

BIHAR HUMAN RIGHTS COMMISSION

9, Bailey Road, Patna

File Nos. BHRC/Comp. 289/12 & 1636/12

**Case of Phool Kr. Devi: (Case of disappearance of Lagan Sahni,
husband of Phool Kri. Devi)**

15.4.2015

This matter came to be filed before the High Court as a writ petition being Cr.W.J.C. No.1081 of 2010 which came to be disposed of by the order of a Division Bench on 21.11.2011. The High Court thought it appropriate to direct the petitioners to move this forum for redressal of the grievance, and after the High Court passed the order a petition was filed before this Commission.

The petition is filed by one Phool Kri. Devi who is the wife of Lagan Sahni. She claims that her husband was a home guard bearing no. 10892. Along with some others he was deputed for Parliamentary election duties held in 2009 by an order of the election authorities. The petitioner's husband was enrolled as a reserved home guard in the year 1976 and his services were used from time to time. When his duties were sought for election, he was directed to report at Sitamarhi so that he could be assigned duty. Along with him there were several other persons whose services were requisitioned. These facts are not in dispute. It is also not disputed that the petitioner's husband drew an advance amount which he was entitled to pursuant to his requisition at Sitamarhi. All such persons who were assigned the duty then travelled to Nawada by train. A composite travel warrant was drawn.

It is submitted by respondents that the petitioner's husband did not report at Nawada for assignment of any specific duty. The petitioner's case is that he left for Nawada on 11.4.2009 and never returned back to his home. The petitioner's son Babulal gave an application to the District Commandant on 27.4.2009 informing him that his father had not returned. That on 13.5.2009 the District Commandant respondent no.2 Home Guard informed that the petitioner's husband had received advance from Sitamarhi for being deputed to Nawada but 'he was not present in Nawada District Unit for his election duty' and he had also not come forward for taking his final payment. Respondent no.2 on 4.7.2009 wrote a letter to Rail Police Station, Sitamarhi requesting for an inquiry about the whereabouts of the husband of the petitioner.

In this memo also respondent no2 stated that the husband of the petitioner had left Sitamarhi by train on 11.4.2009 for election duty at Nawada. That letter dated 8.7.2009 Rail Police informed respondent no.2 that there was a UD case registered with respect to Home Guard No.10892, i.e. the petitioner's husband.

After the petitioner was not able to get her husband back and there was no progress being made by the police in tracing out her husband the petitioner filed a writ petition before the High Court and High Court disposed it of directing the petitioner to approach this Commission. The counters were filed before the High Court as well as before this Commission. A case is registered police has not been able to trace the petitioner's husband. There is no dispute between parties with respect to certain facts.

These facts are:-

- (i) That the petitioner's husband was engaged by Home Guard
- (ii) That the petitioner's husband's services were requisitioned for election duties in 2009
- (iii) That he came to Sitamarhi office on 11.4.2009 received an advance amount and was seen at the railway station for going to Nawada

There are several other issues which are disputed. Although the respondents claim that the petitioner's husband was never seen at Nawada but certain persons who were also on election duty have filed affidavits that they had seen the petitioner's husband at Nawada.

I have heard the learned counsel for the petitioner as well as the respondents. The counsel for the petitioner submits that in view of a circular issued by the government it becomes immaterial whether the petitioner was seen at Nawada or not as the fact was established that he was at Sitamarhi and he had started for undertaking election duties. He submits that even the respondents paid an ex gratia relief of Rs. one lakh to the petitioner. This act of the respondents should be taken as an admission of the fact that the petitioner's husband disappeared during the election duty.

It is true that there is nothing on record to show that the petitioner's husband met with an accident or died during election duty. The Finance Department of Government of Bihar has issued a circular on 1.4.2009. This is in conformity with certain directions of the Election Commission of India and also in compliance of the judgment of the High Court of Patna. By this circular, the government had undertaken to pay a compensation of Rs. ten lakh to a person whose death is caused during the course of election duty due to violence,

accident or any other reason. The Election Commission's letter no.218/218/6/2009/EPS/ dated 17 Feb. 2009 defines election duty as follows:-

“A person is to be treated on election duty as soon as he leaves his residence/office to report for any election related duty including training and until he reaches back his residence/office after performance of his election related duty. If any mishap takes place during this period, it should be treated as having occurred on election duty subject to condition that there should be a causal connection between occurrence of death/injury and the election duty”.

The counsel for the petitioner submits that the Commission, in the circumstances of the case can direct payment of compensation in terms of circular as the petitioner's husband had admittedly left his residence for election duty and not returned till date.

There are two requirements for becoming entitled to compensation under the circular:-

- (i) That a person had left his office/residence for attending the election duties
- (ii) He died during the performance of election related duties

In the present case, the first requirement is fulfilled whereas the second requirement is not fulfilled. The petitioner's husband cannot be presumed to have died. It is however evident from the record that petitioner's husband was last seen on 11.4.2009 when he presented himself for election duties and received cash as advance. He can be presumed to be dead if he is not traced out till 10th April, 2016 in terms of section 108 of the Evidence Act 1872.

In view of the fact that petitioner's husband is not heard of by those who would naturally have heard of him, if he had been alive and in view of the fact that police has not been able to know whether he is alive or dead, the Commission cannot at this point of time draw any conclusion. The Commission feels that following directions will meet the ends of justice in peculiar circumstances of the case.

- (i) That the police will continue its efforts to find out the person of the deceased's husband
- (ii) If it is established before 10.4.2016 that the husband of the petitioner is dead, then the matter should be looked into keeping in view the circumstance which lead to his death.
- (iii) That if by efforts of the police or otherwise person of petitioner's husband is not found or he does not return to those who are expected to know about him by 10th April 2016, he shall be presumed to be dead in terms of Section 108 of the Evidence Act and petitioner shall be paid an amount of Rs.10 lakh as compensation in terms of the circular.

Copy of the order be given to the (i) both the petitioners Adv. Anil Kumar & Phool Kri. Devi (ii) Counsel for the petitioner, (iii) counsel for the respondents, (iv) District Commandant, Home Guards, Sitamarhi, (v) SP, Sitamarhi, (vi) Chief Election Officer, Bihar and (vii) Principal Secretary, Home Department for information and necessary action.

(Justice Bilal Nazki)
Chairperson