

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

CWP No.15696 of 2014

Date of Decision: 07.08.2015

Ramesh Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.S. Saneta, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present petition has been filed for issuance of a writ in the nature of *certiorari* for quashing the impugned letter dated 29.08.2013, whereby, the claim of the petitioner for grant of financial assistance being dependent of deceased Krishan Lal, has been rejected. A further prayer has also been made for issuance of a direction to the respondents to grant financial assistance of Rs.2.50 lacs as per Rules, 2003 or Rs.5 lacs to the petitioner as per Rules, 2005 as well as Government Rules/Instructions dated 28.02.2003, 01.08.2006 and 16.03.2011.

As per case of the petitioner, his father, namely, Krishan Lal was working as *Beldar* since 10.06.1978 in the respondent-Department and he expired on 14.06.2002 during the course of service. Petitioner, being dependent son of Krishan Lal, made a request by moving an application dated 09.08.2008 to appoint him on compassionate ground in

view of policy of Ex-gratia appointment but the same was not decided. The case of the petitioner remained pending with the respondents and ultimately, his request was turned down vide letter dated 22.03.2007, stating therein, that only the financial assistance will be provided to him. Thereafter, vide letter dated 06.02.2008, an option was sought from the dependent of the deceased for grant of *ex-gratia* financial assistance of Rs.2.5 lacs and mother of the petitioner was asked to come present at the office of the respondents with certain documents. In spite of all the efforts made by the petitioner and his widow mother, no action was taken by the respondents. Thereafter, the petitioner filed **Civil Writ Petition No.6245 of 2010** before this Court, which was dismissed on **04.05.2012** on the ground of delay. However, against the said judgment, the petitioner had filed **LPA No.1695 of 2012**, which was also dismissed vide Order dated **19.12.2012**. The observation made by the LPA Bench was that it would be open for the petitioner-appellant to pursue the representation regarding financial assistance. The petitioner pursued his case with the respondents for grant of financial assistance but still, the same has not been released. Thereafter, the petitioner served a legal notice upon the respondents on 21.05.2013 but his claim was rejected vide letter dated 29.08.2013.

Learned counsel for the petitioner submits that the claim of the petitioner for appointment was declined but while dismissing LPA, an observation was made by the LPA Bench that the petitioner can pursue the remedy with regard to financial assistance. This observation was made as the petitioner could not be appointed on compassionate ground but only the financial assistance as per policy of State Government could be provided to the dependent of deceased employee. Learned counsel also submits that all pending cases of *ex-gratia* assistance were to be considered under the new rules/policies and as per policy, the families

were having the option to opt for the lump sum ex-gratia grant provided under Rules, 2003 or 2005, in lieu of monthly financial assistance as per Rules, 2006. Learned counsel further submits that the case of the present petitioner is squarely covered under the said instructions and he is entitled for financial assistance of ₹ 2.5 lacs as per Rules, 2003 or ₹ 5 lacs as per Rules, 2005. Learned counsel also submits that as per Instructions dated 16.03.2011, the dependent(s), who could not exercise their option for financial assistance, one more chance was also given to them as one time measure within a period of six months. The case of the petitioner was pending with the respondent-Department but was wrongly rejected. Learned counsel also submits that the claim of the petitioner was also admitted by the Department in the written statement filed in the earlier petition.

Learned counsel for the petitioner has also relied upon the judgment of Division Bench of this Court in case **Anand vs Uttar Haryana Bijli Vitran Nigam and another 2008(4) SLR 49**, judgments of Single Bench of this Court in cases **Sadiya Muthu vs Haryana Urban Development Authority and others 2013(1) SLR 585** as well as **Krishna Devi vs State of Haryana and others 2009(3) SLR 149**, in support of his contentions.

Learned counsel for the respondent-State submits that the writ petition filed by the petitioner was dismissed on 04.05.2012 and thereafter, the LPA filed against the said order was also dismissed. It was mentioned in the order that the father of the petitioner died in the year, 2002 and the scheme for giving financial assistance was announced only in the year, 2003. The pending representation of the petitioner for financial assistance was also dismissed on 29.08.2013 and hence, the petitioner has no right to claim any benefit after dismissal of writ petition as well as LPA.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

Admittedly, the father of the petitioner, namely, Krishan Lal, who was working as *Beldar* on regular basis, died on 14.06.2002 while in service. However, the petitioner, after the death of his father, made a request dated 09.08.2008 to appoint him on compassionate ground in view of policy of the State Government. In the year, 2003, a new policy, namely Haryana Compassionate Assistance to the dependents of deceased Government Employees Rules, 2003 for appointment of dependent on compassionate grounds, came into existence. In the said rules, it has been provided that the dependent may opt for employment under ex-gratia scheme or ex-gratia financial assistance of Rs.2.5 lacs and all pending cases shall be decided in accordance with new rules. Thereafter, another policy was also framed on 01.08.2006, wherein, there was a provision for grant of financial assistance of sum equal to the pay and other allowances which was last drawn by the deceased employee in the normal course. Even in that policy also, there was a provision that all pending cases of *ex-gratia* assistance shall be covered under the new rules and the families will have the option to opt for lump-sum *ex-gratia* appointment in lieu of monthly financial assistance. The case of the petitioner was kept pending and lastly, his request was turned down vide letter dated 22.03.2007. No doubt, the claim of the petitioner for appointment on *ex-gratia* ground was rejected, the writ petition filed by him was dismissed and thereafter, even the LPA was also dismissed but while dismissing the LPA, an observation has been made by the LPA Bench that the petitioner may pursue his case of financial assistance with the respondents. Meaning thereby, the claim of the petitioner for grant of financial assistance was not dismissed. Moreover, there is a provision in the policy of 2003 that all pending cases will be

considered in view of subsequent policy.

Similar controversy was there before the Division Bench of this Court in **Anand's** case (supra). In that case, the father of the petitioner died on 01.06.2002. The claim of the petitioner, in that case, was rejected on the ground that the validity of seniority list expired on 31.03.2006 and the petitioner was not entitled for any appointment. An option was given to the petitioner, in that case, to opt for *ex-gratia* financial assistance in stead of compassionate appointment. It was held that after expiry of the validity of such seniority list, the respondents were justified in law in offering *ex-gratia* financial assistance in terms of Rule 6 of the Rules of 2006. In that case also, the death occurred prior to the policy of 2003 and thereafter, the financial assistance was provided to the petitioner in place of appointment which was challenged by him.

Similarly, in **Krishna Devi's** case (supra), the husband of the petitioner, in that case, was working as a Driver and a financial assistance of Rs.2.5 lacs was given to the dependent of the deceased employee. Thereafter, the petitioner applied for compassionate appointment for her son but the same was rejected. In that case, the respondents were directed to grant benefit of *ex-gratia* financial assistance to the petitioner within a period of two months.

In **Sadiya Muthu's** case (supra) also, the case of the petitioner was kept pending because the dependent was minor. Subsequently, the financial assistance was granted to the petitioner.

From the judgments as mentioned above, it is clear that in case of death of the deceased prior to the policy of 2003 and thereafter, as per policy of 2003, the financial assistance was granted to the dependent of deceased employee.

In the present case also, the claim of the petitioner for

appointment has been dismissed but as per observations made by the LPA Bench, the petitioner was having right to claim financial assistance, which was declined only on the ground that the writ petition and the LPA filed by the petitioner was dismissed. Moreover, even in the policy of 2003, there was a specific provision that all cases shall be covered under the subsequent policy and the same will be decided by the new rules. The case of the petitioner was kept pending at the time of framing of these rules. It is also relevant to mention here that one time relaxation for applying the *ex-gratia* compensation in old cases pertaining to the period before 01.08.2006 was granted and in case, no option was exercised under the relevant provisions by the eligible candidates for *lump sum* compensation under the rules, it was also provided that in case, the dependents of the deceased employee, have not exercised their option for financial assistance, they may again exercise their option. The claim of the petitioner has wrongly been rejected by the respondents, whereas, his case is covered under the new policy of 2003. Even in the written statement filed in **Civil Writ Petition No.6245 of 2010**, the respondents have admitted that the petitioner is entitled for financial assistance. Para 13 (ii) of the written statement is reproduced as under :-

“13(ii) That the case of the petitioner has been considered as per Haryana Government General Administration Department letter dated 01.08.2006 as already explained in preliminary objections. The family of the deceased is entitled for *ex-gratia* financial assistance on compassionate ground amounting to Rs.2.5 lacs but he is not entitled for *ex-gratia* employment on compassionate ground.”

In view of the facts as well as law position explained above, it is apparent that the petitioner is entitled for financial assistance in view of policy of 2003 as admitted in the written statement filed in the earlier

petition. The liberty was given by the LPA Bench to the petitioner to pursue his representation for financial assistance. Moreover, in some of the cases, financial assistance has also been granted to the dependent of deceased employee who have died prior to the year 2003 under policy of 2003 but the claim of the petitioner has wrongly been rejected, which is violative of Articles 14 and 16 of the Constitution of India.

Accordingly, the present petition is allowed and the respondents are directed to consider the claim of the petitioner for his appointment within a period of three months from the date of receipt of certified copy of this order.

07.08.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE