

**CM-4357-2017 in/and
CWP-5327-2016**

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

104+234

**CM-4357-2017 in/and
CWP-5327-2016
Date of Decision : 27.03.2017**

SAHIL AND ANOTHER

..... Petitioners

Versus

STATE OF HARYANA & OTHERS

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Dilbagh Singh, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

AJAY TEWARI, J. (Oral)

CM-4357-2017

This is an application for placing on record the affidavit of petitioner No.2.

For the reasons recorded in the application the same is allowed and affidavit has been taken on record.

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By this petition the petitioner has prayed for quashing of the impugned order dated 06.11.2015/11.02.2016 and further prayed for directing the official respondents to grant employment to the son (petitioner No.1) of the deceased employee on compassionate ground, as per the then instructions in ex-gratia matters or grant as financial assistance a sum equal to pay and other allowances last drawn by the deceased employee from the date of death till the date the employee would have retired from government service on attaining the

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age of superannuation alongwith arrears of pay and interest for the delayed period.

On the last date the following order was passed:

"The father of the petitioner No.1 had died in the year 1998 and at that time he was 8 months old. The petitioner No.2-mother of the petitioner No.1 represented to the respondents that since the petitioner No.1 was a minor one post be kept reserved for him. It may be mentioned here that at that time there was a practice for this provision. However, thereafter the present petition has been filed by the petitioners to grant employment to the petitioner No.1. In reply it has been stated that by letter dated 21.12.1999 the petitioner No.2 (mother of petitioner No.1) had been informed that a job could not be kept reserved for the petitioner No.2. However, it was offered to her that she could get a job but she never responded. It is on the basis of this implied refusal of the petitioner No.2 the respondents are now denying even the benefit of compassionate assistance. In the replication the petitioners have denied that any such letter was ever received by the petitioner No.2.

In my opinion, neither the assertion of the respondents regarding the letter of 21.12.1999 nor that of the petitioner can be accepted for the simple reason that the respondents have nowhere mentioned that the letter was in fact served upon the petitioner No.2 (mother of the petitioner No.1) and that the affidavit of the petitioner No.1 about something which happened at that time when he was 8 months old can also not be accepted.

Let the affidavit of the petitioner No.2 (mother of the petitioner No.1) be placed on record about the receipt or non-receipt of the aforesaid letter. In the meantime, the learned Assistant Advocate General is directed to find out if the letter dated 21.12.1999 was ever served upon the petitioner No.2.

Adjourned to 27.03.2017."

Pursuant to this order the petitioner No.2 (mother of petitioner No.1) has filed her affidavit in which she has unequivocally stated that no letter dated 21.12.1999 was ever served upon her. On the other hand learned Assistant Advocate General has shown the noting and the Register of the respondents as per which the letter was addressed to petitioner No.2 and was put into ordinary post. However, there is no official record of any type with the respondents to show that any letter was ever served upon petitioner No.2. In the circumstance the affidavit of the petitioner No.2 will have to be accepted and consequently it

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has to be held that she was never communicated the letter dated 21.12.1999.

The issue is in these circumstance what relief can be granted to the petitioners. Counsel for the petitioner has very fairly accepted that now, after so many years no job can be offered to the petitioners in view of the decision of the Supreme Court in the matter of *Union of India and Others vs. Sima Banerjee* passed in Civil Appeal No. 251 of 2017 decided on 10.01.2017 As per him, the petitioners were at least entitled for financial assistance and, since the case is now being taken for that purpose it would be under the Policy of 2006. I am in agreement with the counsel for the petitioner. In this view of the matter it has to be held that respondents are now bound to consider the case of the petitioners for financial assistance under the Policy of 2006. Respondents are directed to consider the case under the 2006 Policy. Learned counsel for the petitioner states that in the petition, the petitioner has prayed that they would opt for monthly assistance. Respondents are directed to grant them benefit within period of 3 months from the date of receipt of a certified copy of this order, failing which the petitioner would be entitled to claim interest @ 12 % per annum on the amount/s from the date/s it fell due.

Petition stands disposed of.

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

**27.03.2017
anuradha**

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No