

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 2293 of 2018

**Padmabati Mitra, since deceased substituted by Utpal Mitra,
son and Esha Basu Mullick, daughter**

Vs.

Union of India & Ors.

For the Petitioner : Mr. Sudip Deb, Id Senior Adv.
: Mr. Riju Ghosh
: Mr. Sumitava Chakraborty
: Mr. Aranyak Saha
: Ms. Ipsita Ghosh

For the respondents/UOI : Ms. Chandreyi Alam

Judgment on : **08/08/2025**

Rai Chattopadhyay, J. :-

(1) The wife of the person deceased has left for heavenly abode and in this writ petition, she has been substituted by her son and daughter. However, for the convenience of discussion, I will mention the petitioner as “she” or “her”. The writ petitioner has initiated this matter to seek relief for the purported tortious liability of the respondent due to the alleged willful delay and negligence in allowing her the appropriate family pension. For this, the petitioner has prayed for in the writ petition inter alia that a writ of mandamus be issued directing the respondents to pay a sum of Rs. 1 Crore, jointly or severally, to the petitioner towards compensation and/or damages for committing constitutional torts against her.

(2) The instant case has a long and checkered background. Mention of the same is necessary to understand the tenor of grievance agitated by the writ petitioner in the instant case, which is as follows:-

- On October 18, 1982, the husband of the petitioner (now deceased), who was engaged as a Driller in the respondent Geological Survey of India, had died due to an accident. At that point of time, he was posted at Rangpo Drilling Camp (Sikkim) as the Camp-in-charge and according to the writ petitioner, he was travelling in a departmental pick up van bearing No. WB-V-8644, to another State that is to Darjeeling, West Bengal, when the accident took place.
- The accident caused death of seven persons including the husband of the writ petitioner, from amongst whom four were the employees of respondent/Geological Survey of India, including the husband of the petitioner.
- The writ petitioner had applied on October 29, 1982 to the respondent for appointment of her son on compassionate ground due to death of her husband.

- In due consideration of the application filed by the writ petitioner for grant of compassionate appointment to her son in place of his deceased father, the respondent/Geographical Survey of India has appointed the son of the deceased namely Shri Utpal Mitra on compassionate ground.
- Later on, a motor accident claim case No. 34 of 1985 was filed by the present writ petitioner before the Motor Accident Claims Tribunal at Darjeeling. The same was disposed of ex parte and the Tribunal passed an award. The Tribunal has awarded a compensation amounting to the tune of Rs. 2,52,612/- including compensation, interests and cost.
- According to the respondent, and also admittedly, the writ petitioner was granted ordinary family pension as per CCS (Pension) Rules, 1972 with effect from October 19, 1982.
- The petitioner has stated that in the year 2005, she came to know about CCS (Extraordinary) Rules, 1939 and also that she was supposed to get pension under the said Rules of 1939, as her husband died while 'on duty'. After coming to know about the same, she has made several representations demanding the family pension under the Rules of 1939, but in vain.

- The respondent has taken a stand that the husband of the petitioner had not died while “on duty” and hence, would not be eligible for family pension under the CCS (Extraordinary) Rules, 1939.
- The writ petitioner has relied on recording of the Central Administrative Tribunal in the order dated April 26, 2010 passed in OA No. 452 of 2009 which is as follows:-

" 6. The award was granted by the MACC, Darjeeling based on the certificate issued by the Drawing and Disbursing Officer and the deposition of the said officer. (The certificate dated 2.6.1989 Exhibit P/1 was marked before the MACC which is produced at page 44 of the OA). It was certified that the death occurred in an accident while he was on duty which was attributable to Government service. "

- The Tribunal in the said order has further held:-

“28. I have carefully considered the submissions made from either side. The respondents cannot ignore the award passed by the MACC. While granting the award the MAC Tribunal assessed the documents including the service certificate dated. 2.6.89, marked as exhibit P/1 which reads as under:

“His date of birth was on 1.12.1930 and his date of superannuation would have been 30.11.1988, who expired on 18.10.82 in a motor accident at Darjeeling while he was on duty.”

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29. ** ** ** When there is an award of the MAC Tribunal and that has not been challenged before the Hon'ble High Court, the said award in MACC 34/85 attained finality. At this stage the respondents cannot say that as on date of accident the husband of the applicant was not on duty. The respondents admitted that the husband of the applicant died while in service on sympathetic ground the son of the deceased has been appointed on compassionate ground. The said document clearly shows that the husband of the applicant died while on duty.

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30. ** ** ** hence I direct the respondents to consider the various representations submitted by the applicant which are referred above and issue an order in accordance with the CCS (Extra-ordinary Pension) Rules, 1939."

- The minutes of the committee formulated by the respondent authority concluded that Late Shri S.K. Mitra's trip to Darjeeling on 18.10.1982, where he died in a road accident, was unauthorized and taken at his own discretion, violating official procedures. There is no official justification for his travel outside his jurisdiction in Sikkim, and no GSI work or camp was scheduled in Darjeeling. He also misused his position by allowing non-GSI personnel in a government vehicle, which led to the death of seven people, including four GSI staff. The documents submitted by his wife, Smt. Padmabati Mitra, in support of an Extraordinary Pension (EOP) claim do not establish that he was on duty at the time of the accident. One key document—a pay slip from 1989—is irregular, with doubts about its authenticity and timing. Her regular

pension was already settled in 1982, and she has been receiving it without issue. The department also provided her son with a job on compassionate grounds. Other victims' families from the same accident are receiving normal pension benefits without making EOP claims. Given all facts, the committee finds no valid reason to grant Smt. Mitra's EOP claim after 25 years.

- On the allegation of the Tribunal having not granted family pension to the petitioner under the CCS (Extraordinary Pension) Rules, 1939 and that it had remanded back the matter to the respondent Authorities for fresh consideration, to be erroneous, the petitioner had moved this Court by filing WPCT No. 247 of 2010. The Court in the said writ petition vide a judgment dated February 21, 2011 had set aside the impugned order challenged before it of the Tribunal and also quashed the decision of the respondent Authorities subsequently taken pursuant to the impugned direction of the Tribunal. The direction of the Hon'ble Division Bench in the judgment dated February 21, 2011 was as follows:-

"With the aforesaid directions, we allow this writ petition and direct the respondent authorities to sanction family pension to the petitioner strictly in terms of Central Civil Service (Extraordinary Pension) Rules, 1939 with retrospective effect from the date of sanctioning normal pension to the said petitioner.

The respondent authorities are further directed to make payment of the arrear dues towards the pension in terms of this order within two months from date positively and the current

pension should be disbursed at the enhanced rate in terms of Central Civil Service (Extraordinary Pension) Rules, 1939."

- Thereafter, the petitioner had moved the Central Administrative Tribunal for interest on the amount of family pension as per Rules, 1939, as was granted to her pursuant to the order of the Hon'ble Division Bench of this Court dated February 21, 2011. The Central Administrative Tribunal rejected the petitioner's prayer as above made in OA No. 913 of 2011.
- Challenging the order of rejection as above of the Central Administrative Tribunal, another writ petition was moved that is WPCT No. 130 of 2012. The Court in the said writ petition, by dint of judgment dated June 29, 2012 did modify the order of rejection of interest as was earlier passed by the Central Administrative Tribunal dated April 13, 2012. The Court in the judgment dated June 29, 2012 has held as follows:-

"But in spite of that as the respondent caused delay in making payment of the arrear pension amount for 4 months in spite of direction of this Court, It is obvious that the respondent is liable to pay interest for the said period i.e. for 4 months @ 12%."

- This order of the Hon'ble Division Bench of this Court was tested before the Supreme Court in Civil Appeal No. 906 of 2014 [arising out of SLP (C)

No. 854 of 2013]. The Hon'ble Supreme Court in its order dated January 24, 2014 has held as follows:-

"Interest at the rate of 9% per annum from 21st January, 2008, i.e., the date when she first made the claim for payment of extra-ordinary pension would in that view be in order.

We accordingly allow this appeal but only to the limited extent that the differential amount payable to the appellant shall carry simple interest at the rate of 9% per annum from 21st January, 2008 onwards till actual payment of the amount due to the appellant. Needless to say that the amount already received by the appellant shall be suitably adjusted."

- Accordingly, in compliance thereof the writ petitioner has been granted interest amount too.
- After all these incidents as quoted above, the instant writ petition was filed by the petitioner on January 29, 2018 for the reasons inter alia that the respondent Authority being the model employer and an instrumentality of State has failed and neglected to comply with the statutory provisions as regards grant of family pension to the petitioner which is the means of livelihood to the petitioner and protected under the Constitution in her favour. Therefore, allegedly the respondent Authority has committed tortious liability as per law, for which it would be liable under the settled legal principles to adequately compensate the writ petitioner. To seek such redress, the petitioner has filed the instant

writ petition seeking adequate compensation preferably to the tune of Rs. 1 Crore as prayed for in the said writ petition.

(3) According to Mr. Dev, learned Senior Counsel who has represented the writ petitioner, the respondent being a State instrumentality and a model employer, has committed gross negligence in complying with the statutory liability as well as its public law duties towards the petitioner by not providing her appropriate benefit after demise of her husband, so far as family pension is concerned. He submits that the husband of the writ petitioner being a public servant and deputed for field duty, would be considered as “on duty” for 24 hours a day and there would have been no question of the deceased husband of the petitioner to be not “on duty”, as purportedly contended by the respondent Authorities. Therefore, consequent to the death of the said person on October 18, 1982, the respondent authority was duty-bound to espouse the relevant clauses of the Central Civil Services (Extraordinary Pension) Rules, 1939 and provide the writ petitioner with appropriate benefit thereunder. Instead allegedly, due to gross negligence and mala fide intentions, inappropriate benefits were rendered in favour of the writ petitioner under the Pension Rules of 1972 which jeopardize the petitioner’s statutory rights. It is submitted that though the duty was cast upon the respondent authority for granting family pension under the Rules of 1939 to the petitioner, such duty was not discharged due to negligence of the respondent Authority, thereby jeopardizing the vital right of the petitioner guaranteed under Article 300A of

the Constitution of India. It is the petitioner's case that she had to face turmoil to time and again knock the doors of the Courts to recover, what was actually due to her under the Rules of 1939. That, the same has caused her serious prejudice and agony. The reason thereof being the intentional and mala fide inaction of the respondent Authority, the respondent would be liable for tortious action and demand of adequate compensation to the writ petitioner.

(4) Mr. Dev, learned Senior Counsel has sufficiently emphasized the role of the State instrumentality like the present respondent Authority as a model employer, which according to him, is to act with highest standards of integrity, fairness and transparency in dealing with the staff so as to emphasize what would be the duties of a model employer, Mr. Dev has relied upon the judgments of the Hon'ble Supreme Court in ***Bhupendra Nath Hazarika v. State of Assam*** reported at (2013) 2 SCC 516 and in ***State of Haryana v. Piara Singh*** reported at (1992) 4 SCC 118.

The Supreme Court in the case of ***Bhupendra Nath Hazarika (Supra)*** held, that the State, as a model employer, is obligated to act fairly and in strict adherence to the rules it has established. However, in the present case, the State failed to uphold this standard by disregarding and weakening its own rules. The Court emphasized the importance of reinforcing the principle that the State must respect and follow its regulatory framework.

In the case of **Piara Singh (Supra)**, the Hon'ble Apex Court reiterated that, the State, as a model employer, must not exploit employees or unemployed individuals. It must act fairly, uphold the rule of law, and treat its employees with dignity. Consistent with this principle, the Court has recognized the right to equal pay for equal work and discouraged the prolonged use of temporary or ad hoc appointments. When such temporary employment continues for an extended period, the Court may presume the existence of a genuine need and order regularization of services.

(5) According to the petitioner also that the State as a model employer has to act with high probity and candour with its employees. The principles as enunciated by the Supreme Court in the case of **Balram Gupta v. Union of India** reported at **1987 Supp SCC 228** has been relied upon by the petitioner in this regard.

(6) Mr. Dev, learned Senior Counsel has also emphasized as how the public law is to be differentiated in its concept and application from the private law, which deals with the rights and liabilities between private individuals in their personal or contractual relationships. It is submitted that, under public law, disputes between citizens (or groups of citizens) and the State or public authorities are addressed to uphold the rule of law and

prevent arbitrary or unlawful actions by the State. The High Courts (as per Article 226) and the Supreme Court (as per Article 32) exercise the power of judicial review, a constitutional power that enables the Court to examine and, if necessary, quash executive or administrative actions of the State or public bodies if such actions violate fundamental rights, or are contrary to law, arbitrary, or unreasonable. With the broadening interpretation of Article 14 (equality before the law) and related fundamental rights, any executive action by the Government or its instrumentalities (as defined under Article 12) is subject to writ jurisdiction and can be scrutinized for ascertaining its constitutionality under Articles 32 and 226. (with reference to the judgment in ***Common Cause v. Union of India*** reported at **(1999) 6 SCC 667**).

(7) As a matter of fact, Mr. Dev on behalf of the petitioner has argued that the action of the respondent Authority has an effect of violating the right of life of the petitioner guaranteed under Article 21 of the Constitution. He has argued that the Constitution guarantees life to a citizen of the country beyond mere physical survival or animal existence. That the same encompasses the full enjoyment of the life including all limbs and faculties through which the life is a meaningful experience. Under Article 21 of the Constitution, a citizen is protected from any kind of deprivation whether total or partial, permanent or temporary and from all acts that injure damage or interfere with independent functioning of a citizen. According to the petitioner, any deprivation must only occur in accordance with the procedure established by law. Mr. Dev, learned Senior Counsel has relied on

the judgments in **Francis Coralie Mullin v. Administrator, Union Territory of Delhi** reported at **(1981) 1 SCC 608** and **Railway Board v. Chandrima Das** reported at **(2000) 2 SCC 465** to further emphasize the point as above.

(8) Mr. Dev, learned Senior Counsel has further submitted about the vicarious liability of the State or its instrumentality for such an action of its officer which tantamount to deprivation of the legitimate statutory or Constitutional right of a citizen and thus to be a tortious action by the State Officer. It is submitted that in such an event, it is the State which is vicariously liable for such an illegal action and is liable to compensate the sufferer. Mr. Dev, learned Senior Counsel has submitted that the Courts have expressed concern over lack of clear legislation on State liability in tort thereby undermining legal clarity and public confidence. It is submitted that the Courts have stressed for urgent comprehensive statutory reform to address this gap in a manner consistent with Constitutional values and the dignity of an independent person (with reference to the judgment in **N. Nagendra Rao & Co. v. State of A.P.** reported at **(1994) 6 SCC 205**).

(9) Thus, the writ petitioner has made out a case of tortious liability of the respondent Authority and prayed for adequate compensatory relief in the instant writ petition.

(10) The petitioner's contentions and prayer as above, have been vehemently opposed to and denied by the respondent Authority. The respondent Authority is represented by Ms. Chandreyi Alam, learned counsel. She has submitted that the contention of the petitioner regarding any tortious liability of the respondent Authority is only misconceived and illusory. The respondent has stated that since from the beginning that is, since after death of the petitioner's husband, there has not been any lapses or negligence on the part of the respondent Authority, not to say about any intentional lapses which could have brought the respondent Authority under the litmus test of being held guilty for its tortious liability, as alleged.

(11) Therefore, the first counter argument attacking the argument on behalf of the petitioner by the respondent Authority has been that, as a model employer, the respondent has acted legitimately, in terms of the statute, transparently, fairly and just and properly. It is submitted that neither of the respondent's action is arbitrary or manipulative or can be called as a failure to uphold the principles of a model employer. The respondent's actions have been timely and appropriate to regard the dire necessity of means of livelihood for family of a deceased employee. Thus, the respondent's action are only in terms of the principles governing the characteristics and course of action to be followed by the model employer as held by the Courts from time to time. In this regard, a judgment of Supreme

Court in ***State of Jharkhand v. Harihar Yadav*** reported at **(2014) 2 SCC 114** has been referred to by Ms. Alam, learned counsel.

(12) She has categorically submitted with reference to the documents on record that immediately after death of the petitioner's husband, whose employment with the respondent Authority is an admitted fact, the respondent has taken all possible steps to provide the benefits available to the family of the deceased employee including payment of family pension to the widow of the deceased employee, that is the petitioner and providing appointment on compassionate ground to the son of the deceased employee. The respondent has stated that after prolonged period of unchallenged, well-accepted and peaceful enjoyment of the pensionary benefits advanced to her, it is only purportedly and with ulterior motive, the petitioner has come up before the Court with her prayer for pension under the 1939 Rules.

(13) Even then, Ms. Alam has submitted, that in terms of the Court's order, relief has been extended to the writ petitioner including interest amount. Thus, according to the respondent, the petitioner who was earlier granted family pension in terms of 1972 Rules has now been provided with pension in terms of the Rules of 1939, with effect from the date as directed by the Court and also has been provided with adequate interest on the differential amount of pension pursuant to the directions of the Court itself. That, it is now only with mala fide intention, the petitioner seeks to extract

public money on the purported and unsustainable plea of the respondent having committed civil wrongs etc. According to the respondent Authority, the entire claim of the petitioner in the instant writ petition is frivolous and liable to be set aside.

(14) By referring to the judgment of the Supreme Court in ***Kaushal Kishor v. State of U.P.*** reported at **(2023) 4 SCC 1**, Ms. Chandreyi Alam has submitted that compensation awarded under Article 32 or Article 226 of the Constitution is a public law remedy based on strict liability for violation of fundamental rights. Only in that event sovereign immunity would not be applicable to the State. That, the Court therein has distinguished public law proceedings from private law ones, emphasizing that public law aims to control government power and ensure citizens' rights which are protected under a legal system. When Courts grant compensation under Articles 32 and 226, they do so as part of public law by imposing liability on the State for negligence in protecting fundamental rights. It has been held by the Supreme Court that, such compensation is not akin to civil damages in private law but is a broader remedy for breach of public duty resulting in fundamental rights violations. This constitutional remedy is independent of any private law claims for damages or criminal prosecution that the aggrieved party may also pursue. According to the respondent, these necessary ingredients are not fulfilled in case of the present writ petitioner, as she comes before the Court to seek remedy for the alleged tortious action by the respondent by violating her fundamental rights.

(15) Similarly, with reference to the judgment of the Supreme Court in ***Rabindra Nath Ghosal v. University of Calcutta*** reported at (2002) 7 SCC 478, Ms. Chandreyi Alam for the respondent authority has argued that claim of compensation in public law is based on strict liability. That, the same represents an innovative tool available to Courts as protectors of Civil liberties, enabling them to grant compensation upon finding a violation of fundamental rights under Article 21. That, it was clearly laid down in the referred judgment that, when Courts grant compensation under Articles 32 and 226 of the Constitution for enforcement or protection of fundamental rights, they do so in public law to penalize the wrongdoer and fix liability on the State for failing to protect citizens' fundamental rights. However, not every minor breach of public duty by an officer justifies compensation under these Articles. Courts exercising extraordinary powers under Articles 32 and 226 will not award damages merely because an order is ultra vires or due to inaction, unless there is malice or conscious abuse. Exemplary damages require proof that a fundamental right under Article 21 was infringed by arbitrary or capricious action by public officials, and that the victim was helpless in the face of such conduct.

(16) Upon perusal of record and hearing the respective learned counsels for the parties, it is found that the principal contention of the appellant has been that her husband died while 'on duty'. Certain facts are disputed and

others admitted in the instant appeal. The respondent has neither disputed the date of death of the petitioner's husband, that the said person was in employment with the respondent when he died. The petitioner has admitted the fact of receipt of family pension immediately after death of her husband, though grant of pension as per the Rules of 1972, has been disputed. The fact of the son of the said deceased employee to have been granted appointment on compassionate ground, is also admitted in the instant writ petition.

(17) Thereafter, the petitioner has prayed for grant of family pension as per the Extraordinary Rule of 1939, which was rejected by the respondent-authority. Such rejection of the prayer of the petitioner for issuance of family pension in her favour in terms of Rules of 1939 had thereafter been tested before the Court of law in several litigations. The outcome of those litigations has been discussed above. At the cost of reiteration it is mentioned that the Division Bench of this Court in the order dated February 21, 2011, has held that Central Civil Service (Extraordinary Pension) Rules, 1939 would be applicable to the appellant with retrospective effect from the date of sanctioning of normal pension to her by the respondent. Another Division Bench in order dated June 29, 2012 upon finding that 4 month's delay is caused in paying the arrear amount to the appellant, has allowed interests to be paid on that arrear, at the rate of 12% per annum for a period of 4 months. Finally the Supreme Court, vide order dated January 24, 2014 has directed that interest should be paid at the rate of 9% per annum with effect

from January 21, 2008, that is the date when the present writ petitioner first made the claim for payment of extraordinary pension and the amount already received by the petitioner to be suitably adjusted.

(18) Now it was the petitioner's turn to come up with the instant writ petition, seeking redress of violation of her fundamental right to life under Article 21 of the Constitution of India, allegedly due to the negligence and inaction of the respondent authority which is said to have rendered the same liable for the tortious actions against the writ petitioner and seeking adequate compensation therefor. The contrary view has been expressed by the respondent that it has not been any inaction or negligence of the respondent as alleged but due consideration of the prayer of the appellant and conscious decision of rejection thereof by the respondent, where the respondent has found the death of the employee not to be "on duty", and not to be subject to the provisions of the Extraordinary Rules 1939, for grant of family pension to the surviving family of him. Thus the allegation of any negligence being meted out by the respondent or any of its action to have jeopardised the constitutionally guaranteed right of the appellant, to life under Article 21 has been strongly disputed by the said respondent.

(19) It is pertinent to note that the finding of the Motor Accident Claims Tribunal regarding the deceased employee being "on duty" has been taken note of by this Court, while directing that the petitioner would be eligible for pension under the Rules of 1939. The fact that the judgment of the Motor

Accident Claims Tribunal has not been challenged by the respondent would imply the binding effect of the same upon the respondent and undisputedly the respondent has complied with the order of the Court. The Tribunal's determination that the individual died on duty, as referenced by this Court in the order dated February 21, 2011, does not inherently imply negligence on the part of the respondent in providing suitable relief to the writ petitioner, unless it is demonstrated that the respondent by applying a different 'Rule' in the petitioner's case, has acted with malice, bad faith or ulterior motives. This is, however, not a case of the petitioner here. Furthermore, before the Tribunal, the issue determinable was whether the legal heirs of the deceased would be eligible for compensation on the ground of death being occurred on account of a motor vehicular accident. That, to ascertain the eligibility for compensation due to death on account of vehicular accident under the specific statutory provision and the quantum thereof - whether or not, the deceased was 'on duty' at the time of death, was actually not in issue for adjudication before the Tribunal. The Courts have found the petitioner to be eligible for extraordinary pension under the Rules of 1939. The Courts have exercised inherent and discretionary power and granted relief to the petitioner. This Court considers this aspect and finds that it has been constantly an issue in dispute as to whether the husband of the petitioner was or not "on duty" at the time of his death. An issue in dispute when adjudicated and decided by the Court becomes binding on the parties. But it cannot be said that it is only due to negligence and inaction, the authority has previously not granted an appropriate

benefit. Instead it is because the respondent authority has consistently contested the key factual question that must be established in order to be eligible for being granted the extraordinary family pension, namely whether or not the deceased individual was “on duty” at the time of death. It is particularly more so, as admittedly the petitioner has been granted with the pension and her son with the appointment on compassionate ground. Consideration and rejection of the prayer of the petitioner by the authority merely indicates that the authority has exercised its judgment regarding the petitioner’s prayer and does not suggest any negligence exercised in the proves of considering the same. The Court, while adjudicating the issue, may not find the stand or decision of the authority to be sustainable and direct otherwise. This would constitute the Court’s judgment of the matter rather than any asserted tortious liability for negligence on the part of the respondent in evaluating and dismissing the petitioner’s prayer. Every decision of the respondent authority which are finally adjudicated by the Courts as not sustainable in the eye of law, does not and cannot tantamount to be a negligent act on its part to render it liable for tortious action. Whether the concerned person was on duty or not, has been a question of fact for consideration before the authority. Also that the authority, after due consideration has held the fact to be only otherwise. The authority’s consideration and decision which did not favour the petitioner, cannot be attributed to negligence or willful inaction. This at best is a factual finding on which the decision of the authority is based.

(20) It cannot be argued that the respondent is devoid of any authority or power to come to a decision regarding a matter which pertains to its administration. It cannot also be argued that the respondent would always be required to make a decision in favour of the petitioner based solely on her prayers. The things to be looked into are that the decision of the authority should not be unreasoned and perverse, that it should be arrived at after due observance of the principles of natural justice and/or that it should not be an arbitrary or improbable one, being wholly against the law. The doctrine of sovereign immunity of the State would be subject to the constitutional mandate enjoining a duty on the State not to deprive any person of his life or personal liberty without following the procedure established by law. Here in this case the writ petitioner has alleged that her right to life as guaranteed under the Constitution has been adversely affected by the inaction of the respondent without however disputing that, if not as per the Rule of 1939, but as per Rules of 1972, she has been granted pension due to death of her husband during employment, thereby accepting that life with the basic human dignity has never been compromised in her case, much less that being attributable to the respondent here.

(21) On the backdrop of assessing tortious liability of the State, on the allegation of custodial torture, the Supreme Court has formulated the following questions for the Court to seek answer, some of which are relevant

in this case also. Let the portion of judgment in **Sube Singh Vs. State of Haryana** reported in **(2006) 3 SCC 178** be quoted:-

46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the Courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

Therefore, before awarding compensation, the Court should at least get answers of the questions as to whether the alleged violation of Article 21 is patent and incontrovertible or that the violation if is gross and of a magnitude to shock the conscience of the Court or not. According to the factual background of this case, these questions have to be answered in negative.

(22) The basis of any tortious action against the respondent Authority is its negligence in performing its statutory duties. From the discussion as above, this Court comes to the conclusions that in the instant case, the petitioner has not been able to bring on record any negligence of the respondent

Authority to perform its duty under the law. The result of performance of duty by the respondent Authority may not have gone in favour of the writ petitioner and that is why, the Court has exercised its jurisdiction to adjudicate the validity and propriety of the decision of the respondent Authority. Fortunate to the writ petitioner that, before the Court the decision has gone in her favour. In such circumstances, this Court is not inclined to attribute any tort of negligence or intentional, purported inaction of the respondent authority particularly touching her constitutionally guaranteed right to life. Contrarily, this Court is inclined to record that even if there were any inaction or procedural lapses by the respondent authority, that would not have automatically attracted its tortious liability, in absence of any malice, bad faith or arbitrary conduct being proved, whereas in this particular case, there has not been found any negligence or intentional lapses on the part of the respondent authority.

(23) It is worth noting about the conduct of the respondent. Acknowledging the death of the employee, it has immediately responded to the prayers of the surviving wife, firstly for grant of family pension and thereafter for appointment of the son of the deceased person on compassionate ground. After the order of the Court has been passed, the respondent has been diligent in complying with the same by granting family pension to the writ petitioner in terms of Rules of 1939, paying arrear pension to her and also by paying interest on arrear pension to her in compliance with the Court's order. Therefore, not an iota of malice, bad faith or arbitrary conduct of the

respondent can be noted. The Court therefore does not find any violation in due compliance by the respondent, either statutorily or otherwise.

(24) Hon'ble Supreme Court in the case of ***Kaushal Kishor v. State of U.P.*** reported at **(2023) 4 SCC 1** has held that compensation for any tortious liability is to be granted in case violation of Fundamental Right specially under Article 21 is proved and established through evidence of negligence, misconduct or breach of duty, such as custodial torture, police excesses, medical negligence or any wrongful act that results in injury or death. It is only on those considerations, the "Constitutional torts" are recognised as actionable wrongs committed by the State actors the Constitutional remedy to award monetary compensation is also based on strict liability principles, as it is held by the Supreme Court in ***Kaushal Kishor's case (Supra)***.

(25) In ***Kaushal Kishor's case (Supra)***, the Supreme Court has held that on proof of such tortious act by the State Authority, the sovereign immunity shall have no application for the said Authority, otherwise of course, the State Authority having discharged its discretion, power and functions in good faith should be covered by the principles of sovereign immunity which squarely applies to the respondent authority in the instant case.

(26) Mr. Deb, learned Senior Counsel for the petitioner has relied on various judicial pronouncements to submit as to how the petitioner's rights under Article 21 might have been violated or the respondent should be held liable for alleged tortious action. After going through the said judgments and fully relying on the principles as laid down therein, the Court finds that the instant case really arises from a different set of factual context altogether, disconnected with the background of any of the cases as referred to by Mr. Deb, learned Senior Counsel. The propositions in the said judicial pronouncements are now well-settled. However, all of these are applicable in case the Court finds any negligence in duty by the respondent, which is not a finding here in this case. Rather the Court is compelled to say that the cause of action brought forward by the writ petitioner in the instant case appears to be motivated and not with any bona fide intention. The writ petitioner has been enjoying the family pension and other benefits under the law since after the death of her husband and also has been granted with further benefit as per the Court's order. As a matter of fact, by accepting these facts, the writ petitioner has failed to bring on record anything in support of her contention that her right to life as guaranteed under the Constitution of India has been jeopardized. The Court finds the instant writ petition to be a serious and gross abuse of the process of Court. This actually should render the writ petitioner liable for an appropriate order of exemplary cost for her endeavouring to abuse the process of the Court. However, having considered the old age and ailing conditions of the writ petitioner as informed, the Court restrains itself from issuing any such

adverse order against the petitioner. Otherwise, on merits, the Court finds no grounds to entertain the prayer of the writ petitioner.

(27) Hence, writ petition No. **WPA 2293 of 2018** is dismissed.

(28) Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)