IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8071 of 2013
Date of decision: 01.05.2015

Rajesh Kumar ..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? Yes**
2. **To be referred to reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Ram Niwas Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondents – State.

Daya Chaudhary, J.

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 certiorari for quashing of impugned order dated 16.03.2012 (Annexure P-12) to the extent of allowing only 25% of ex-gratia amount instead of ₹5 lacs. A prayer has also been made for issuance of directions to the respondents to allow the ex-gratia grant of ₹ 5 lacs to the petitioner instead of ₹1.25 lacs.

The father of the petitioner, namely, late Sh. Satbir Singh was working as a Clerk and he expired at the age of 54 years on 24.04.2006 while being posted in the office of Assistant Registrar, Cooperative Societies, Narwana, District Jind. The mother of the petitioner had expired on 15.01.2002 i.e., even before the death of his father. The petitioner and his younger brother, namely, Kapil as well as his younger sisters were got married during the lifetime of their father. After the death of the father of the petitioner, a request was made for appointment of younger brother of petitioner, namely, Kapil as he had passed 10+2 examination. An affidavit was also submitted by other LRs in support of younger brother of the petitioner. LRs of deceased Satbir Singh had also submitted an affidavit dated 09.06.2006 authorizing the petitioner to get all the after death benefits like GPF, GIS, leave encashment and DCRG etc. and consequent thereupon, all benefits were paid to the family through the petitioner. The Assistant Registrar, Cooperative Societies, Narwana informed the petitioner that as per Financial Assistance Rules and Family Pension Scheme, 1964, none of the family member was dependent upon the deceased as all sons and daughters were already married. Again a request was made by the petitioner to release financial assistance under Rules, 2005 but the claim of the petitioner was rejected vide order dated 11.11.2008, which is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that impugned order dated 11.11.2008 has been passed without any application of mind whereas as per the rules known as "The Haryana Compassionate Assistance to the Dependents of the Deceased

Government Employees Rules, 2005" (hereinafter called as Rules, 2005), the married son of deceased government employee is eligible only if no other member of the family is eligible for government service and his spouse is not in government service and in case, unmarried eligible dependent is not willing to join service and gives an affidavit in this regard. Learned counsel for the petitioner further submits that out of the total financial assistance, 50% is to be given to surviving spouse and 25% to the children excluding married daughter and 25% to the surviving parents. Learned counsel also submits that as per directions issued by this Court in CWP No.2344 of 2010, the impugned order dated 11.11.2008 was quashed and case was remitted back to the respondents to hold an inquiry with regard to claim of the petitioner for ex-gratia compassionate financial assistance. In compliance of directions issued by this Court, an inquiry was conducted by respondent No.3, who came to the conclusion that the dependent son of the deceased government employee is eligible for financial assistance in terms of Rule 3(g) (2) of the Rules, 2005. In the second inquiry, it was found that the case of the petitioner is not covered under the definition of Rules 3(b), 3(e) and 3(f) of Rules, 2005 and the claim was rejected vide order dated 11.02.2011. Learned counsel for the petitioner also submits that as per order passed in contempt petition, the petitioner was found entitled for an amount of ₹ 1.25 lacs instead of ₹ 5 lacs because of entitlement of 25% only. Learned counsel also submits that it is a case of misinterpretation of the rules whereas the petitioner is entitled for financial assistance to the tune of ₹ 5 lacs. The family of the deceased was dependent upon him as no family member was earning. As per Rules, 2005, in case, the children are minor then the share of the children would be disbursed to the spouse of the deceased government employee. In case, the spouse and children are not there then surviving parents are entitled for the total amount of ₹ 5 lacs not ₹ 1.25 lacs.

Learned State counsel submits that father of the petitioner expired on 24.04.2006 and he was having four children i.e., two sons and two daughters and all of them were married. The wife of the deceased employee had already expired. The petitioner and his brother being married sons of deceased are eligible for financial assistance of 25% i.e., ₹ 1.25 lacs out of total financial assistance of ₹ 5 lacs, which has already been paid.

Heard arguments of learned counsel for the petitioner and learned State counsel.

Admittedly, father of the petitioner expired on 24.04.2006 and his mother had already expired before the death of his father. The deceased employee was having two married sons and two married daughters at the time of his death. The issue for consideration before this Court is whether the petitioner is entitled for 25% share of ₹ 5 lacs as per Rule 3(g) (2) of Rules, 2005 or not? It is not disputed that the petitioner was married at the time of death of his father. The claim of the petitioner is that he is entitled for financial assistance of ₹ 5 lacs whereas only ₹ 1.25 lacs has been paid. The claim has been rejected on the ground that the petitioner is entitled only for 25% of total amount of ₹ 5 lacs in view of provisions under Rule 3(f) of Rules, 2005 wherein the proportionate distribution is there for dependents of deceased employee.

Rule 3(g) of the Rules, 2005 is relevant for resolving the controversy in hand wherein 'family' has been defined and the same is reproduced as under: -

> *“(g) **“family”** means -*
>
> *(i) spouse of the deceased Government employee or missing Government employee;*
>
> *(ii) Son (including adopted son subject to the proof of adoption as envisaged in the Hindu adoption and Maintenance Act, 1956 (78 of 1956) till he attains the age of 35 years;*
>
> *(iii) unmarried daughter (including adopted daughter subject to the proof of adoption as envisaged in the Hindu Adoption and Maintenance Act, 1956 (78 of 1956) till she attains the age of 35 years;*
>
> *(iv) parents of the deceased Government employee, who were dependent on the deceased Government employee;*
>
> *(v) in the eventuality of the deceased Government employee being unmarried brother/sister, not above the age of 35*

years. ***In case of conflict of interest between brother and sister, brother/sister in whose favour option is writing is exercised by both the parents of the deceased Government employee, shall be considered the eligible family member.***

(vi) in the eventuality of the deceased Government employee being a divorcee, unmarried son/unmarried, divorced or widow daughter, not above the age of 35 years."

Rule 3 of Rules, 2005 defines "appointing authority", "compassionate financial assistance", "competent authority", "deceased government employee", "eligible family member", which is reproduced as under: -

"3. Definitions . *In these rules unless the context otherwise required,-*

(a) ***"appointing authority"*** *means the Head of Department, where the deceased Government employee was working;*

(b) ***"compassionate financial assistance"*** *means the financial assistance of the tune of Rs. 5 lacs, provided as ex-gratia assistance over and above all other benefits to the completely dependent members of the indigent family of the deceased as provided hereinafter;*

(c) ***"competent authority"*** *means the Head of the concerned department where the deceased/missing employee was serving;*

(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;*

(e) ***"eligible family member"*** *seeking gratia appointment on compassionate ground means,*

(i) *In case of deceased Government employee being married;*

(a)the surviving spouse; or

(b)unmarried son/unmarried/divorced/ widowed daughter. ***In case of conflict of interest between son/daughter, such member shall be son/daughter, in whose favour, option is exercised in writing by the surviving spouse of the deceased Government Employee.***

(ii) *in case of deceased Government being unmarried; brother/sister not above the age of 35 years.*

(iii) *in case of deceased Government employee being a divorcee ;*

(a)unmarried son/unmarried; divorcee or widowed daughter, not above the age of 35 years; or

(b) brother/sister; or

(iv) *in case, of such member belong to*

reserved category, having such upper age limit as may be determined by the Government from time to time.

*(f) **"eligible family member"** seeking ex-gratia compassionate financial assistance shall be entitled to such assistance in the following proportion, namely ; -*

(i) Surviving spouse 50%

(ii) Children excluding married daughter 25%

(iii) Surviving parents 25%"

Under Rule 8 of Rules, 2005, the criteria of eligibility has been defined, which is reproduced as under: -

*"**8 Criteria of Eligibility:***

The criteria for eligibility under these Rules shall be as under: -

(a) The family is indigent and deserves immediate assistance for relief from financial destitution and dependent upon the deceased/missing Government employee.

(b) The monthly income of the family shall not exceed Rs. 6000/- per month, from all other than family pension. For this purpose, the income of the entire family of the deceased Government employee will be taken into account and not just the income of the dependent who has applied for appointment on compassionate grounds.

(c) The applicant for appointment should be eligible and suitable for the post in all

respects under the provision of the relevant recruitment rules.

(d) *Where spouse of the deceased is already in Government service, no other dependent member shall be eligible for appointment or ex-gratia compassionate financial assistance.*

(e) *Married son of the deceased/missing Government employee will be eligible only if no other member of the family is eligible for Government service and his spouse is not already in Government service and unmarried eligible dependent is not willing to join service and give an affidavit to this effect.*

(f) *The prescribed educational qualifications and lower/upper age limits, shall not be relaxed for appointments.*

(g) *In case the dependent of the deceased/missing Government employee is not eligible for appointment on any ground mentioned in clause (c) and (f) of this rule, the family member shall be given ex-gratia assistance of Rs. 5.00 lacs.*

Although the petitioner has applied for appointment of his younger brother, in the alternate a request has also been made to give financial assistance to the tune of ₹ 5 lacs. As per Rule 3(f) of Rules, 2005, eligible family members are given financial assistance and married daughters have been excluded from its purview but not the married sons. Rule 8 of Rules, 2005 deals with the criteria of the eligibility and as per Rule 8(g), in case, the dependent of deceased government employee is not eligible for appointment, then family member is to be given ex-gratia assistance of ₹ 5 lacs but an amount of ₹ 1.25 lacs has been released to the petitioner being 25% of the total amount.

In the present case, neither the spouse nor the parents of the deceased employee were alive at the time of his death and in such a situation, the family of the deceased is to be given financial assistance of ₹ 5 lacs. The case of the petitioner is that he and his brother being sons of deceased are entitled for financial assistance of ₹ 5 lacs instead of ₹ 1.25 lacs whereas as per stand taken by respondents-State, the petitioner is entitled as per the proportion mentioned under "the Rules, 2005". As per Rules 3(b), 3(f) and 8 of the Rules, 2005, the eligible family members are entitled for financial assistance in the following proportion: -

(i)	Surviving spouse	50%
(ii)	Children excluding married daughter	25%
(iii)	Surviving parents	25%

In view of the provisions as mentioned above, the first preferential right has been given to the living spouse of the deceased and in case, the spouse had already expired, then the dependents unmarried son or unmarried/divorced/widow daughter are entitled. It is also provided under the Rules that surviving parents are also entitled in case, they are dependents upon the deceased son. As per scheme, 50% has been provided for surviving spouse, 25% is for children excluding married daughter whereas 25% is for surviving parents.

In the present case, wife of the deceased employee had already expired before his death and as such, there is no surviving spouse. Two daughters of the deceased are married. The petitioner is claiming his right over the financial assistance to the tune of ₹5 lacs instead of ₹1.25 lacs on the ground that the total assistance is to be given to him as other family members have given an affidavit that they have no objection with the same.

The father of the petitioner expired on 24.04.2006. The petitioner being elder brother applied for appointment of his younger brother. As per directions issued in CWP No.2344 of 2010, the impugned order dated 11.11.2008 was quashed and the case was remitted back to the respondents to hold an inquiry with regard to claim of the petitioner for ex-gratia compassionate financial assistance. As per rules, the claim of the petitioner was rejected vide order dated 11.02.2011. On filing COCP No.1213 of 2013, 25% of the total ex-gratia amount was allowed to be released to the petitioner.

As per Rule 3(f), the financial assistance has been distributed proportionately amongst the dependents of the deceased employee. In case, there is any dispute amongst the dependents of deceased employee then, the total amount of financial assistance is to be distributed as per their share. As per criteria of eligibility as provided under Rule 8 of the Rules, 2005, the son of deceased employee is eligible only in case, his spouse is not living or the spouse is in government service. Similarly, married son of deceased government employee is also eligible if no other family member is eligible for government service or his spouse is not already in government service and unmarried eligible dependent is not willing to join service. In such circumstances, an affidavit is to be given to this effect. The maximum limit of financial assistance is ₹5 lacs and further it has been bifurcated proportionately, which is to be given to the dependents of the deceased employee.

On perusal of Rules as discussed above, the total financial assistance is to be given to the tune of ₹5 lacs. In case, all family members are claimants and there is conflict of interest then, the total amount of ₹5 lacs is to be divided as per the proportion provided under the Rules. In absence of any conflict or if there is no other claimant, then the total amount of financial assistance is to be given to the surviving dependent of the deceased government employee. The bifurcation is to be made only in case, the conflict is there amongst the dependents of the deceased employee. The financial assistance is not to be decreased by keeping in view the number of dependents.

In the present case, only an amount of ₹1.25 lacs has been paid to the petitioner whereas he is entitled for ₹5 lacs. Accordingly, there is merit in the contentions raised by learned counsel for the petitioner and the present writ petition deserves to be allowed. The respondents are directed to release the remaining amount of financial assistance to the petitioner within a period of two months from the date of receipt of certified copy of this order after having no objection from other claimants, if any.

Disposed of accordingly.

01.05.2015 **(DAYA CHAUDHARY)**
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