IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12717 of 2009
Date of decision: 7.11.2016

Smt. Saroj & anr. … Petitioners

Versus

State of Haryana & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Bhoop Singh, Advocate,
for the petitioners.

Mr. JS Bedi, Addl. A.G., Haryana.

RAJIV NARAIN RAINA, J.(Oral)

The 1st petitioner is the wife and the 2nd petitioner is the son of late Hardeva Ram, a government employee who died in harness on November 15, 2005, aged about 49 years, while serving in the office of the Animal Husbandry and Dairying Department of the Haryana Government. The son was a minor aged 16 years at the time of death of his father. Initially, the 1st petitioner applied for ex-gratia appointment of her son and the papers were accordingly processed by the department under the prevailing policy on compassionate appointments and financial assistance and a post identified in Class IV, but before the case could be processed till its conclusion, the Government of Haryana promulgated the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules 2006 (for short 'the Rules'). Before this Court adverts to its material provisions in Rules 5 & 6 of the Rules, it may be noticed that at the time of death of Hardeva Ram, the prevailing policy dated February 28,

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2003 was the one floated and applicable.

The scheme in the 2003 Rules was that claimant could apply within three years from the date of death of the employee to seek compassionate appointment or financial assistance. The amount of financial assistance provided in 2003 Rules was a sum of ₹ 2.50 lacs. In less than a year after the death of Hardeva Ram, the 2006 Rules were brought into force. Rules 5 & 6 are of concern in this petition and these provisions are reproduced below:-

> "5. Criteria for financial assistance :— (1) 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 drawn by the deceased employee is the normal course without raising a specific claim ,-
>
> (a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years.
>
> (b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years.
>
> (c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.
>
> (2) The family shall be eligible to receive family

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> pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.
>
> (3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain the residence on payment of normal rent/ license fee for a period of one year from the date of death of the employee.
>
> (4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.
>
> (5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance.
>
> 6. Pending cases :—All pending cases of ex-gratia assistance shall be covered under the new rules. The calculation of the period and payment shall be made to such cases from the date of notification of these rules. However, the families will have the option to opt for the lump sum ex-gratia grant provided in the Rules, 2003 or 2005 , as the case may be, in lieu of the monthly financial assistance provided under the Haryana compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006.

While petitioner No.1 initially staked her claim for ex-gratia appointment for her son but with the promulgation of 2006 Rules, she waived her right to compassionate appointment and applied for financial assistance instead under the Rules notified on August 1, 2006. The case of the petitioners fell in Rule 5(1) (c) entitling her to salary for the period of 7 years or till the date the employee would retire from Government service on attaining the age of superannuation, whichever is less, provided the

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employee attained the age of 48 years at the time of death. The petitioners' case for financial assistance was processed and allowed and salary was started to be paid by deducting from it the amount of family pension already paid to her from the date of death of her husband till the year 2009. This was fair enough since salary excludes pension and any family pension paid would have to be deducted from the salary payable to her husband. The petitioner has no complaint on this.

Mr. Bhoop Singh learned counsel appearing for the petitioners has drawn the attention of the Court to the relevant documents and particularly the memo dated May 18, 2007 at Annex P-4 regarding scheme of providing facility of Ex-Gratia concessions to the dependents of deceased government employees like late Hardeva Ram. It is recorded in the memo that amount of ex-gratia assistance was approved on May 4, 2006 and the first petitioner-dependent wife of late employee had furnished an affidavit for grant of benefit of financial assistance in the shape of grant of monthly salary as per instructions dated August 3, 2006. The memo refers to Rule 5 (c) and the instructions dated August 3, 2006 while allowing payment of monthly salary. After expiry of the period of 7 years, the petitioners were protected by a declaration in the memo that she would entitled to family pension thereafter.

The next vital document in favour of the petitioners pointed out by Mr. Bhoop Singh is the memo dated April 4, 2008, which has been read out in extenso by him in Court and deserves reproduction of its relevant part:-

> “On the subject cited above it is stated that due to
> the death of Late She. Hardeva Ram V.L.D.A. on

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> 15.11.2005. You had sent a proposal vide your letter no.143 dated 6.2.2006 to appoint his son Mandeep (D.O.B) 05.08.1989 as water carrier/bull attendant (4th Class). On this basis an Ex. Gratia grant of Rs.25,0000/- has already been sanctioned for the dependents of deceased vide this office letter No.17619-23 dated 04.05.2006 but due to want of all authenticated proof for giving employment to the dependent son you were requested to sent the proposal along with certificates of the dependents of the deceased vide this office letter no.17624 dated 11.5.2006 which were received by this office vide your letter no.771 dated 23.05.2006. The same were returned to you due to non fulfilling the standard of the proof vide this office letter no.26396 E-2/2 dated 14.07.2006. Those documents were again sent by you for giving employment to this office vide your letter no.1837 dated 03.10.2006.
>
> On coming into force of the new Ex.gratia Scheme of the government the proposal was sent to grant of financial assistance after receipt of letter no.2350 dated 17.01.2007 in view of Govt. letter no.36/33/2005-5-GS-II dated 03.08.2006 in response letter no. DGAH & D no.37566 E2/2 dated 13.10.2006. On which a per rule 5 (C) of the Govt. instructions dated 03.08.2006 the proposal to give monthly salary to the dependent wife of the deceased Smt. Saroj was sanctioned vide this office letter no.8067 dated 18.05.2007 (copy enclosed).

While the petitioners were receiving benefits under the 2006 Rules, they were abruptly stopped by the impugned order dated April 15,

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2009 passed by the Director General, Animal Husbandry and Dairying, Haryana, Panchkula, withdrawing the benefit by citing the clarificatory letters issued by the Chief Secretary, Haryana addressed separately to various authorities including the Accountant General, Haryana advising them of the changed position. These were the two memos dated June 8, 2007 and January 16, 2009 which were responses of the Chief Secretary, Haryana to queries put by some departments as to what to do in those cases where PPO/GPO had been issued. The clarification issued by the Chief Secretary, Haryana was that where PPO/GPO had been issued in case of death occurring prior to August 1, 2006, then the Haryana Compassionate Assistance to the Dependents of Deceased Employees' Rules 2006 cannot be made applicable in such cases. If the clarification holds good and is legal and valid, the petitioner would lose rights under the 2006 Rules by the impugned decision. But this is not the case with respect to the validity of the clarification issued by the Govt. since both these clarificatory letters have come under judicial scrutiny of this Court and have not found favour of the Division Bench of this Court in <u>Raj Kumari v. Uttar Haryana Bijli Vitran Nigam Ltd. & ors.</u> 2008(4) SCT 411. In that case the Court held that they neither qualify as rules framed under proviso to Article 309 of the Constitution nor can they be viewed as executive instructions under Article 162 of the Constitution and therefore, they cannot pretend to amend the Rules, 2006. In *Raj Kumari's case*, the husband of the petitioner died on March 13, 2005 when the 2003 Rules were in operation and the 2006 Rules had not come in force and therefore, the legal position in *Raj Kumari's* case is no different from this case. Needless to say that all pending cases of ex-gratia assistance deservedly had to be governed by the 2006 Rules and the

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benefits thereunder granted to the bona fide claimants. The Division Bench dealt with a similar and identical letter dated September 21, 2007 to the one under consideration in the present case and also a reminder dated January 14, 2008 withdrawing the benefits granted to Raj Kumari and set aside the same while issuing a direction to the respondents to release all the benefits to the petitioners therein as envisaged by a letter [similar to the impugned letter in this case] when the benefit was granted vide Annex P-4 in declaring the clarification to be of no legal value. In reaching the conclusion at a clarification cannot amend the rule the Division Bench relied upon the law expounded by the Supreme Court in the first major case on the point, that is, Sant Ram Sharma v. State of Rajashtan, AIR 1967 SC 1910 and other cases which are only off shoots proliferating the legal principle enunciated in *Sant Ram* holding that Rules framed under Article 309 of the Constitution cannot be varied, substituted or amended by issuing executive instructions under Article 162 of the Constitution. Not to speak of a clarification by the Chief Secretary, Haryana ousting valuable rights under the 2006 Rules depending on a fallacious reason whether PPO/GPO stood issued or not by the date fixed.

The rival argument raised by Mr. J. S. Bedi, Addl. AG, Haryana that the Government initiated steps under the 2003 Rules for ex gratia appointment and therefore, only those rules can apply precluding claim for enhanced benefits under the new dispensation in the policy of the 2006 Rules. This argument appears to the Court to be fallacious for the reason that though it might hold true for a case of compassionate appointment but it would not hold good in the case of financial assistance. The steps taken by the department towards compassionate appointment turned out infructuous

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by their own inaction in not offering the 2nd petitioner employment. The ground to deny the benefit to the petitioners, though no longer material in this case, it is urged that there had to be a clear and substantive vacancy occurring within 3 years of the death and that too within the quota of 5% ex-gratia that appointments could be offered. The perusal of 2003 Rules discloses that 3 years period is prescribed for approaching the authorities by an application seeking ex-gratia appointment from the date of death. Mr. Bedi builds his case on ex gratia appointments in a case where the claim is restricted to financial assistance in the scheme in the 2006 Rules for which reason the contention is unacceptable in facts of this case.

In passing, it would be useful to advert to another Division Bench judgment of this Court in The General Manager/Administrator, Dakshin Haryana Bijli Vitran Nigam Limited, Vidyut Sadan, Vidyut Nagar, Hissar & ors. v. Pehladi, 2013 (2)SCT 104, where the Full Bench decision in Krishna Kumari v. State of Haryana, 2012(2) SCT 736 has been explained inasmuch as the ruling was on compassionate appointments not financial assistance. The issue before Division Bench was for compassionate appointment alone and is not to be read in a case of financial assistance without reference to the date of death of government employee. Even in the Special Leave Petition against the judgment and order of the Full Bench, the Supreme Court while dismissing the petition left the question of law open.

Having heard learned counsel for the parties, I would allow this petition and quash the impugned order dated May 12, 2009, Annex P-8 and the recovery orders Annex P-10 and P-11 and all other notings on the file contrary to the rights of the petitioners by issuing a writ of certiorari in the

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light of the law in *Raj Kumari* case (supra). As a corollary, a mandamus is issued to the respondents to release all the benefits to the petitioners as envisaged by order dated May 18, 2007 (Annex P-4). The amounts be determined within 2 months from the date of receipt of certified copy of this order and paid to the petitioners. The petitioners are held entitled to interest @ 6% on the balance salary which was paid and then illegally withdrawn. Those amounts be also determined and paid along with the principal amount within the same period.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned *Yes*

Whether reportable *No*

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