

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7276 of 2008

Date of Decision: 22.11.2016

Gaurav

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Mahavir Sandhu, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

1. The father of the petitioner was a Government employee working as a Conductor in Haryana Roadways, Chandigarh Depot when he died in harness on June 11, 2005. He was then two months short of 15 years of age. His mother made an application in July 2005 informing the department that the husband had passed away leaving her to fend for herself without and the family left behind by the income producer. The family was completely dependent on the husband with no other source. She requested the authorities for providing a job on compassionate grounds for her son when he attains the age of majority. The mother applied on the prescribed proforma on April 19, 2006 for ex gratia appointment for her son which was duly supported by an affidavit. Shortly thereafter, on August 01, 2006 the Haryana Government repealed its earlier policy on compassionate appointments/financial assistance by bringing a fresh policy on the rule book in the style of "The Haryana Compassionate Assistance to the

Dependents of the Deceased Government Employees' Rules, 2006". This did away with compassionate appointments by restricting itself to a more beneficial financial assistance scheme as prescribed in the rules.

2. The petitioner admittedly attained the age of majority on April 13, 2008 and by then he had qualified the 10+2 examination and thus the request was made that he may now be provided benefit of ex gratia appointment as per the repealed Rules of 2003. Her representation was rejected on March 10, 2008 vide Annex P-8 informing her that she was earlier notified for payment of ex gratia grant of ₹ 2.5 lacs in lieu of a job for the dependent of deceased government employee.

3. On attaining the age of majority, the petitioner himself stepped forward and made an application on April 15, 2008 asking for the same relief of ex gratia appointment so that he could bear the continuing financial crisis of the family as a result of the death of his father. This representation was pending when the writ petition was brought in April 2008. He stated that he was making the rounds of the office but the authorities have paid a deaf ear to his request.

4. The department informed him that his mother's request had been rejected and no question arose to provide him relief of compassionate appointment in the changed scenario. Earlier, it may be mentioned, that the mother of the petitioner had filed CWP No.18703 of 2007 titled *Veena Rani v. State of Haryana and others* complaining of inaction in deciding the case. In addition to compassionate appointment, she claimed financial benefits under the Rules of 2006 in that petition. The petition was dismissed as withdrawn to pursue benefit under the old policy as per ratio of the

judgment of the Supreme Court in Abhishek Kumar v. State of Haryana and others, 2007 (3) RSJ 121 to claim compassionate appointment under the Rules of 2003. The pursuit for relief remained unsuccessful.

5. In the present petition the petitioner pleads that has two sisters. The family has no other source of income except the family pension coming from the deceased father. The sister was unmarried at the time the petition was brought. They belong to a poor family of a Conductor. It is urged that the State of Haryana being a welfare state has formulated ex gratia policies from time to time to give relief to the dependents of deceased employees so that they may find salvation from financial crisis in the event of untimely death. The object of the policy at the time of death of the father was not kept in view to help the family tied over the emergent situation resulting from the loss of the bread earner. On these premises the petitioner has sought directions against the State to provide him a job. This matter was tagged to be heard with *Krishna Kumari v. State of Haryana and others* decided by the Full Bench of this Court reported in case reported in 2012 (2) SCT 736.

6. On notice, the State has filed its reply to contest the case taking preliminary objections. The petitioner did not fulfill the condition of age of employment in Government service at the time the representation which was made on July 19, 2005 for grant of ex gratia benefits. It is stated that 5% quota of the sanctioned posts for the purposes of compassionate appointment had already been filled up by then and the mother of the petitioner was asked to give her consent for the alternative option of compassionate assistance of ₹ 2.5 lacs but she neither gave her consent nor turned up in the office of the answering respondents to receive the draft of ₹

2.5 lacs offered to her in accordance with the then prevailing rules of 2003. They admit that the mother of the petitioner requested through application dated June 25, 2007 that she may be given the benefits and allowances w.e.f. August 01, 2006 in terms of the Haryana Government ex gratia Scheme, 2006. It is the stand of the State that she was informed vide letter dated September 14, 2007 that since the dependents of the deceased employee are already getting family pension benefits she is not entitled for the benefits under the Rules of 2006. The governing policy in the case of the petitioner was the rules of 2003 which conferred right to receive ₹ 2.5 lacs in cases where the family of the deceased does not opt for ex-gratia employment.

7. The request for compassionate appointment could not be processed due to non-availability of post in the quota prescribed falling under direct recruitment quota in Group-C & D categories which are to be determined by the Head of the Department on 31 March of each year. The claim is denied under the 2006 Rules because the father of the petitioner died before the ex-gratia policy of 2006 came into force and right of consideration was foreclosed by the rules of 2003 even though they had been repealed by the 2006 Rules but with option to claim under 2003, 2005 or 2006 policies regarding financial assistance, as the case may be. Her claim under the 2006 Rules was rejected for financial assistance including payment of salary last drawn for the period prescribed in the formula adopted which depended on the age of the deceased.

8. The petitioner has filed a replication to the written statement re-asserting his rights to compassionate appointment. He asserts that his claim

was declined by the authorities even before he turned major, when his mother's application to the same effect was declined. He asserted that an application was made on his behalf when he was minor and the same was within three years from the date of death. He relied on proviso to Rule 4 and Rule 6 of the 2006 Rules to assert that declining financial assistance to his mother in terms of the 2006 Rules was erroneous. The right to relief survives since they stand preserved by the 2006 Rules which provides that pending applications will be decided in terms of the 2006 Rules despite repealing the earlier ones, including the 2003 and 2005 Rules. He re-asserted that his case fell in the ratio of *Abhishek Kumar* case (Supra) which laid down the law that at the time of death of the employee whatever rules are in existence, those would apply and not the rules which are in existence at the time when the claim was considered for appointment or otherwise rules as are in existence would apply. Therefore, the date of death was relevant. The rules prevailing at the time of death were the 2003 Rules which provided both benefits of ex gratia employment and financial assistance as per option, as the case may be. The petitioner has been wrongly denied consideration under the applicable rules of 2003. It is argued that the application for ex gratia appointment would survive till he attained the age of majority in 2008. In these facts and circumstances, this case has to be considered.

9. I have heard the learned counsel for the parties at sufficient length and perused the record with their assistance.

10. The petitioner is presently about 26 years of age. This petition has been pending since 2008. The petitioner has not placed any material on

record as to the status of the family obtaining today and whether he has made any effort to look for a job elsewhere in Government service or in the private sector to shoulder the duties which have fallen on the son of the parents. As time passes away, the right, if any, to ex gratia appointment recedes with the passing hour because of the very nature of things as change for the better is inevitable as life struggles on and water finds its level.

11. The object of such appointment is to provide immediate relief to save family from acute financial crisis and complete ruin but is not meant to fashion a career in government or to promote the status of the family. It is true that in *Krishna Kumari* the full bench of this Court commended the view that it is the date of death which is the relevant date. The Special Leave Petition filed before the Supreme Court against the decision of the full bench has been dismissed but the question has been kept open. Assuming that the ratio of the full bench [of which I was a member] is to apply that is the date of retrospective consideration would be the date of death of the bread earner in 2005 when the 2003 Rules were in force which provided both compassionate appointment and financial assistance but unfortunately the petitioner was a minor of about 15 years at that time. But all the same, the stand of the respondents is that during the relevant period of three years of the date of death there was no sanctioned post against which his claim could be satisfied from the 5% quota which was already replete and House Full.

12. It is trite to say that claim to compassionate appointment rests on several factors. There must be a sanctioned vacancy available in the

queue and if it not available absence can prevent claim from maturing. In any case, compassionate appointment cannot be claimed as a matter of right and a direction cannot be issued to the State to create a supernumerary post to accommodate the claim of the petitioner and that too retroactively. Moreover, if the family did not accept the financial assistance of ₹ 2.5 lacs offered to them not long after the death of the breadwinner then there may be a case that family did not fall in cases of sudden financial crisis and acute hardship.

13. For all these reasons, I do not think this is a fit case to interfere by issuing a mandamus to the State to offer appointment to the petitioner even by applying the law in MGB Gramin Bank v. Chakarvarty Singh, (2014) 13 SCC 583 that the date of consideration is the appropriate date to apply the schemes by keeping in view the event that the rejection came for the first time in the presence of the 2006 Rules. By that time the right to ex gratia appointment stood extinguished by State policy offering only financial assistance.

14. While the petitioner may have no case for compassionate appointment at this distance of time [he was underage for employment at the time of death] but his case could not be dismissed altogether even qua financial assistance. There is no doubt that the family was offered ₹ 2.5 lacs in terms of the 2003 policy which was non-actively refused by non-acceptance but at the same time refusal was obviously a product of a line of thinking that had money been accepted it might result in automatic extinguishment of claim to compassionate appointment. It cannot be said with any certainty that there was refusal to accept money because no order

was passed rejecting the case of financial assistance in the presence of a draft already banked and offered but was not credited into the account of the mother of the petitioner which might have ended the claim altogether. Therefore, the claim remains technically pending and open to revival in view of Section 6 of the Rules of 2006 including right to claim last drawn salary etc. of the deceased for the period prescribed in Rule 6 of the rules.

15. The 2006 Rules make pending cases before enforcement open to choice of dependents from one of the schemes framed under either the 2003, 2005 or the 2006 Rules, as the case may be. To this extent, the rights of the petitioner and his mother are kept open for her to approach the authorities, if advised, who would consider accepting her option and decide the case of financial assistance accordingly in terms of the 2006 Rules. Though the petitioner has centered his claim and set his heart on compassionate appointment alone, which is not found sustainable in law on facts presented and after hearing the parties in order to serve the ends of justice I would still bring the case of the petitioner and his mother in the residual prayer seeking after the main prayer a writ, order or direction to the respondents which the court deems fit and proper in the facts and circumstances of the case to issue appropriate directions *ex debito justitiae*.

16. Therefore, without issuing any specific directions directly to the State to provide financial assistance in a particular fashion I would keep the right open as above. If the petitioner approaches the authorities with his secondary grouse argued in the alternative by leave of the Court they will decide the claim for financial assistance in terms of the 2006 Rules based on option by treating the case for financial assistance as “pending case”. If a

request is made then it is ordered that the case of the family of the petitioner shall be processed within *three months* and after completing the requisite formalities the department would consider offering the mother of the petitioner/petitioner financial assistance in accordance with and as available in law.

17. Accordingly, the petition stands dismissed with respect to compassionate appointment but with the above directions so far as financial assistance is concerned.

(RAJIV NARAIN RAINA)
JUDGE

22.11.2016

manju

Whether speaking/reasoned *Yes*

Whether reportable *No*