

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

CWP No. 3746 of 2014

Date of decision:-23.02.2016

Virender Singh & ors.

...Petitioners

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naveen Kumar Jaglan, Advocate,
for the petitioners.

Mr. Keshav Gupta, AAG, Haryana

Mr. D.K. Singhal, Advocate
for respondent No. 4

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest? Yes

RITU BAHRI , J.

Petitioners have approached this Court praying for issuance of writ in the nature of certiorari/mandamus directing the respondents to reimburse the petitioners an amount of tuition fee of Rs.5,50,000/- deposited by petitioner No. 1 for studies of petitioner No. 2 in the respondent-College for BDS course from year 2007 to 2011, as per policy dated 22.12.1972 issued by Government of Haryana and further prayer is for setting aside order dated 27.11.2013 (P-7) passed by

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respondent No. 4 whereby claim of petitioners has been rejected.

Petitioner's wife Smt. Kamlesh Devi was working as a Staff Nurse with respondent No. 4 when she died on 11.1.2008. Ruchi daughter of late Kamlesh Devi got admission as a student of B.D.S Ist year in 2007 vide roll No. 238 and completed her course in 2012. Since the petitioner along with her family has not been issued Identity Cards as children of the deceased employee and petitioner-Virender Kumar filed CWP No. 14236 of 2012, claiming the benefit of Instructions dated 22.12.1972 (Annexure-P-1), issued by the Government of Haryana for getting the benefit of free education till the degree level for his children. This petition was disposed of by this Court on 30.07.2012 with a direction to the Director General, Health Services, Haryana to consider and decide the application dated 28.1.2011 (Annexure-P-3) submitted by the petitioner within a period of one month from the date of receipt of certified copy of this order and the subsequent application dated 28.6.2012 (Annexure-P-4) submitted by the petitioner within a period of three months from the date of receipt of certified copy of this order. Thereafter, petitioner-Virender Kumar was issued Identity Card in August 2013 which was valid up to 31.12.2013 (P-4). Thereafter, an application dated 05.09.2013 (P-5) was moved before the respondent-College for reimbursement of tuition fee of Rs.5,50,000/- by petitioner-Virender Kumar, according to the Haryana Government Employees in

School/ Colleges but no action was taken. Thereafter, petitioner gave a legal notice to respondent on 08.10.2013 claiming the reimbursement, as per the instructions dated 22.12.1972, issued by the Government of Haryana, according to which children of the deceased Haryana Government employees, who die in harness, are entitled to the benefit of free education till the degree level. In response to the legal notice, a reply dated 27.11.2013 was received from the respondent-College rejecting the claim of the petitioner (P-7) on the ground that Ruchi got the admission in this Institution during August, 2007 and passed her BDS final year examination in May, 2012 and completed her internship on 30.06.2013. However, petitioner-Virender Singh gave his application on 05.09.2013 for refund of the fee, on the basis of above mentioned instruction and her wife died on 11.01.2008 and further Identity card was issued in August, 2013 by the Haryana Government. Further as per clause 4(b) of the above said scheme “facility will continue uninterrupted for five year after death of Government Employee and thereafter, when the child fails in an examination, the facility will be discontinued”. But since Ruchi failed two time in BDS first year, 2nd year and third year and one more time before passing BDS final year. Thus, she was not held entitled for reimbursement of the tuition fee.

Learned counsel for the petitioners contends that Ruchi had enrolled herself in graduate degree course of BDS in respondent No. 4,

which is a duly recognised college and thus, is fully covered by the above-said scheme.

Further petitioners were issued Identity Card, after filing of CWP No. 14236 of 2012, which was valid up to to 31.12.2013 (P-4), thus the respondents cannot take this plea that the petitioners have no I.card, as it was due to lapse on part of respondent No. 2.

Learned counsel further argued that Ruchi never failed in any examination and she only got re-appear in the examination and later on passed the examination, so she is covered under the above mentioned instructions.

On the other hand, learned State counsel submits that respondent No. 1 has now issued new Instruction dated 12.02.2014 (R-1) regarding ex gratia grant and other facilities to the families of deceased Haryana Government employee who die while in service and thus petitioners are not entitled for reimbursement of tuition fee, as per the above instruction.

Learned counsel for respondent No. 4 submits that as per instruction No. 2(i) of Annexure P-2, the District Education Officers concerned have to arrange medical reimbursement at his own level and the petitioners have not impleaded him as a party and thus, no order can be passed in its absence.

Further, Ruchi passed her BDS final exam in the month of

May, 2012 and she was issued Identity Card in August 2013 and thus at that time, she was not the student of respondent No. 4.

Learned counsel for respondent No. 4 further submits that Ruchi-petitioner No. 2 failed to fulfill the mandatory terms and conditions of free education schedule, as she failed two times in 1st year, 2nd and 3rd year and one more time before passing BDS final year.

Heard learned counsel for the parties at length and with their assistance gone through the records of the case, the claim of the petitioners have been denied on grounds mentioned below.

Petitioners have been issued Identity Card in August 2013 whereas Ruchi had passed her BDS exam in May, 2012. Further an application was moved before the respondent-College on 05.09.2013 (P-5) for reimbursement of tuition fee of Rs.5,50,000/- by petitioner-Virender Kumar, according to the Haryana Government Employees in School/ Colleges.

The other ground is that Ruchi failed two times in 1st year, 2nd and 3rd year and one more time before passing BDS final year and thus, her claim is not covered as per clause 4(b) of the above said scheme whereby facility will continue uninterrupted for five year after death of Government Employee and thereafter, when the child fails in an examination, the facility will be discontinued.

The next ground is that now new Instruction dated

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12.02.2014 (R-1) have been issued regarding ex gratia grant and other facilities to the families of deceased Haryana Government employee who die while in service and thus petitioners are not entitled for reimbursement of tuition as per the above instruction, in which the claim of the petitioner does not survive.

The claim of the petitioners should not have been rejected as Ruchi never failed in examination, she got re-appears, which she cleared. She was permitted to attend the next session despite the fact she got re-appear, which she cleared later on and thus, she had completed her BDS course and clause 4 (b) of instruction dated 22.12.1972 will not come her way now.

Thereafter, the application dated 05.09.2013 was moved before the respondent-College well in time for reimbursement of tuition fee of Rs.5,50,000/- by petitioner-Virender Kumar, as petitioners were issued Identity card after filing of CWP No. 14326 OF 2012.

Petitioners are not covered by the subsequent policy i.e Instruction dated 12.02.2014 (R-1), as their claim should have been decided by the respondents, in view of instruction dated 22.12.1972. The procedure for the reimbursement of the fee will be read as under:-

“(i) Recognised Private Schools/Colleges in Haryana State will not charge any fee from the children of deceased Haryana Government on the basis of Identity Cards issued to

them by the Chief Secretary to Government of Haryana (Welfare Cell). The heads of the Institutions will then make a claim in respect of the amount of fee to District Education Officers concerned who will arrange reimbursement at his own level.

(ii) As regards, the children studying in recognised private schools, college in Punjab and Chandigarh Union Territory, they will pay the fee in the first instance and then prefer claims at the end of every quarter, duly verified by the Heads of the Institutions concerned, to the Director, Public Instructions, Haryana, for reimbursement.

X	X	X
X	X	X

Note:- Vide C.S. Hjr. No. 16/19-3GSII 79 dated 12.12.1979, Fee Education up to degree level including professional courses) will be permissible up to 5 years from the date of death and thereafter in case of failure in any class, it will be discontinued.”

As per the above instruction, Ruchi has to pay fee in the first instance, which she did and thereafter, she has prefer claims at the end of every quarter, duly verified by the Heads of the Institutions concerned, which she had not done. Further as per note, she can apply up to 5 years from the date of death and her mother expired on 11.1.2008 and she can make her claim up to 11.01.2013 but since she was not issued I. Card by the Chief Secretary and her father had to file

CWP No 14236 of 2012 for getting the I.Card and subsequently on getting the I.Card, he made an application well in time on 05.09.2013 for reimbursement of tuition fee.

That being so, the claim as made by the petitioners in the present writ petition is fully justified and covered by the instructions dated 22.12.1972.

Accordingly, the writ petition is allowed. Order dated 27.11.2013 (P-7) passed by respondent No. 4 is hereby quashed. A direction is issued to the respondents to reimburse the petitioners an amount of tuition fee of Rs.5,50,000/- deposited by petitioner No. 1 for studies of petitioner No. 2 in the respondent-College for BDS course from year 2007 to 2011, as per policy dated 22.12.1972 issued by Government of Haryana. The above said exercise shall be completed within a period of one month from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

23.02.2016

G Arora