

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 1199 of 2016

Date of decision : September 10, 2018

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Neelam

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Hitesh Pandit, Additional A.G. Haryana.

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RITU BAHRI, J.

By way of the present writ petition, petitioner is seeking direction to the respondents to allow the regular pay scale to the petitioner w.e.f 25.7.2003 as she was appointed as class-IV employee on Part Time basis on the demise of her husband who was at that time Part Time employee but in compliance to order dated 2.9.2011 (Annexure P-6), his services were regularized as Water Carrier Class-IV employee w.e.f 6.8.1999.

Petitioner's husband Sh. Jai Pal s/o Sh. Nafe Singh was appointed as Part Time Kahar on 6.8.1991 and was posted at Govt. Girls'

Primary School, Sissar Khas District Rohtak. State Government framed the policies dated 30.12.1998/25.2.1999 (Annexure P-1) for regularization of the services of part time employees. Under the said policy, if a part time employee had completed six years of services and was appointed directly then his/her services were to be regularized w.e.f 1.2.1999. The petitioner's husband requested the respondents to regularize his services under the policy (Annexure P-1) but respondents took no action. Thereafter petitioner filed CWP No. 8257 of 2000 along with other co-petitioners titled as 'Rattana and others vs. State of Haryana & others'. The said writ petition was clubbed with CWP No. 5943 of 2000 titled as 'Rohtas Singh and others vs. state of Haryana and others'. The writ petitions were allowed by this Court vide order dated 24.9.2001 (Annexure P-2) directing the respondents to regularize the services of the petitioner. Thereafter petitioner's husband filed COCP No.676 of 2002 along with others which was disposed of vide order dated 19.12.2002 (Annexure P-3) directing the respondents to comply with the orders within two months. State Government filed SLP against the order dated 24.9.2001 (Annexure P-2). Petitioner's husband expired on 9.7.2003. Block Education Officer, Meham (Rohtak) vide order dated 25.7.2003, appointed the petitioner as Part Time Kahar. Petitioner had no source of income and keeping in view her financial condition, she joined as Part Time Kahar on 25.7.2003 in compliance of appointment order dated 25.7.2003 (Annexure P-4). SLP filed by the State Government was dismissed vide order dated 22.3.2010 (Annexure P-5). Even thereafter, the services of petitioner's husband were not regularized. Finally petitioner

filed Contempt Petition No. 1696 of 2011 titled as 'Neelam vs. Smt. Surina Rajan, IAS and others'. The said contempt petition was disposed of vide order dated 17.1.2012 (Annexure P-7). The respondent-Department vide order dated 2.9.2011 (Annexure P-6) regularized the services of petitioner's husband w.e.f 06.08.1999 in view of the policy (Annexure P-1). Petitioner was issued family pension vide order dated 14.9.2011 (Annexure P-8). The petitioner could not claim regular appointment under Ex-gratia scheme because ex-gratia benefits are admissible only to the dependents of deceased employees. Petitioner was working as Part Time Kahar since 25.7.2003 (Annexure P-4) as she was given part time appointment because the services of her husband could not be regularized, at that time. The petitioner is claiming that her part time appointment be considered as regular appointment in regular pay scale with all consequential benefits.

On notice, a statement has been filed by respondents no. 1 to 4, in which a stand has been taken that the husband of the petitioner was employed on part time basis on the post of Kahar and his services were regularized w.e.f 6.8.1999 in view of the policy framed by the State Government. He died in 2003 and then the petitioner was appointed as part time Kahar by the respondents after taking into account her financial condition. She opted for family pension instead of employment under ex-gratia scheme. In view of the provisions of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (hereinafter referred to as 'the Ex-gratia Rules, 2003'), the petitioner is not entitled to be appointed under ex-gratia scheme as she had already

availed the benefits of family pension.

Heard counsel for the parties. In a judgment passed by a Full Bench of this Court in ***Krishna Kumari vs. State of Haryana and others*** **2012 (2) SCT 736** case, it has been held that policy prevailing at the time of death of the Government employee is to be made applicable for deciding the claim of the dependent of the deceased Govt. employee for appointment under Ex-gratia. The State Government filed SLP against the orders of Full Bench of this Court which has now been decided vide order dated 28.1.2015 (Annexure P-10) and judgment passed by the Full Bench has been upheld. In the present case, on the day when petitioner's husband died on 9.7.2003, Policy (Annexure P-1) was to be made applicable. A perusal of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (hereinafter referred to as the Ex-gratia Rules 2003) (Annexure P-9) shows that the dependent of a deceased employee has to give option as per Rule 4. Option has to be given as under:

Option 4. (1) A dependent of the deceased/missing Government employee shall give in writing his/her preference of option, within 3 years from the date of death of the Government employee, for one of the following:-

(a) ex-gratia appointment on Compassionate grounds to a member of the family who was “completely dependent” on the deceased employee and is in extreme financial distress due to the loss

of the deceased, namely, the Government employee who dies in "service".

Or

(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.

(2) exercise of option shall be permitted only once and shall not be changed, once exercised.

The respondents in the written statement have not placed on record that the petitioner while exercising option under Ex-gratia Rules 2003 had taken financial assistance of Rs.2.5 lacs. The benefit of regularization has been given to the petitioner's husband w.e.f 6.8.1999 as as per the policy dated 30.12.1998/25.2.1999 (Annexure P-1) and as per the above said policy (Annexure P-1), a part time employee was required to work for at least six years on the post to become eligible for regularization. The petitioner's husband has been given the benefit of this policy (Annexure P-1) in the year 2011 after almost 12 years. He was working as part time Kahar since 6.8.1991. After the death of her husband, due to her harsh financial condition, the petitioner accepted part time employment as Kahar. Even though she was working on part time basis, she had a right to ex-gratia appointment on compassionate grounds. But this claim could only be

entertained after the regularization orders were passed in the year 2011. The writ petition is being allowed. The direction is being given to the respondent to appoint the petitioner on regular basis as per the Ex-gratia Rules 2003 (Annexure P-9) w.e.f the date of her appointment i.e 25.7.2003 on part time basis.

September 10, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No