

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

Date of decision: 08.12.2016

CWP No.25588 of 2012

Kirna Devi

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravinder Malik Ravi, Advocate, for the petitioner.

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

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner's husband was a Government servant working as a Water Pump Operator before he died in harness on 16.06.2006 leaving behind the petitioner, two unmarried daughters and one unmarried son. The siblings are non-petitioners. The petitioner submitted an application in November, 2006 to the authorities in her late husband's parent department to for grant of compassionate appointment to her son as per the provisions of the Haryana Government known as Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 (for short '2005 Rules'), which were then in vogue and the new Rules called 'the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules, 2006' (for short '2006 Rules') had not been notified. The 2006 Rules were notified on 01.08.2006.

In the alternative, the prayer for compassionate financial assistance has been made in this petition in case the predominant fails. The fact of the matter is that the petitioner has neither been able to get

compassionate appointment for her son nor financial assistance for herself under the extant policies of the Haryana Government. The prayer for compassionate appointment was given up on a statement made by the petitioner through her counsel Mr. Malik on 08.08.2016 before the Coordinate Bench. The order is reproduced below:

“Learned counsel appearing for the petitioner makes a statement that the petitioner is ready and willing to accept a sum of Rs.5 lacs under the Haryana Compassionate Assistance to the Dependents of Deceased Govt. Employees Rules, 2005. He, however, has placed a rider that acceptance of such amount would be only if certain interest is granted on the amount. In support of such submission counsel would advert to the documents placed on record at Annexure P-3 i.e. an application form for compassionate financial assistance that the widow/present petitioner had submitted on 13.11.2006. He submits that the petitioner is liable to be compensated for the delay that is attributable to the department for processing such application.

Learned State counsel prays for time to assist the Court on such aspect as also to produce the original record which would depict the manner and mode in which the application of the petitioner seeking compassionate financial assistance had been dealt with.

List on 31.8.2016.”

The only question which arises for consideration is; whether the petitioner is entitled to financial assistance in a sum of ₹ 5 lacs with or without interest due to culpable delay attributable to the Department for not offering the sum of financial assistance to the petitioner within a reasonable time after the death of the bread earner, when it should have been gestured. Assuming *arguendo* the petitioner did not apply for financial assistance, she was still within her legitimate rights to press for compassionate appointment in the hope of securing one for her son without being seen as a surrender of

right, no matter if she met with success or not as any mother might. But at least the Government should have taken timely steps to help the petitioner in securing financial assistance and not have made her wait for years together.

At this stage, Mr. Malik corrects the position and draws attention of this Court to Annex P-3, which was an application form for compassionate financial assistance submitted by the petitioner and duly received by the Executive Engineer, Public Health Division, Ambala Cantt. on 13.11.2006 bearing the officer's rubber stamp. The application form for compassionate financial assistance was in addition to the application form for employment under the ex gratia scheme as per Rule 5 of the prevailing rules.

Mr. Bedi for the respondents' points out to the reply to the legal notice dated 11.11.2010 filed by the petitioner and especially to the contents of Para.1 thereof in which the following averments have been made:

“1. Para No.1 of your notice is totally wrong and denied as the two number applications of your clientess were processed by this office to the concerned authority. Out of which one application of your clientess was considered and rejected which was for Ex-Gratia appointment of her son being no such policy in force of Haryana Government. The other application of Ex-Gratia grant was duly processed and your clientess was paid ex-gratia amount of Rs.25,000/-. Your clientess is required to apply for ex-gratia compensation of Rs.5.00 lacs which she never applied and thus the case for grant of ex-gratia compensation could not be forwarded to the competent authority for approval.”

The reply to the legal notice is not substitute of an order of the Government passed by the competent authority made in writing after examining the original record and settling rights. The averments made in Para.1 of the reply appear clearly in contradiction of the application form for

compassionate financial assistance (Annex P-3), where there is no mention that claim is confined to ex gratia payment of ₹25,000/-. Since Mr. Bedi has raised the issue in defence of the action that no application has been made by the petitioner for financial assistance in terms of 2005 Rules, a perusal of Para.4 of the petition where Annex P-3 falls deserves attention to be read and considered. The same reads as follows:

“4. That it is further pertinent to mention here that apart from giving the aforesaid application, the petitioner also submitted the application form dated 13.11.2006 to the respondent No.3 for compassionate financial assistance in case no compassionate appointment is given to her only son namely Vikram Jit Singh. For kind perusal of this Hon’ble High Court, the true copy of the application form dated 13.11.2006 submitted by the petitioner to the respondent No.3 for compassionate financial assistance is attached as Annexure P-3 to the petition.”

A corresponding look at the averments made in Para.4 of the written statement reveals a different story. The response of the State is in the following terms:-

“4. That in reply to para.4 of the petition, it is submitted that the petitioner insisted for grant of ex-gratia employment to her son and did not agree to get the compassionate financial allowance as per policy. The petitioner was advised to submit the papers for grant of ex-gratia financial assistance, but she failed to do so.”

There is no categorical denial in the pleadings of submission of Form Annex P-3. It is well settled in law that what is not specifically denied is admitted. I will then take it as true and faithful to the record that Annex P-3 was submitted not only because statement is made in the pleadings, but because it bears the signatures and rubber stamp of the Executive Engineer, which is an authentic proof that the Form was duly submitted. It is not the

case of the respondent State that the signatures of the Executive Engineer are forged or the rubber stamp is fake and, therefore, I am constrained to observe that the contents of Para.1 of the reply to the legal notice are an attempt to obstruct in the administration of justice and aimed to mislead the court and deflect it from the course of justice. If the contents of Para.1 of the reply to the legal notice are to be believed, the petition could have been dismissed. The conduct of the author of the reply is questionable and deserves to be enquired into by the Chief Secretary, Haryana or his nominee and report submitted to this Court even after the conclusion of this case, as to what action was taken against the erring official who so casually took a false defence which was ex facie not true to record. The Chief Secretary, Haryana, may also note that Governments are expected to speak formally and in writing by passing orders which affect finally the rights of the citizens be they government servants. Reply to a legal notice is not an order of the Government. This Court does not quash written statements filed by the department of the State responding to a petition. The written statement is nothing but a faithful representation of the original record of the Government to make hearing in Court as shortest as possible otherwise in every case the record would have to be called for though it may not be necessary. If the reply to a legal notice does not reflect faithfully the factual position on record, then this Court can come down with a heavy hand. Similar issue has been considered by me recently in a judgment reported as Kailash Devi Vs. State of Punjab & others, 2016 (2) SCT 216; 2016 (2) PLR 369.

To return to the case, I have no doubt left in my mind in the facts and circumstances of the case that the petitioner is entitled to compassionate financial assistance in a sum of ₹ 5 lacs as was available to

her under the 2005 Rules. The story set up by the State in its reply and in response to the legal notice is found a piece of falsehood and therefore, while allowing this petition, a direction would go to the State to pay interest at the rate of 9% p.a. on ₹ 5 lacs from the date of submission of application for providing compassionate financial assistance i.e. 13.11.2006. The amount should have at least been offered by cheque or draft and if refused may have disentitled claimant from relief of interest on the principal amount due to delayed payment and loss of use of money. Accordingly, the amounts are directed to be calculated and paid to the petitioner within a period of eight weeks from the receipt of certified copy of this order either from the Court or by the petitioner, whichever is earlier.

The petition is partially allowed with the right to ex gratia appointment given up in the hope of award of interest as recorded in the motion order reproduced supra while surrendering the predominant prayer.

08.12.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*