

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

CWP No. 22312 of 2015

Date of Decision: 07.11.2016

LATA

... *Petitioner*

VS.

STATE OF HARYANA AND ANR

...*Respondents*

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Amit Kaith, Advocate,
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana

KULDIP SINGH, J. (Oral)

The petitioner has preferred the present writ petition under Articles 226/227 of the Constitution of India for issuance of writ of certiorari quashing the order dated 03.06.2015 (*Annexure P-10*) passed in reply to the legal notice served by the petitioner regarding denial of payment of ex-gratia payment to the petitioner.

The brief facts of this case are that Swaraj Singh, husband of the petitioner, was employed as Driver w.e.f. 07.07.1995, on contract basis by the General Manager, Haryana Roadways, Chandigarh. His services were regularized vide order dated 15.06.1998. Swaraj Singh expired on 06.03.2001 and thereafter, his wife-Shri Lata (petitioner) had applied for an ex-gratia amount of ₹2,50,000/- in terms of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (*for short "Rules of 2003"*). The same was denied to the petitioner on the ground that the deceased was not having regular Service of 3 years and hence, not entitled to benefit of the said Rules 2003. This is how the petitioner has approached this

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Court with a prayer for issuing writ of certiorari for quashing of order dated 03.06.2015 (*Annexure P-10*) vide which the said relief was declined and also to issue writ of mandamus directing the respondents to release the payment of ex-gratia benefit to the petitioner alongwith interest.

I have heard learned counsel for both the parties.

It comes out that in the written statement the respondents have not denied that the payment of ex-gratia benefit was denied to the petitioner as the deceased-husband of the petitioner was not possessing regular service of three years as per Rules 2003. It is further stated that the definition of deceased employee is given in Rule 3 (d) which stipulates that the deceased employee must have regular service of three years. For appropriate appreciation of the said rule, the Rule 3 (d) defining the deceased Government employees is reproduced as under:

“Rule 3 (d) - ‘deceased Government employee’ means a Government employee:-

- (i) appointed on regular basis, and not working on daily wages, casual, apprentices, work charged, ad hoc, contractual or re-employment basis;*
- (ii) who has served the Government for at least 3 years;*
- (iii) who should not have crossed the age of 55 years.*

It comes out that the respondents have grossly misinterpreted the said Rule. The Rule merely says that the deceased-employee must be employed on regular basis at the time of death. The said Rule does not say that he must have regular Service of 3 years. Sub-Rule 2 states that he must have served the Government at least 3 years. Here, it is not specified that the 3 years service must be as a regular employment and that the services on daily wages, casual,

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apprentices, work charged, ad hoc, contractual or re-employment basis; are to be excluded.

The combined reading of Sub-Rules (i) and (ii) of Rule 3 (d) of the Rules 2003 shows that the deceased employee on whose behalf the benefit is being sought must be regular employee at the time of his death. Secondly, the deceased employee should have served the Government at least for 3 years and that 3 years need not be only the regular employment. It may include previous service on daily wages, casual, apprentices, work charged, ad hoc, contractual or re-employment basis contract employment was followed by regularization. Therefore, in the present case, the previous service of the deceased-husband of the petitioner is a service of the Government and hence, the case of the petitioner is squarely covered by the definition of deceased employee mentioned above. Consequently, it will follow that the petitioner is entitled to the benefit of said Rules 2003 being widow of the deceased-employee who served the Government with effect from 07.07.1995 till 06.03.2001 i.e. for a little less than 6 years. Since, benefit was not denied initially and during the intervening period the said Rules of 2003 has been replaced by another set of Rules called as Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (*for short "Rules of 2006"*), therefore, now this Court is to see as to whether the petitioner is entitled to benefit of the said Rules or not? In the new Rules of 2006, the definition of deceased employee has been done away with and in place of Rule 5 lays down for criteria for financial assistance and the same is mentioned as under: -

"5 (1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and

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other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim

- (a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty five years;*
 - (b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less. if the employee at the time of his death had attained the age of thirty five years but had not attained the age of forty eight years;*
 - (c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty eight years*
- (2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed;*
- (3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain the residence on payment of normal rent/license fee for a period of one year from the date of death of the employee*
- (4) Within fifteen days from the date of death of a Government employee an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner*
- (5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance”*

The Rule 6 shows of the Rules 2006 is reproduced below: -

“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 Rules. 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

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Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006”

The perusal of the aforesaid rule shows that all the pending cases regarding ex-gratia assistance shall be covered under the new Rules of 2006. However, the families will have option to opt for lump sum ex-gratia grant as per Rules 2006 or 2003 as the case may be. It would follow that the case of the petitioner for payment of ex-gratia is to be considered and decided under the new Rules of 2006 which provides for enhanced benefits to families of the deceased employees.

It being so, the present writ petition is allowed. The impugned order dated 03.06.2015 (*Annexure P-10*) is hereby quashed and writ of mandamus is issued directing the respondents No. 1 to 3 to process the case of the petitioner in compliance with the new Rules of 2006 and pass the necessary orders within two months from the date of receipt of the copy of the judgement. Thereafter, release all the benefits within next two months from the passing of the order of the respondents.

In view of the above, the present writ petition stands allowed.

November 7, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

Whether speaking / reasoned

✓
Yes / No

Whether Reportable

✓
Yes / No