

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

**CWP No. 13894 of 2013
Date of Decision: 12.07.2017**

Veena Devi

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

In this petition, the petitioner is seeking the benefit of ex-gratia benefits after the demise of her husband on 13.07.2006, who is stated to have been working as a Helper in the Transport Department of the respondent-State.

The said benefits are stated to have been denied to her on the ground that her husband was not a regular Government employee and was only a daily wager and therefore would not be covered by the rules governing the grant of ex-gratia benefits, including family pension, which are otherwise available to the spouse of a deceased Government employee.

Mr. Sharma, learned counsel for the petitioner, submits that the petitioners' husband was initially appointed as a Helper during the period of strike of Government employees between 09.12.1993 till 28.01.1994, after which, in view of the policy to accommodate such persons who had come to the rescue of

the Government during the strike period, he was again appointed as a Helper on daily wages on 02.04.1996.

He is stated to have continued in that position till 13.07.2006, on which date he unfortunately died.

In the meanwhile, a notification was issued by the respondent-Government on 01.10.2003 (Annexure P-4), to provide for regularization of different categories of employees, including daily wage employees in Group-D, who had completed 03 years of service on Group-D posts as on 30.09.2003 and were in service, one of the conditions being that the employee should have been in service on that date, i.e. 30.09.2003.

The said policy was 'supplemented', as per the reply of the respondents, by a notification dated 10.02.2004 (Annexure R-1), in which Clause (D) stipulates as follows, with regard to the modification of the policy dated 01.10.2003:-

“after condition number 7, the following condition shall be added at the end, namely:-

8. In the case of daily Wage Group C and D employees, only those daily wage employees shall be regularized who had been engaged before 31.01.1996 provided they fulfil the other conditions.”

Upon query to learned State counsel as to how the date 31.01.1996 has any nexus to the condition of 03 years service in a daily wage capacity running backwards from 30.09.2003, i.e. that the person should have been in service at least since 01.10.2000, he submits that the said condition was inserted only because the policy of October 2003 was framed actually to accommodate only those persons who were not earlier regularised in terms of the Government instructions issued in 1993, 1996 and thereafter.

However, that contention is not seen to be borne out in any manner from the notification dated 01.10.2003 itself, the preamble to which reads as follows:-

“No. G.S.R.24/Const./Art. 309/2003- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the proviso to clause 6 of Haryana Government General Administration Department (General Services), notification no. 523-3GS-70/2068, dated the 28th January, 1970, and all other powers enabling him in this behalf, the Governor of Haryana hereby specifies such Group-C posts, as have been held for a minimum period of three years on the 30th September, 2003, by Group-C employees on adhoc/contract or daily wage basis, to be taken out of the purview of the Haryana Staff Selection Commission. The service of such adhoc/contract/daily wage employees shall be regularised if they fulfil the following conditions, namely:-”

After the aforesaid preamble in the notification, the first two clauses relate to regularization of ad hoc/contractual employees and daily wage employees of Group C, after which Clause 3 deals with daily wage employees in Group D, which reads as follows:-

“That only such daily wage employees who have completed three years service on Group-D posts on 30th September, 2003 and were in service on 30th September, 2003 shall be regularised against their respective Group-D posts, provided they fulfill the requisite qualifications and were originally appointed against vacant posts. Provided further they have worked for a minimum period of 240 days in each and if the break in service of a daily wage employee has been caused for no fault attributable to him, such break period should be condoned unless it is of an extraordinary longer period. However, if the break in service has been caused due to fault of the employees like abandonment of employment, the Government may not condone the same if the period of such break is more than a period of 30 days.”

Clause 4 of the policy further goes on to lay down the manner in which the seniority of such employees, as were to be regularized, would be determined.

Clause 5 stipulates that the said policy would not be applicable to the drivers and conductors of the Haryana Roadways, who would be governed by a separate policy/rules.

Clause 6, thereafter, states that in order to curb the tendency of appointment on ad hoc/contract/daily wage basis (in Group- C and Group- D posts), any officer found making such appointment would be liable for strict disciplinary action

By the last clause of the policy, i.e. clause 7, the instructions issued by the Finance Department on 09.01.1996, are seen to have been withdrawn.

In the written statement filed by the respondents, it has been stated that the petitioners' husband not meeting the conditions of regularization in terms of the policy dated 01.10.2003, read with the modified policy as per the notification dated 10.02.2004, he was not regularized, he not having been in service on 31.01.1996 and therefore, the petitioner is not entitled to the benefit she has sought.

The aforesaid stand of the respondents is found to be wholly devoid of reasoning and logic, in view of the fact that when the original policy dated 01.10.2003 stipulates that a person in order to be regularised in service must have completed 03 years of service as on 30.09.2003, i.e. he/she should have been in service since 01.10.2000 (as already noticed), such person being in service on 31.01.1996 is not seen to be logical or rational in any manner, with nothing stipulated in the policy that prior to 01.10.2003 the person should have been in some service in the State of Haryana and thereafter, again continuously in service

from 01.10.2000 till 30.09.2003.

Undoubtedly, the Supreme Court in **Secretary State of Karnataka and others** vs. **Uma Devi and others** (2006) 4 SCC 1, has held that regularization of services of those who have not gone through the process of regular selection is something which is to be not encouraged and as a matter of fact, it was held to be unconstitutional, with further direction that no such regularization policy shall be issued except as a one time measure (after that judgment), in respect of those who has been in “non regular service” for 10 years.

Such policy was to be issued within six months from the date of the judgment.

However, the petitioners' right relates back to the policy dated 01.10.2003 when other employees similarly situated as her husband were 'regularized' in service. In terms of the permission given in **Uma Devi**, the petitioners' husband admittedly having put in more than 10 years of service as on the date of his death on 13.07.2006, I see no reason to deny the petitioner the benefit of ex-gratia assistance in terms of the then existent rules/instructions of the Haryana Government, after the respondents are directed to first issue orders regularising the service of the petitioners' husband in terms of the policy dated 01.10.2003, if he is not otherwise found to be ineligible except for the ineligibility expressed in the written statement filed by the respondents, which has already been dealt with (with regard to the necessity of being in service from 31.01.1996, in terms of the notification dated 10.02.2004).

It needs to be noticed that at least at this stage no other 'disqualification' possessed by the petitioners' late husband, as would bar him from being regularized in service after 10 years of service in a daily wage capacity has been brought to the notice of this Court.

Consequently, this petition is allowed and the respondents are directed to regularise the service of the petitioners' husband as a Helper in the Transport Department of the Government of Haryana, with effect from the date on which other such employees were regularized, in terms of the aforesaid policy dated 01.10.2003 and to thereafter treat him to be a regular employee on the date of his death, i.e. 13.07.2006.

It is to be specifically noticed that in the written statement filed by the respondents it has not been stated anywhere at all that the post on which the petitioners' husband was working for 10 years was not a sanctioned post.

Even if such a stand had been taken, it must be stated that if a person is kept in service for 10 long years, obviously the need for such work exists and with the petitioners' husband never having been relieved for 10 years prior to his death, there would be no reason to even hold that such a post should not be sanctioned.

It also needs to be stated here that family pension specifically being a recurring cause of action, delay in filing this petition would not come in the way of the petitioner, except to the extent that arrears of financial benefits to be granted to her would need to be restricted.

Consequently, upon orders being passed for regularization of the service of the the petitioners' husband as aforesaid, she would be released all benefits as are due to her, in terms of the existing Government instructions and rules governing ex-gratia benefits as on 13.07.2006. However, the arrears to be paid to her in respect of any continuing financial benefits that may accrue to her, would be limited to 38 months prior to the date of filing of the writ petition.

As regards the petitioners' demand for 'compassionate appointment' that of course would be dealt with in terms of the prevalent instructions/rules

governing such appointments at the time when the petitioners' husband died, i.e. on 13.07.2006.

As per Rule 4 (1) of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees, 2005, a family member of the dependent of the deceased is to opt within six months from the date of the death of the Government employee for either ex-gratia appointment on compassionate grounds or for an ex-gratia grant of Rs. 5,00,000/-.

Section 6 (2) of the said rule further stipulates that a list of such eligible family members who had applied within six months of the date of the death of the employee, would be appointed in a 'seniority list' with reference to date of death of the deceased/missing employee, which such list remaining alive for a period of four years from the date of death and that appointment would be given strictly in accordance with the seniority so maintained.

Very obviously at least compassionate appointment in terms of the said rules annexed with the petition, cannot be given to the petitioners' son, it not having been shown that even if the petitioner had applied within six months of her husbands' death, for such appointment for her son, he had the requisite qualifications, including being within the age limit to be appointed, and further, whether, even if it is taken that the petitioner had applied in time, any person whose father/spouse had died after the petitioners' husband, was appointed within the stipulated period of four years.

Hence, as regards the claim for compassionate appointment, the petitioners' son cannot be considered at this stage, 11 years after the death of the petitioners, husband, the aforesaid parameters not having been brought to the notice of this court.

As regards the case for grant of financial assistance, the petitioners' first application for appointment of her son, or alternative relief of payment of an amount of Rs. 5,00,000/- in lieu thereof, shall be treated to have been made by the spouse of a regular employee, and a decision taken by the competent authority, thereupon.

The aforesaid directions be carried out within a period of 03 months from the date of receipt of a certified copy of this order.

July 12, 2017
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No.