

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 11403 of 2013

Date of Decision : March 02, 2016

Kamla Devi Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Nonish Kumar, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner challenges order dated 08.03.2013 (Annexure P-8), through which the petitioner's claim for seeking compassionate appointment has been rejected. The petitioner further prays for the issuance of a direction to the respondents to appoint her son on compassionate basis or to make payment of ₹ 5 lacs as ex-gratia compensation under the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2005 (hereinafter referred to as – the 2005 Rules).

After hearing counsel for the parties and perusing the record

with their able assistance, the facts that have emerged are that on 12.03.2000, petitioner's husband, while serving in the Haryana Police as a Constable, expired. After the passage of over 11 years, on 19.07.2011, the petitioner made an application for seeking compassionate appointment for her son. The reason given for the delay in making the application was that at the time of death of her husband, her son was minor. The application of the petitioner was considered and through order dated 08.03.2013, was rejected. Laying a challenge to the afore-referred order, the present petition has been filed for the reliefs, as mentioned above.

The record reveals that the claim for compassionate appointment was made by the petitioner after over 11 years of the death of her husband. As per the law settled by the Apex Court, as also this Court through a catena of judgments, after an inordinate, unexplained and unjustifiable delay of over 11 years, no compassionate appointment can be granted as the same would be against the very objects and principles, for which such appointment is made. In this regard, the following paragraphs of the judgment of the Apex Court in the case of **Umesh Kumar Nagpal vs. State of Haryana – 1994 (4) SCC 138** can usefully be referred to :-

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of

appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in

Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

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6. *For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis*

which it faces at the time of the death of the sole (1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878 : (1989) 4 SLR 327 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

To the same effect, is another judgment of the Apex Court in the case of **The Chief Commissioner, Central Excise and Customs, Lucknow and others vs. Prabhat Singh – (2012) 13 SCC 412**, in which it has been held as under :-

“The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved.”

Learned counsel for the petitioner relies on a communication dated 16.03.2011 issued by the Chief Secretary to Government Haryana to submit that through this communication, a fresh liberty was granted to persons, who had not applied earlier for compassionate appointment and it was under this communication that the petitioner had made an application on 19.07.2011. It was submitted that once the Government had itself granted another chance to persons, who could not apply earlier, then it did

not lie in the mouth of the Government to reject the case of the petitioner on the ground of delay.

The argument of the learned counsel, though attractive at first blush, does not stand deeper scrutiny. The communication dated 16.03.2011 is reproduced as under :-

“No.16/22/2010-5GSII

From

The Chief Secretary to Government, Haryana

To

- 1. All Heads of Department in Haryana*
- 2. Commissioners Ambala, Hisar, Rohtak and Gurgaon Division*
- 3. The Registrar, Punjab and Haryana High Court*
- 4. All Deputy Commissioners & SDOs (Civil) in Haryana*
- 5. The Registrar, MDU Rohtak, Kurukshetra University, Kurukshetra/Ch. Charan Singh Haryana Agriculture University, Hisar/Guru Jambheshwar University, Hisar/Ch. Devi Lal University, Sirsa/Bhagat Phool Singh Mahila University, Khanpur Kalan, Sonipat.*

Dated, Chandigarh the 16-3-2011.

Subject To provide one time Relaxation for applying ex-gratia compensation in old cases pertaining to before 1.8.2006 where no option was exercised under relevant provision though eligible to lump-sum compensation under the rule.

Sir,

I am directed to invite your attention to the subject cited above and to say that as per notification issued by the Haryana Government vide No. GSR 19/Const./Art 309/2006, dated 1.06.2006, the provision was made to give monthly financial assistance to the

family of deceased Government employees and all old cases pending shall be dealt with as per rule 6 of the Rules 2006 ibid.

Now it has come to the notice of the Government that there are some old cases where the family of the deceased under rule 4(2) and 6 (1) (c) of Rules 2003 and under rule (2) and 6 (4) of Rules 2006 of the ex-gratia scheme could not exercise option within time due to lack of requisite knowledge and other reasons and because of which the family of the deceased could not avail the benefit under ex-gratia scheme as being time barred.

In view of the above and taking a lenient view the Government has decided to re-consider all such cases as referred above to give one more chance as one time measure to exercise their option within a period of six months and not thereafter from the issuance of the instructions.

These issues with the concurrence of Finance Department vide letter D O No. 2132/2010-1 Pension, dated 2.2.2011.

Yours faithfully,

*Under Secretary Protocol
for Chief Secretary to Government Haryana.”*

A perusal of the above quoted letter shows that the same applied to cases, which were pending either under the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2003 (hereinafter referred to as – the 2003 Rules) or the 2005 Rules. Still further, the letter gave an option to make only an

application for grant of monthly assistance and not for seeking compassionate appointment.

The uncontroverted position, which emerges from the perusal of the record, is that at the time when the 2003 Rules and 2005 Rules came into existence, no application had been made by the petitioner and thus, her case could not be considered to be pending at that time. Therefore, the 2003 Rules and the 2005 Rules would not apply and resultantly, the communication dated 16.03.2011 also would have no application to the petitioner's case.

The petitioner's husband died on 12.03.2000 and the policy with regard to compassionate assistance, which was then applicable was the policy dated 08.05.1995 (clarified on 31.08.1995). For this reason as well, the 2003 Rules and 2005 Rules would not apply in the case of the petitioner and resultantly, no reliance could be placed by the petitioner on the afore-quoted communication dated 16.03.2011.

The petitioner's claim for ex-gratia compensation of ₹ 5 lacs under the 2005 Rules is also not made out, as under the 2005 Rules, for consideration of one's case thereunder, an application is required to be made within four years of the date of death of an employee, which is not so in the case in hand.

Even while applying the instructions of the Government dated 08.05.1995, which were applicable at the time of death of petitioner's husband, no relief can be granted to her as the same would be barred under Clause 2(v) of that policy. The same is reproduced below for ready

reference :-

“2. (v) The dependent of the deceased employee shall be required to apply for employment within 3 yrs. of the death of the employee.”

As per the afore-quoted provision, to be eligible for consideration of one's case under the policy dated 08.05.1995, an application was required to be made within three years of the date of death of the employee. As no such application was made within the time prescribed, no relief can be granted to the petitioner even under the policy dated 08.05.1995.

Thus, viewed from different angles, no relief can be granted to the petitioner. Resultantly, the present petition being devoid of any merit, is dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

March 02, 2016
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