

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14305 of 2009

Date of decision: 8.11.2016

Smt. Santro Devi

... Petitioner

Versus

State of Haryana & ors.

... Respondents

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

Present: Mr. RK Malik, Sr. Advocate, with
Ms. Rimple Kadyan, Advocate,
for the petitioners.

Mr. JS Bedi, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

The controversy involved in the present writ petition is that husband of the petitioner who was working as a Patwari in the Revenue Department, Haryana, died in harness on April 5, 2005. The petitioner had applied for compassionate appointment but the Director, Land Records Haryana vide letter dated August 30, 2006 (Annex P-2) had directed the Deputy Commissioner, Hisar guiding him that since the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules 2006 have been enforced w.e.f. August 1, 2006 so the case of the petitioner deserves to be remitted with a direction to consider her claim as per the Rules, 2006 which do not provide for compassionate appointment but prescribe a scheme of financial assistance and in compliance of the said letter, the petitioner filed affidavit (Annex P-3) that she wished to opt for monthly financial as assistance as envisaged in the 2006 rules in place of Family pension scheme which benefit was provided

by the PCS Rules as applicable to Haryana. But, her claim was rejected vide impugned order dated October 24, 2008 (Annex P-5) on the ground that the Government has clarified that in those cases where the family is in receipt of family pension, the benefits under 2006 Rules are not admissible.

It is argued by Mr. J.S.Bedi for the State that the petitioner claimed financial assistance of ₹ 2.50 lacs in terms of the 2003 Rules on compassionate appointments and financial assistance and the Government is prepared to give that sum of money and that should be an end of the matter. Therefore, the State is not under any legal obligation to pay any further amount in terms of 2006 Rules.

The contention is that relief can be confined to ₹ 2.50 lacs only and not extended to other benefits which might be available in the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules 2006. It is his further submission that once an option is exercised, it cannot be varied by the maker. This mechanism, he says, is stipulated in Rule 4(2) of the 2003 Rules. Rule 4(2) reads as follows:-

“4 (2) Exercise of option shall be permitted only once and shall not be changed, once exercised.”

While advancing this argument Mr. Bedi fails to see that in the 2006 Rules all pending applications are required to be decided in terms of the new dispensation. When Rule 8 of the 2006 Rules speaks of options, it means options tendered in terms of the earlier 2003 Rules on the subject matter, could be revisited by claimants and this is how Mr. Malik, learned Senior counsel appearing for the petitioner draws attention to the letter of the Director, Land Record, Haryana written to the Deputy Commissioner, Hisar, dated September 12, 2006 informing him that the Haryana

Compassionate Assistance Rules, 2006 have been issued and these rules have been enforced from August 1, 2006. So the case of the petitioner was sent back to the Deputy Commissioner in original for taking necessary action in accordance with the new policy enforced in 2006. It was in response to this advice that the petitioner submitted her affidavit to the department in which she deposed in para. 3 as follows:-

“3. That I wish to opt monthly financial assistance in place of family pension according to Rules 6 & 8 and the Haryana Govt. notifications dated 1.8.2006. Compassionate Monthly Financial Assistance which is equivalent to that of salary and allowances may kindly be granted. In return, I shall not claim family pension and lump-sums amount Rs.2,50,000/-.”

The petitioner had categorically averred in the affidavit that she would not claim family pension and lump-sum amount ₹ 2.50 lacs [underscored in quote] and her case should be considered under the new law in the policy of 2006. The petitioner was well within her rights to waive her inchoate rights under the policy, 2003 which had not brought fruit to her in terms of money by payment to conclude her rights before the new deal was enforced in 2006. Her case deserved to be considered in the light of the benefits made available by the employer State which her husband served and died in harness.

In the light of the above I find merit in this petition and would allow the same in the broad terms of the decision rendered by me yesterday in batch matter in CWP 12717 of 2009 decided on November 7, 2016 which order may be read as supportive reasons for this order. As a corollary, a mandamus is issued to the respondents to release all the benefits to the petitioner as envisaged in the 2006 Rules. Accordingly, the amounts be

determined within 2 months from the date of receipt of a certified copy of this order and paid to the petitioner together with interest @ 6% on the amount found due and the same be paid along with the principal amount, as above, within the same period in terms of the Rules, 2006.

(RAJIV NARAIN RAINA)
JUDGE

8.11.2016
monika

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>