

In the High Court for the States of Punjab and Haryana at Chandigarh

CWP No. 13190 of 2018
Date of Decision: April 22, 2019

Mamtesh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashok Tyagi, Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana,
for the respondents.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance which is raised by the petitioner is that the petitioner has been denied the benefits accruing to her under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred to as the “2006 Rules”). The claim of the petitioner for the grant of the benefits has been declined vide order dated 26.03.2018 (Annexure P/10) on the ground that the husband of the petitioner, who was working as a driver with the respondent-Department, was not regular employee on the date when he died and under 2006 Rules, only legal heirs of the regular employee are entitled for the benefits under 2006 Rules.

As per the facts mentioned in the writ petition, husband of the petitioner, namely, Sh. Jai Narain, was appointed as a driver on contractual basis on 28.08.2002 on a fixed salary of Rs.2410/- per month. He was selected as a Driver after due advertisement and after considering the claim of all eligible persons. In pursuance to the said selection, husband of the

petitioner was appointed vide appointment letter dated 25.07.2002, ultimately, joined on 28.08.2002. At the time of the selection, husband of the petitioner had cleared the medical fitness test also. Unfortunately, while working as a driver, husband of the petitioner, who was suffering from cancer, ultimately, died on 12.05.2007. After the death, the petitioner made a claim for the grant of the benefits to her as envisaged under 2006 Rules. As the benefits were not being released to the petitioner, she approached this Court by filing CWP No. 24886 of 2017, which was disposed of by this Court on 02.11.2017 directing the respondents to consider the case of the petitioner for the grant of benefits under 2006 Rules by passing an appropriate speaking order. In pursuance to the said direction given by this Court, respondents passed an order on 26.03.2018 (Annexure P/10) declining the claim of the petitioner. The reason for declining was that as per 2006 Rules, only the legal heirs of a regular employee are entitled for the benefits and as the petitioner's husband was not working on regular basis, the case for the grant of benefits under 2006 Rules was not covered. The said order dated 26.03.2018 is under challenge in the present writ petition.

Upon notice of motion, respondents have filed the reply. In the reply also, the same stand has been taken by the respondents that as the late husband of the petitioner was not a regular driver with the respondent, no benefit under 2006 rules can be extended. The relevant portion of the reply is as under:-

“1. That the present writ petition has been filed for quashing the order dated 26.03.2018 (Annexure P-10), vide which the monthly financial assistance has been denied to the petitioner.

2. That it is respectfully submitted that the present writ petition is not maintainable on the grounds that the monthly financial assistance claimed by the petitioner is not valid. It is worthwhile to mention here that the petitioner's husband late Sh. Jai Narain Driver No. 60/295 was appointed on contractual basis with effect from 28.08.2002. According to the notification 2003, issued by the Transport Department, Haryana, the services of the employee may be regularized on completion of six years of regular satisfactory services. The copy of the same is annexed as Annexure R-1. It is further submitted that the husband of the petitioner's Sh. Jai Narayan Driver has upgraded in driver grade 2nd vide this office order no. 7295/EA/ECD dated 05.11.2014. It is worthwhile to mention here that the services of Sh. Jai Narayan has not been regularized in grade 1st due to his death, he has expired on 12.05.2007. It is further clarified that the monthly finance assistance case sent to the Director State Transport, Haryana, Chandigarh vide this office letter no. 485/ECD dated 09.05.2015. The Director State Transport, Haryana, Chandigarh issued the following direction:-

“It has been observed that as per report the services of Sh. Jai Narayan Driver No. 60/295 was not regularized in grade 1st as on the death. So, his family is not entitled for monthly finance assistance as per Chief Secretary to Govt. of Haryana instruction dated 01.08.2006”.

3. That it is further respectfully submitted that in compliance of the order dated 02.11.2017 in C.W.P. No. 24886/2017 titled as Mamtesh versus State of Haryana, the answering respondent no.3 has been appreciated / examined the case of the petitioner/legal notice of the petitioner P-7 has been considered in the light of rule and

the instructions. After the consideration of the case, the matter for monthly financial assistance has been sent to the Director General, State Transport Haryana. It is pertinent to mention here that as per instruction issued by worthy Chief Secretary, Government of Haryana dated 01.08.2006, the petitioner's claim has been rejected due to non regularization of service husband Jai Naraian, Driver No. 60/295 was not regularized in the Grade-I at the time of death.”

I have heard the counsels for the parties and have gone through the record with their able assistance.

Counsel for the petitioner contends that the action of the respondents in declining the claim of the petitioner on the ground that the husband of the petitioner was not a regular employee is contrary to the law laid down by this Court in ***CWP No. 5593 of 2011*** titled as ***“Kelo Devi vs. State of Haryana and others”***, ***decided on 07.02.2013***. A Co-ordinate Bench of this Court while deciding the said writ petition, which also raised the same question of law as to whether an employee who has been selected after due advertisement, though on contract basis, whether his family members will be entitled for the benefit under 2006 Rules, in case the said employee dies while in service, held as under:-

“6. Per contra, learned State counsel would contend that the husband of the petitioner had been appointed as Driver on a contractual basis for a period of 89 days, initially on 21.6.2008, and it was such contractual appointment that continued upto the date of his death i.e. 5.9.2010. Stand of the State Government is that 2006 Rules are applicable only to regular employees and since the petitioner is the widow of a contractual employee, the benefit of ex-gratia financial assistance would not be admissible to her.

7. *Learned counsel for the parties have been heard at length and the pleadings on record have been perused.*

8. *The claim of the petitioner for grant of financial assistance on account of the death of her husband and the validity of the rejection order dated 20.7.2011, Annexure P8, would require examination in the light of the statutory Rules governing the subject.*

9. *The 2006 Rules were notified on 1.8.2006. Rules 2 and 3 of the 2006 Rules would be relevant for consideration of the controversy raised in the present writ petition and the same read in the following terms:*

“2. The object of the rules is to assist the family of a deceased/missing Government employee of Group C and D category, in tiding over the emergent situation, resulting from the loss of the bread-earner while in regular service by giving financial assistance.

3. The eligibility to receive financial assistance under these rules shall be as per the provision in the pension/family pension scheme, 1964.”

10. *Clearly, the object of the 2006 Rules is to mitigate the sudden financial crisis that has fallen upon the family of a deceased Government employee on account of the loss of a bread-winner. Undoubtedly, under Rule 2 of the 2006 Rules, the expression 'regular service' pertaining to such deceased Government employee has been used. However, Rule 3 of the 2006 Rules clearly stipulates that the eligibility of a dependent to receive financial assistance under such Rules shall be as per provision in the pension/Family Pension Scheme, 1964.*

11. *Para 4 of the Family Pension Scheme, 1964 reads in the following terms:*

“4. This scheme is administered as below:-

(i) The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired

officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.

Note 1: The term one year continuous service used in para 4(i) above is inclusive of permanent/temporary service in a pensionable establishment but does not include periods of extraordinary leaves, boy service and suspension period unless that is regularised by the competent authority or before completion of one year continuous service provided the deceased Government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service.

Note 2: In the case of persons who were in service in composite State of Punjab prior to 1st November, 1966 and came over to Haryana State on or after 1st November, 1966 or those who have been recruited by the Haryana Government on or after 1st November, 1966, or who are transferred to the Haryana State from the Central Government or other State government and to those cases it has been agreed to count their previous service for pension, the family pension scheme would be applicable in the event of their death/retirement without putting in one year continuous service under the State Government; if their total service at the time of death (inclusive of service rendered under the previous Government)

exceeds one year.

(ii) 'Family' for purposes of this Scheme includes the following relatives of the officer:-

- (a) wife, in the case of a male officer;*
- (b) husband, in the case of a female officer;*
- (c) minor sons; and*
- (d) unmarried minor daughters.*

Note 1- (c) and (d) include children adopted legally before retirement.

Note 2- Marriage after retirement is not recognised for purposes of this scheme.

Note 3- A judicially separated wife/husband does not lose her/his legal status of wife/husband of the Government employee and is thus eligible for the benefit of the Family Pension Scheme, 1964 -

(iii) The pension is admissible:-

- (a) in the case of widow/widower upto the date of death or remarriage whichever is earlier.*
- (b) in the case of minor son until he attains the age of 21 years (w.e.f. 10.5.88, 25 years)*
- (c) in the case of unmarried daughter until she attains the age of 24 years or marriage whichever is earlier (25 years vide letter No.1/1(4) 80-2FR II dt.10.5.88)*

Note- (i) Where an officer is survived by more than one widow, the pension will be paid to them in equal shares. On the death of a widow, her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child the payment of her share of the pension will cease.

(ii) Where an officer is survived by a widow but has left behind an eligible minor child from another wife, the eligible minor child will be paid the share of

pension which the mother would have received, if, she had been alive at the time of the death of the officer.

(iv) "Except as provided in the Note below sub-para (iii) of this para, pension awarded under this scheme will not be payable to more than one member of an officer's family at the same time. It will first be admissible to the widow/widower and thereafter to the eligible minor children."

(v) In the event of remarriage or death of the widow/widower the pension will be granted to the minor children through their natural guardian, if any, otherwise through their defacto guardian on production of indemnity bond, etc. on the analogy of the orders contained in F.D. circular letter No.6837-(5) FRI-61/8358, dated the 29th July, 1961. In disputed cases, however, payments will be made through a legal guardian (i.e. guardian appointed by a court of law).

(vi) The adhoc increase granted under the Punjab Government circular letter No.8206-FRI-64/7668, dated 13th August, 1964, will not be admissible on the family pension granted under this scheme."

12. As per the relevant clause under the Family Pension Scheme, 1964 re-produced hereinabove, the benefits are admissible in the case of death while in service of a Government employee who has completed minimum period of one year of continuous service without any break. As per Note-1 appended to para 4, sub clause (i), the term of one year continuous service is inclusive of permanent/temporary service in a pensionable establishment. Still further, a rider has been imposed that such deceased Government employee immediately prior to his recruitment to the service or post was required to be examined by the appropriate Medical Authority and declared fit for Government service.

13. *The short issue that arises for consideration in the present case is with regard to the nature of appointment and service rendered by the deceased-husband of the petitioner.*

14. *The appointment letter dated 21.6.2008 in respect of the husband of the petitioner has been placed on record at Annexure P1. Undoubtedly, such appointment letter has been captioned as appointment as Heavy Vehicle Driver, Class 'B' on contractual/daily wage basis. A further perusal of such appointment letter would reveal that the husband of the petitioner was appointed on a consolidated salary of `3,000/- per month and against a temporary post. As per condition No.2 of such letter of appointment, the husband of the petitioner was obligated to serve a one month's notice or salary in lieu thereof in the eventuality of his choosing to resign from the post. The husband of the petitioner had also been called upon to obtain a Medical Fitness Certificate from the Chief Medical Officer concerned as required under Rule 3.1 of the Punjab Civil Service Rules, Volume-I, applicable to the Haryana State. It was further stated that such appointment could be governed by the Haryana Service Rules, 1995 governing the post of driver. The admitted position of fact is that prior to joining the post of driver, the husband of the petitioner was medically examined and the requisite Medical Certificate of Fitness on first entry into Government service as per Rule 3.1 of the Haryana Civil Service Rules had been issued by the competent Medical Officer/Civil Surgeon, Jind, Annexure P3.*

15. *The categorical averments made in the petition as regards the posts of Drivers having been duly advertised and the husband of the petitioner having been duly selected and appointed in pursuance to a regular selection process have not been rebutted in the written statement filed on behalf of the State.*

16. *Upon the petitioner having submitted a representation for grant of financial assistance on the death of her husband,*

apparently such claim was processed and a clarification in that regard was sought by the General Manager, Haryana Roadways, Jind from the Director General, State Transport, Haryana vide letter dated 16.11.2010, appended as Annexure R2 along with the written statement. Such document would be a clincher in the present case. A perusal of the same would reveal that the husband of the petitioner had been selected and appointed to the post of heavy vehicle driver/bus driver in pursuance to a process of selection conducted by the Haryana Staff Selection Commission. As such, for all intents and purposes, the appointment of the husband of the petitioner would have to be construed to have been effected on a regular basis even though against a temporary post. It is only on account of the operation of the statutory Rules that the language 'contractual/daily wage' has been implied in the appointment letter. Such language cannot work to the detriment of the present petitioner insofar as her claim for grant of ex-gratia assistance under the 2006 Rules is concerned. The service rendered by the late husband of the petitioner would certainly fall within the scope and ambit of the expression 'temporary service' under the Family Pension Scheme, 1964 which, in turn, would render the petitioner to be eligible for the grant of financial assistance under the 2006 Rules.

*17. Even otherwise, the 2006 Rules have been promulgated with a laudable object i.e. to provide assistance to the family of the deceased Government servant who dies in harness. Such provisions are in the nature of a beneficial provision and are to be given a wider meaning while interpreting the same, rather than a restricted one which would negate the very object of such provisions. The observations of the Hon'ble Supreme Court in the case of *Bombay Anand Bhavan Restaurant v. The Deputy Director, ESI Corporation and Anr.*, 2009(4) SCT 421 would be most relevant in this behalf which are in the*

following terms:

“The Employees State Insurance Act is a social security legislation and the cannons of interpreting a social legislation is different from the cannons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects. This Court, in the case of ESI Corporation, Hyderabad v. Jayalakshmi Cotton and Oil Products (P) Ltd., (1980) Lab IC 1078 has observed that the ESI Act is a social security legislation and was enacted to ameliorate the various risks and contingencies which the employees face while working in an establishment or factory. It is thus intended to promote the general welfare of the workers and, as such, is to be liberally interpreted.”

18. For the reasons recorded above, the memo dated 20.7.2011, Annexure P8, is set aside. The petitioner is held to be entitled for the grant of ex-gratia assistance under the 2006 Rules in terms of taking the service rendered by the late husband of the petitioner i.e. with effect from 26.6.2008 till 5.9.2010 to be 'temporary service'. Consequently, the petitioner shall be released the admissible financial assistance as per the 2006 Rules within a period of one month from the date of receipt of a certified copy of this order.”

A bare perusal of the aforesaid reproduction shows that after appreciating the Rules governing the service, this Court came to the conclusion that the legal heirs of a contractual employee, who was selected after due process, though on contract basis initially, will be entitled for the

benefits under 2006 Rules under the facts and circumstances noted in the said judgment.

Counsel for the respondents have not been able to rebut that the case of the petitioner is not covered by the said judgment. As the only reason given by the respondents to decline the claim of the petitioner by the impugned order that the husband of the petitioner, who was also working as a Driver, was not a regular employee of the Government of Haryana and the said reason has already been held as unjustifiable so as to not to give the benefits under 2006 Rules, the same reason cannot be sustained in case of the petitioner, who is similarly situated as the petitioner in CWP No. 5593 of 2011 – Kelo Devi vs. State of Haryana and others. Counsel for the respondents has not been able to point out any difference between the case of the petitioner and the case of the petitioner in CWP No. 5593 of 2011. Rather during the course of hearing, counsel for the respondents accepted that petitioner is entitled for the benefits of 2006 Rules in view of the judgment in Kelo Devi (supra).

In view of above, present writ petition is allowed and a direction is given to the respondents to release the benefits admissible to the petitioner under 2006 Rules, within a period of two months from the date of receipt of certified copy of this order.

April 22, 2019
vkd

(Harsimran Singh Sethi)
Judge

Whether speaking / reasoned : Yes / No

Whether reportable : Yes / No