

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

Civil Writ Petition No.19507 of 2011

Reserved on: 08.09.2017

Decided on : 20.09.2017

Shakuntla Rani and another

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present : Mr. Rajesh Hooda, Advocate for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J.

The petitioner seeks a writ in the nature of certiorari under Article 226 of the Constitution of India for quashing of the order dated 23.06.2011 (Annexure P-12), whereby the case of petitioner No.2 for ex-gratia appointment has been rejected. Resultantly, appointment is sought of the said petitioner by issuance of a writ of mandamus in view of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003.

The rejection by the Divisional Forest Officer (DFO)-respondent No.3 is on the ground that Tarsem Lal, father of petitioner No.2 had died on 23.05.2004 and in view of the directions issued by this Court, the Principal Chief Conservator of Forest Haryana vide letter dated 28.07.2009 (Annexure P-2) had sanctioned one post of Chowkidar for the period from 01.02.1996 to 23.05.2004, so that the services of the deceased could be regularized for the aforesaid period. The arrears were paid accordingly to the legal heirs on 19.08.2009. The formal order of regularization was passed on 19.05.2010 (Annexure P-7), whereby the pay had been refixed and thereafter on 31.05.2010 the case had been sent

for family pension. Resultantly, the speaking order dated 10.06.2010 (Annexure P-8) was passed, wherein the case of appointment of petitioner No.2 for the post of Chowkidar had been sent to the Conservator of Forest, Northern, Haryana and the same was cancelled and it was held that in view of the cancellation of the earlier appointment policy w.e.f 01.08.2006, petitioner No.2 was not entitled for appointment. Resultantly, the present writ petition came to be filed.

The pleaded case of the petitioners is that Tarsem Lal was appointed as Mali-cum-Chowkidar in the Forest Department in the year 1987 on daily wage basis. He had filed CWP No.7517 of 1992 with another worker, in which directions had been issued on 10.12.1992 to consider his case for regularization, in view of the judgment in **'State of Haryana Vs. Piara Singh' (1992) 4 SCC 118**. Due to non-consideration, he had filed CWP No.17578 of 1996, which was also disposed on 16.12.1997 by issuing similar directions. On 30.01.1998, his claim had been rejected and thereafter he approached this Court in CWP No.4981 of 1998. On 17.02.2006, the said writ petition was disposed of on the statement made by State counsel that for the purpose of regularization a communication had been addressed to the State Government for sanction. The needful was accordingly to be done within three months.

During the pendency of the writ petition Tarsem Lal had died on 23.05.2004 and resultantly both his legal heirs approached this Court by filing COCP No.239 of 2008, wherein it had been informed that his

services stood regularized, as per the letter dated 28.07.2009 (Annexure P-2). Petitioner No.1 immediately applied for appointment of petitioner No.2 on compassionate ground 14.09.2009 (Annexure P-4) and resultantly due to any response being elucidated from the respondents, a legal notice dated 20.10.2009 was got issued. Thereafter, CWP No.1689 of 2010 came to be filed, which was disposed of on 02.02.2010 (Annexure P-6) with the direction to take a decision on the legal notice within 3 months. The formal order of regularization thereafter was passed on 19.05.2010 (Annexure P-7), though payment had already been made on a prior date by complying with the directions of this Court. The Divisional Forest Officer (DFO) came to the conclusion that 2000 policy was applicable when Tarsem Lal died, therefore, since one member of the family was to be given appointment and in view of the regularization of the deceased employee, his case for appointment was also forwarded to the Conservator of Forest on 10.06.2010 (Annexure P-8). The same was forwarded by the Chief Conservator of Forest Security-I to the Principal Chief Conservator on 01.07.2010 (Annexure P-9) , who returned the same on 06.10.2010 (Annexure P-10) with the direction that comments be sent and informed that whether the deceased employee was eligible to be appointed as per Rules or not. Vide communication dated 05.01.2011 (Annexure P-11), case was again forwarded for necessary action to give appointment to petitioner No.2 by noting the fact. Eventually the impugned order came to be passed as noticed above.

The State in its written statement has taken the defence that

the post of the deceased employee had been sanctioned for a specified period from 01.02.1996 to 23.05.2004 on which his service have been regularized for the post of Chowkidar with retrospective effect vide order dated 19.05.2010 (Annexure P-7). An amount of ₹2,01,207/- as arrears of pay for the period from 01.02.1996 to 23.05.2004 had been paid. Death-cum-gratuity amount of ₹60,336/- and ₹25,000/- had been paid on account of ex-gratia payment. It is pleaded that an explanation had been sought from DFO as on what basis the case had been sent for appointment, once a new compassionate policy w.e.f. 01.08.2006 had superseded the earlier 2003 Policy. Resultantly, by virtue of the speaking order the earlier order dated 10.06.2010 (Annexure P-8) had been cancelled and also the claim of the petitioner had been rejected. The husband of petitioner No.1 had died in the year 2004 and the compassionate appointment was prayed for in the year 2009 which was belated and time barred. At the time of application there was no policy in existence regarding ex-gratia appointment and therefore he was not entitled for any compassionate appointment.

Counsel for the petitioner has accordingly argued that the rules prevalent at the time of death of the employee should be applied i.e. 23.05.2004 and has placed reliance upon the judgment of the Full Bench in '**Krishna Kumari Vs. State of Haryana and others**' 2012 (3) PLR 383 to contend that the rules applicable at the time of the death were to be followed and subsequent policy which came into operation could not be to the detriment of the petitioners. It is, accordingly, contended that

under 2003 Rules the employment was liable to be granted. It is, accordingly, argued in the alternative that once the regularization order had been passed on 19.05.2010, he was entitled for a sum of ₹5 lakhs under the 2005 Rules which had been superseded thereafter by 2006 Rules.

State counsel on the other hand defended the said order and submitted that there was no such absolute right of appointment under the compassionate policy and the applicant had only a right of consideration. The regularization order was given with retrospective effect only to give benefit to deceased employee and by taking advantage of the same, the application for appointment on compassionate basis had been filed on 14.09.2009, once the payments had been received. Subsequently the formal order of regularization was passed on 19.05.2010. A period of more than 6 years has gone by then and, therefore, petitioner No.2 was not entitled as such for the benefit of appointment or the ex-gratia amount. It is submitted that consideration has to be done of the family's financial status before any recommendation can be made and there is no legal right *ipse dixit* also for the financial amount under the subsequent schemes. Thus, there could be no absolute right as such to claim the amount provided under the 2005 and 2006 Rules.

It is not disputed that the 2003 Rules came into force on 28.02.2003 which were notified under Article 309 of the Constitution of India. The entitlement as such for compassionate either for ex-gratia appointment or financial assistance upto ₹2.5 lakhs was liable to be

granted to dependents of deceased Government employee who were appointed on regular basis who had served the Government at least for 3 years. Rule 2 & 3 (d) provides as under:-

“2. Object of rules:- The object of the rules is to assist the family of a deceased employee in tiding over the emergency situation, resulting from the loss of the bread-earner by giving either of the following options:-

(i) ex-gratia appointment on compassionate grounds to a member of the family who was “completely dependent” on the deceased employee and is in extreme financial distress due to the loss of the deceased, namely, the Government employee who dies in “Harness”.

(ii) ex-gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex-gratia grant due to his family to be paid @ 2.5 lacks, in cases where the family of the deceased does not opt for ex-gratia employment.

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3 (d) “deceased/Government employee” means a Government Employee-

(i) appointed on regular basis, and not working on daily wages, casual, apprentice, work charged, adhoc, contractual or re-employment basis;

(ii) who has served the Government for atleast 3 years;

(iii) who should not have crossed the age of 55 years.”

Similarly, the indigent family has been defined under sub Clause 3 (h), which reads as under:-

“3 (h) “Indigent family” Where the family of the deceased/missing Government employee is completely dependent upon him/her and deserve immediate assistance for relief from destitution and whose income does not exceed ₹6,000/- per month excluding the family pension.”

As per Rule 4, an application had to be given within 3 years

from the date of the death of the Government employee and family member who was completely dependent on the deceased employee and in extreme financial distress due to the loss of the deceased was entitled for the ex-gratia appointment or financial assistance of ₹2.5 lakhs to be paid to the family of the deceased not opting for ex-gratia employment.

The Head of the Department was competent to give relief and under Rule 6 he was to prepare a list of such dependents which was to be valid for a period of 3 years. After the expiry of the validity of the list prepared by the department, the dependent of the deceased Government employee could exercise his preference with regard to option, if no post existed in the department for ex-gratia appointment. The criteria of eligibility of the family to be indigent and deserving immediate assistance was also provided under Rule 8 (a). Under Rule 9 appointments under these rules were to be made on regular basis and if regular posts meant for that purpose were available and appointments could be made upto a maximum of 5% of sanctioned posts.

As noticed the deceased employee was not a regular employee and therefore his case could never be processed under 2003 Rules and it is only by subsequent events the post was sanctioned from 01.02.1996 to 23.05.2004 to effect compliance of the orders passed by this Court. There could be no such retrospective effect as such to take the said sanction order of regularization back to the date. It came into effect for the period sanction was granted. The said benefit was as such personal to the deceased and ran out of its currency on 23.05.2004. This

would be clear from the communication dated 28.07.2009 (Annexure P-2) addressed by the Chief Conservator Officer to the DFO . The said order reads as under:-

“To resolve the above COCP, a meeting was held on 21/5/09 under the chairmanship of Sh. P.K. Gupta, IAS, former Commissioner and Principle Secretary, Haryana Government, Forest Department. The proceedings of the meeting have been received in the office vide their letter no.2609-FT-5-2009/8003 dated 29.5.09. At serial no.6 of the proceedings, it has been written that action be taken to pay arrears of salary to Smt. Shakuntla Rani wife of the deceased late Sh. Tarsem Lal against any class-IV post in the department. Keeping in view the above instructions, one post of Chaukidar is hereby allotted to you from 1.2.1996 to 23.5.2004. The arrears be paid to Smt. Shakuntla Rani dependent wife of the deceased after deducting the amount paid to late Sh. Tarsem Lal for the above period. Compliance report be sent to this office.”

The Apex Court has time and again held that compassionate appointment is not a regular source of recruitment and it is only for the purpose of giving immediate relief to the family who might be in penury at that point of time. Reference can be made to '**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.

The application of the petitioner also as such filed on 14.09.2009 (Annexure P-4) would go on to show that there was no such mention of indigent circumstances of the family by petitioner No.2. Petitioner No.1 had only stated that she had two sons and one of them is

major, who is petitioner No.2 and dully filled form was sent for appointment. No such other circumstances had been mentioned as such keeping in view the appointment policy in force in the year 2003 at the time of the death.

It is apparent that finding as such has to be recorded that the family was suffering from adverse circumstances on the death of the Government employee. Though it is not on any delay on account of the petitioners but their right as such only accrued once there was a regularization order passed in favour of Tarsem Lal. By the time 5 years has passed since his death and thus the immediate circumstances which usually warrant compassionate appointment as such would not flow as a matter of right to the petitioners. The right as per the 2003 Rules would only crystallize as such if the petitioner's case had been put up in the wait list and after the 3 years on account of the wait list lapsing, an option would be given to avail of the financial benefits of ₹2.5 lakhs. It is also a matter of fact that 2003 Rules, thereafter, have been repealed and the 2005 Rules came into force on 19.11.2005 by which the amount of financial assistance was increased to ₹5 lakhs and thereafter the same rules as such have been repealed in the year 2006 on 01.08.2006. The eligibility to receive financial assistance under the 2006 Rules which were enforced at the time of filing the application came in as per provisions of the Pension/Family Pension Scheme, 1964. Rules 2 and 3 read as under:-

“2. Object of rules:- The object of the rules is to assist the family of a deceased/missing Government employee of Group C and D

category, in tiding over the emergent situation, resulting from the loss of the bread-earner while in regular service by giving financial assistance.

3. Eligibility:- The eligibility to receive financial assistance under these rules shall be as per the provision in the pension/family pension scheme, 1964.”

Rule 6 provides that the pending cases have to be decided as per the Rules of 2003 or 2005 as the case may be. Rule 6 reads as under:-

“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 Employees Rules, 2006.”

It is, thus, apparent that vide the impugned order the petitioner's case as such for financial assistance has not been properly appreciated, though eventually appointment is not justified in the facts and circumstances.

Accordingly, the present writ petition is partly allowed to the extent that the petitioners case for financial assistance under the 2003 Rules will be considered by the competent authority within a period of 3 months from the receipt of the certified copy of this order.

SEPTEMBER 20, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No