

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

**CWP No.24995 of 2013
Date of decision: 27.08.2019**

Rajni Devi

....Petitioner

Versus

State of Haryana and others

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Lalit Rishi, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J. (Oral).

1. Prayer in the writ petition is for quashing of order Annexure P/5 dated 25.11.2008 vide which respondent No.2 modified the claim of the petitioner and accorded sanction for payment of ex-gratia Compassionate Financial Assistance amounting to ₹2,50,000/- on account of family of the deceased having re-opted for financial assistance under The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (hereinafter referred to as the Rules, 2003) in lieu of monthly financial assistance provided under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred to as the Rules, 2006). Prayer is also for issuance of directions to the respondents to reconsider the claim of the petitioner in terms of policy Annexure P/1 dated 01.08.2006.

2. Brief facts of the case leading to the filing of the writ petition are that the petitioner was granted financial assistance vide order Annexure P/3 dated 27.10.2006 as admissible in case of death of government servant in

terms of policy Annexure P/1 dated 01.08.2006 on account of death of her husband on 11.11.2005 i.e. full salary as was payable to the petitioner's husband till the date he would normally have reached the age of superannuation if he had not died. Thereafter, the Chief Secretary to Govt. of Haryana vide No.16/56/2006-5 GSII dated 08.06.2007 clarified that in case of death prior to 01.08.2006 and where PPO/GPO had been issued by the office, claim under the new scheme introduced with effect from 01.08.2006 could not be opted for. In view thereof, the senior accounts officer of the Office of the Accountant General (A & E) Haryana wrote a letter Annexure P/4 dated 07.08.2007 to the Superintendent of Police , Bhiwani with a copy to the petitioner that since her husband had died prior to 01.08.2006 and PPO/GPO had already been issued therefore, the deceased family would get family pension instead of salary. Accordingly, recovery of salary paid to the petitioner was advised to be made under intimation to the office and family pension directed to be given to the petitioner as per Haryana Government clarification dated 08.06.2007. A perusal of Annexure R-1 dated 08.06.2007 i.e. clarification issued by the Chief Secretary to Govt. of Haryana reveals that in case death took place prior to 01.08.2006 and PPO/GPO had been issued, the new scheme introduced w.e.f. 01.08.2006 could not be opted for but since there was no cut off date for seeking option where death occurred prior to 01.08.2006 therefore, all pending cases of ex-gratia assistance would be covered under the new Rules i.e. Rules, 2006.

3. That in the circumstances, the petitioner, an illiterate lady from a rustic background having two children, old aged father and mother-in-law requested for grant of ex-gratia compensation vide Annexure R-2/T dated 29.02.2008 as per policy in force at the time of death of her husband.

Thereupon, order Annexure P/5 dated 25.11.2008 was passed sanctioning payment of ex-gratia compassionate financial assistance of ₹2,50,000/- in terms of the Haryana Compassionate Assistance to the Dependents of Deceased Govt. Employees Rules, 2003.

4. That subsequently, the petitioner invoked the jurisdiction of this Court but the writ petition was dismissed as not pressed vide order dated 14.11.2013 in view of pendency of SLP No. 5532 of 2013 against the Full Bench decision in case titled as **Krishna Kumari versus State of Haryana and others** with liberty to the petitioner to move an application in the disposed of matter, depending on the result of the SLP. Eventually, SLP filed against the Full Bench decision in **Krishna Kumari's** case (supra) was dismissed by Hon'ble the Supreme Court vide order dated 28.01.2015 while keeping the question of law raised open to be agitated in an appropriate case. Review Petition (Civil) No.128 of 2016 filed by the State of Haryana in the aforementioned SLP was also dismissed on the ground of delay as well as on merit vide order dated 28.04.2016. In the aforementioned background, application was filed by the petitioner for revival of the writ petition.

5. Stand of the respondents is that the law laid down by Hon'ble the Full Bench in **Krishna Kumari's** case (supra) is applicable and in view thereof it would be the policy in force at the time of death of the employee which would be applicable for considering grant of ex-gratia compensation. Stand is also that the petitioner is estopped from challenging order Annexure P/5 dated 25.11.2008 as the same was passed on her request i.e. Annexure R-2.

6. Learned counsel contends that the decision in Krishna Kumari's case does not stand in the way of the petitioner, instead, the claim is squarely

covered by the decision of a Coordinate Bench of this Court in CWP No.20405 of 2010 in case titled as **Saroj versus Special Secretary, Development and Panchayat Department, Haryana and another** decided on 17.05.2012 as well as CWP No.19322 of 2010 in case titled as **Darshana Devi versus State of Haryana and others** decided on 14.05.2012.

7. In **Saroj's** case (supra), financial assistance had been granted to the dependants of the deceased vide order dated 04.05.2007 under the Rules, 2006 w.e.f 01.08.2006 to 31.07.2018 or till the date the deceased would have continued in government service till attaining the age of superannuation i.e. 30.06.2026 whichever was earlier. Despite passing of order dated 04.05.2007, clarification was sought by the Executive Engineer, Panchayati Raj, Jind from the government as to whether family pension which had been released to claimant Saroj had to be stopped or was to be continued. Thereafter, there was departmental communication between the respondents and a clarification was received according to which claimant Saroj was required to deposit the amount of family pension which she had received from the Department and also to give an affidavit that till she was getting financial assistance she would not claim family pension. Although claimant therein submitted an affidavit but the amount in question which she had received as family pension could not be deposited as the Executive Engineer, Panchayati Raj Block, Jind had sought clarification from the Accountant General, Haryana as to under which head the said amount had to be deposited. Since no response was received from the Accountant General, therefore, the claimant therein left with no other option invoked the jurisdiction of this Court. In response thereto, objection was taken by the respondents that the claimant was not entitled to the monthly financial assistance as approved vide order dated

04.05.2007 as her husband had died prior to the coming into force of the Rules, 2006. Besides, Pension Payment Order had already been issued to her, therefore, she was not entitled to the monthly financial assistance under the Rules, 2006 in the light of clarification issued by the Chief Secretary to Govt. of Haryana vide letter dated 08.06.2007 and she was only entitled to the benefit of family pension under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 under which a lump sum amount of ₹5 lakh only could be paid.

8. Respondents in **Saroj's** case (supra) also relied upon the Full Bench decision of this Court in **Krishna Kumari's** case (supra) but the said stand was negated by the Coordinate Bench on the ground that the Hon'ble Full Bench had not considered Rule 6 of the Rules, 2006, therefore said decision could not be said to be applicable in the case in hand as there was specific statutory rule providing for the applicability of the Rules, 2006 to all pending claims under the 2003 and 2005 Rules and the Hon'ble Full Bench had primarily dealt with a situation where employees who had earlier opted for the benefit under the statutory rules prevalent at the time of death of the deceased employee had not been granted the benefit of those rules in the light of subsequent rules coming into force which were not more beneficial than the rules in force at the time of death of deceased employee. The Coordinate Bench held that it was in said context that Hon'ble the Full Bench had held that the rules prevalent at the time of death of the employee would be applicable. In the light of the aforementioned reasoning, the Coordinate Bench held that the claim of Saroj under the Rules, 2006 would not be affected by the judgment of Hon'ble the Full Bench in **Krishna Kumari's** case (supra). Rules 6 and 8 of the Rules, 2006 are reproduced as under:

"6. All pending cases of ex gratia assistance shall be covered under the new rules. The calculation of the period and payment shall be made 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 Employees Rules, 2006."

7. xxxxx xxxxxx xxxxxx

8. *The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005, which are in force immediately before the commencement of these rules are hereby repealed;*

Provided that 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 these rules:-

Provided further that in all pending cases where the family exercises the option to receive the financial assistance under these rules, the calculation of the period and payment shall be made from the date of notification of these rules."

9. Perusal of Rule 6 and 8 of the Rules, 2006, reveals that all pending cases of ex-gratia assistance on the date of coming into force of Rules, 2006 were to be considered under the Rules, 2006 but an option was given to the families of the claimants to opt for lump sum ex-gratia grant available to them as provided under the Rules, 2003 and 2005 as the case may be, in lieu of monthly financial assistance provided under the Rules, 2006. However, the Rules 2005, were repealed and option was given to the families of the deceased government employees to receive financial assistance under the Rules, 2006. Thus, the claim of the petitioner which was pending on 01.08.2006 when the Rules, 2006 came into force was to be considered under the Rules, 2006 as the petitioner had opted for the monthly financial assistance under the Rules, 2006. Thus, the respondents rightly considered the claim of the petitioner under the Rules 2006 and held her entitled to the benefit of monthly financial assistance under the Rules, 2006 vide order Annexure P/3 dated 27.10.2006. Clarification issued by the Chief Secretary to Govt. of Haryana dated 08.06.2007 has been held by the Co-ordinate Bench

in **Saroj's** case (supra) to be violative of Rule 6 and 8 of the Rules, 2006 therefore, of no consequence in view of settled law that executive instructions being subject matter of delegated/subordinate legislation cannot override statutory rules and the right conferred under statutory rules cannot be taken away by instructions/letter. Therefore, rejection of the claim of Saroj based upon letter/ instruction dated 08.06.2007 was held to be not sustainable, accordingly, the claim was allowed and she was held entitled to the benefits as per order dated 04.05.2007 under the Rules, 2006 with monthly family pension which she had been receiving to be adjusted against the monthly financial assistance which she was held entitled to under the Rules, 2006.

10. Admittedly, vide order Annexure P/3 dated 27.10.2006, the petitioner was held entitled to financial assistance of a sum equal to the pay and allowances that was last drawn by her husband under Rule 5(1) of the Rules, 2006 w.e.f. 01.08.2006 while holding her not entitled to get pension w.e.f. 01.08.2006 during the period of drawing of pay and allowances under the new scheme. Thereafter, clarification Annexure R-1 dated 08.06.2007 was issued by the Chief Secretary to Govt. of Haryana that where death took place prior to 01.08.2006 and PPO/GPO had been issued then the claim under the scheme introduced with effect from 01.08.2006 was not maintainable. The petitioner who had been granted the benefit under the Rules, 2006 vide order Annexure P/3 dated 27.10.2006 was sent a copy of the communication from the Accountant General addressed to the Superintendent of Police, Bhiwani of her ineligibility to get benefits under the Rules, 2006 on account of death of her husband having taken place prior to 01.08.2006 and PPO/GPO having been issued, consequentially, of her being entitled to family pension only.

Recovery of salary paid to the petitioner was ordered to be made under

intimation to the office of the Accountant General and further requiring family pension to be given to the petitioner as per Haryana Government clarification dated 08.06.2007. There was no compliance with the principles of natural justice nor was any opportunity of hearing given prior to taking a decision to unilaterally withdraw the benefits which the petitioner was granted under the Rules, 2006 in terms of order Annexure P/3 dated 27.10.2006. The petitioner is an illiterate, rustic lady with two minor children, old aged father and mother-in-law dependant upon her and in the circumstances faced with the specter of lack of financial resources, requested for grant of ex-gratia compensation under the ex-gratia policy prevalent at the time of death of her husband vide representation Annexure R-2 dated 29.02.2008 leading to passing of order Annexure P/5 dated 25.11.2008.

11. Admittedly, the claim of the petitioner for grant of financial assistance had not been decided and in the meantime Rules, 2006 came into force with effect from 01.08.2006. Rule 5(1) (b) of the Rules, 2006 are reproduced as under :

*“5(1) On the death of any Government employee the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim:-
(b) for a period of twelve years or till the date the employee would have retired from government service on attaining the age of superannuation whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years.”*

12. In accordance with the aforementioned rules, the petitioner was correctly granted the benefits under the Rules, 2006 vide order Annexure P/3 dated 27.10.2006. However, the Chief Secretary issued communication

Annexure R-1 dated 08.06.2007 holding that where death had occurred prior to 01.08.2006 and PPO/GPO had been issued, new scheme introduced w.e.f. 01.08.2006, under Rules, 2006 could not be opted for. The clarification dated 08.06.2007 issued by the Chief Secretary to Govt. of Haryana vide Annexure R-1 has already been held by Hon'ble the Coordinate Bench in **Saroj's** case (supra) to be in violation of Rule 6 and 8 of Rules, 2006 on the ground that executive instructions cannot override statutory rules and the right conferred under statutory rules cannot be taken away by instruction's/letter. Representation Annexure R-2 dated 29.02.2008 was submitted by the petitioner not out of her own volition but solely on account of communication Annexure P/4 dated 07.08.2007 received by her from the office of the Accountant General mentioning that she was not entitled to the benefit under the Rules, 2006 on account of death of her husband having taken place prior to 01.08.2006 and PPO/GPO having been issued by the office and advising the Superintendent of Police, Bhiwani to effect recovery of salary paid to her while giving her family pension as per Haryana government clarification dated 08.06.2007.

13. The petitioner is an illiterate lady from a rustic background with a huge family to support. Despite it being well settled law that executive instructions cannot override statutory rules, the respondents issued instructions Annexure R-1. In issuing instructions Annexure R-1 dated 08.06.2007, the respondents acted unfairly and in violation of well settled law to deprive an illiterate lady from a rustic background of her entitlement as per the statutory rules. Despite it being incumbent upon the respondents as functionaries of a Welfare State to have ensured that the petitioner was given benefits under the statutory rules as per her entitlement, the same was not

done. Consequentially, the action of the respondents in issuing communication Annexure R-1 dated 08.06.2007 as well as communication Annexure P/4 dated 07.08.2007 is legally unsustainable, accordingly, representation Annexure R-2 submitted by the petitioner cannot bind her. Consequentially, order Annexure P/5 dated 25.11.2008 passed in the circumstances as noted above is also not binding on the rights of the petitioner. Although death of the petitioners husband had taken place prior to 01.08.2006 yet claim of the petitioner was pending and was granted under the Rules 2006 only vide order Annexure P/2 dated 27.10.2006. Consequentially, deprivation of the lawful entitlement of the petitioner under Rules, 2006 in terms of clarification Annexure R-1 dated 08.06.2007 as made vide order Annexure P/5 dated 25.11.2008 is legally unsustainable and is set aside. Consequently, the petitioner is held entitled to the benefits as were granted to her vide order Annexure P/3 dated 27.10.2006 in terms of Rules, 2006 with payment to be released to her as per Annexure P/3 dated 27.10.2006 within a period of 3 months from the date of receipt of certified copy of this order failing which the same shall be paid along with interest at the rate of 7.5% per annum with effect from the date of entitlement till date of actual payment.

13. Needless to mention, financial benefits received by the petitioner otherwise than under the Rules, 2006 would be adjusted by the respondents out of the financial benefits admissible to the petitioner in terms of Annexure P/3 dated 27.10.2006.

14. Writ petition allowed in aforementioned terms.

August 27, 2019

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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

(B.S. Walia)
Judge