

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

104

CWP-10135-2007
Decided on 16.01.2017

SATISH KUMAR

....PETITIONER

VS

STATE OF HARYANA & ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Anurag Goyal, Advocate
for the petitioner.

Mr. Jasmeet Singh Bedi, Addl. A.G, Haryana.

AJAY TEWARI, J.(Oral)

By this petition the petitioner has challenged the impugned order dated 06.12.2006 of rejecting the claim for ex-gratia appointment to him. However when I brought to the notice of the learned counsel for the petitioner the judgment passed by the Supreme Court in the matter of **Union of India and Others vs. Sima Banerjee** passed in Civil Appeal No. 251 of 2017 decided on 10.01.2017 , he has fairly stated that after this judgment he was not in a position to claim the relief of compassionate appointment but states that in the present case the father of the petitioner had passed away on 01.09.2004. Immediately thereafter the petitioner applied for compassionate appointment as per the 2003 Rules. Ultimately the petitioner approached this Court when directions were issued to the respondent to pass a speaking order on claim and then Annexure P-5 was passed, as per which it was pointed

out that the petitioner could not be granted compassionate appointment under the 2003 Rules because his turn did not come under 5% quota for 03 years. To this extent the petitioner has no grievance, however what petitioner is now claiming is that after having passed this, the respondent should have granted ex gratia benefit under the 2006 Rules and not under the 2003 Rules because ultimately his case was considered under the 2006 Policy. He has relied upon the judgment of the Supreme Court passed in the matter of **State Bank of India vs. Raj Kumar, (2010) 11 Supreme Court cases 661** wherein it has been held that the Rules/Policy applicable would be that which was in force when the claim was considered.

Learned Addl.AG has relied upon the instructions of the Chief Secretary Annexure R-1 wherein it was held that in case death has taken prior to 2006 and PPO and GPO has been issued then the case has to be considered as per the 2003 Rules. Learned counsel for the petitioner points out that these instructions cannot over-ride the statutory rules and there is no such limitation in the 2006 Rules and these instructions cannot be held to be binding over and above the rules. I find weight in the argument of learned counsel for the petitioner. Learned Addl. AG has further brought to my notice that under those Rules the petitioner had to make an option either for lump sum payment or monthly payment. Learned counsel for the petitioner undertakes to do that exercise within one month from the date of receipt of certified copy of

this order. In view thereof petition is disposed of with a direction to the respondents to consider the claim and make whatever payment is payable to him within a further period of two months thereafter.

It is made clear that in case any due payment is now not made within the aforesaid period the petitioner would be entitled to interest @ 12% per annum with effect from today.

16.01.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No