IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.12.2016

CWP No.1114 of 2009

Shamdass Mehta ...Petitioner

Vs.

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

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

RAJIV NARAIN RAINA, J. (ORAL)

On the death of his wife on 08.06.2006, the husband was released family pension on 05.06.2007. The petitioner's wife was an S.S.Mistress, a teacher in a Government school. The other pensionary benefits have also been handed over to the family of the deceased government employee. The petitioner was not satisfied with the family pension and made a request to the authorities to grant him the monthly family assistance under the prevailing Rules or ex gratia appointment and compassionate financial assistance. At the time of death, the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 (for short '2005 Rules') were in force. The new Rules called 'the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules, 2006' (for short '2006 Rules') were promulgated on 01.08.2006 after the death of the wife of the petitioner. The Treasury Officer, Kaithal vide his memo dated 21.08.2007 addressed to the Accountant General, Haryana, Chandigarh advised that the Pension Payment Orders in a sum of ₹ 1,61,800/- vide letter dated 25.06.2007 have been issued, which were pending in his office. The Treasury Officer, Kaithal being unable to decide as to what he was to do in the matter and sought guidance from the Accountant General, Haryana to proceed further. The Accountant General, Haryana advised that the policy dated 01.08.2006 would be applicable to the employees expiring thereafter. The petitioner had been allowed family pension and gratuity after sanction of the Department. For this an option was required to be submitted by claimant, which had not been received in the office of the Accountant General (A&E), Haryana. It was further advised that if the petitioner had not come forward to receive pension and gratuity, the same may be returned to the Accountant General office without making any payment. This was followed by the letter dated 27.02.2008 issued by the Accountant General (A&E), Haryana addressed to the Treasury Officer, Kaithal that both halves of PPOs are being returned with the remarks that the petitioner cannot refuse to draw his family pension as the option once exercised is treated as final. This attests to the fact that the petitioner had opted for family pension at one stage since there is no explanation or rebuttal in the petition or in any document placed on the writ file by the petitioner. The petitioner was thus pinned down on his option for family pension, which could not be changed. It is not asserted in the petition that the option was exercised after coming into force of the 2006 Rules. The date is not clear from the record placed before me. The presumption is that the option was exercised during the currency of 2005 Rules and, therefore, the petitioner's case had ceased to be a "pending case" to be transported via the 2005 Rules to the 2006 Rules to bring him the benefit of monthly financial assistance scheme created for the first time by the Haryana

Government abolishing right to compassionate appointments. Therefore, what petitioner could take even though not sought in the petition is the financial assistance offered under the 2005 Rules, which would be a sum of ₹ 5 lacs. However, there is no request made for such an award of assistance and, therefore, no opinion is expressed by this Court nor can be with any firm conviction. This issue is left to the authorities to decide and the petitioner may approach them in case he thinks he is entitled to the same in accordance with law and as per rules.

Before parting, it may be noted that I had dealt with issue of foreclosure of right to financial assistance by reason of release of PPO/GPO denied by the Haryana Government citing its instructions that where PPOs have been released, then financial assistance is not available under the Rules in CWP No.12717 of 2009 titled '<u>Smt. Saroj & another Vs. State of Haryana & others</u>' decided on 07.11.2016 holding that the instructions cannot supplant rules and the right would subsist. I had agreed with the petitioner in that case that instructions could not override the Rules and if the Rules created a right, then it should be given. I had granted to Smt. Saroj, the benefits following under Rule 5 (1)(c) entitling her to salary for the period of seven years i.e. from the date her husband would have retired from government service had he not died. I had not approved the memo dated 04.04.2008, which restricted right to financial assistance etc. under the new scheme in cases where PPO/GPO has been issued.

Having given my thoughtful consideration to the precedential connection between Smt. Saroj and the present one, I would distinguish the case in *Smt. Saroj*; *firstly*, for the reason that the petitioner had opted out of the new scheme by applying for family pension and had received the pensionary benefits including gratuity, whereas in *Smt. Saroj's* case, she was still pressing her rights for compassionate appointment for her son, who was a minor when her husband died and, therefore, all her rights remained in a state of flux to be determined ultimately by me on 07.11.2016 when the case was decided.

The other reason why I would deny the claim under the 2006 Rules is that the petitioner has approached this Court alone and not with his children, who collectively formed a 'family'. 'Family' has not been defined in the 2006 Rules and will have to suffer at least a restriction that in case of husband alone seeking compassionate financial assistance at the enhanced rate under the scheme in the 2006 Rules, the claim should not be allowed to reap such a right if he is already in receipt of family pension through his wife, who died in harness, and is an able-bodied person. The exchequer was not designed for such a situation as in this case in the schemes of the Government to shoulder recurrently full salary as per the formula adopted in the 2006 Rules.

There is yet another reason why I would decline interference in this case is that no indulgence can be shown to the petitioner in exercise of equitable jurisdiction provided by Article 226 of the Constitution and I see no fundamental reason to exercise equity in favour of the petitioner to change him over from family pension to full monthly salary of the deceased government employee under the 2006 Rules.

For these reasons, I find no sufficient reason to interfere in the matter and would dismiss the petition.

However, the rights, which the petitioner has earned through his wife for family pension etc., if not paid, shall be paid forthwith. As far as compassionate assistance in terms of 2005 Rules is concerned, the issue is kept open for the petitioner to press together with the children through the deceased wife and if the competent authority considers such a right is available then this order will not come in the way of the children to stake claim under the 2005 Rules by taking into account the date of death as the relevant date which occurred prior to the enforcement of the 2006 Rules.

12.12.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*