

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

C.W.P No. 2812 of 2016

Date of decision : 03.05.2016

Rajesh Devi

...Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Yadav, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, A.A.G. Haryana

RITU BAHRI , J.

The petitioner is seeking issuance of writ in the nature of mandamus seeking direction to the respondents to release the monthly financial assistance under “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 as Conductor on 13.03.2013 through regular process conducted by Staff Selection Board (P-1). The husband of the petitioner was given regular pay scale vide instruction dated 25.06.2014 (P-2). Unfortunately, the husband of the petitioner died on 14.11.2014

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in a road side accident, while he was in service (P-3). Petitioner submitted his application regarding granting of benefit under Rules 2006 (P-4) but till date no action has been taken and the petitioner came to know that the case of the petitioner is not being considered as husband of the petitioner had not completed one year of service.

Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the judgment passed by this Court in a case of ***Usha Rani and others v. State of Haryana and others, passed in CWP No. 10697 of 2013, decided on 07.10.2014*** whereby this Court while dealing with a case of a driver who was appointed on 10.02.2012 and died on 30.09.2012 and his legal heirs were denied the benefit of Rules 2006 on the ground that he had not completed one year of service. This Court allowed the writ petition by referring to the below mentioned judgments:-

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.”

On the other hand, learned State counsel contends while referring to the written statement, which has been filed in the Court today, contends that since the husband of the petitioner was working on contract basis and was not covered under Rules 2006, therefore, the judgment of ***Usha Rani*** is not applicable to the facts of the present case.

Learned State counsel has further submitted that the Government of Haryana has brought instructions dated 27.11.2014 for the welfare of deceased employees working on adhoc/daily wages/contract basis in the Government Department/Boards etc but this instruction also cannot be applied in the case of the petitioner, as her husband died on 14.11.2014 and these instruction was applicable w.e.f 27.11.2014.

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 working on regular

basis.

The contention raised by learned State counsel is liable to be rejected on the short ground that once the husband of the petitioner was granted regular pay scale, vide instructions dated 25.06.2014, he cannot be said to be working on contract basis. Further once the petitioner was appointed through regular process conducted by Staff Selection Board, her wife after the death of her husband, was to be given benefit of Rules 2006

So, the consistent view is that even if an employee died during one year of service, the department has to give financial assistance, 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 release the financial assistance as per Rule 3 of Rules 2006 treating the husband of the petitioner as a regular employee. 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

03.05.2016

G Arora