

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

LPA no. 1494 of 2015 (O&M)

Date of Decision :10.05.2016

State of Haryana and others

....Appellant(s)

Versus

Sumit

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

HON'BLE MRS JUSTICE LISA GILL

- 1)Whether reporters of local newspapers 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?

Present : Mr. Sudeep Mahajan, Addl. AG, Haryana
for the appellant

Mr.Sandeep Singal, Advocate for the respondent

MAHESH GROVER, J.

CM no. 1590-LPA of 2016

Allowed as prayed for.

Main case

The appellant – State of Haryana is in appeal against the judgment dated 5.5.2015 of the learned Single Judge.

The respondent made a claim for ex gratia appointment on account of death of his father in harness on 30.4.2002. His application was moved after he attained the age of majority on 29.3.2012. The prayer was rejected leading to the writ petition where the learned Single Judge while relying on Rule 18 which

employment under the ex-gratia policy of 2003.

“**Rule 18** There shall be no relaxation of any provision of these rules. However, as special case, these shall be relaxed only in the cases of children who have become orphans upon the demise of the Government employee. The claim of appointment of such orphans, shall remain alive till one child has attained majority/minimum eligible age for entry into Government service.”

Learned counsel for the appellant while challenging the impugned judgment states that Rule 18 has been mis-interpreted as it envisages relaxation in favour of an orphan upon demise of a Govt. employee but if the applicant was having other siblings he could not be construed to be an orphan to get the benefit under afore-extracted rule. Apart from this it has been contended that the claim would remain alive till one child has attained majority and this would imply that if any of the members of the family had attained the age of majority and not pressed for his claim of appointment, the same would lapse. Besides these two arguments another argument has been raised that case of the respondent could be considered, if at all, under the 2006 Rules.

Learned counsel for the respondent on the other hand states that his father died on 30.4.2002 while his mother had pre-deceased him on 21.11.1997. He would thus be an orphan having lost both his parents and merely because he has surviving sisters would make no difference as in any case both of them were

married. Apart from this it is contended that he made his application in 2012 i.e 21.12.2012 after having attained majority on 29.3.2012 i.e within 3 years therefore there would be no reason to deprive him consideration under 2003 Rules envisaging employment. He has relied on the decision of the Full Bench in case titled as **Krishna Kumari vs. State of Haryana and others** reported as 2012 (2) SCT 736 (FB) to contend that the rules and policies which are to be made applicable are the ones which prevail at the time of the death of an employee.

We have heard learned counsel for the parties. The facts are not in dispute, therefore, the issue remains regarding interpretation and applicability of the Rules. According to the Full Bench decision in Krishna Kumari's case (supra) Rules which would have to be applied are the Rules existing at the time of death of an employee. In the instant case, the deceased employee died in harness on 30.4.2002. Therefore, as per the Full Bench decision Rules and policies which were prevailing in the year 2002 would be applicable.

Learned Single Judge, however, has directed consideration as per the 2003 rules although a specific reason in this regard has not been mentioned but on a closer perusal of the Rules 18 and 19 we find that all earlier ex gratia schemes were repealed as a consequence of which the only existing rules warranting consideration of the respondent's case were 2003 Rules and none other. For the purposes of reference Rule 19 is extracted herebelow:-

“19. The existing instructions issued by the Haryana Government from time to time regarding providing for financial assistance and appointments under ex gratia scheme are hereby repealed.

We find sustenance of our view in this regard from decision rendered in case titled as **State Bank of India and another vs. Raj Kumar** reported as (2010) 11 SCC 661 wherein it has been held that appointment under a scheme can be made only if scheme is in force and not after it has been abolished/withdrawn. Since the earlier schemes stood abolished with the introduction of 2003 Rules, case of the respondent could have been considered only under 2003 Rules.

In so far as the argument of the appellant that the respondent was not an orphan having surviving sisters is concerned it has to be negated outrightly. There is no doubt that the respondent has lost both of his parents and merely because he is survived by other siblings would be of no consequence to the claim of the respondent for ex gratia employment in terms of the Rules. It is quite possible that a person deprived of his parents though survived by other children may still be left to fend for himself. The argument of the learned counsel for the appellant if accepted would largely result in defeating the very purpose of the rule intended to be read beneficially for orphans. It is for this reason that the State itself has envisaged a clause of relaxation.

We are also of the opinion that the claim of the respondent cannot be defeated by placing an interpretation that period of 3 years for consideration would commence from the date of death. The rule clearly envisages consideration within 3 years upon attaining majority.

Similarly, the argument of the appellant that if any child of the family has attained majority and not pressed for his claim would defeat the right of other survivors of the deceased has to be rejected. The intended object is to give employment to one member of the family and if no body has made a claim then the person who makes so upon attaining majority has to be considered provided a claim has been made within 3 years of the attainment of age of majority.

For the aforesaid reasons we do not find any merit in the appeal and therefore same is dismissed but with a direction that the appellant shall now consider the case of the respondent for employment in terms of policy of 2003 as mandated by the learned Single Judge in terms of his qualification and eligibility that the post demands.

(Mahesh Grover)
Judge

10.05.2016
rekha

(Lisa Gill)
Judge