

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 7365 of 2012

Date of decision: 3.12.2016

Rashmi Devi Sharma

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Mr. JS Bedi, Addl. A.G., Haryana.

RAJIV NARAIN RAINA, J.(Oral)

Not only was the queue seeking compassionate appointments rather long with the petitioner waiting at Sr. No.432 but the size of the cadres of the Haryana Irrigation Department were down-sized and posts reduced as a result of rationalization of cadres, the review leaving no vacancy/post of Clerk available in the department to satisfy the claim of the petitioner. Even then by the letter dated May 18, 2005 (Annex R-1) the General Manager, Irrigation Department, Haryana, Panchkula, informed the Superintending Engineer B.W.S. Circle Kaithal to obtain option from the legal heirs of the deceased Government employee late Shyam Sunder, a Canal Patwari, whether the widow opts for financial assistance of ₹2.50 lacs as per the provision made in the Haryana Compassionate Assistance to the Dependent of Deceased Government Employees Rules, 2003 or wait for employment till before the end of the 3 years period prescribed. When informing the Superintending Engineer of no-vacancy position vide memo, a copy thereof was forwarded to Smt. Roshni Devi Sharma, W/o late Sh.

Shyam Sunder for necessary compliance, the petitioner here who failed to

exercise her option when asked to do so. Accordingly the department on its own paid her an amount of ₹ 2.5 lacs by negotiable instrument which she refused to accept obviously implying that she was looking for ex-gratia employment for her son. By that time even the period of 3 years provided by the rules had gone by. It may be noticed that the petitioner's husband died on December 7, 2003 and the widow was put on family pension and another benefits and entitlements due towards late Shyam Sunder and was in addition released an ex-gratia amount of ₹ 25,000/-. This satisfies the test against absence of lack of financial resources.

No replication has been filed to the written statement disputing right-sizing the personnel in the Haryana Irrigation Department, where the husband of the petitioner worked and died in harness. If there are no posts or vacancies available, then compassionate appointment cannot follow by creation of supernumerary post. I would, therefore, refuse to interfere in the matter of relief of compassionate appointment which in any case cannot be claimed as a matter of right. But still, since the rights of the petitioner had been declared against her as far as job is concerned, her right to receive the amount of ₹2.50 lacs cannot be lost and would revive and the same should be paid to her without delay.

Mr. Jasmeet Bedi appearing for the respondent State argues that the order Annex R-1 was passed on May 9, 2005 before coming into force of the 2005, and obviously, the Rules of 2006 came into force and therefore, consideration had stopped and the process could not be treated as pending to bring the desired relief. The argument may hold good for compassionate appointment and its denial as well as right to financial assistance as per the

Rules of 2006 but the rights of the widow to financial assistance as per rules are not to be lightly denied or squandered as she did not surrender the right but lived in the hope of employment which cannot be said to be chasing an illegitimate dream. She never responded to the offer and kept silent to pursue what she may have thought a better option for her family to secure a job for her son as any mother might do. With the rejection of the foremost prayer the secondary prayer is decided in her favour and thus the respondents will take effective steps to process the claim for financial assistance to the petitioner afresh in accordance with the rules of 2005 and complete the exercise within two months and pay the amount offered earlier lying in the department uncashed.

For the foregoing reasons, the petition has no merit and is dismissed re: ex gratia appointment but accepted qua money declared due.

(RAJIV NARAIN RAINA)
JUDGE

3.12.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *No*