

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

**CWP No. 5480 of 2015
Date of decision:-11.05.2016**

Rajbala

...Petitioner

versus

U.H.B.V.N.L and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naveen Daryal, Advocate,
for the petitioner.

None for the respondents.

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

RITU BAHRI , J.

Petitioner has approached this Court praying for issuance of writ in the nature of certiorari quashing the order dated 19.11.2007 (P-4) and further prayer is for issuance of direction to the respondents to allow financial assistance on compassionate ground to the petitioner with all consequential benefits.

The husband of the petitioner was working with the respondents on the post of ALM and died on 22.01.2004 before attaining the age of superannuation. The copy of death certificate is Annexure P-1. The case of the petitioner for financial assistance has

been sent to the Head Office by the department, as per policy dated 01.08.2006 (P-2). The petitioner gave an application for compassionate appointment or financial assistance, as per Rules. The department vide order dated 03.01.2007 has accepted the request of the petitioner and granted her benefits in terms of provisions contained under the Haryana Compassionate Assistance to the dependent of the deceased Government Employee Rules, 2006. Thereafter, vide impugned order dated 19.11.2007, the department stopped the last pay monthly basis, as per instruction w.e.f 11/2007. Petitioner gave a representation dated 10.12.2012 that as per the policy dated 01.08.2006, she is entitled for financial assistance as per the said policy.

In the written statement filed by the respondents, the stand has been taken that the husband of the petitioner died on 22.01.2004 and the petitioner was granted pension on account of demise of her husband vide memo dated 23.07.2004 and she was awarded lump sum amount of Rs.94668/- to 1470 +DR, 2042+DR (R-1). It was further revised by the Nigam on 25.06.2015 vide letter dated 26.06.2015 by counting the daily wage service of the husband of the petitioner w.e.f 11/79 to 28.08.1990. An amount of Rs.196293/- was disbursed to the petitioner vide cheque No. 47653 dated 10.07.2015 (R-2). She was also granted Rs.168790/- on account of leave encashment of 141 days vide cheque No. 352225 dated 09.05.2008. Rs.2.5 lacs were

also paid to the petitioner as ex gratia compassionate financial assistance. Further, an amount of Rs.81210/- was recovered from the above mentioned ex gratia amount, as the paid amount of Rs.81210/- was already paid to the petitioner on account of last pay drawn of the deceased. However, as per Haryana Government instruction dated 19.07.2007 adopted by the Nigam vide letter dated 09.08.2007, it has been clarified that in those cases where pension, GPF and leave encashment have already been paid to the dependent of Government deceased employee, a lump sum financial assistance would be granted (R-5). In compliance of the above said instructions, the respondent-Nigam has stopped the monthly financial assistance being given to the petitioner.

Heard learned counsel for the parties.

The question for consideration before this Court that if the petitioner had been given pension, GPF and leave encashment, whether the respondent-Nigam can stop monthly financial assistance being given to the petitioner earlier, as per Haryana Government instruction dated 19.07.2007 adopted by the Nigam vide letter dated 09.08.2007?

Reference at this stage can be made to a Division Bench judgment titled as ***Raj Kumari v. UHBVNL and others, 2008 (4) (SCT) 411*** whereby this Court was considering a case of petitioner whose husband died on 13.03.2005. Thereafter, petitioner was given benefit of

financial assistance, which was later on withdraw, on the basis of letter dated 09.08.2007, adopted by the Nigam on 06.09.2007 and as per this amendment, it has been clarified that in those cases where pension, GPF and leave encashment have already been paid to the dependent of Government deceased employee, thereafter, the dependents of the deceased is not entitled for pay and allowances last drawn by the deceased except lump-sum cash financial assistance. This Court allowed the writ petition and the instructions issued by the Government of Haryana on 09.08.2007 were struck down. The relevant portion of the judgment reads as under:-

*“It is trite to observe that the rules framed under Article 309 of the Constitution cannot be varied, substituted or amended even by issuing executive instructions under Article 162 of the Constitution. In that regard reliance may be placed on a Constitution Bench judgment of Hon'ble the Supreme Court in the case of **Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910**, which has been repeatedly followed, relied and applied in a number of cases including **Dhananjay Malik v. State of Uttranchal, 2008(2) SCT 659 : 2008(3) RAJ 249 : (2008)4 SCC 171** and **A. Manoharan v. Union of India, (2008)3 SCC 641**, wherein it has been held that in any case such executive instructions cannot be given retrospective effect. In the present case, a letter issued by the Financial Commissioner, which can not even regarded as executive instructions under Article 162 of the Constitution, has been relied upon by the respondents to argue that the 2006 Rules framed under Article 309 of the Constitution (P-9) stand abrogated to adversely affect the rights of the petitioner. Such an argument apparently would not be acceptable. Therefore, issuance of impugned letters dated 21.9.2007 and 14.1.2008 (P-6 & P-7) respectively, asking the petitioner to change her option once again by opting for one time lump-sum ex-gratia payment on the basis of the letter of the Financial Commissioner, dated 9.8.2007 as adopted by respondent No. 1 on 6.9.2007, would be unsustainable and the same are, thus, liable to be set aside”*

Thereafter, the above said judgment has been followed by this Court in cases of ***Birmati v. State of Haryana and others, 2015 (1) SCT 733, Sushila Devi v. State of Haryana and others, 2009(3) SCT 715.***

In Sushil Devi's case, her husband died on 14.07.2005. Her case was not considered in 2003 though 2003 Rules were applicable. It has been held that the clarification issued by the State Government is contrary to the Rule position as would emerge from Rule 6. The writ petition was allowed and respondents were directed to pay the financial assistance to the petitioner in terms of 2006 Rules.

Reference at this stage can further be made to a case '***Smt. Kelo Devi and another vs. HVPNL and others, 2012(3) PLR 646'*** wherein this Court allowed the writ petition and in para 2 observed as under:-

"2. On this basis the order passed already providing for a monthly payment was withdrawn and lump-sum grant of Rs.2.5 lacs was offered to be given and also deposited in the account directly. The petitioner would not want the lump-sum assistance and says that under the 2006 rules themselves, there was an option under clause 6 which made possible to obtain assistance in the manner provided under 2006 rules or take a lump-sum grant either under 2003 rules or 2005 rules as the case may be. If the rules are provided for such an option and the petitioner

had actually exercised the option to receive the monthly payment on the basis of the last pay drawn, the instructions cannot over ride such a rule and direct but gives its applicability to be effective to persons who had died subsequently to 1.8.2006. Counsel for the respondent is fair to state that even the instructions dated 19.7.2007 were quashed by this Court. I do not have the details of the judgment but suffice it to hold that such an instruction cannot be issued against the express provisions under 2006 rules allowing for its applicability to all pending cases relating to compassionate assistance. The impugned order is quashed.”

Thus the above said judgments makes it abundantly clear that the instructions dated 19.07.2007 issued by the Chief Secretary is contrary to the Rules and therefore the respondents should not withdrew the benefit granted to the petitioner earlier.

Applying the ratio of the above said judgment to the facts of the present case, the writ petition is allowed and order dated 19.11.2007 (P-4) is hereby quashed. Respondent-Nigam is directed to restore the financial assistance to the petitioner along with all consequential benefits, after adjusting the amount of Rs.2.5 lacs given to the petitioner.

(RITU BAHRI)
JUDGE

11.05.2016

G Arora