IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 06.12.2016

CWP No.14689 of 2008

Deepak Kumar ...Petitioner

Vs.

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anand Bhardwaj, Advocate, for the petitioner.

Mr. J.S.Bedi, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

The claim in this petition presented in 2008 is for directions to the respondents to provide the petitioner with compassionate appointment. The petitioner’s mother predeceased the father, who a Government servant was working on a Class IV job in the Health Department, Haryana. The petitioner’s father died on 24.03.2006 at the age of 41 years, when the petitioner was about 16 years of age.

In compliance of the previous order, the Court is informed on instructions obtained that the petitioner has two other siblings i.e. a sister and a brother. The sister was married after the death of the father. On instructions obtained by Mr. Bedi pursuant to the interim order passed by me on 10.11.2016, he informs that the three siblings received a sum of ₹ 63,072/- as DCRG and family pension. It appears that the bread earner left behind nothing in GPF or other investments to take care his family after his death. A small amount of ₹ 25,000/- was paid as ex gratia amount, which served as solatium. The children were in the receipt of ₹ 2070/- towards family pension arising out of death of the income producer. The family pension was paid from 25.03.2006 to 25.03.2013 i.e. for a period of 7 years till the youngest dependent attained the age of 25 years in terms of the policy of the Haryana Government. The policy prevailing at the time of the death of the government employer was the Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 (for short '2005 Rules') and the new Rules called 'the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules, 2006' (for short '2006 Rules') come into force on 01.08.2006 i.e. few months after the death of the office holder. Applying the ratio of the Full Bench in Krishna Kumari Vs. State of Haryana & others, 2012(2) S.C.T. 736, the date of death is relevant date to measure benefits of ex gratia scheme. This Court is conscious that the Supreme Court in the Special Leave Petition filed by the State of Haryana had left the issue open, but had dismissed the petition.

Mr. Bedi for the State cites judgment of the Supreme Court in MGB Gramin Bank Vs. Chakarvarty Singh, (2014) 13 SCC 583, wherein it has been held that in case the scheme of compassionate appointment does not create any legal right, a candidate cannot claim his case to be considered as per the scheme existing on the date when cause of action arose i.e. the death of incumbent on post. Still the claimant may apply for consideration of his case under new Rules and the appellant Bank would consider it strictly in accordance with Clause 14 of the new scheme within a period of three months from the date of receiving of application. However, in that case, it appears quite apparently that the application was made for the first time after the new Rules had come into force and, therefore, the Supreme Court held that the new scheme would apply and connected by and with the date of consideration. But in the present case, the petitioner had applied for compassionate appointment prior to coming into force 2006 Rules and, therefore, on facts MGB Gramin Bank's case is distinguishable.

In order to balance out the ruling in MGB Gramin Bank and Krishna Kumari cases, it is quite possible that the date of death can be applied in this case, as the governing cut-off date, which is before the 2006 Rules came into force which abrogated compassionate appointments altogether in Haryana and restricted ex gratia benefits to financial assistance alone. Therefore, the operating law was the Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 from where rights flow.

The Haryana Compassionate Assistance Rules, 2003', (for short '2003 Rules') often have to be dealt with in a special manner and, therefore, cases of compassionate appointment have to be decided on altogether different footing. Rule 18 of the Rules carved out an exception in the case of orphans by relaxing the Rules. A Division Bench of this Court in Kumari Bandana Sharma Vs. State of Haryana & others, 2006(3) SCT 619, dealt with Rule 18 read with Rule 3(k), which defined an 'orphan' for grant of relief of appointment. The Bench held that Rules used the word 'shall' which made the Rule mandatory in nature and accordingly the offer must be kept alive till the child attains majority/age of entry into service and thereby the claim of an orphan, like the petitioner in boyhood, is required to be considered by relaxing the Rule as allowed by the exception. Rules 3(k) and 18 of the 2003 Rules are an isolated exception and read as follows:-

> "3(k) "orphan" means a child who has previously lost one parent and has become an orphan upon the demise of the Government employee;"

> "18. There shall be no relaxation of any provision of these rules. However, as a special case, these rules shall be relaxed only in the cases of children who have become orphans upon the demise of the Government employee. The claim of appointment of such orphans, shall remain alive till one child has attained majority/minimum eligible age for entry into Government service."

No departure from these principles governing 'orphan' is made in the 2005, rules and even on first principles in a case where justice may require to be done, then Court can act *ex aequo et bono* to do what is fair and just within the law. Mr. Bedi confirms from 2005 Rules repealing 2003 Rules bear identical provision as to rights of orphans since it has been retained therein, which fortifies the case of the petitioner that he had a right of consideration in terms of sub Rule (2) of Rule 18 of the 2005 rules, which is similarly worded as the corresponding previous Rule. Sub Rule (2) of Rule 18 of the 2005 Rules is as follows:

> "18. Relaxation: - (1) xx xx
>
> (2) As a special case, rules shall be relaxed in the case of the children who have become orphan upon the demise of the Government employee in regard to minimum age only. The claim of appointment of such orphans shall remain alive till one child has attained majority/minimum eligible age for entry into Government service."

The question which falls for consideration is; whether this Court can make a direction, which would be accepted as within the law to direct the State to offer appointment to the petitioner. I see no limitations in the 2006 Rules when the application was made before coming into force of those Rules, then 2006 Rules would also come to the rescue of the petitioner that pending cases have to be treated in accordance with law.

It may be noted that Supreme Court in MGB Gramin Bank's case noticed the earlier decision in SBI Vs. Raj Kumar, (2010) 11 SCC 661 and relied upon it. The Full Bench in Krishna Kumari took note of Raj Kumar's case and yet reached the conclusion that the date of death would be the relevant date and, therefore, I would not apply Raj Kumar's case as it is distinguishable on facts and rules covering the subject are different and would follow the dicta in Krishna Kumar's case since Special Leave Petition filed by the State against the judgment of the full bench stands dismissed and the issue *res judicata* between the claimants and the State of Haryana. Hence, the question whether date of death or date of consideration is relevant can be answered elsewhere in an appropriate case where the facts and rules demand. An 'orphan' has been defined as a child who has previously lost one parent and has become an orphan upon the demise of the government employee and the Division Bench in Bandana Sharma's case interpreted this to mean it does not provide that death of both has been simultaneous as was wrongly thought by State of Haryana in that case. That petition was allowed upholding the right of consideration of a special class of candidates who are orphaned. Denying relief of ex gratia appointment in this case would tantamount to writing off the rules which clearly create a right to a special class of deserving persons who are left without means. Poverty is writ large on the face of record.

In view of the foregoing discussion, I find sufficient merit in this case and would allow it. The advice given by the Department to the petitioner at Annex P-8 vide impugned letter dated 05.09.2007 to the effect that the case of the petitioner could be only considered under the new Rules promulgated on 01.08.2006 restricted to financial assistance is not the correct position in law and is therefore, declared bad and is as a result set aside. The State is directed to consider the case of the petitioner within a period of 8 weeks from the date of receipt of certified copy of this order in the light of the observations made above.

06.12.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*