IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.7894 of 2014 (O&M)
Date of decision : 05.08.2016

Smt. Santosh Kumari ... *Petitioner*

Vs.

State of Haryana & others ... *Respondents*

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Rajesh Arora, Advocate for the petitioner.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

Ramesh Kumar was serving as a Hindi Teacher under the Haryana State Education Department on regular basis and died in harness on 01.10.2004. He left behind his wife and two minor children.

The instant petition has been filed by the widow, namely, Smt. Santosh Kumari assailing the order dated 07.12.2010 passed by the Director, Secondary Education, Haryana at Annexure P-3 in terms of which her claim for Ex-gratia Financial Assistance has been declined.

Husband of the petitioner i.e. Late Ramesh Kumar was appointed as Hindi Teacher on 04.01.1997 on *ad hoc* basis. His services were regularized vide order dated 31.12.2003 but w.e.f. 30.09.2003. He died while in service on 01.10.2004. Present petitioner approached the respondent/authorities for grant of benefit of Ex-gratia Financial Assistance/Compassionate Appointment as may be admissible. Memo dated 21.03.2007 was issued from the office of the Director, School Education, Haryana and addressed to the District Education Officer, Jhajjar stating therein that the case of the dependent of the deceased employee i.e. Ramesh Kumar be sent for Ex-gratia Financial Assistance as under the instructions issued by the State Government dated 01.08.2006, compassionate appointment cannot be granted. It was also recited in such memo that the instructions dated 01.08.2006 are applicable on the pending cases. Finally, the impugned order dated 07.12.2010 at Annexure P-3 has been issued declining claim of Ex-gratia Financial Assistance. Under such circumstances, the widow has been constrained to approach this Court.

Counsel appearing for the petitioner would argue that Ex-gratia Financial Assistance claim has been introduced by the State of Haryana w.e.f. 01.08.2006 and which contemplates the benefit of Ex-gratia Financial Assistance only and not compassionate appointment and all pending cases of Ex-gratia Financial Assistance stand covered under such scheme and the respondent/authorities have rejected the claim of the petitioner illegally by applying the earlier instructions dated 28.02.2003. It is further submitted that the petitioner has two minor children and the family is going through a period of grave financial hardship and her case ought to have been considered as per Policy dated 01.08.2006.

Upon notice of motion having been issued, two separate written statements have been filed i.e. a joint written statement on behalf of respondents No.1 to 3 and a separate written statement on behalf of respondent No.4. However, stand taken in both the written statements is common. As per learned State counsel, Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (hereinafter to be referred to as 'the 2003 Rules') would hold the field as the husband of the petitioner had died on 01.10.2004. Reliance has been placed upon a Full Bench decision of this Court in ***Krishna Kumari Versus State of Haryana and others (CWP No.4303 of 2009) decided on 20.04.2012*** to contend that the date of the death of the employee would be crucial and the rules prevalent at such point of time only have to apply. State counsel would submit that under the 2003 Rules, the benefit of compassionate appointment or ex-gratia monthly financial assistance amounting to Rs.2.5 lacs where family of the deceased does not opt for compassionate appointment is contemplated but subject to the condition that the deceased employee had served government for at least three years. State counsel submits that Late Ramesh Kumar had to his credit regular service of one year and one day and as such, the present petitioner is not entitled for either compassionate appointment or the Ex-gratia Financial Assistance of Rs.2.5 lacs under the 2003 Rules.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the stand taken on behalf of the State to deny to the petitioner the benefit of Ex-gratia Financial Assistance is untenable.

Placed on record is memo dated 21.03.2007 at Annexure P-2 issued from the office of Director, School Education, Haryana. The contents thereof are not disputed. Reading of the document at Annexure P-2 clearly reveals that the case and claim of the petitioner seeking Ex-gratia Financial Assistance was pending on the date of issuance of the memo dated 21.03.2007.

The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter to be referred to as 'the 2006 Rules') came into operation w.e.f. 01.08.2006. Rules 6 and 8 are relevant for the issue at hand and are reproduced herein:

> ***"6. Pending cases.--***
>
> *All pending cases of ex-gratia assistance shall be covered under the new rules. The calculation of the period and payment shall be made to such cases from the date of notification of these rules. However, the families will have the option to opt for the lump sum ex-gratia grant provided in the Rules, 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee Rules, 2006.*
>
> ***8. Repeal and savings.--***
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> *The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005, which are in force immediately before the commencement of these rules are hereby repealed:*
>
> *Provided that families will have the option to opt for the lump sum ex-gratia grant provided in the rules 2003 or 2005, as the case may be in lieu of the monthly financial assistance provided under these rules:*
>
> *Provided further that in all pending cases where the family exercises the option to receive the financial assistance under these rules the calculation of the period and payment shall be made from the date of notification of these rules."*

A conjoint reading of the Rules reproduced hereinabove would make it clear that all the pending cases of Ex-gratia Financial Assistance shall be covered under the new Rules i.e. the 2006 Rules itself. In the Full Bench judgment of this Court in ***Krishna Kumari's case (supra),*** a principle had been laid down that the statutory rules/instructions prevalent on the date of death of the deceased employee shall be applicable. However, the Full Bench had not considered Rule 6 of the 2006 Rules. The Full Bench had primarily dealt with a situation wherein an employee had opted for a benefit under the statutory rules/scheme prevalent at the time of death of the deceased employee and while such application/claim was still under consideration, a new Rule/Policy having come into operation. It is towards protecting the interest of the family of the deceased employee that the following observations were made by the Full Bench:

> *"Needless to observe, it is up to the authority to consider the application without inordinate delay and take a decision thereupon. In the eventuality, application remains pending for considerable period and some other policy comes into operation, no fault can be found on the part of the employee."*

It is in this context that the principle was laid down that the Rules/Policy applicable on the date of death/incapacitation of an employee need to be followed. The judgment in ***Krishna Kumari's case (supra)*** will not apply in the present case as there is a specific statutory rule providing for the applicability of the 2006 Rules to all pending claims. In taking such view, I would draw support from the judgment dated 17.05.2012 rendered by a co-ordinate Bench of this Court in ***CWP No.20405 of 2010*** titled as ***Smt. Saroj Versus Special Secretary, Development and Panchayat Department, Haryana, Chandigarh and another***.

Under the 2006 Rules, Rule 3 lays down eligibility to receive financial assistance and stipulates that the same would be as per provisions in the Pension/Family Pension Scheme, 1964. Clause 4 of the Family Pension Scheme, 1964 in turn provides that in case of death while in service of a government employee, family pension is admissible where such government employee has completed a minimum period of one year of continuous service without break. In the present case, deceased employee i.e. Ramesh Kumar had served continuously from 04.10.1997 till his date of death i.e. 01.10.2004. In any case, even as per the stand taken on behalf of the State, Late Ramesh Kumar has to his credit of 1 year and 1 day of regular service on the date of his demise. The claim of the petitioner for Ex-gratia Financial Assistance is thus established under the 2006 Rules read with Family Pension Scheme, 1964.

In view of the above, the impugned order dated 07.12.2010 at Annexure P-3 cannot sustain.

The writ petition is allowed. Order dated 07.12.2010 (Annexure P-3) is set aside. Petitioner is held entitled to grant of Ex-gratia Financial Assistance under The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. The necessary benefits admissible therein be calculated and released to the petitioner within a period of three months from the date of receipt of a certified copy of this judgment.

Petition is allowed in the aforesaid terms.

05.08.2016 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes

ii) Whether Reportable? Yes