

CWP-22196-2015 (O&M)

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

**CWP-22196-2015 (O&M)
Date of Decision : 22.05.2017**

Roshni Devi Petitioner

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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

Mr. Harish Rathee, Sr. DAG, Haryana.

AJAY TEWARI, J. (Oral)

By this petition the petitioner has prayed to consider the claim of her son for appointment under ex-gratia as respondent No.2 had rejected the claim of her son for appointment vide order dated 23.1.2009 (P-12).

On 23.3.2017, the following order was passed:

"Father of the petitioner died in the year 1996. After the second round of litigation, respondent No.2 decided the representation by order, Annexure P-12. The order is ex-facie illegal since it is based on the premise that the application for compassionate appointment was moved after a delay of more than eight years, whereas in the written statement it has been accepted that the application was moved immediately after the death of the petitioner's father. In the written statement another reason taken for denying the benefit for compassionate appointment is that right from 1999 there

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was a stipulation that appointment could be given within the period of three years from the date of death. However, counsel for the petitioner points out that the information received by the petitioner through RTI (Annexure P-16) there are many cases where such appointments were given after the period of three years.

Learned AAG Haryana states that this by itself would not create any right in favour of the petitioner because it is not known under what circumstances those orders were passed. In the first place once reliance was placed on this document and specific allegations had been made in respect thereto, it was the duty of the respondents to have explained it in the original written statement a completely unmeaning reply has been given. Even though there is no justification for the same yet I give one more opportunity to respondent No.2 to file his personal affidavit about the reasons which weighed with the respondents in giving appointments beyond the period of three years to persons mentioned in the list, Annexure P-16.

Adjourned to 15.5.2017. Copy of this order be given dasti to learned AAG Haryana for onward transmission to respondent No.2 under the signatures of the Bench Secretary."

In the affidavit filed by the Director General of Police, Haryana it has been accepted that out of 336 dependents of police officers (who died in service) were given job on the death of their fathers in service 145 were such who were appointed beyond the period of 3 years.

In the circumstances, both the grounds on which appointment was denied to the petitioner's son have been found to be wrong. However in view of the judgment of the Supreme Court in **Union of India and Others vs. Sima Banerjee** passed in Civil Appeal No. 251 of 2017 decided on 10.01.2017 it would not be possible for the Court to direct the respondents

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to grant a job to the petitioner's son now, 21 years after the death of his father.

Counsel for the petitioner has accepted this position. He then argued that once it has to be held that the case of the petitioner's son was rejected on wrong grounds, it must be deemed to have been pending till the Rules of 2006 came into operation and consequently even if no appointment can be offered to the petitioner's son yet the respondents are bound to consider his case for financial assistance as per the Rules of 2006.

Learned Sr. DAG however argues that the case of the petitioner has to be considered under the 2003 Rules because it was rejected (rightly or wrongly) before coming into force of the 2006 Rules when the 2003 Rules were applicable.

Learned counsel for the petitioner has argued that by judgment and order dated 22.8.2008 this Court had directed the respondents to consider the case of the petitioner's son afresh and in view of that judgment it has to be held that case of the petitioner was pending when the Rules of 2006 came into force.

I find merit in this argument and consequently direct the respondents to consider the case of the petitioner's son for financial assistance under the 2006 Rules.

Learned counsel for the petitioner has further argued that it has now transpired that the case of the petitioner's son was not only rejected on a wrong interpretation of law but it was rejected on completely wrong grounds which have now been belied by the written statement as well as the affidavit of Director General of Police, Haryana.

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The petitioner had to approach this Court and thereafter had also contest the case in the Supreme Court and respondents have now deprived her of the small benefits which had to be given her on the death of her husband for a period of 21 years. Learned counsel for the petitioner prays that damages of Rs. 5,00,000/- to be paid to the petitioners.

On the other hand, learned Sr. DAG has stated that no damages at all are payable.

In my considered opinion interest of justice would met in case respondents pay Rs. 1,00,000/- as damages to the petitioners for the delay and for the fact that she had to approach this Court and the Supreme Court against their order. Under the 2006 Rules an option has to be given by the petitioner. Petitioner would now move her option and the respondents are directed to make the payment to her of the assistance as well as damages within a period of 4 months from the date of receipt of certified copy of this order.

Consequently, petition stands disposed of.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

22.05.2017
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No