

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 8037 of 2009 (O&M)

Date of decision:-17.11.2016

Shashi Bala and anr.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. B.S. Dhillon, Advocate for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Mohnish Sharma, Advocate,
for respondents No. 2 to 5.

RAJIV NARAIN RAINA, J. (ORAL)

After arguing for some time on the merits of the case and having regard to the order passed by the Division Bench of this Court on 01.05.2008, the petitioner would have no right to claim compassionate appointment since her son namely, Munish Kumar filed the writ petition claiming compassionate appointment and in the alternative financial assistance in terms of the Haryana Compassionate Assistance to the Dependents of deceased Government Employee Rules, 2003 ('2003 Rules' – for short) The order has attained finality. The operative part of the order passed by the Division Bench reads as follows.

“As a matter of fact, on March 20, 2007, learned counsel for the petitioner has restricted the claim of the petitioner to the extent of grant of ex-gratia financial assistance only. Since the claim of the petitioner was considered prior to applicability of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee Rules, 2006 (hereinafter referred to as the '2006 Rules'), therefore, the petitioner is entitled to ex-grata financial assistance to the tune of Rs.2.5 lacs alone as contemplated under the 2003 Rules.

In view of the said fact, the present writ petition is disposed of with a direction to the respondents to release the financial assistance of Rs. 2.5 lacs to the petitioner

within a period of one month from the date of receipt of certified copy of the order of this Court.”

It may be noted that the respondent-Uttar Haryana Bijli Vitran Nigam Ltd ('Nigam'- for short) had offered ₹ 2.5 lakhs to the family of the petitioner prior to the filing of the writ petition but for reasons which are not clear on the record, the amount was not disbursed. This is obvious because of the directions of the Division Bench issued on 01.05.2008 with respect to the consideration given for release of financial assistance of ₹ 2.5 lakhs.

What is also significant in the extracted part of the judgment is that the Division Bench restricted the claim of the family of the deceased Government servant to the benefits contemplated under the 2003 Rules and to the exclusion of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee Rules, 2006. The order was passed in the presence of the counsel for the Nigam and therefore, it would be presumed to be known to both mother and son that the order had to be complied with, without inviting contempt proceedings. Learned counsel for the respondent-Nigam is not in a position to say authoritatively whether the amount of ₹ 2.5 lakhs was disbursed within time allowed in the order dated 01.05.2008.

The petitioner's husband while working as Assistant Lineman died in harness at the age of 49 on 20.03.2002 and the family would, as directed by the Division Bench of this Court, be entitled to financial assistance contemplated in the 2003 Rules. It is also the admitted position that the petitioner-Shashi Bala is in receipt of family pension from the death of her husband. Nevertheless, the right to family pension is independent of the right to financial assistance under the 2003 Rules which oblige an employer to offer the financial assistance in a sum of ₹ 2.5 lakhs to the

dependents of the deceased employee. The offer was made by the respondent-Nigam for the first time on 21.04.2006 when the case for ex gratia appointment was rejected by the authorities and instead option was sought for changing over to financial assistance. In these circumstances the offer of ₹ 2.5 lakhs was made in the year 2006 but it was not paid, and if not paid, it was legitimately due but illegally withheld and therefore, the petitioners may have a case for interest on the principal amount of ₹ 2.5 lakhs to compensate them for loss of use of money for all these years. The question arises from which date the interest should be made to run; whether from the date of death of the Nigam employee, or the date when the request for compassionate appointment was rejected and in lieu thereof financial assistance was offered, or still further from the date of filing of the writ petition in the year 2009.

Having given my thoughtful consideration to the issue and having heard the learned counsel for the parties at length and after perusing the record and the milestones of the case, I am made to believe that ends of justice will be served if the petitioner is paid a sum of ₹ 2.5 lakhs as financial assistance with interest running from the date of first rejection of the request on 25.11.2002 (Annex P-4). This date is pressed by the petitioner to be the appropriate point for counting interest etc, and to consider this prayer made at the Bar, a look at the office memo would be necessary. The office memo rejecting the employment case reads as follows:

“In view of latest instructions imparted by the Chief Secretary of Govt. Haryana vide memo. No. 16/123/2001-5-GS-II dt. 19.11.2001 and adopted by M.D. UHBVN Panchkula Memo. no. Ch-5/UH/HR-II/pen/L-II dt.11.4.02 wherein it has been clarified that claim for employment case only be considered within a period of three years of death of an employee but in the present case the applicant Sh. Munish Kumar S/o Shri Som Nath ALM will

attain 17 years of age on 28.3.2005 only after three years as such case does not fall within the guideline issued by authority concerned.

You are, therefore, requested to look into the matter and inform the widow accordingly. The employment case is also returned herewith.”

The memo negates the case for compassionate appointment for the reason that the petitioner's son was a minor when his father died and would attain 17 years of age on 28.03.2005. Since the date was beyond three years of the date of death so therefore the Nigam thought that his case does not fall within the guidelines issued by the authorities. The petitioner No. 1 was informed accordingly. I do not think the petitioner has right to interest from the date of rejection of the compassionate employment case as it is inchoate with no fixed point of reference or alternative prayer made to change the track of the case to financial assistance and therefore, the better point for running element of interest to my mind to sub-serve the ends of justice would be from the expiry of one month from the date the order was passed by the Division Bench of this Court on 01.05.2008 to release financial assistance of ₹ 2.5 lakhs while rejecting the case for ex gratia appointment to the son Munish Kumar. Accordingly, the amount be calculated and paid to the petitioner with simple interest @ 12 % per annum from 01.06.2008 till realization, within two months from the date of receipt of certified copy of this order.

The writ petition is partly allowed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

17.11.2016

PA

Whether speaking/reasoned
Whether reportable

Yes
No