

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

CWP No. 7765 of 2011
Date of decision: 04.07.2017

Murti Devi

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. S.N. Yadav, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of the action of the respondents whereby, there has been denial of the ex gratia payment of financial assistance. Accordingly a writ of mandamus is sought for grant of employment under the ex gratia scheme as per Government instructions to the son of the petitioner or in the alternative, financial assistance.

It is the case of the petitioner that the husband of the petitioner was working as an Assistant in the office of DIG, Gurugram Range, Gurugram and died during the course of employment in the year 1990. As per Government of Haryana letter dated 13.07.1971, one of the dependents was to be appointed on compassionate grounds. The petitioner had applied for compassionate appointment within the requisite time limits and submitted all the necessary documents under the ex gratia scheme. Vide letter dated 05.04.1991 (Annexure P-6), the case of the petitioner was forwarded to the Chief Secretary by the DIG (Administration) on behalf of

the DGP, Haryana, which was responded to on 14.05.1991 (Annexure P-7) that after receiving the vacant posts in other departments, service would be given on priority basis. The petitioner was intimated on 12.06.1993 that there was no vacant post of the 4th Class employee in the Police Department and, therefore, if she was interested for service in other civil departments, she should give her consent. As per letter dated 22.12.1993 (Annexure P-9), she was offered appointment on the post of a peon and it was her case that appointment as peon had not become final so far as per the letter dated 04.03.2006 (Annexure P-10). Eventually on 14.02.2008 (Annexure P-11), the petitioner was informed by respondent no. 2 that as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short '2006 Rules'), there was no provision of job under the ex gratia scheme. Resultantly, this Court was approached in the year 2011 praying for the above said necessary relief.

The State, in its defence in the written statement filed, has taken the plea that post of peon was offered in the Department of the Urban Local Body on 11.12.1991 by giving relaxation in eligibility as the petitioner was illiterate. Reliance has been placed upon the affidavit given by the petitioner (Annexure R-1) that the petitioner had refused to accept the said post by emphasizing that she should be appointed in the Police Department only and that her sons were minors and they be appointed as Constable by giving relaxation after passing of Matric. Resultantly, the plea taken was that once she had not joined the job, the case of the petitioner was not covered under the instructions and she had avoided joining and, therefore, the writ petition is not maintainable.

Counsel for the petitioner, at the outset, has restricted his claim

only to the financial benefits of ₹2.5 lacs which was as per the Haryana Compassionate Assistance Dependents on Deceased Government Employees Rules, 2003 (in short '2003 Rules') and rightly so keeping in view the settled principle that compassionate appointment is not to be granted after such a long period as would be clear that the death of the Government employee had taken way back in the year 1990.

Counsel for the State, on the other hand, has resisted the claim on the ground that the case of the petitioner had been finalized and an offer of appointment as such had been made but she had refused to join and accordingly reference was made to communication of the petitioner dated 26.04.2011 (Annexure R-2) to show that she was offered appointment in the Municipal Committee.

A perusal of the said communication would also go on to show that it was the case of the petitioner that the appointment in the Municipal Committee was temporary and not pensionable and the petitioner had continued agitating for her claim and asked for financial assistance of ₹2.5 lacs in the said communication also. Reliance has been rightly placed by the petitioner's counsel upon the order passed in ***CWP No. 678 of 2007, Hemant Kumar vs. State of Haryana and others*** decided on 15.04.2009 (Annexure P-15) wherein also, the benefit of ₹2.5 lacs was granted in the case of the employee who had died in 1991 and the son of the deceased had become major in the year 2006. He had approached the concerned authorities under the new policy of 2003 and resultantly, directions were issued that the payment should be made within 3 months, failing which, interest would be paid from the date of majority till the date of payment.

In similar circumstances, the Division Bench in ***LPA No. 1606***

of 2014, Dharambir vs. State of Haryana decided on 28.01.2015, had directed the consideration of the claim for grant of ex gratia lump-sum payment under the 2003 Rules while setting aside the order of the Single Judge dated 06.11.2012 whereby, the claim rejecting the application of the deceased for grant of ex gratia benefit under the 2003 Rules had been denied. The denial had been done on the ground that an offer had been made of appointment to the elder brother of the deceased and, therefore, the claim already stood decided. The Division Bench held that there were two modes given, either by ex gratia appointment or by compassionate financial assistance of ₹2.5 lac. The dependents of the deceased having not been able to get the benefit of appointment and, therefore, could have opted for grant of ex gratia lump-sum payment and, therefore, it was held that the case of the widow was liable to be considered.

In the present case also, the observations of the Division Bench would be applicable as admittedly, the petitioner has not been able to get the benefit of the policy which was there of the State for appointment on compassionate grounds. It would be apparent that there is nothing on record to show as such that a clear cut offer of appointment to a permanent post was ever made. Rather, correspondence would go on to show that a temporary appointment was sought to be given in a different department, to which the petitioner chose not to accept at that stage and, therefore, she never as such exhausted her right. She continued agitating for it and the respondents themselves denied the same wrongly on 14.02.2008 on the ground that under the 2006 Rules, there was no such provision of a job under the ex gratia scheme. However, the respondents neither granted the financial benefits which was permissible under the 2006 Rules as per Clause

6, which provides that all pending cases of ex gratia assistance shall be covered under the new Rules. The said Rule reads as under:-

“All pending cases of ex-gratia assistance shall be covered under the new rules. The calculation of the period and payment shall be 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.”

A perusal of communication dated 16.3.2011 addressed by the Chief Secretary would also go on to show that one more chance was to be given as one time measure and all cases where the family of the deceased had not availed the benefit were to be reconsidered. The same reads as under:-

“To provide one time Relaxation for applying ex-gratia compensation in old cases pertaining to before 1.8.2006 where no option was exercised under relevant provision though eligible for lump-sum compensation under the rule.

Sir,

I am directed to invite your attention to the subject cited above and to say that as per notification issued by Haryana Government vide No. GSR 19/Const./Art 309/2006, dated 1.08.2006, the provision was made to give monthly financial assistance to the family of deceased Government employees and all old cases pending shall be dealt with as per rule 6 of the Rules 2006 abid.

Now it has come to the notice of the Government that there are some old cases where the family of the deceased under rule 4(2) and 6(1) of Rules 2003 and under rule 4(2)

and 6(4) of rule 2005 of the ex-gratia scheme could not exercise option within time due to lack of requisite knowledge and other reasons and because of which the family of the deceased could not avail the benefit under ex-gratia scheme as being time barred.

In view of the above and taking a lenient view, the Government has decided to reconsider all such cases as referred above to give one more chance as one time measure to exercise their option which in a period of six months and not thereafter from the issuance of the instructions.

These issues with the concurrence of Finance Department vide their U.O. No. 2/32/2010-1 Pension, dated 2.2.2011.”

In such circumstances, this Court is of the opinion that the petitioner is entitled for the benefit of ₹2.5 lacs in view of the fact that she has not availed the appointment on compassionate ground. Resultantly, respondent no. 2 is directed to make the payment of the abovesaid amount within a period of 2 months from the date of receipt of certified copy, failing which, the interest element would start @ 8% per annum from the date of the order dated 14.02.2008 (Annexure P-11). The writ petition is accordingly allowed in the above said terms.

04.07.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No