors.*** reported in ***2009 (4) SCC 32*** in respect of compensation arising out of Motor Vehicles Act, 1988, where the Hon'ble Supreme Court has held that Section 140 of the Motor Vehicles Act, 1988 which raised the compensation to Rs. 50,000/- under no fault liability could not be made retrospectively applicable to enhance the amount payable under Motor Vehicles Act, 1939 since repealed, as the accident had taken place before coming into force of the new Act. Further reliance has been placed upon the judgment rendered in the case of ***State Government Pensioner's Association and others -vs. State of Bihar*** reported in ***(1986) 3 SCC 501***, where it was held that the benefit of revised gratuity was payable with prospective effect from specified date and can by no stretch of imagination be made retrospectively applicable. Therefore fixation of a cut off date was not violative of Article 14 of the Constitution of India. Further reliance has been placed upon judgments rendered by Patna High Court reported in ***(1997) 1 BLJR 188 and (1996) 2 PLJR 329*** on the application of Motor Vehicles Act, 1988 specifically Section 140 which are prospective in nature.

Learned counsel for the appellant has further relied upon a judgment rendered by Hon'ble Supreme Court in the case of ***K. S. Paripoornan-Vs.- State of Kerala and others*** reported in ***(1994) 5 SCC 593,*** which relate to effect of the amendment in the Land Acquisition Act in pending proceedings wherein it was held that they are unaffected by the changes in law so far as they relate to the determination of the substantive rights and in absence of a clear indication of a contrary intention in an amending Act, such cause of action has to be determined as per law as it existed. Learned counsel while referring to the judgment rendered in the case of ***Hitendra Vishnu Thakur and others-Vs.- State of Maharashtra and others***

reported in ***(1994) 4 SCC 602***, has submitted that a statute which affects substantive rights is presumed to be prospective in operation unless made retrospective. It is submitted that the scheme in question is conferring substantive rights which should be given effect to prospectively and therefore cannot govern the case of the petitioner.

5. Learned counsel for the writ petitioner/respondent herein has defended the impugned judgment. It is submitted that learned Single Judge after considering the material facts that though the scheme of 21st March, 2001 came into force after the death of husband of the petitioner but the payments were made by office of Accountant General on 13th February, 2002 after issuance of sanction order by the competent authority under the State Government, admittedly after coming into force of new scheme, the writ petitioner was entitled to enhanced compensation by advancing a liberal and beneficial to such a welfare provision. It is submitted that the case of the writ petitioner was not closed before new scheme came into force on 21st March, 2001 nor was any decision taken on the said claim before 21st March, 2001. Therefore, the learned writ court held that the claim of the petitioner would be guided by new scheme. It is submitted that the impugned judgment is a well reasoned one duly considering the beneficial import of the resolution of 21st March, 2001 which grants *ex-gratia* compensation of Rs. 10 Lakhs without any discrimination on account of post and grade to the victim's family and other benefits as well. It is submitted that learned writ court has rightly held that the aim and object of the scheme is to boost the morale of the police force/Government employees dying in such extremists violence and to extend adequate support to their families in the event of their death. Therefore, no interference is warranted in the impugned judgment.

6. We have considered the rival submission of the parties and given anxious thought to the issue involved herein. On perusal of circular/letter no. 350 dated 21st March, 2001 issued by the Home Department, Annexure-2, it appears that the State Government had felt that the facilities provided under the earlier resolution of 5th May, 1997 (hereinafter referred to as the “Old Scheme), Annexure-1 to police personnel/government employees injured in naxal/extremists violence during the course of their duties or to the dependent of such deceased employees, were not sufficient and the procedure

prescribed was quite lengthy and complicated, as a result the intended benefits could not reach the beneficiaries on time. This had resulted in serious discontent amongst the concerned employees which was having adverse affect on the efficiency and work culture of the administrative machinery. Therefore, after due consideration by the State Government it was decided that henceforth police personnel Government employee killed/injured in naxal/extremist activities would be given compensation/benefits as per the criteria prescribed thereunder. The relevant conditions which are germane to the present controversy are contained in para 2(k) (i) of the said circular. It provides for compensation of Rs. 10 Lakhs to the family/dependent of such a police personnel/government employees killed in course of duty in an extremists violence without any discrimination on the basis of post or grade amongst different employees. The scheme also provided for payment of salary for the balance period of service to the dependent family till the victim employee would have reached the age of superannuation. It also provided for immediate appointment to the dependent on the post other than the Gazetted post. The scheme also provided for retention of the Government quarter for a period of one year without any rent or in the alternative rent for a period of 1 year to the family who were residing in a rented house. The scheme also contemplated the provision of free education facilities for maximum two children with certain conditions, at the same time. The scheme was made applicable with immediate effect.

7. The present scheme therefore replaced the existing scheme of 5th May, 1997 which had also made provision for grant of certain benefits to the police personnel/government employees in the event of their being injured and at the same time to the dependent of such employees who died during the course of their duties in violent incidence. Perusal of Scheme of 5th May, 1997, Annexure-1 would show that it was made effective from 1st May, 1997 and it provided for a compensation of Rs. 2.5 lakhs to the dependent of the deceased/employee dying in course of duty in extremist violence.

The question therefore is, if on the death of the petitioner's husband admittedly on 25th January, 2001 in course of duty in extremists violence, no decision was taken to pay compensation under scheme of 5th May, 1997 till coming into force of

new scheme on 21st March, 2001, should the petitioner claimant be denied the benefit of the enhanced compensation under the new scheme in the context of the object behind framing of the scheme by the State Government. The issue would have been different had the State Government taken a decision on the petitioner's claim before coming into force of the new circular. In such circumstances, it would be beyond any doubt that the claim/case of the petitioner should have been treated as closed before the new scheme of 21st March, 2001 it came into force. In the present case, however, admittedly the decision on the claim of the petitioner to pay compensation was taken on 13th September, 2001 after coming into force of new scheme of 21st March, 2001, which was implemented with immediate effect. The language used in the new scheme at para 1 also intents to provide the benefits/facilities contained in the new scheme from the date of circular to all those employees of the State Government or their dependents, who were injured or killed in naxal/extremists violence. The scheme is in the nature of a social and economic right guaranteed to a government employee who has suffered injury or death during the course of duty in naxal/extremist violence. They are essentially intended to provide relief to the family of the deceased or disabled employee in time of distress. In the matter of construction of such provision which are in the nature of beneficial provision and conferring social and economic right to such victims of violence and under privileged persons, the view which advances the course of justice has to be adopted. If the narrow view intends to defeat the ends of justice, the same has to be shunned, while broader view which enhances the course of justice is to be adopted. This approach has been also reiterated by the judgment rendered by the Hon'ble Apex Court in number of cases. Therefore, a purposive interpretation needs to be accorded to such provisions which relates to families in destitution, wife or helpless children on the death of bread earner of the family. The Hon'ble Supreme Court in the case of ***Badshah Vs. Urmila Badshah Godse & Anr.*** reported in ***(2014) 1 SCC 188***, have once again emphasized that the courts have to adopt different approaches in “social justice adjudication” which is also known as “social context adjudication" as mere “adversarial approach" may not be very appropriate. The provision for grant of compensation to the

victim employee or his dependent, injured/killed in a naxal/extremist violence can be definitely said to fall in the said category. Such scheme aims of empowering the destitute and achieving social justice or equality and dignity of individual. Confronted with the choice between two interpretations, of such a scheme/legislation, the narrower of which would fail to achieve the manifest purpose should be avoided. We should avoid a construction which would reduce the scheme/legislation to futility and should accept the bolder construction based on the view that the State Government would have legislated or brought into effect such a scheme only for the purpose of bringing about an effective result.

8. The luminous opinion of Hon'ble Sikri,J. as expressed in the aforesaid judgment in the case of Bad Shah (Supra) at paragraph nos. 17 to 21, 25 and 27 are being quoted hereunder:

> ***"17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr. P.C. while dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.***
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> ***18. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in "social justice adjudication" which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:***
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> ***"It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved, by Parliament and the Supreme Court is myriad situations presented before Courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication"***
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> ***19. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.***
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> ***20. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most***

cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

21. Cardozo acknowledges in his classic

"....no system of just scriptum has been able to escape the need of it", and he elaborates: "It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute.

Says Gray in his lecture

"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat guam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.

27. In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt. Ramesh Chander Kaushal vs. Veena Kaushal:

"The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be
selective in picking out that interpretation out of two alternatives which advances the cause-the cause of the derelicts."

9. The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors. Vs. Hirendra Pal Singh and others*** reported in ***(2011) 5 SCC 305,*** while considering the clauses of U. P. Legal Remembrancer Manual which were amended with effect from 13.8.2008, reducing the age of retirement of the District Government Counsel from 62 to 60 years, had the occasion to observe as follows:

Para 29 : ***Therefore , it is evident that under certain circumstances, an Act which stood repealed, may revive in case the substituted Act is declared ultra vires/unconstitutional by the court on the ground of legislative competence, etc., however, the same shall not be the position in case of subordinate legislation. In the instant case, the LR Manual consisted of executive instructions, which can be***

replaced any time by another set of executive instructions (Vide Johri Mal).

Therefore the Hon'ble Court drew a clear distinction between the repeal or amendment of an Act and replacement of an executive instructions by another set of executive instructions. Since the scheme of 21st March, 2001 came into immediate effect in place of earlier scheme of 5th May, 1997 as issued by the State Government, the claim of the petitioner for compensation was to be covered under the scheme of 21st March, 2001.

10. As a matter of fact, it is relevant to notice here that in a public Interest Litigation W.P (PIL) no. 2584 of 2011 preferred for directing the Respondent-State of Jharkhand to settle all claims for compensation and Government employment as per the existing schemes for civilian deaths that might have occurred in course of violence between the State Security Forces and the Naxalities, learned Division Bench of this Court vide its judgment dated 10th January, 2014 issued several directions for expeditious disposal of such claims for compensation in a structured manner in terms of central scheme dated 29th June, 2012 and the letter dated 24th October, 2013 and also as per the applicable scheme of the State Government. It would be worthwhile to indicate herein that at para 10 of the said judgment reported in ***(2014) 1 JCR 643,*** the stand of the State Government that even for the incidence which had taken place prior to 29th June, 2009 and where no payments have been made, the dependents of such victims would be covered by the new scheme has been taken note of. It is therefore evident that where the claim of such compensation arising out of death or injury in extremists violence of civilian death remained pending for considerable length of time due to various bureaucratic delays; the learned Division Bench issued specific direction to consider such cases within a time frame in structured manner by the respective District Magistrates/Deputy commissioners in terms of the central scheme as also scheme applicable by the State Government. This Court also observed that the Jharkhand State Legal Services Authority should circulate copy of the order along with guidelines on central scheme for assistance. Jharkhand State Legal Services Authority and the District Legal Services Authority were directed to create awareness in relation to the scheme available to the

victims of terrorists and communal violence. Therefore, the present stand taken by the Respondent-State in the case of a welfare and beneficial scheme does not seem to be proper while acting as a welfare State.

11. In the aforesaid background, we consider it imperative that an approach which advances the course of justice and confers benefit conceived under the provisions of new scheme dated 21st March, 2001, be extended to the victim family of such an extremists violence like the writ petitioner whose case admittedly was decided on 13th September, 2001 and payments thereof were made by the office of Accountant General through payment order dated 13th February, 2002 i.e. after coming into force of new scheme on 21st March, 2001. The scheme of 21st March, 2001 was implemented with immediate effect and though it did not use the word supercession, but from the aims and objects and the language used therein it in effect replaced the earlier scheme of 5th May, 1997 which was in vogue on the same subject. Therefore, though the scheme of 21st March, 2001 cannot be said to have a retrospective effect but the claims arising out of such extremists violence not closed till coming into force of the new scheme would be definitely covered by its beneficial provisions. The contention of the appellant that the provisions of the scheme dated 21st March, 2001 has been made retrospectively applicable to the case of the writ petitioner is not correct. The analogy drawn by the counsel for the appellant to the provisions of Motor Vehicles Act, 1988 vis-a-vis the liability arising out in relation to an incidence covered under the old Motor Vehicles Act, 1939 are misplaced in view of the specific provisions of Repeal and Savings contained in such Act/Legislation i.e. Section 217 of the Motor Vehicles Act, 1988. In fact, Section 217 (4) also provides that mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act with regard to the effect of repeals. Therefore, the Patna High Court in the case of ***New India Assurance Company Ltd.*** reported in ***1996 (2) PLJR 329 and in (1997) 1 BLJR 188*** after considering the effect of repeal and savings as provided under Section 217 of the New Act and other relevant provisions came to a conclusion that the Insurance Company cannot be saddled with the liability beyond the statutory limit fixed under section 96(2) (b) of

1939 Act merely because on the date of passing of the order the Act of 1988 was came into force.

The judgment on the same principles relied upon by the appellant in the case of K.S.Paripoornan-Vs.- State of Kerala and others reported in (1994) 5 SCC 593 (Supra) and in the case of Hitendra Vishnu Thakur and others -Vs.- State of Maharashtra and others reported in (1994) 4 SCC 602 (Supra) are also inapplicable to the present case. In the instant case as has been found the scheme does not provide for any savings clause and has replaced an existing scheme of 5th May, 1997. Since the case of the writ petitioner was never decided under the old scheme, it is found to be covered under the new scheme, which came into force from 21st March, 2001. The new scheme, therefore does not operate retrospectively but governs the case of the petitioner which had never been decided under the old scheme which was replaced by new scheme of 21st March, 2001.

12. The judgment relied upon by the counsel for the Appellant in the context of Motor Vehicles Act, 1988 in the case of ***Pepsu Road Transport Corpn., Patiala through its General Manager Vs. Kulwant Kaur and Ors.*** (Supra) by Hon'ble Supreme Court is also therefore not applicable to the facts of the present case. In fact, the judgment rendered in the case of *Shashikalabai (Smt.) Vs. State of Maharashtra & Anr.* (Supra) by Hon'ble Supreme Court would be applicable to the present case as in the said case also the circular dated 20th January, 1993 giving enhanced compensation had come into force while the claim for compensation of the said appellant had not been closed under the earlier circular dated 5th April, 1979. The learned Single Judge therefore has rightly relied upon the said judgment where additional compensation was awarded to the appellant widow in case of fatal accident of her husband after having come in contact with live wire leading to death due to shock.

13. Thus, considered on all relevant aspects and the judgments referred to hereinabove, the impugned judgment does not suffer from any error of law or fact. However, since an important legal question relating to applicability of the scheme was involved in the matter of deciding the claim for compensation of the writ petitioner, the cost awarded by learned Single Judge is reduced to Rs. 25,000/-

upon the respondent/appellant.

14. Resultantly, the appeal being devoid of merit, is dismissed. Consequently, I. A. No. 8047/2013 also stands disposed of.

(**Virender Singh, C.J.**)

(Aparesh Kumar Singh,J)

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