

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

**OWP No. 852/2002**

**CMP No. 888/2002**

**Date of decision: 21.10.2008**

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***Dharmi Devi & Ors.***

***Vs.***

***State & Ors.***

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***Coram:***

***MR. JUSTICE J. P. SINGH, JUDGE.***

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***Appearing Counsel:***

For Petitioner(s) : Mr. O.P.Thakur, Advocate.

For Respondent(s) : Mr. S.C.Gupta, AAG for respondent  
nos. 1 to 5.

Mr. A.H.Qazi, AAG for respondent  
nos. 6 & 7.

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| i)  | Whether approved for reporting<br>in Press/Journal/Media | : Yes/No |
| ii) | Whether to be reported<br>in Digest/Journal              | : Yes/No |
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Four real brothers Baldev Singh, Chatter Singh, Bharat Singh and Kesho Ram residing in Villages Maligam Sonu and Basu Luroo (Neel) of Tehsil Banihal District Doda, who are stated to be the members of the Village Defence Committee, were killed in the intervening night of 6<sup>th</sup>/7<sup>th</sup> of January, 2002 when militants operating in the area had attacked their houses.

Petitioner No.1, their mother, petitioner No.3, the widow of Baldev Singh, who had left behind three daughters and two sons, petitioner No.4, the widow of

Chatter Singh who had left behind three minor sons and petitioner No.5, the widow of Bharat Singh who had left behind two minors had approached the respondents seeking release of ex-gratia relief which was payable to the Village Defence Committee members in terms of Government orders issued by the Government in this behalf. They had requested the respondents to pay them additional ex-gratia relief for the damage caused to their property in the militants' attack, besides considering their engagement in Government Service on compassionate grounds.

Petitioners' claim was not addressed to by respondent Nos. 1 & 2. It was only respondent No.6 who is stated to have released ex-gratia relief of Rs. 1 lac to the next of the kins of each deceased.

Aggrieved by the inaction and refusal of the respondents in discharging their statutory obligations, the petitioners have filed this writ petition seeking issuance of directions commanding the respondents to sanction and pay them ex-gratia relief of Rs. 2 lacs for the death of each person who had died in the militants attack, and compensation to petitioner No.2 whose one eye had been completely damaged in the attack along with interest @ 12% per annum.

The case set up by the petitioners in the writ petition is that the four persons who had died in the militants attack, were the members of the Village Defence Committees which had been constituted pursuant to the orders issued by his Excellency, the Governor of the State in presence of other functionaries of the State on his Excellency's visit in the area pursuant to the killings of 22 persons in and around Village Maligam Sonu in the intervening night of August, 2000 by the militants and the petitioners were entitled to ex-gratia relief in terms of Government Order No. 762-GAD of 2001 dated 11.07.2001 and the cost of damage caused to their property because of the militants attack, besides compassionate appointments in Government Service in terms of the provisions of SRO 43 of 1994.

To substantiate their plea that the four persons who had been killed, were the members of the Village Defence Committee, the petitioners, besides producing the identity cards issued by the Police Department in favour of the deceased, acknowledging them to be the members of the Village Defence Committee, have stated that the deceased had been issued weapons and ammunition by the Police Department to work as the members of the Village Defence Committee.

While supporting petitioners' case, Deputy Commissioner, Doda has submitted in his objections that Senior Superintendent of Police Ramban, respondent No. 4, had communicated him vide his Communication No. VDC 731 dated 11.1.2001 that the four persons who had died in the militants attack of 6<sup>th</sup>/7<sup>th</sup> of January, 2002 were the members of the Village Defence Committee and in that view of the matter their legal heirs were entitled to Rs. 2 lacs as ex-gratia relief for each victim but only an amount of Rs. 1 lac could be paid to them in view of respondent No.4's subsequent Communication No. Estt/794 dated 11.1.2002 whereby he had informed that the victims of the militants attack were not the members of the sanctioned Village Defence Committee and were, therefore, required to be treated as locals of the area.

Petitioners' case has been contested by Senior Superintendent of Police Ramban, respondent No.4, on the ground that four persons killed in the militants attack at Village Maligam Sonu and Village Basu Luroo (Neel) of Tehsil Banihal were not the members of the sanctioned Village Defence Committee and they were not thus entitled to the reliefs they seek through their writ petition. This respondent has, however, not denied issuance of identity cards and weapons to these four

persons. Other respondents to the writ petition have opted not to file their response to the petitioners' writ petition.

Petitioners' counsel Mr. O.P.Thakur submitted that the four victims of the militants attack were the members of the Village Defence Committee and in terms of Government Order No. 762-GAD of 2001 dated 11.07.2001 and other orders issued on the subject, besides SRO 43 of 1994, the petitioners barring petitioner No.2 were entitled to ex-gratia relief of Rs.2 lacs for each victim, in addition, to the cost of damage caused to their property as assessed by the respondents in terms of Communication No. 2/ADCR/SA dated 5.5.2003 sent by Additional Deputy Commissioner, Ramban to Deputy Commissioner, Doda, besides their engagement in Government Service on compassionate grounds in terms of SRO 43 of 1994.

According to the counsel, the respondents' plea that the victims were not the members of the sanctioned Village Defence Committee, was factually incorrect and legally unsustainable because after having availed the services of the victims as members of the Village Defence Committee, the respondents cannot turnaround to deny relief to the families of the victims to which they are

entitled in terms of the Government Orders and SRO 43 of 1994.

Per contra, Mr. S.C.Gupta submitted that although the deceased had been discharging the duties assigned to Village Defence Committee members and arms too had been issued to them yet their dependents/legal heirs may not be entitled to the reliefs claimed in the writ petition because the Village Defence Committee, of which the victims were the members did not have requisite Government sanction when the militants had attacked the area.

I have considered the submissions of learned counsel for the parties and perused the documents placed on records.

The question that, therefore, falls for consideration in this petition is as to whether the four victims who had died in the militants attack of 6<sup>th</sup>/7<sup>th</sup> of January, 2002 in Villages Maligam Sonu and Basu Luroo (Neel) of Tehsil Banihal District Doda could be treated as members of the Village Defence Committee in terms of Government Order No. 762-GAD of 2001 dated 11.07.2001 when sanction for constitution of such Committee was in the pipe line.

The answer to this question would decide the petitioners' entitlement or otherwise to the reliefs they seek through their writ petition.



Before dealing with the issue, reference needs to be made to what has been stated by the petitioners in paragraph No. 10 of their writ petition and the reply of respondent No.4 thereto. Paragraph No. 10 of the writ petition and respondent No. 4's reply thereto read thus:-

**Para 10 of the writ petition-**

“That subsequently on being approached, the petitioners were told that they have been appointed as V.D.C members but the formal approval was under process when the aforesaid incident happened. It is submitted that the V.D.C was sanctioned because there is a large scale of killing in the year 2000 in and around village Maligam Sonu. It is further submitted that in the intervening night of July 31, / 1-8-2000 militants killed 22 persons in and around the aforesaid village. The members of the Pogal Paristan area refused to go back to their houses because of the fear of militants, they also refused to allow the authorities to cremate the dead bodies of those persons who were killed by the militants. The Governor of the State, the Home Minister of the State and the Director General of Police Sh. Gurbachan Jagat, the D.I.G Udampur Doda range, the S.S.P Ramban, Sh. Rajesh Kumar were also present. The police authorities on spot announced that a V.D.C would be constituted and weapons were to be provided to all the persons who are desirous of taking up weapons. Immediately after the aforesaid incident in the year 2000, the police authorities constituted V.D.C groups. The above named persons who were killed on 6-1-2002 were also appointed as V.D.C members and provided the 303 weapon. In these circumstances, the respondents cannot say that the V.D.C was not formally sanctioned. As submitted hereinabove that the on the spot announcement was made by the police authorities for constitution of

V.D.C members to avoid further killing of the V.D.C members.”

**Respondent No. 4's reply to paragraph no. 10 of the writ petition-**

“That in reply to para 10 of the writ petition it is submitted that the averments made in this para are self destructive quo the petitioners insofar as there is an unambiguous admission by the petitioners that the VDC in question was without any approval and as such was without any sanction. Subsequently whatever happened does not confer any legally sustainable right to the petitioners. Rest of the factual averments are denied.”

Perusal of respondent No.4's reply indicates that the respondents had not denied the specific case set up by the petitioners that the Governor and Home Minister of the State had announced constitution of Village Defence Committees and the factum of issuance of arms to those who were desirous of becoming the members of the Village Defence Committee in presence of the police functionaries present on spot when they had visited the area around Village Maligam Sonu in August, 2000 where about 22 persons had died because of the militants attack.

Issuance of instructions/orders for constitution of Village Defence Committees on spot in presence of the head of the State, the Home Minister, the Director General of Police and other functionaries of the State and subsequent issuance of weapons and identity cards to



the victims of militants attack is, in my opinion, sufficient enough to recognize the status of the victims as members of the Village Defence Committee in the absence of any material having been placed on records by the respondents to demonstrate any thing to the contrary.

Respondents' sitting over in issuing formal sanction for already constituted Village Defence Committees would not thus deprive the victims of their status as members of the Village Defence Committee who had been discharging their functions as such and using the weapons and ammunition supplied to them by the police department for the safety and security of the villagers against the threatened attack of the militants. After having availed the services of these persons by providing them weapons and issuing them identity cards to act as members of the Village Defence Committee, the respondents are estopped from denying their status as such and their entitlement to relief in terms of Government Order No. 762-GAD of 2001 dated 11.07.2001 by treating them as members of the Village Defence Committee.

I, therefore, do not find any merit in Mr. Gupta's submission that non-issuance of formal orders by the respondents for constitution of Village

Defence Committee would deprive the deceased of their status as members of Village Defence Committee and consequent entitlement of their legal heirs to the reliefs to which they are entitled to being the legal heirs of the members of the Village Defence Committee who had been killed in the militants' attack.

Petitioners' case was thus required to be considered for, grant of ex-gratia relief in terms of Government Order No. 762-GAD of 2001 dated 11.07.2001 by the respondents treating them to be the legal heirs of the deceased members of Village Defence Committee and compassionate appointment in terms of SRO 43 of 1994.

The respondents have failed to discharge their statutory duty to consider petitioners' cases for release of ex-gratia relief of Rs. 2 lacs for the death of each member of the Village Defence Committee and the cost of damage caused to their property as assessed by the State functionaries and pass appropriate orders in this behalf.

In view of the above discussion, I am of the view that petitioners have succeeded in establishing their case. Respondents are accordingly directed to consider release of ex-gratia relief for the death of Baldev Singh, Chatter Singh, Bharat Singh and Kesho Ram, the members of the Village Defence Committee, who had been killed in militants attack of 6<sup>th</sup>/7<sup>th</sup> January, 2002,

in favour of their legal heirs in terms of Government Order No. 762-GAD of 2001 dated 11.07.2001 minus the amount already paid to them by Deputy Commissioner, Ramban. They are further directed to process the case of those legal heirs and dependents of the four deceased for their engagement in Government Service on compassionate grounds, who may be eligible therefor. They shall consider the cases of the petitioners for release of money payable to them for the damage caused to their property on the basis of assessment of damage which had been made by Additional Deputy Commissioner, Ramban while addressing Communication No. 2/ADCR/SA dated 5.5.2003 to Deputy Commissioner, Doda.

Respondents shall consider petitioner No.2's case too for payment of appropriate ex-gratia relief to her to which she may be entitled in terms of the Orders issued by the Government in this behalf for grant of ex-gratia relief to those who are injured in the militants attack.

The respondents shall complete this exercise and pass appropriate orders in this behalf within a period of three months.

**(J.P.Singh)**  
**Judge**

**Jammu**  
**21.10.2008**  
**Pawan Chopra**