

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

CWP No.15500 of 2014

Date of decision: 02.02.2016

Smt. Asha Devi

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajbir Sehrawat, Advocate,
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana, Advocate,
for the respondents.

RITU BAHRI, J.

The petitioner is seeking direction to the respondents to grant her the benefit of compassionate assistance as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short '2006 Rules').

Husband of the petitioner died on 07.09.2004 while working on the post of VLDA. He left behind the petitioner and three minor children. He was a regular employee since 12.06.1984. After his death, the petitioner was offered appointment to the post of Watermen vide letter dated 21.06.2006 (Annexure P-1). However, she could not accept the said appointment due to adverse condition in her family life on account of death of her husband and had no time to spare for minor children. At the same time, the petitioner had made an application dated 30.11.2005 (Annexure P-2) for appointment of her son namely Manish Kumar as he was a matriculate. Thereafter, she made another application for grant of compassionate assistance under the 2006

Rules. This application was duly received by the respondent-department. Thereafter, respondent No.3 sent the same to respondent No.2 vide letter dated 13.09.2009, however no action was taken thereon. Consequently, respondent No.3 again sent a letter dated 18.10.2006 (Annexure P-4) to respondent No.2 recommending that instead of appointment, the petitioner be offered the financial assistance under 2006 Rules. The claim of the petitioner for getting financial assistance under 2006 Rules was sanctioned vide letter dated 13.02.2007 (Annexure P-6) with a condition that she shall not be entitled to any family pension. The petitioner deposited the entire amount of family pension received by her vide Treasury Challan No.49 dated 29.01.2009. Respondent No.3 vide letter dated 02.03.2009 (Annexure P-7) requested respondent No.2 to start payment of monthly salary w.e.f. 03.08.2006.

The problems of the petitioner started now when instead of complying with the sanctioned letter dated 13.02.2007 (Annexure P-6), respondent No.2 vide letter dated 26.05.2010 informed respondent No.3 that as per letter/clarification dated 16.01.2009 (Annexure P-11) issued by the Government, the petitioner could not be granted the benefit as she had already been issued the Pension Payment Order. Hence, this petition.

Upon notice, written statement on behalf of respondent Nos. 1 to 4 has been filed by Sub Divisional Officer, Animal Husbandry and Dairying, Karnal, wherein it has been stated that after the Government has issued the 2006 Rules, the petitioner deposited the amount of pension to the tune of Rs.2,32,895/-, which she had received from August, 2006 to December, 2009 and thereafter, the sanction order for monthly financial assistance was passed by the respondents vide order dated 10.02.2011. Meanwhile, the State

Government issued clarification dated 16.01.2009 to the effect that where the PPO/GPO have been issued in case of death occurred prior to 01.08.2006, the benefit of 2006 Rules cannot be made applicable in such cases. Since the PPO was issued to the petitioner on 09.02.2005, therefore, her case could not be considered for monthly financial assistance under 2006 Rules, as per Government instructions dated 16.01.2009 (Annexure P-11). Another ground for declining the benefit to the petitioner was that under 2006 Rules, the petitioner had option of either taking appointment on compassionate ground or financial assistance to the tune of Rs.2.5 lacs. The petitioner was offered appointment of Watermen (Class IV) vide letter dated 21.06.2006 (Annexure P-1), which she did not accept and rather, made an application dated 30.11.2005 (Annexure P-2) for appointment of her son-Manish Kumar in place of herself, who was minor at that time. After exercising the option to take appointment as per Haryana Compassionate Assistance to the Dependent of Deceased Government Employees rules, 2003 (for short '2003 Rules'), the petitioner cannot be permitted to change her option to claim financial assistance under 2006 rules.

Main question for consideration in the present case is, “after the death of husband of the petitioner on 07.09.2004, what benefit under the Ex-gratia Scheme can be extended to her.”

After the death of her husband, the petitioner was offered appointment to the post of Watermen vide letter 21.06.2006 (Annexure P-1), which was not accepted by her as she had three minor children to look after and could not spare time. 2006 Rules were made after the offer of appointment was made to the petition on 21.01.2006. Under these Rules, an option was to be exercised by the claimant that if, she had received the family

pension earlier, she could refund the same and claim the benefit as per Rules.

Relevant Rule 6 of the aforesaid Rules is reproduced as under:-

“6. 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 rule. 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.”

As per above Rule, pending cases were to be covered by the new Rules and the families will have an option to opt for the lump sum ex-gratia grant provided in the Rules 2003 or 2006. In the case of the petitioner, she had been offered an appointment to the post of Waterman as per letter Annexure P-1, which could not be accepted due to her adverse family circumstances. Thereafter, a notification with regard to 2006 Rules came on 01.08.2006. When the new Rules i.e. 2006 Rules, came into force, the petitioner neither had accepted the compassionate appointment nor had received ex-gratia payment of Rs.2.5 lacs. At the same time, she had been given the family pension by the department. On the date when 2006 Rules came into force, for all intents and purposes her claim was pending with the department for compassionate assistance. She gave an affidavit that she would return the pension, so received by her, therefore, she should be granted the benefit of 2006 Rules. As per written statement, the petitioner had deposited a sum of Rs.2,32,895/-, which she had received from August, 2006 to December, 2009, vide Treasury Challan No.49 dated 29.01.2009. This deposit was made by her after the sanction order dated 13.02.2007 (Annexure P-6) had been passed. After depositing the above said family pension on 29.01.2009, the petitioner has not been awarded the

compassionate assistance till date. The claim is being denied pursuant to the clarification issued by the Government vide letter dated 16.01.2009 (Annexure P-11). Clause 3 of the clarification, which is relevant, is reproduced as under:-

“3. Where PPO/GPO have been issued in case of death occurred prior to 01.08.2006, the Haryana Compassionate Assistance to the Dependents of Deceased Govt. Employees Rules 2006, cannot be made applicable in such cases.”

Vide the above said clarification, petitioner was not granted the benefit of 2006 Rules, as her husband had died before 01.08.2006.

The families of deceased employees have been given an option under Rule 6 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 2006 Rules. A further provision has been made in Rule 7 that in case of any doubt, the matter can be referred to the Government in the department of General Administration. In the case of the petitioner, when 2006 Rules came into force, her case for grant of financial assistance was still pending with the respondent-department as she had neither been appointed nor any financial assistance had been provided to her as on 01.08.2006. Family pension had to be granted to her as it was a separate right on account of the services rendered by her husband on regular basis. Payment of family pension before 01.08.2006 would not render her claim as infructuous under the Financial Assistance Scheme dated 01.08.2006, wherein as per Rule 6, all pending cases were to be decided under the new Rules. The clarification (Annexure P-1) cannot over-right the main Rule i.e. Clause 6 of the notification dated 01.08.2006.

Reference can now be made to a decision given by a Co-ordinate

Bench of this Court in **Smt. Kelo Devi and another Vs. Haryana Vidyut**

Prasaran Nigam Limited and others, CWP No.7865 of 2011 (decided on 29.02.2012). In this case, compassionate assistance of Rs.2.5 lacs under 2003 Rules or 2005 Rules was offered and deposited in the account of the petitioner. After coming into force 2006 Rules, the petitioner exercised his option under Clause 6 to obtain monthly financial assistance on the basis of last pay drawn. Her claim was not being entertained on the ground that vide letter/instructions dated 19.07.2007, the benefit of 2006 Rules was to be made applicable to the person, who died after 01.08.2006. These instructions were quashed by this Court and in view of the option given to the Government employee under Clause 6 of 2006 Rules, the writ petition was allowed and the petitioner was held entitled to the benefit under 2006 rules monthly viz-a-viz payment of salary after adjusting payment of Rs.2.5 lacs, which she had already received under 2003 or 2005 Rules earlier.

Applying the ratio of aforesaid judgment in the facts of present case, clarification/instructions dated 16.01.2009 (Annexure P-11) with regard to denying the benefit of 2006 Rules in cases where the PPO/GPO have been issued prior to 01.08.2006, are contrary and against the notification dated 01.08.2006. Moreover, the respondents, after having accepted entire amount of family pension vide Treasury Challan No.49 dated 29.01.2009, have kept the petitioner high and dry without family pension and financial assistance. The petitioner, who was having minor children when her husband had died in the year 2004, has been rather ill-treated. Consequent upon the death of her husband, the petitioner along with her three minor children had faced acute agony after 2009 when she neither got family pension nor compassionate assistance under 2006 Rules. The very object of 2006 Rules, after accepting the deposit of family pension, has been defeated in this case. The claim of the

petitioner could not be rejected. Furthermore, as per Rule 5 of notification dated 01.08.2006, all pending cases of ex-gratia assistance were to be covered under the new Rules. The petitioner had neither been given financial assistance under 2003 Rules or 2005 Rules nor she was in a position to accept the appointment of Waterman, which was offered vide Annexure P-1.

In view of the above discussion, this petition is allowed and the respondents are directed to immediately release the benefit of sanction order dated 13.02.2007 (Annexure P-6) to the petitioner within a period of one month from the date of receipt of certified copy of this order. The respondents are further saddled with costs of Rs.50,000/- to be paid to the petitioner. Compliance report of this order be sent to this Court after four weeks.

(RITU BAHRI)
JUDGE

02.02.2016
ajp