

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

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**CWP No.17945 of 2010
Date of Decision : 10.03.2017**

Smt. Sushila Rani Petitioner

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Naveen Daryal, Advocate
for the petitioner.

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

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the order dated 24.04.2009 (Annexure P-5) whereby her request for compassionate appointment of her son has been rejected and only an amount of Rs.2.50 lacs was granted towards financial assistance.

On 02.04.2013 the following order was passed:-

“The claim raised in the instant writ petition is for giving appointment on a compassionate basis. The categoric averments made in the petition were to the effect

that the petitioner had been offered appointment to the post of Peon i.e. Class-IV post vide letter dated 21.7.2006 and in response thereto the petitioner had submitted an affidavit dated 22.8.2006 accepting the offer of appointment on the post of Peon.

In the reply filed on behalf of the State the fact as regards offer of appointment on a Class-IV post having been given stands admitted. However, in para 3 of the reply it has been stated that such offer was not accepted.

On 1.10.2012 the respondents were directed to produce the original records pertaining to consideration of the claim of the petitioner for offering compassionate appointment to her son Gaurav in the light of letter dated 21.7.2006. It was further directed that the records be produced so as to ascertain as to whether any response had been furnished by the mother of the petitioner to such offer of appointment.

Learned State counsel has produced in Court today the original records. A perusal thereof would clearly reveal that a letter dated 21.7.2006 had been issued by the office of Financial Commissioner & Secretary to Govt. of Haryana, Education Department addressed to the D.E.O, Jind and a copy thereof was even marked to the petitioner herself. Record also reveals that an affidavit dated 22.8.2006 was duly submitted by the petitioner accepting the offer.

Learned State counsel is directed to place on record the translated copies of both the letters dated 21.7.2006 as

also the affidavit dated 22.8.2006 on record within a period of two weeks.

List for arguments on 10.5.2013.

A copy of this order be furnished to learned State counsel under the signatures of Bench Secretary.”

Thereafter the respondents have placed on record the documents which did tend to confirm the assertion made by the petitioner on that date before this Court. Today however the learned Additional Advocate General contends that the issue of grant of compassionate appointment is now beyond the pale of controversy in view of the judgment of 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*** and as regards the financial assistance an amount of Rs.2.5 lacs were given to her in the year 2009 which she accepted unconditionally.

Learned counsel for the petitioner has however relied upon the decision of this Court passed in **CWP No.696 of 2008** decided on 03.12.2016 titled as ***Rajesh Kumar vs. UHBVN Ltd. and others*** wherein it has been held as follows:-

“Having regard to the totality of the circumstances presented and keeping in view the date of death of the father of the petitioner in January, 2005 and the non-availability

of vacancy within the 5% of the vacancies in the cadre strength available during the 3 years from the date of death of the bread-earner, there appears to be no error apparent on the face of record in the decision of the Nigam refusing to offer compassionate appointment to a dependent of the deceased Lineman who expired while in service. However, there can be no doubt that the petitioner's family would be entitled to monthly financial assistance in terms of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006, which provides the methodology of award of financial assistance in different circumstances according to the age at the time of death etc. This is for the reason that the Rules of 2006 breath life into pending cases and the petitioner's case can be properly accepted as a case pending for consideration either for compassionate appointment or for the alternative relief of money. Keeping in view the law in MGB Gramin Bank v. Chakarvarty Singh, (2014) 13 SCC 583 and State Bank of India & anr. v. Raj Kumar, (2010) 11 SCC 661, the relevant date in such cases would be the date of consideration where consideration has either not taking place or the issue is under litigation.

In view of above, the petitioner may apply for consideration of his case under the Rules of 2006 and the competent authority will process the claim in accordance with law and on completion of all formalities, remit the financial assistance either in lump-sum or in the shape of

salary, as then case may be, and/or arrears thereof within a period of 3 months from the date of receipt of certified copy of this order. Accordingly, the petitioner may exercise option within one week under the new scheme.

The petition is partially allowed as above.”

Learned counsel for the petitioner further states that this judgment has become final since no appeal has been filed till date.

Learned Additional Advocate General has accepted these facts.

In the circumstances, it has to be held that case of the petitioner would have to be considered under 2006 Rules. In normal circumstances, I would have asked the litigants to exercise their option under 2006 Rules but since an amount of Rs.2.5 lacs has already been granted to the petitioner and her son, it would have to be considered that they had exercised option of lumpsum payment and therefore would be entitled to further payment of Rs.2.5 lacs in equal share and that amount be paid to the petitioner and her son within a period of 2 months from the date of receipt of a certified copy of this order, failing which, the petitioner and her son would be entitled to claim interest thereon @ 12% p.a. from today.

Petition stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 10, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No