

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

**Civil Writ Petition No.8777 of 2009 (O&M)
Decided on : 26.10.2017**

Sumit Aggarwal

... Petitioner

Versus

State of Haryana

... Respondent

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

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

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J.

In the present writ petition, the petitioner seeks quashing of the order dated 04.01.2008 (Annexure P-7) by issuance of a writ in the nature of certiorari under Article 226 of the Constitution of India, vide which the respondent No.2 had held that the petitioner was only entitled for the ex-gratia amount of ₹2.5 lakhs under the policy of 28.02.2003 (Annexure P-8) and the claim for appointment on compassionate basis being not maintainable was rejected.

The view has been reiterated by the said respondent on 20.04.2009 (Annexure P-10), on account of the fact that the directions had been issued to decide the claim of the petitioner afresh in the light of the instructions/rules applicable at the time of the death of the Government employee.

Counsel for the petitioner has vehemently submitted that at one stage sanction had been granted on 14.07.2005 (Annexure P-2) to allow the

petitioner to join on the post of Clerk and as such the employee, namely, Raj Kumar Aggarwal had expired on 20.11.2004. In the alternative it is contended that the benefits under Haryana Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2006 (Annexure P-12) should be granted and the amount payable for financial assistance be paid as provided under Rule 5 which was till the date of age of superannuation.

Counsel for the State on the other hand has submitted that the petitioner's case had to be decided as per the policy which was in force at the time of the death and at that point of time the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 had been notified on 28.02.2003. Therefore, the decision was rightly taken vide the impugned orders that the petitioner was already receiving family pension and therefore only a sum of ₹2.5 lakhs was payable under the said policy. The subsequent policy was not a retrospective in nature and even in the case of the petitioner, the Division Bench had directed on 22.08.2008 (Annexure P-9) that as per the policy prevalent at the time of the death of the employee would be applicable. She further submits that the Full Bench in the case of **'Krishna Kumari Vs. State of Haryana and others'** 2012 (3) PLR 383 has also held that the rules applicable at the time of the death should be applied and therefore the impugned orders do not suffer from any infirmity and merely because consideration has been done at a later point of time, subsequent policy would not be applicable.

A perusal of the paper book would go on to show that on 14.07.2005 (Annexure P-2) though sanction was granted for appointment as Clerk to the petitioner on account of the death of his father, the same was under Government Instructions dated 08.05.1995 (Annexure P-3) and 31.08.1995 (Annexure P-4). On account of the inaction of the respondents, he had served a legal notice dated 05.10.2006 (Annexure P-5) upon the respondents and directions had been issued on 03.07.2007 (Annexure P-6) to consider the claim of the petitioner and decide the legal notice in **CWP No.9598 of 2007**.

Resultantly, respondent No.2 vide order dated 04.01.2008 (Annexure P-7) came to the conclusion that only 5% sanctioned posts are reserved for the appointment of ex-gratia dependents. On account of no vacancies being available, 25 names which had been recommended for appointment to the posts of Clerk had been sent back. It was noticed that on 01.08.2006, the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 had come into force and therefore an option could be given for lump sum ex-gratia grant. It was, accordingly, noticed that the petitioner's mother was receiving family pension and accordingly recommendation was only granted for the ex-gratia amount under the 2003 policy.

The petitioner being dis-satisfied had filed **CWP No.12589 of 2008**, which was clubbed alongwith a bunch of cases by the Division Bench which decided the legal issue that the policy applicable at the time of the death of the deceased employee would govern, the dependents of

the deceased employee. Reliance was placed upon the judgment of the Apex Court passed in '**Abhishek Kumar Vs. State of Haryana and others**' 2007 (2) SCT, apart from other judgments passed by this Court. Resultantly, the writ petitions were also disposed of on 22.08.2008 (Annexure P-9) in the same terms as per the judgment passed in **CWP No.8844 of 2007 'Sheela Devi Vs. State of Haryana and others'**.

Vide order dated 20.04.2009 (Annexure P-10), respondent No.2 in view of the same applying the 2003 Rules, came to the conclusion that The Director General & Commissioner School Education had pointed out that there is no vacancy available against the 5% sanctioned posts and therefore entitlement was only of ₹2.5 lakhs.

It is pertinent to mention that the Full Bench in **Krishna Kumari's case (supra)** has also gone on to hold that the rules prevalent at the time of the death of the employee would be applicable. The SLP against the said order has also been dismissed on 28.01.2015. The relevant part of the Full Bench judgment reads as under:-

“Travails of the family begin immediately thereafter. In that context, date of death assumes significance. Purpose of providing compassionate appointment is to mitigate the hardship at that time. Thus policy applicable on the date of death needs to be invoked to provide immediate relief. Application seeking compassionate appointment should be moved promptly thereafter by his dependent and considered by the employer without undue delay. In case an application is considered by the authority after lapse of time, objective of scheme is defeated. Such schemes which are in the nature of social welfare measure and have been recognised as an exception to the general rule for offering public employment would necessarily be applicable strictly in the

*parameters laid down therein and accepted by the apex court in its various decisions. Particular reference may be made here to **Umesh Kumar Nagpal v. State of Haryana & Ors, 1994(3) S.C.T. 174 : (1994) 4 SCC 138**, wherein it was held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution. This favourable treatment given to dependent of the deceased employee was accepted as it bore a rationale nexus to the object sought to be achieved viz. relief against destitution. The Supreme Court held :-*

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis."

In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed. Needless to observe it is upto the authority to consider the application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognised by the apex court in its recent judgment in Bhawani Prasad Sonkar's case. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time

as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly.”

The arguments raised by the counsel for the petitioner, thus, cannot be accepted, as it is his own case that on a subsequent occasion, the Division Bench had held in his case that the policy prevalent at the time of the death of the employee would be applicable. The same has been duly complied in the case of the petitioner and on account of the cap which was fixed under the 2003 Policy under Rule 9 (b), the appointing authority had to hold back 5% posts in the aforesaid categories to be filled by direct recruitment by way of appointment on compassionate ground. It was further provided that waiting list had to be prepared under Rule 6 (a) which was valid for a period of 3 years and was to lapse after 3 years. In such circumstances, the petitioner had been rightly offered a sum of ₹2.5 lakhs vide the impugned orders, which at that point of time, the petitioner had not accepted.

It is the case of the respondents also that a cheque dated 13.01.2010 had been offered to the mother of the petitioner, who has refused to accept.

In such circumstances, no infirmity can be found in the impugned orders and the writ petition is accordingly dismissed.

However, the respondent shall make payment of ₹2.5 lakhs as had already been directed to the family of the deceased in consonance with the order dated 04.01.2008 (Annexures P-7) and 20.04.2009 (Annexure P-10). The said amount be paid within a period of one month from the receipt of the certified copy of this order, by respondent No.2.

OCTOBER 26, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No