

**HIGH COURT OF JUDICATURE AT ALLAHABAD****WRIT - C No. - 41066 of 2023**

Ajay Kumar

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Neeraj Shukla
Counsel for Respondent(s)	:	C.S.C., Suresh Kumar Maurya

A.F.R.**Court No. - 1****HON'BLE AJIT KUMAR, J.
HON'BLE GARIMA PRASHAD, J.**

1. Heard Sri Neeraj Shukla, learned counsel for the petitioner, Sri Suresh Kumar Maurya, learned counsel for the respondent No.- 3 and Sri P.K. Shahi, learned Additional Chief Standing Counsel for the State respondents.
2. By means of this petition filed under Article 226 of the Constitution, petitioner has questioned the validity of the order dated 4th September, 2023 passed by the District Magistrate, Firozabad, whereby claim of the petitioner for *ex gratia* compensation for his wife dying of covid- 19 has come to be rejected.
3. Learned counsel for the petitioner has submitted that the respondents has manifestly erred in rejecting the claim of the petitioner for *ex gratia* compensation for the reasons that the Government order in that regard has not been correctly interpreted to hold that the petitioner's wife did not dye of covid- 19. It is contended by learned counsel for the petitioner that petitioner's wife was working as Assistant Teacher in a basic school while she was allotted election duty on 7th April, 2021 while going for duty she suffered Covid-19 and ultimately when her condition worsen she was taken to the hospital on 27th April, 2021 but she could not survive and met untimely death on that date itself.
4. It is contended by learned counsel for the petitioner that the chest report of the petitioner's wife was available on record and according to which no

abnormality otherwise was seen which could have been said to be a cause of death and, therefore, since covid pandemic 19 was prevailing in those days it should be taken a death of Covid-19 only. It is further contended by learned counsel for the petitioner that in view of the Government order dated 1st June, 2021 it was not necessary for one to have obtained positive RTPCR report or Antigen report and therefore, in the circumstances, if death takes places within 30 days of the infection or otherwise, such a patient being admitted to the hospital such death should be taken as a death due to covid and such cases, therefore, should be taken to be covered within the meaning as assigned to covid patient under the Government order dated 1st June, 2021.

5. To buttress his argument, learned counsel for the petitioner has taken the Court to the relevant provisions of the Government order as contained in clause -9, 10 and 12.

6. Learned counsel for the petitioner has also relied upon two authorities of this Court, one in the case of **Kusum Lata Yadav v. State of U.P. and 4 others** being **Writ – C No.- 28249 of 2021** along with connected matters decided on 25th July, 2022 and another judgment of a coordinate Bench in the case of **Sadhna Sahu v. Union of India and 5 others** being **Writ – C No.- 20071 of 2024** decided on 23rd July, 2024. In respect of the judgment in the case of **Kusum Lata Yadav (supra)**, the petitioner has placed reliance upon paragraph 17 of judgment, which is reproduced hereunder:

*"17. Having regard to the three parameters provided in para-12, this Court would note that any case detected beyond the period of 30 days from election duty as covid positive is certainly a category not covered under the scheme. The death of asymptomatic cases within 30 days of election duty as per the mandate of government order is covered under the G.O. Provided the death certificate on account of COVID-19 is produced by the claimants. This principle broadens the scope of G.O. for symptomatic cases where **the infection after election duty was detected within 30 days**, however, death in such a case occurred beyond the period of 30 days. The two situations that deserve to be treated at par are; firstly, **where the death occurred due to covid-19 within a period of 30 days of participation in election duty in an asymptomatic case and; secondly, where the infection of COVID-19 was detected within 30 days of election duty but the death occurred thereafter during treatment or***

otherwise."

(emphasis added)

7. In respect of judgment in the case of **Sadhna Sahu** (*supra*), learned counsel for the petitioner has placed reliance upon paragraphs 4, 6 & 7 of judgment which is reproduced hereunder:

4. The beneficial schemes provided by the Government are not to be read in a technical manner and are required to be looked in a holistic manner. The relevant portion of the order dated 28.03.2020 is provided below:-

"i. It will be a comprehensive personal accident cover of Rs. 50 lakh for ninety (90) days to a total of around 22.12 lakh public healthcare providers, including community health workers, who may have to be in direct contact and care of COVID-19 patients and who may be at risk of being impacted by this. It will also include accidental loss of life on account of contracting COVID-19."

6. Reliance may be placed on the Delhi High Court judgment in Sangeeta Wahi -v- Union of India and others, reported in 2023 SCC OnLine Del 6808. The ratio of the said judgment is provided below:-

"8. Covid-19 Pandemic struck the country in March, 2020. Lakhs of persons lost their lives in the Pandemic. Police officials, healthcare workers, Doctors, Paramedics, etc. were braving the Pandemic and were in the line of duty to provide assistance to persons who fell victims to the life taking virus. Concerns had been raised regarding the country's healthcare system and its capacity to cope with the massive outbreak. Doctors, nurses, paramedical staff, including security staff in various hospitals, were working day and night to streamline the patients to ensure that the patients are screened at the earliest and are quarantined so that the virus does not spread. Persons who were affected by any fever were in a state of panic and not knowing what is to be done, they were rushing to hospitals not knowing where to go and whom to meet. People were crowding OPDs and the causality in the hospital to get themselves screened. At this juncture, it was these security guards, paramedical staff, who not only to ensured the safety of the hospitals but were also acting as guides by directing the patients to approach the correct centre. It, therefore, cannot be said that the security guards who were posted at various places were not in direct contact of

*Covid-19 patients. It is well known that Covid-19 virus spread through air and any patient who was coming to the hospital could have been infected by the virus, whether he/she was symptomatic or not. **The patients got in touch with many service providers, be it security guards, nurses, paramedical staff, who might or might not have been posted in the Covid-19 ward. The Central Government, therefore, cannot take such a narrow approach that only such persons who were posted in the Covid-19 ward or centre only will be covered by the "Pradhan Mantri Garib Kalyan Package: Insurance scheme for health workers fighting COVID-19".** The Scheme was actually brought out as a measure to benefit the family members of persons who became martyrs in the line of duty while protecting thousands of persons affected by Covid-19 Pandemic. Taking such a narrow view actually goes against the spirit of the Scheme which was meant to provide immediate relief to persons who were tackling the situation and were protecting the lives of thousands of patients. This Court can take judicial notice of the fact that any person having mildest of the symptoms of Covid-19 was getting himself/herself tested. Poor people who could not afford private testing centres were rushing to the Government hospitals. A normal person would never know that there is a special Covid-19 ward and his normal reaction would be to approach either the OPD desk or the casualty of the hospital to meet the Doctor. At that point of time, to streamline the queue, the services of the security guards were availed. The security guards were also directing the people to the Departments where the patients have to approach in order to get themselves treated. It, therefore, cannot be said that the late husband of the Petitioner herein, who died of Covid-19 which he may have contracted in the Hospital, was not in direct contact with the Covid-19 patients.*

9. The Scheme has been brought out as a social welfare scheme and application of such schemes are not to be put in Procrustean beds or shrunk to Liliputian dimensions. Welfare Schemes must necessarily receive a broad interpretation. Where Scheme is designed to give relief, the Court should not be inclined to make etymological excursions [refer: Workmen v. American Express International Banking Corpn., (1985) 4 SCC 71].

10. The Apex Court in Regl. Provident Fund Commr. v. Hooghly Mills Co. Ltd., (2012) 2 SCC 489, has observed as under:

"24. If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who

might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.

25. The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender.

26. It is no doubt true that the said Act effectuates the economic message of the Constitution as articulated in the directive principles of State policy. Under the directive principles the State has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life. The said Act obviously seeks to promote those goals. Therefore, the interpretation of the said Act must not only be liberal but it must be informed by the values of the directive principles. Therefore, an awareness of the social perspective of the Act must guide the interpretative process of the legislative device."

11. In view of the above, the narrow and pedantic stand taken by the Central Government cannot be accepted and the Petitioner is entitled to the benefit of "Pradhan Mantri Garib Kalyan Package: Insurance scheme for health workers fighting COVID-19".

7. Keeping in view the above judgment, we are of the view that the present case is very much covered by 'Pradhan Mantri Garib Kalyan Package : Insurance Scheme for Health Workers Fighting COVID-19' as the petitioner's husband was a Ward Boy working in the O.P.D. that was just opposite the Covid Section. The pedantic view taken by the authorities is without application of mind that too with narrow interpretation of the said Scheme. Such an interpretation would be wholly contrary to the intention of the said Scheme."

(emphasis added)

8. *Per contra*, meeting the above arguments, Sri P.K. Shahi, learned Additional Chief Standing Counsel for the State respondents has defended the order for the reasons assigned therein and submitted that a very exhaustive order has been passed giving valid reasons for rejecting the claim of the petitioner's wife on the ground that petitioner could not place any material before the authority so as to draw any inference that petitioner's wife was suffering from pandemic Covid-19 and died of Covid 19. Placing the Government order dated 1st June, 2021 and those very clauses as 9, 10 and 12, it is submitted by learned Additional Chief Standing Counsel that three documents were required necessarily to be placed before the authority in order to set up a valid claim for *ex gratia* compensation; firstly, specific date of infection of Covid-19, the date of test report regarding a person being covid positive and thirdly, a certificate that the death of patient being found positive covid 19. It is submitted that clause 10 the Government order further explains away the circumstances in which it could be possible that RTPCR report and Antigen report may not be positive and, therefore, the blood test report should be relied upon. He further submits that as far as the death is concerned if the cause is established that if a patient was found to be positive Covid 19 on a particular date and may be subsequently the report is not found further to be positive but the death takes place within 30 days of the first infection test report then such death should be taken to be death due to Covid 19 and in those case *ex gratia* compensation can be made.

9. It is submitted by Mr. Shahi, learned Additional Chief Standing Counsel that in the present case petitioner has not been able to place any material before the authority that at any point of time his wife suffered pandemic Covid 19. He submitted that no test report much less a blood test report was ever placed. He further submitted that medical test report of chest that has been relied upon by the petitioner and has been brought on record vide Annexure – 8 to the petition, clearly records final opinion at the end of the report at page 48 of the writ petition that 'Bilateral pleural effusion (left>right) with adjacent passive atelectasis are suggestive of infective etiology which is inconsistent for Covid-19 infection'. Thus according to him this report cannot be relied upon for the purposes of claim as set up by the petitioner that he was entitled for *ex*

gratia compensation due to his wife dying of covid 19. He thus submits that writ petition is devoid of merits and, therefore deserves to be dismissed.

10. Having heard learned counsel for the respective parties and having perused the records, the only point that arises for our consideration as to whether the respondent District Magistrate was justified in rejecting the claim of the petitioner by correctly interpreting the provisions as contained in various clauses of the Government order.

11. There is no quarrel between the parties that before the District Magistrate while claim of *ex gratia* compensation was set up, no documents was placed by the petitioner evidencing the *factum* of infection of Covid 19 in respect of his wife who died on the day she was admitted to the hospital. Now, in such circumstances, therefore, it is to be seen whether such claim can still be considered because the patient died when the entire State was badly infected by pandemic Covid 19.

12. A complete scheme has been floated by the State Government vide government order dated 1st June, 2021 for *ex gratia* compensation and the clauses very specifically provide for kind of documents that are required to be placed before the authority while the claim of *ex gratia* compensation is set up. Vide clause 9, three documents are required like grade of infection of Covid 19, test report regarding positive Covid 19 and date of death of a person due to covid 19.

13. In our considered view, this clause 9 is to be read with clause 10 and clause 11 together and if three clauses are read together then conjoined reading of these provisions will lead us to conclude that a party who sets up a claim in respect of a deceased person for *ex gratia* compensation on the ground that deceased died due to covid 19, it should place a proved case of covid infection by a test report or a covid death certificate or in the event no death certificate is available of such nature then it is the date when the deceased was found to be positive covid 19 so as to co-relate it with a period of 30 days. In case the chest report showing the patient to be covid 19 is not available then the date of infection of covid 19 should be shown though blood test or swab test report.

14. In these circumstances, therefore, eventually if a deceased has become victim of covid 19 and dies within a period of 30 days of the date of first

infection of covid 19 or the first report that the patient had suffered covid 19, a death certificate may not be required. The RTPCR report and Antigen negative test report would hardly matter in the event a death certificate is available to show that a person died due to covid 19. Thus, in a case where a person carries a certificate that the patient died due to covid 19, he may not be in possession of a positive test report. In that circumstances also such claim of compensation can be allowed.

15. In case in hand, we do not find there to be any such above document ever placed before the authority to demonstrate that a patient died due to covid 19 or that patient while died was already suffering from pandemic covid 19.

16. The judgment that has been relied upon by learned counsel for the petitioner in the case of Kusum Lata Yadav (*supra*), it was dealing with the issue when a defence was sought to be drawn in the general perception of people regarding asymptomatic and symptomatic cases of covid 19 and the question was whether any symptomatic condition was there when an infected person contacted infection within 30 days of joining duty but died after 30 days of such infection.

17. The question was also with regard to the parameters laid down in paragraph 12 and the Court was considering as to whether a case detected beyond the period of 30 days from the election duty as covid 19 positive would fall within that category, not covered under the scheme.

18. In our considered view, in the above case this issue of established or not established cases of covid 19 did not arise. Paragraph 17 that has been relied upon refers to the cases where there was established case of detected covid 19 infected person who died within 30 days and the court held that two situations were to be placed at par where the death had occurred due to covid 19 within a period 30 days of participation in election duty in a symptomatic case and secondly where the infection of covid 19 was detected within a period of 30 days of election duty.

19. Thus, the Court was considering the cases where the person who died was in fact found to be detected as infected covid 19 patient. Therefore, on fact the case is distinguishable.

20. Insofar as the case of **Sadhna Sahu** (*supra*) is concerned, the issue was whether the case of the patient would be covered where the death of

covid 19 victim took place on account of infection though not specifically posted in the covid ward. The Court relies upon the judgment of Delhi High Court wherein it was held that guards, nurses and paramedical staffs who might or might not have been posted in the covid ward but if got infected by virus and died of covid, would also be entitled to compensation under the scheme. It was also a case proven covid death.

21. We are clear that in the case in hand the claim has been rejected on the ground that there was no material available on record to establish that it was the death of covid 19. Therefore, the cases that have been relied upon are of no help to the petitioner.

22. A claimant must establish a case of covid infection *qua* the victim by placing test reports or must have a covid death certificate to rely upon.

23. Thus, we do not find any merit in the case.

24. The writ petition is dismissed and is consigned to records.

(Garima Prashad,J.) (Ajit Kumar,J.)

March 11, 2026

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