

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.10170 of 2012
Date of decision: 07.04.2015.**

Maya Devi

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Vijay Pal, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for respondent No.1 – State.

Mr. Mohnish Sharma, Advocate
for respondents No.2 and 3.

Daya Chaudhary, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondents to grant ex-gratia benefits to the petitioner as per policies of the Haryana Government issued from time to time. A further prayer has also been made for quashing of letter dated 27.04.2011 (Annexure P-13), whereby, the claim of the petitioner has been rejected.

As per case of the petitioner, an advertisement for filling up of 791 posts of Assistant Lineman was issued and husband of the petitioner applied for said post in the Backward category and was selected. Thereafter, he joined his services on 03.03.1993, but the said selection was challenged by some of the candidates, who were not selected, by way of filing CWP No.7382 of 1993 and the selection was set-aside by this Court. Thereafter, the matter came up for hearing before Hon'ble the Apex Court in the SLP (C) No.11947 of 1996. As per decision by Hon'ble the Apex Court in SLP, respondent-department issued another advertisement and the persons/candidates, who had already applied in view of earlier advertisement, need not to apply again. The husband of the petitioner continued to work as per direction issued by Hon'ble the Apex Court as service of those employees, who were already selected and appointed were not terminated till regular selected candidates join the duty. Subsequently, in compliance of said judgment passed by this Court in CWP No.7382 of 1993, the services of the petitioner were terminated on 23.09.1997. The husband of the petitioner appeared in written test but before joining on the post, he expired on 29.04.2002.

Learned counsel for the petitioner submits that the husband of the petitioner worked with the respondent-department with effect from 03.03.1993 to 27.09.1997 and as such, the petitioner being dependent wife is entitled for ex-gratia benefits under the policy framed by the State Government. Petitioner made representation to

the respondent-department for appointment after death of her husband but no action was taken thereon. Thereafter, a legal notice was also served upon the respondents. When no action was taken by the respondents, the present writ petition has been filed for issuance of a direction to grant ex-gratia benefits to the petitioner as per policy of State Government. Learned counsel for the petitioner also submits that in view of the order passed in CWP No.15558 of 1997, the candidates, who were appointed as a result of this exercise, would not be entitled for any backwages but would be entitled to all other consequential benefits.

Learned counsel for respondents No.2 and 3 submits that the husband of the petitioner did not join after selection as he expired before joining, therefore, the petitioner is not entitled for any benefit of the policy of ex-gratia appointment as the interim direction was issued because the selection process was in progress which does not create any right in favour of the petitioner in any manner. Learned counsel further submits that as per definition of 'deceased government employee' as defined in notification dated 28.02.2003, only the dependent family members of the appointed employee can be considered but in the present case, the husband of the petitioner did not work even for a single day as he did not join the duty. He cannot be considered as regular employee before joining his duty. Learned counsel for respondents No.2 and 3 also submits that the services of husband of the petitioner were terminated and only because of interim

direction issued by Hon'ble the Apex Court, he continued in service.

Heard arguments of learned counsel for the petitioner as well as learned counsel for respondents No.2 and 3 and have also perused the documents available on the file.

Admittedly, the petitioner applied for the post of Assistant Lineman and was selected in the category of BC. Thereafter, he joined his service on 03.03.1993. The selection on the post of Assistant Lineman was challenged by some of the unsuccessful candidates, who were not selected by way of filing CWP No.7382 of 1993. The selection was set-aside by this Court. Aggrieved by aforesaid judgment, SLP (C) No.11947 of 1996 was filed. In pursuance of directions issued by Hon'ble the Apex Court, fresh advertisement was issued. The husband of the petitioner and other similarly situated candidates were allowed to remain in the services till new selection was made. It was mentioned in the advertisement that those candidates, who have already applied, need not to apply again. It is also not disputed that services of husband of the petitioner were terminated on 23.09.1997. Although the husband of the petitioner was selected in the subsequent selection but he did not join his duty as he expired. Thereafter, a request was made by the present petitioner, who is widow of the deceased employee, for appointment on ex-gratia basis as per policy of the State Government. The claim of the petitioner is that her husband was duly selected and was continued with the job thus, a right has accrued to the husband of the petitioner

as he became regular employee of the respondent-department whereas stand of the respondents is that only selection was made and husband of the petitioner did not join as before joining on the post, he had expired, so no right accrued to him.

The husband of the petitioner was having no right and only because of directions issued by Hon'ble the Apex Court, he was allowed to continue in service in spite of the fact that his selection was set-aside. Moreover, mere selection does not confer any right as husband of the petitioner did not join his duties.

'Deceased government employee' has been defined under notification dated 28.02.2003, which is reproduced as under: -

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(d) “deceased government employee” means a Government employee-

(i) appointed on regular basis, and not working on daily wages, casual apprentice, work charged, adhoc, contractual or re-employment basis;

(ii) who has served the Government for atleast 3 years;

(iii) who should not have crossed the age of 55 years.”

In view of the aforesaid definition, it cannot be said that the husband of the petitioner was appointed on regular basis or was

working with the respondent-department. Her husband remained in service against the post whereas the selection was already set-aside and because of the interim directions issued by Hon'ble the Apex Court, he was allowed to continue in service, which can be considered as a stop gap arrangement and because of working on that basis for a particular period, no right has accrued to the petitioner. The petitioner is not entitled to be appointed on ex-gratia basis as her husband cannot be considered as regular employee only because of his selection.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

07.04.2015
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(DAYA CHAUDHARY)
JUDGE