

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

**C.W.P No. 23933 of 2014
Date of decision : 12.04.2016**

Neha Gupta

...Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Aman Chaudhary, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl.A.G. Haryana

RITU BAHRI , J.

The petitioner is seeking issuance of writ in the nature of certiorari for quashing letter dated 26.03.2012 passed by the respondents and further prayer is for issuance of direction to the respondents to grant the petitioner family pension as per the provisions of Family Pension Scheme, 1964 and release the monthly financial assistance under Rule 3 of “the Haryana Compassionate Assistance to the dependents of deceased Government Employees rules, 2006 (for short 'Rules 2006')”

Brief facts of the case are that the husband of the petitioner was initially appointed on 26.02.1984 as Labour Officer in Haryana State

Minor Irrigation Tubewell Corporation (for short 'HSMITC') and worked

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with HSMITC till its closure in the year 2003. Thereafter in view of policy dated 21.06.2006, petitioner was appointed as Labour Officer-cum-Conciliation Officer in the Labour Department Haryana, vide appointment letter dated 12.08.2008 and was posted at Karnal. However, unfortunately the husband of the petitioner met with an accident on 01.11.2008 and expired leaving behind petitioner, a son, minor daughter and parents as legal heirs.

The petitioner submitted her case for monthly financial assistance admissible under Rules 2006 and the petitioner was requested by the Labour cum Conciliation Officer, Karnal to fill Form A and submit along with death certificate and an affidavit, vide letter dated 03.12.2008 (P-5) and the same were submitted by the petitioner on 31.12.2008 (P-6) but this amount has not been released till date. Petitioner thereafter gave representation dated 30.11.2010 (P-7) to release the monthly financial assistance admissible under Rules 2006 and she also stated that she had received only Rs.25000/- from the department. Petitioner gave another representation dated 12.12.2011 and finally vide letter dated 26.03.2012, the petitioner was informed that she is not entitled to family pension as the service of her husband was less than 1 year in this department.

Learned counsel for the petitioner contends that the husband of the petitioner was working since 26.02.1984 as Labour

Officer in HSMITC and thereafter, the Corporation being closed, petitioner was adjusted as Labour Officer-cum-Conciliation Officer in the Labour Department Haryana, vide appointment letter dated 12.08.2008, in lieu of policy dated 21.06.2006 and 01.02.2007 (P-1 and P-2) wherein it has been stated that the regular employees of the Board/Corporation/co-op Federation and other Public Sector undertakings who have been retrenched on account of closure or restructuring of these organisations between 1.03.2000 to 01.03.2005 be considered for adjustment.

On the other hand, learned counsel for the respondents contends while referring to the written statement contends that the appointment of the husband of the petitioner was fresh on group D post as per his appointment letter, after HSMITC was closed and thus, the husband of the petitioner was not entitled for the benefit of past service period prior to his retrenchment, as per his appointment letter.

Learned State counsel further contends that Kuldeep Singh (deceased) joined his duties on 12.08.2008 and died on 01.11.2008 and the eligibility to receive financial assistance under Rules 2006 shall be as per the provisions in the pension/family pension scheme, 1964, which provides as under:-

“(i) The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired

officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.”

Thus, since the husband of the petitioner expired before one year of his service, the petitioner would not be entitled for grant of financial assistance as well as family pension.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Mahender Kaur vs. State of Haryana and others, passed in CWP No. 3515 of 2009***, whereby this Court was dealing with a case of widow, whose husband appointed as Instructor on 12.01.2007 and expired on 11.01.2008. But her wife was denied the compassionate financial assistance, as her husband had not completed one year of service. This Court interpreted the above said Rule and allowed the writ petition by observing as under:-

The note under the Rule would clearly show that exception appears to have been carved out in those cases to grant family pension even before completion of one year continuous service provided the deceased Government employee concerned had been examined by the appropriate medical authority and declared fit by the authority for Government service. The mandate of this Rule was observed as under by the Division Bench in the case of Smt.Savitri Devi

(supra):-

“3. The mandate of the aforementioned provision appears to be that in case the Government servant at the time of entry into service produces a Medical Certificate of Fitness, the family would be entitled to Family Pension even if he dies within less than one year. Concededly, the husband of the petitioner did submit the Medical Certificate of Fitness, copy of Annexure P1.

4. The only interpretation which can be placed upon the Scheme as reproduced above is that even if the deceased Government employee does not complete one year of continuous service, his dependents would nevertheless be entitled to the grant of family pension provided the deceased was medically examined and found fit and a Medical Certificate of Fitness is produced before entry into Government Service from a competent Medical Officer. The completion of one year continuous service is, therefore, wholly irrelevant in view of the phraseology of the Family pension Scheme.”

Following the ratio laid down in the above-noted case, it is held that the petitioner would be entitled to the grant of family pension even when her husband had not completed one year continuous service as prior to his joining, the husband of the petitioner had appeared for medical examination and had been

offered appointment only on having been found fit. Once the petitioner is held entitled to grant of family pension, she would be eligible for grant of compassionate financial assistance in terms of 2006 Rules as she would be eligible under Rule 3, which reads as under:-

“Eligibility. 3. The eligibility to receive financial assistance, these rules shall be as per the provision in pension/family pension scheme 1964.”

The writ petition is accordingly allowed. Direction is issued to the respondent-State to grant compassionate financial assistance to the petitioner under 2006 Rules. Needless to mention that the petitioner would also be entitled to the family pension though in terms of 2006 Rules.”

In the present case, the claim of the petitioner has been rejected on the ground that her husband was not having one year of service in his credit and further he was never medically examined.

The respondents at the same time are not disputing that the husband of the petitioner was initially appointed on 26.02.1984 as Labour Officer in HSMITC and worked with HSMITC till its closure in the year 2003 and subsequently, he was again re-appointed as Labour Officer-cum-Conciliation Officer in the Labour Department Haryana, vide appointment letter dated 12.08.2008, in view of policy dated

21.06.2006 and was posted at Karnal.

The case of the petitioner is squarely covered by Mohinder Kaur's case (supra). The initial appointment of the husband of the petitioner in HSMITC was on regular basis after he was found to be medically fit.

Reference at this stage can be made to a judgment of this Court in a case of ***Usha Rani and others v. State of Haryana and others, 2015 (1) PLR 153*** wherein this Court while referring to a judgment passed by this Court in a case of ***Kelo Devi v. State of Haryana and others, passed in CWP No. 5593 of 2011, decided on 07.02.2013*** has held as under:-

The question, as to whether an employee, who has rendered less than one year service is entitled to the benefits under the Rules, has been considered by this Court in Neeraj Yadav' s case (supra), where the deceased had joined as Inspector with the police on 7.10.2008 after medical examination and died on 23.3.2009. Despite the service being merely of five months, the family was held entitled to the benefits under the Rules. While dealing with the issue, this Court relied upon earlier judgments of this Court in Smt. Savitri Devi vs The State of Haryana and others 1996 (2) RSJ 854, Sharmila Devi vs Uttar Haryana Bijli Vitran Nigam Limited 2002 (4) SCT 178 and CWP No. 3515 of 2009 Mahender Kaur vs State of Haryana and others, decided on 5.10.2009. Hence, the petitioners could not be denied benefits under the Rules on the ground that

the deceased employee had not served for minimum one year.

In Kelo Devi's case (supra), the petitioner therein was declined ex-gratia assistance under the Rules on the ground that her husband, who was serving as a driver, was a contractual employee. He joined served as driver after due medical examination on 26.6.2008, however, he expired on 5.9.2010. This Court opined that the petitioner therein would be entitled to the benefits available under the Rules as the service rendered by her late husband was treated to be temporary service.

In Mohinder Singh's case (supra), the issue was raised by the drivers/ conductors recruited in Haryana Roadways, regarding the salary being paid to them. In terms of the Rules for first three years in service, the drivers were to be paid fixed salary of Rs.10,000/- per month and only thereafter they were entitled to regular pay scales. This Court opined that payment of consolidated salary was impermissible and the rules to that extent were declared unconstitutional. The petitioners therein were held entitled to minimum of the pay scale from the date of their initial appointments. Meaning thereby, the method adopted by the State to recruit the drivers stating that initially they were on contract basis was deprecated by this Court.”

So, the consistent view is that even if an employee died during one year of service, his family will get family pension as per Family Pension Scheme.

Once the petitioner is entitled to family pension, the department has to give financial assistance as well, in terms of Rule 3 of

Rules 2006.

Applying the ratio of the above mentioned judgments, the writ petition is ***allowed*** and a direction is given to the respondents to give the family pension to the petitioner, as per Family pension Scheme, 1964 and further release the financial assistance as per Rule 3 of Rules 2006. This exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

12.04.2016

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