IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P No. 6646 of 2015
Date of decision : 17.03.2016

Kamla **....Petitioner**

versus

State of Haryana and others **..Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.S. Rawat, Advocate
for the petitioner.

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

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RITU BAHRI , J.

Petitioner is seeking issuance of a writ in the nature of mandamus directing the respondents to fix the salary of the late husband of the petitioner in the minimum of pay scale in accordance with law settled in CWP No. 22516 of 2013 and release the ex gratia benefits to the petitioner under Haryana Compassionate Assistance to Dependent of Deceased Government Employees Rules, 2006 (for short "Rules 2006").

Brief facts of the case are that the husband of the petitioner was appointed as Conductor on temporary basis on contract/daily wages vide appointment order dated 07.07.2008 issued by respondent No. 3 on the recommendations of Haryana Staff Selection Commission.

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The husband of the petitioner joined his duties at a consolidated amount of Rs.2500/- per month (under revision) plus allowances, after getting proper medical fitness certificate from the Chief Medical Officer, Faridabad. Unfortunately the husband of the petitioner died on 01.09.2008 as he met with an accident leaving behind petitioner and four minor children. A legal notice dated 18.12.2014 has been given by the petitioner to the respondents for releasing the ex gratia benefits to the petitioner, as per law settled in CWP No. 5593 of 2011 and CWP No. 10697 of 2013. Vide letter dated 11.02.2015, respondent No. 3 informed the petitioner that ex gratia benefits of later Sh Sultan Singh, Driver has been sanctioned to his family but till date the ex gratia benefits have not been released to the petitioner.

Learned counsel for the petitioner has submitted that even if deceased Sultan Singh had not completed one year of servie, still the claim of legal heirs for the benefits under Rules, 2006 could not be rejected. This issue has been considered by this Court in CWP No. 8183 of 2009 titled as ***Neeraj Yadav and another v. State of Haryana and others, decided on 12.10.2009*** wherein it has been opined that even if the deceased Government employee does not complete one year of continuous service, his dependents are entitled to grant of family pension. He further submitted that the defence of the respondents that the deceased being a contractual employee was not entitled to the

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relief, is also not tenable in view of judgment of this Court in CWP No. 5593 of 2011 ***Kelo Devi vs State of Haryana and others decided on 7.2.2013***, wherein while considering the case of a driver, it was opined that the manner in which the appointments were made, even if not termed to be regular, they can be treated as temporary and the family is entitled to benefits under the Rules.

Learned counsel for the petitioners further while referring to the Division Bench judgment of this Court in CWP No. 22516 of 2012 ***Mohinder Singh and others vs State of Haryana and others decided on 1.4.2013***, submitted that this Court had set aside the Haryana Transport Department (Group-C) Haryana Roadways Service (Amendment), Rules, 2004, providing for contractual appointments to the drivers for the first three years, followed by regular pay scale. It was opined that the drivers so appointed shall be entitled to minimum of the pay scale from the date of their initial appointments. The submission is that in view of the aforesaid judgments, the family of the deceased employee could not be denied the benefits under the Rules.

On the other hand, learned counsel for the State submitted that different policies framed by the State are meant for the benefit of the employees or the family of the employee, who die in harness. These have their own limitations. There are certain conditions attached in the Rules, which are required to be fulfilled before grant of benefits to the

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family of the deceased employees. The deceased in the present case had served merely for a period of two months. He was not even a regular employee. Hence, the family cannot be granted benefits under the Rules. However, he has not pointed out any judgment taking contrary view on the issue or that any appeal has been filed against the aforesaid judgments of this Court.

Heard learned counsel for the parties at length

The judgment of Neerja Yadav is directly applicable to the facts of the present case as in that case as well wherein 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 petitioner could not be denied benefits under the Rules 2006 on the ground that the deceased employee had not served for minimum one year.

Applying the ratio of the above mentioned judgments, the present writ petition is allowed and the petitioner is held entitled to the

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minimum of pay scale on the post of driver for the period he has worked with the department. Petitioner is also entitled to financial assistance as per the 2006 Rules.

(RITU BAHRI)
JUDGE

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