

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

**LPA No.481-2018 (O&M)
Date of Decision: 07.05.2018**

State of Haryana & others

... Appellants

Versus

Murti Devi

... Respondent

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Deepak Balyan, Additional Advocate General, Haryana.

....
TEJINDER SINGH DHINDSA, J.

CM-1331-LPA-2018:

The instant application has been filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 166 days in filing the accompanying appeal.

The only basis cited in the application is that after the Law Officer had given opinion on 10.08.2017 that it is a fit case for filing the LPA, matter was endorsed to the office of Legal Remembrancer and Secretary to Govt. of Haryana for opinion and necessary action but subsequently, case was put up for drafting of grounds of appeal before the Law Officer concerned only on 11.01.2018. Resultantly the delay.

In our considered view, the justification being put forth cannot be accepted. Delay in movement of office files can never be accepted as

valid justification and that too, for accepting the prayer for condonation of an inordinate delay of 166 days in filing the appeal.

Prayer is accordingly declined.

Application is dismissed.

LPA-481-2018:

The instant appeal under Clause X of the Letter's Patent Act is directed against the judgment dated 04.07.2017 passed by the learned Single Judge and whereby the claim of a widow for grant of ex-gratia financial assistance of Rs.2.5 lakhs has been allowed.

Learned State counsel has argued that after the demise of the husband of respondent-Murti Devi, a post of Peon in the Department of Urban Local Bodies was offered in the year 1991 itself. Such offer having not been accepted, the right to claim compassionate appointment/ex-gratia financial assistance stood extinguished under law. It is contended that ex-gratia appointment or assistance as the case may be is a concession and can be availed of as a one time right and cannot be permitted to subsist unendingly. The Haryana Compassionate Dependents on Deceased Government Employees Rules, 2003 (in short 'the 2003 Rules') would not hold the field in the present case as an offer of appointment had already been made much prior in point of time i.e. in the year 1991 and the same having been declined, claim for ex-gratia financial assistance under the 2003 Rules cannot be accepted.

We have heard learned State counsel at length and have perused the pleadings on record.

The uncontroverted factual position is that husband of the respondent was working as an Assistant in the office of Deputy Inspector

General, Gurugram Range, Gurugram and died in harness in the year 1990. As per Government of Haryana letter dated 13.07.1971, one of the dependents of the deceased government employee was to be considered for appointment on compassionate basis. The widow Murti Devi applied for compassionate appointment within the requisite time frame and submitted all the necessary documents. A post of Peon was offered in the Department of Urban Local Bodies on 11.12.1991 by granting relaxation in the eligibility conditions.

Learned State counsel has not been able to refute that the offer of appointment made to the widow was on a temporary basis and was not pensionable. Clearly, no clear cut offer of appointment was made to the respondent to a permanent post.

Under such circumstances, we are in complete agreement with the view taken by the learned Single Judge that the right of the widow to claim appointment/ex-gratia financial assistance did not stand exhausted.

Perusal of the impugned judgment dated 04.07.2017 would reveal that petitioner had confined and restricted the claim in the writ petition only towards financial benefits of Rs.2.5 lakhs under the 2003 Rules. Apparently, the 2006 Rules came to be framed thereafter, namely, the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'the 2006 Rules') and on 14.02.2008 respondent was informed that there was no provision of compassionate appointment under the prevailing ex-gratia scheme.

It is a glaring case where the State Government in the first instance did not offer to the widow appointment to a permanent post and thereafter is agitating to even deny to her the ex-gratia financial assistance

of a meagre amount of Rs.2.5 lakhs by taking a stand that the 2003 Rules and subsequent 2006 Rules do not apply.

The claim of ex-gratia financial benefits is permissible as per Rule 6 of the 2006 Rules and which 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 Employee Rules, 2006.”

That apart, the learned Single Judge while accepting the claim of the respondent has even adverted to a communication dated 16.03.2011 addressed by the Chief Secretary of the State and which envisaged that one more chance was to be granted as a one time measure and all cases where the family of the deceased had not availed of the benefit were to be reconsidered. Contents of the communication are as follows:

“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 abide.

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.”

Issuance of communication dated 16.03.2011 issued by the Chief Secretary and contents thereof are also not disputed by the learned State counsel.

In our considered view, the claim of the respondent for grant of ex-gratia financial assistance of an amount of Rs.2.5 lakhs has been rightfully allowed by the learned Single Judge keeping in view the peculiar facts and circumstances of the case as also in view of the statutory provisions contained under the 2003 Rules/2006 Rules and in the backdrop of the letter dated 16.03.2011 issued by the Chief Secretary and which would be in the nature of binding executive instructions.

No interference in the matter as such is called for.

In view of the discussion herein above, the instant appeal is dismissed on the ground of delay as well as on merits.

Since the main appeal itself has been decided, pending

applications, if any, shall also stand disposed of.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

07.05.2018
harjeet

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |