

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.27649 of 2013
Date of Decision: 16.04.2018**

Sunita

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

**Present:- Mr. Vivek Khatri, Advocate,
for the petitioner.**

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. The husband of the petitioner was a policeman who was martyred at a young age in an encounter with antisocial elements. He succumbed to the injuries inflicted upon him by the antisocial elements and as a result of the encounter died on the intervening night of June 03-04, 2000 while performing his official duties bravely. The petitioner was at the time of death of her husband an illiterate person. Initially, she applied for a job for her brother-in-law Karambir Singh under the ex gratia scheme which request was rejected by the Government as he was not dependent on the family of the deceased. At that time, she said that she was not willing to do a job. Later on, she obtained a Matric certificate from the Hindi Sahitya Sammelan Prayag (Allahabad) which is an institution not recognized for employment in a department of the Haryana Government. She filed a second application on October 09, 2002 for grant of appointment to herself as a Constable in Haryana Police, which claim has been rejected for want of her

being a 10th class pass from a recognized Institution. A request for Class-IV

job was made in the third application on May 29, 2003 but due to non-availability of vacancy, a Class-IV job could not be offered to her and consequently her claim was rejected.

2. In the alternative, she also made a claim for award of ₹2.5 lakh as compensation by way of financial assistance by a representation dated October 29, 2003. This claim has been rejected by the impugned order citing Clause 3 (d) (ii) of the [Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2003 (“2003 Rules”). The reason for rejecting case for financial assistance is that her husband had served the Government of Haryana for less than three years before his death. For these reasons, the State contests the petition contending that orders have been passed and declined earlier with respect to her brother-in-law, job for self as a Constable and then on a post in Class-IV service and finally by *volte face* for the lesser concession of financial assistance on the ground of delay and laches.

3. Mr. Khatri for the petitioner points out that there is no delay since the impugned order is dated June 02, 2006 (Annex P-9) against which the petitioner carried an appeal to the Director General of Police, Haryana which appeal was rejected on November 05, 2013 (Annex P-10) and that is how the petitioner has approached this Court; firstly, to provide ex gratia appointment or instead financial assistance of ₹5 lakh for a kin of a martyr.

4. During the pendency of this petition, the relief of ₹5 lakh has been awarded to the petitioner accepting the position that her husband was a martyr.

5. As pointed out by the learned Law Officer, it is recorded that

Annex P-10 dated November 05, 2013 of which the petitioner sought quashing of, has been varied and relief granted.

6. It would not be possible for this Court to consider any direction as far as compassionate appointment is concerned as it is not a constitutionally recognized source of recruitment. Notwithstanding this, the petitioner has a good case for making provision for her for payment of ₹2.5 lakh as financial assistance in terms of 2003 Rules which was the first regularization policy prevailing after the death in harness of the government employee in status of a breadwinner.

7. Having paid thought to the moot proposition I find it not res integra as the period of three years provided in Rule 3 (d) (ii) of the 2003 Rules has been examined by the Division Bench of this Court in State of Haryana through Commissioner and Secretary, Department of Transport, Haryana v. Sunil Kumar, 2011 (1) RSJ 315. This rule was challenged as arbitrary. The Division Bench held that while the deceased employee must be a regular employee, the service rendered to the State in any capacity prior to death will entitle the legal heirs to compassionate appointment or allowance in lieu thereof. Neither compassionate appointment nor allowance is contingent on condition of three years of regular service by the employee dying in harness before the period expires.

8. Accordingly, the ground assigned for rejecting the case for compassionate assistance is not well founded in law or fact and the same is contrary to the law laid down in *Sunil Kumar's* case and a previous decision of this Court in Kamlesh v. State of Haryana, 2006 (4) SCT 658. In *Sunil Kumar's* case this Court observed that any scheme of compassionate

appointment etc. as may be framed by an employer being a beneficial scheme having a definite social object must be interpreted in a manner consistent with the object that is sought to be achieved by the policy. There can be no justification to read a requirement in Rule 3 (d) (ii) in the manner, namely, that three years of service contemplated by the said sub-rule must be after regularization. Hence, in principle, I find no way that the State counsel can be heard to distinguish those cases from the facts of this case when death fell suddenly on active duty leaving the petitioner a young widow.

9. It may be noticed that during the pendency of this petition, the State has recognized the claim of the petitioner regarding financial assistance for ₹5 lakh as martyr and in addition thereto it is declared in the present case that the petitioner would have a further right to grant of financial assistance in a sum of ₹2.5 lakh as per the 2003 Rules by treating her claim as an existing one; the petitioner seen as trying her best to bring maximum relief to herself, in one or the other way. The payment be calculated forthwith and the sum due be disbursed within six weeks. As far as the claim for compensation of ₹5 lakh as kin of martyr is concerned as prayed in the petition, the same is rendered infructuous since the sum has been paid to the petitioner. In short the petition is partly allowed.

(RAJIV NARAIN RAINA)
JUDGE

16.04.2018
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Whether speaking/reasoned

Yes

Whether reportable

Yes