

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

CWP No.21354 of 2016

DATE OF DECISION : 15 FEBRUARY, 2019

Smt. Shilpa

.... Petitioners

Versus

State of Haryana & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

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Present : Mr. S. M. Sharma, Advocate for the petitioner.

Mrs. Tanisha Peshawaria, DAG Haryana.

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A. B. CHAUDHARI, J.

1. In the present petition the petitioner has put to challenge part 5(1) Clause (b) of the notification dated 01.08.2006 No.G.S.R.19/CONST. /ART.309/20006, (Annexure P-2) issued by the State of Haryana along with order dated 30.07.2015 (Annexure P-1).

2. In support of the writ petition learned counsel for the petitioner contended that Clause 5(1)(b) of the aforesaid notification provides for financial assistance equal to the pay and other allowances last drawn by the employee for a period of 15 years, which restriction placed by the Government is arbitrary, irrational and deserves to be declared unconstitutional. He submitted that such a restriction by the Government for making the payment of salary for 15 years is required to be set aside and in addition the petitioner is required to be granted additional reliefs, including that of employment. Consequently according to him the impugned order (Annexure P-1) is also liable to be set aside.

3. *Per Contra*, learned counsel for the State of Haryana has invited our attention to the written statement filed on behalf of respondents No.1 to 4 by Sh. Abhishek Jorwal, IPS, Superintendent of Police, Ambala and submitted that issue is clearly covered by the decision of this Court as well as the Supreme Court against the petitioner and therefore, the petition is liable to be dismissed.

CONSIDERATION:

4. With the assistance of learned counsel for the rival parties we have perused the record and heard learned counsel for the rival parties. The impugned order Annexure P-1, reads thus:

“Subject: Application regarding grant of financial assistance to the family of Late SI Vikram Singh No.A/44.

Memo.

Please refer to your application dated 22.05.2015, on the subject noted above.

Brief fact of the case are that SI Vikram Singh No.A/44 died on 05.12.2007. At that time “the Haryana Compassionate Assistance to the Dependent of the deceased Government Employees Rules, 2006” was applicable. SI Vikram Singh No.A/44 died in the age of 36 years, 07 months and 08 days being his date of birth is 28.04.1971. As per Para 5 (I) clause (b), Smt. Shilpa wife of late SI Vikram Singh is entitled for monthly financial assistance for the period of 12 years i.e. 06.12.2007 to 05.12.2009.”

5. The provision regarding financial assistance and in particular clause 5 is reproduced below:

Criteria for financial assistance:

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,---

(a) For a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years;

(b) For a period of twelve years or till 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;

(c) For a period of seven 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 had attained the age of forty eight years.

6. The policy framed by the Government of Haryana as aforesaid, in our opinion, is certainly unique and the Government must be applauded for finding out an intelligent solution to the problem of the dependants of the deceased employee who would get the full salary had the deceased been alive till the age of superannuation or for a period of 15 years whichever is less. In our opinion, the period of 15 years is good enough for the family to make its own arrangement for survival thereafter, which would also include the savings from the said salary by

putting the same for earning the interest for further security. We, therefore, do not find anything wrong with the above clause and on the contrary we think that the security provided by the Government, in accordance with the said clause, must be appreciated. That apart, the respondent-State of Haryana has relied on judgments in paragraph 6 of the written statement. The gist of the judgment has been reproduced in the said paragraph. We quote the said paragraph 6 as under from the written statement:

“6. That the petition is not maintainable as the Hon’ble Supreme Court of India and this Hon’ble High Court in number of its judgments held that the object of the Haryana Compassionate Assistance to the Dependents of Deceased Employee Rules is to assist the family of the 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. In Umesh Kumar Nagpal vs. State of Haryana and others, 1994(3) STC 174, the following observations have been made by the Hon’ble Court:-

“However, it is now a well settled principle of law that appointment on compassionate ground is not a source of recruitment. The reason for making such a benevolent scheme by the State or the

Public Sector Undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.”

Full Bench of this Hon’ble High Court in CWP No.4303 of 2009 titled as Krishna Kumari versus State of Haryana and others also discussed the above position regarding Ex-Gratia benefits. The relevant para in this regard is as under:-

“We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex Court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution

of India. We answer the reference accordingly.”

7. In view of the above discussion, we are of the considered opinion that the policy to provide salary for 12 years now 15 years, must be upheld and it does not violate Article 14 of the Constitution of India, as contended.

8. It would be apt to observe that it is almost impossible to get compassionate appointment. Then there is a litigation for claiming compassionate employment. The alternate mode found out by the Government of Haryana to provide last drawn salary of the deceased, to the dependants really achieves the purpose to provide immediate relief. We think other states may also consider the same.

9. In that view of the matter, we find that the present petition is bereft of any merit and the same is required to be dismissed. Hence, we make the following order:

ORDER

(i) CWP No.21354 of 2016 is dismissed.

(A. B. CHAUDHARI)
JUDGE

15 FEBRUARY, 2019
‘raj’

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes**

Whether Reportable: **Yes**