

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

CWP No. 753 of 2010
Date of decision: 09.08.2017

Darshana Devi and anotherPetitioner(s)

Versus

UHBVNL and others ...Respondent(s)

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

Present: Mr. Naveen Dahiya, Advocate,
for Mr. P.K. Rohila, Advocate,
for the petitioners.

Mr. J.S. Bedi, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of the order dated 03.04.2007 (Annexure P-6) wherein, the claim of the petitioner for compassionate appointment was disposed of that the family would 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 monthly financial assistance provided under the Haryana Compassionate Assistance to the Dependents of the deceased Government Employees Rules, 2006. Accordingly, option was called from the dependents of the deceased.

The husband of the petitioner was working on the post of a Meter Reader and died on 11.09.2003 and she accordingly applied for compassionate appointment on 16.12.2003 (Annexure P-3) for her son, who is petitioner no. 2. Resultantly, the impugned order was passed, which the petitioner has challenged and seeks the appointment on compassionate grounds.

The defence of the respondents is that at the time of death, the Haryana Compassionate Assistance to the Dependents of the deceased Government Employee Rules, 2003 (in short '2003 Rules') (Annexure P-2) were applicable and the name of petitioner no. 2 was duly entered in the seniority list under Class IV category, which was at Sr. No. 257. The name of the said petitioner did not come for compassionate appointment for a period of 3 years upto 2006. New Rules came into force from 18.11.2005 and instead of Rs.2.5 lacs, an amount of Rs.5 lacs was to be given and the same was admissible to the deceased-employee who died on or after 18.11.2005. Since Ram Pal died on 11.09.2003, they were entitled for financial assistance of Rs.2.5 lacs only.

On an earlier occasion on 27.07.2017, the dispute only remained as to whether the petitioner was only entitled to Rs.2.5 lacs or Rs.5 lacs since admittedly, the death had occurred in the year 2003 and at this stage, grant of compassionate appointment 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. v. 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 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.”

Keeping in view the above, the impugned order dated

03.04.2007 (Annexure P-6) does not suffer from any infirmity wherein, the petitioner had been given the option to opt for the lump-sum Ex-gratia and accordingly, no relief can be granted to the petitioner apart from the directions that the respondents shall pay a sum of Rs.2.5 lacs to the petitioner within a period of two months from the date of receipt of certified copy. It is made clear that in case the payment is not made within two months, the respondents shall be liable to pay 8% interest from the date of the impugned order.

09.08.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No