IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP NO. 18696 OF 2012
Date of decision: 10.02.2015

Smt. Neelam

.... Petitioner

versus

State of Haryana and others

.... Respondents

Coram: **Hon'ble Mr. Justice Amol Rattan Singh**

Present: Mr. S.K.Chauhan, Advocate
for the petitioner.

Mr. Sushil Gautam, DAG, Haryana

Amol Rattan Singh, J.(Oral)

The petitioner, who is a widow, in this petition seeks the benefit of ex-gratia assistance in terms of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. The said assistance is governed by Rule 5 of the aforesaid rules which states that on the death of any government employee, the family of the employee would continue to receive as financial assistance, a sum equal to the pay and other allowances that was last received by the deceased employee in the normal course, without raising a specific claim.

The criteria, further, for grant of financial assistance is (as applicable to the case of the petitioner), as per clause (b) of Rule 5 (i) of the aforesaid Rules, which states that the family of the deceased employee who had not attained the age of 48 years, but was above 35 years of age, would continue to draw such financial assistance for a period of either 12 years, or till the date that the employee would have retired from government service on attaining the age of superannuation, which ever is

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less.

It is admitted by the respondents that the deceased, i.e. mother of the petitioner, was 47 years and about 3 months of age at the time that she died, i.e. on 21.01.2010.

Further, the eligibility for grant of the above assistance, is governed by Rule 3 of the said rules which reads as under:-

> "The eligibility to receive financial assistance under these rules shall be as per the provisions in the pension/family pension scheme, 1964."

Learned counsel for the petitioner points out that the Family Pension Scheme, 1964, was amended by the respondent – government vide notification dated 21.10.2008(Annexure P-4) wherein, as per clause (i) inserted after clause 4(ii)(wrongly typed as clause 9(e) in Annexure P-4), it has been stipulated as under:-

> "(i) In the case of unmarried daughter beyond twenty five years of age at par with widowed/divorced daughters subject to other conditions being fulfilled. Grant of family pension to unmarried/widowed/divorced daughters shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above her has become ineligible for grant of family pension. Further, pension to unmarried/widowed/divorced daughters

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above the age of twenty five years shall be payable only after the other eligible children below the age of twenty five years have ceased to be eligible to receive family pension and that there is no disabled child to receive the family pension.

Provided that unmarried daughter including widowed/divorced daughter will be ineligible for pension from the date of her marriage/remarriage or when she starts earning livelihood.

Provided further that the income criteria for grant of family pension to unmarried daughter shall be the same as in respect of parents and widowed/divorced daughter as per notification dated 21st July, 2006."

It is not the stand of the respondents that either the petitioner has an income higher than that as is laid down in the notification dated 21.07.2006, nor that she is earning her own livelihood.

The stand in the reply filed is to the effect that firstly, she was not a nominee of her deceased mother, Smt. Biro, and further that there are four other daughters of the deceased-Biro and as such the petitioner can not claim financial assistance in terms of the aforesaid rules.

It is still further stated that none of the daughters of deceased-Smt. Biro, was dependent upon her as all had crossed the age of 25 years and had solemnized their marriage and as such no family pension can be

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granted to them.

It needs to be mentioned again that the petitioner is not seeking the benefit of the Family Pension Scheme of 1964, but seeks financial assistance in terms of the Rules of 2006, aforesaid.

The Family Pension Scheme is only referred to in the 2006 Rules for the purpose of eligibility, which obviously is further qualified by what is stipulated with regard to a widowed daughter, in Rule 5(1)(b) of the 2006 Rules themselves.

Strangely, the stand of the respondents is also reflected in the impugned communication (Annexure P-11), by which the petitioner was informed by the Director School Education, Haryana (though the letter is shown to be signed by the Superintendent (Pension)), that since she is 38 years of age, she cannot receive financial assistance under the Rules of 2006, as the Family Pension Scheme stipulates a maximum age of 25 years, for purposes of eligibility(for a daughter).

Obviously, the said letter was communicated to the petitioner without looking at the bare provision of the Rules, i.e. Rule 5.

It also needs specific mention that the sisters of the petitioner, namely, Kiran, Santosh, Beeta and Shella have all executed affidavits, copies of which are annexed as Annexures P-15, P-17, P-19 and P-21 with the petition, stating therein that after the expiry of their mother, Biro Devi on 21.01.2010, they all executed a Special Power of Attorney in favour of the petitioner (Neelam), to do all necessary activities in relation to claims of their mother and to receive financial assistance. All the sisters of the petitioner, as already noticed earlier, are of the age of majority and are all married and living with their respective families. Thus, it is obvious that they had no objection to the petitioner getting all benefits of their late mothers'

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service, the petitioner being a widow. Further, in any case, even as per the rules referred to the above, the only child of Biro Devi, eligible for grant of ex-gratia assistance, is the petitioner, being a widow, with all the other sisters being married and living with their families.

Consequently, this petition is allowed. The respondents are directed to make payment as is due to the petitioner under the aforesaid Rules of 2006, in terms of Rule 5 (1) (b), within a period of 3 months from the date of receipt of a certified copy of this order and, for the delayed payment, since the petitioner was obviously eligible for financial assistance, which became due to her after her application(Annexure P-2) was moved on 17.08.2010, the respondents shall also pay interest @6% per annum running from a date four and a half months after the date of the petition, i.e. w.e.f. 1.1.2011 till the date that actual payment is made to her.

Respondents would also pay costs of ₹ 20,000/- to the petitioner, for taking a stand wholly contrary to rules. The respondents would be at liberty to recover the said amount from the person/persons responsible for denying the claim to the petitioner.

[AMOL RATTAN SINGH]
JUDGE

10th February, 2015
Shivani Kaushik

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