

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

**Civil Writ Petition No.20536 of 2009
Decided on : 29.08.2017**

Ravi Chauhan

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Rakesh Nagpal, Advocate for
Mr. S.K. Monga, Advocate for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks a writ of mandamus directing the respondents to give appointment on a suitable post as per the provisions of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003. Quashing of the orders dated 07.12.2006 (Annexure P-6) and 16.02.2009 (Annexure P-10) are also prayed for.

The petitioner's father who was serving as an Assistant in the Excise and Taxation Department, Haryana had died on 21.10.2004. The petitioner had applied for compassionate appointment on 23.12.2004 and an offer was given of financial assistance of ₹2.5 lakhs on 14.01.2005 (Annexure P-4) on the ground that there was no post of Clerk vacant in the department. The petitioner insisted for his claim for appointment and an order dated 07.12.2006 (Annexure P-6) was passed, whereby the respondents stuck to their stand that the Government job could not be provided and he could only be paid last pay drawn by the deceased

employee or ₹2.5 lakhs under ex-gratia scheme.

The petitioner challenged the said order in **CWP No.20408 of 2008** on the ground that policy which was in force at the time of death should be taken into consideration. Resultantly, direction was issued on 03.12.2008 (Annexure P-9) to take a decision and pass a speaking order on his representation. Resultantly, the impugned order has been passed on 16.02.2009 (Annexure P-10) that the case of the petitioner for appointment to the post of the Clerk is not covered under the Ex-gratia Policy, 2003 due to the non-availability of the post during the stipulated period of 3 years and resultantly the present writ petition has been filed.

Admittedly, a period of more than 13 years has passed, since the death of the Government employee. The grant of compassionate appointment at this stage is not possible, specially keeping in view the settled law in **Umesh Kumar Nagpal Vs. State of Haryana 1994 (4) SCC 138** which has been followed in **Shreejith L. Vs. Deputy Director (Education) Kerala and Others (2012) 7 Supreme Court Cases 248** and in **Union of India and others vs. Sima Banerjee, 2017 (1) RSJ 351**.

It is settled position that it has been time and again held by the Apex Court that compassionate appointment is an exception to the general rules of appointment and is not an independent source of recruitment. Counsel for the respondents has referred to Rule 4(1)(b) of 2003 Rules, to show that a sum of 2.5 lacs was payable. The same reads thus:-

“4(1)(b) ex-gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex-gratia grant due to his/her family, to be paid @ Rs. 2.5 lacs in case of the family of the deceased not opting for ex-gratia employment.

It has accordingly been pointed out that once the new Rules came in force on 18.11.2005, Rule 19.2 provide that pending cases of all those deceased Government employees whose family members are eligible under the old Rules so repealed were to be disposed of in accordance with old Rules at the commencement of the new Rules. Rule 19(2) reads thus:-

“(2) Pending cases of all those deceased Government employees whose family members are eligible under the rules so repealed, shall be disposed of in accordance with the old rules at the commencement of new rules.”

Thereafter, 2006 Rules came into force which provided under Clause 6 that all pending cases would be covered under the new Rules and the calculation of the period and payment will be made to such cases from the date of notification of these Rules and the families would have to opt for lump-sum ex gratia provided under Rules 2003 or 2005, as the case may be, in lieu of monthly financial assistance. Rule 6 Reads thus:-

“6. Pending cases:- All pending cases of exgratia 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 Employees Rules, 2006.”

Counsel for the State has relied upon the judgment passed in **CWP No.7013 of 2010 'Pawan Kumar Vs. State of Haryana and others'** decided on 30.11.2016 to submit that the petitioner's case can be reconsidered for the financial assistance, if the department is still willing to pay.

As noticed above on an earlier occasion on 07.12.2006 (Annexure P-6), the petitioner was offered ₹2.5 lakhs and for the reasons best known to him, he had opted to avail his legal remedies and has remained unsuccessful.

In such circumstances, this Court is of the opinion that at this stage to relegate the petitioner for another round in the Government corridor would not be justified. Accordingly, ₹2.5 lakhs which was offered to the petitioner vide order dated 07.12.2006 (Annexure P-6), the benefit of which has not been given to the petitioner in the subsequent order, is liable to be paid to the petitioner. Let, the needful be done within a period of 2 months from the receipt of the certified copy of this order.

With the abovesaid observations, the present writ petition stands disposed of.

AUGUST 29, 2017

Naveen

Whether speaking/reasoned:

Whether Reportable:

**(G.S. SANDHAWALIA)
JUDGE**

Yes/No

Yes/No