

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8162 of 2010
Date of Decision:-02.03.2017.

Lali Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Lalit Rishi, Advocate for the petitioner.

Mr. J.S. Bedi, Additional A.G. Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of the order dated 28.9.2006 vide Annexure P-6 by which the respondents proposed to grant compassionate financial assistance to the extent of ₹ 2.5 lacs and further sought for directions to the respondents to consider her grievance under ex-gratia scheme with reference to 1995 policy and to decide the pending ex-gratia case within a stipulated period.

2.) Brief facts of the case are that the petitioner's husband died while he was in service on 3.11.2002. The petitioner submitted application for compassionate appointment on 17.2.2003. Her name was included in the list of consideration of compassionate appointment cases. For the first time, petitioner's case was considered with reference to seniority on

4.1.2006. However, no decision has been taken in respect of rejection of

compassionate appointment and the respondents proceeded to offer ₹ 2.5 lacs as financial assistance on 4.1.2006 which is under challenge.

3.) Learned counsel for the petitioner submitted that the petitioner is entitled for compassionate appointment with reference to 1995 policy or 2006 policy dated 1.8.2006 as the petitioner's claim for compassionate appointment is yet to be decided by the respondents. Therefore, in view of Rule 6, the respondents are required to consider her case for compassionate appointment.

4.) On the other hand, learned counsel for the respondents submitted that the petitioner's case for compassionate appointment was considered with reference to seniority prepared for the purpose of issuance of compassionate appointment. The same was considered on 4.1.2006. Since as on 4.1.2006 3 years time was lapsed there were no vacancies under 5% quota ear-marked for compassionate appointment. Therefore, the respondents have rightly proceeded to offer ₹ 2.5 lacs with reference to the policy decision as financial assistance. The petitioner has not made out a case so as to contend that she is entitled for compassionate appointment under the 2006 policy. Learned counsel for the respondents vehemently contended that as per the 2005 policy, under Rule 19, pending cases would be considered with reference to old policy. Therefore, as per old policy, the petitioner is entitled for only financial benefits to the extent of ₹ 2.5 lacs. It was further submitted that the Supreme Court in the case of **State Bank of India and another Vs. Raj Kumar 2010 (11) SCC 661** has held that as on the date of consideration of the application for compassionate appointment whatever the scheme is existing that would be applicable and not the old rules or policy.

5.) Heard learned counsel for the parties.

6.) The State Government have evolved policy relating to compassionate appointment called Employment to the dependents of deceased government employees under ex-gratia scheme vide memo dated 8.5.1995. The policy is relating to only compassionate appointment. Thus, policy was replaced in the year 2003 by Rules, 2003 and the Rules were replaced by another set of Rules in the year 2005 i.e. on 18.11.2005. Further in the year 2006 on 3.8.2006 a new set of Rules was issued called Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Rule 6 of the 2006 Rules provides how to deal with the pending cases.

7.) In the present case petitioner submitted application for compassionate appointment on 17.2.2003. The respondents have enlisted her name in the seniority list for consideration of compassionate appointment and petitioner's name fell for consideration for issuance of appointment order on 4.1.2006. The respondents are of the view that the petitioner has already completed 3 years in the waiting list. Consequently, the existing policy provides only for consideration of compassionate appointment within a period of three years from the date of death of the deceased employee. Therefore, they proposed to grant compassionate financial assistance to the extent of ₹ 2.5 lacs. In other words, there is no decision either to reject or accept the petitioner's claim for compassionate appointment even to this day. Mere on presumption that 3 years have lapsed as on 4.1.2006, therefore, the respondents cannot proceed to offer financial assistance. In the absence of decision whether the petitioner is

the compassionate appointment read with the Supreme Court decision cited above, the respondents have not yet taken decision. Therefore, the order dated 28.9.2006 vide Annexure P-6 is set aside. The matter is remanded to the respondents since no decision has been taken in the petitioner's case. Therefore, it is presumed that petitioner's claim for compassionate appointment is still pending. In view of the pending decision now the respondents are required to examine the petitioner's claim under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006 in particularly Rule 6 which reads as under:-

“6. 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 Decades Government Employee Rules, 2006.”

Supreme Court decision cited by the respondent is not applicable in view of specific provision i.e., Rule 6 supra read with decision of Supreme Court in **Nair Service Society Vs. Dr. T. Beermasthan and others (2009) 5 SCC 545**. Para 48 reads as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State

Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block. ”

8.) In view of these facts and legal position, the respondents are directed to take a decision within a period of one month from today and communicate the same to the petitioner.

9.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

March 02, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.