

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

CWP No. 5644 /2020

Date of Decision : 29.05.2020

Om Pati and another.

....Petitioner's

v/s

Dakshin Haryana Bijli Vitran Nigam and others.

....Respondents

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

Present: Mr. Bhushan Bhatia, Advocate for the petitioner's.

B.S. Walia, J.,

1. Prayer in this petition under article 226/227 of the Constitution of India is for the issuance of a writ of Mandamus for directing the respondent's to offer appointment to petitioner No. 2 under the ex gratia scheme as also to issue any other appropriate writ, order or direction which this Court deems fit and proper in the facts and circumstances of the case.

2. That the brief facts of the case leading to the filing of the instant writ petition are that the father of petitioner No. 2 and husband of petitioner No. 1 who was working as ALM in OP Division, DHBVNL, Charkhi Dadri unfortunately died on 29.06.2001 while in service.

3. That in the aforementioned circumstances, petitioner No. 1 submitted an application, Annexure P/2 dated 12.09.2001 to the Managing Director, DHVBNL, Hisar for employment to her son i.e. petitioner No. 2 on compassionate grounds.

4. That in response to the application submitted by petitioner No. 1 for grant of employment on compassionate basis to petitioner No. 2, petitioner No. 1 received a communication, Annexure P/2 dated 25.03.2002 from the Chief Engineer, OP, DHBVNL, Hisar that petitioner No. 2 would be attaining the minimum age for grant of employment i.e. of 17 years on 18.04.2004, therefore application complete in all respects be submitted for grant of employment of petitioner No. 2 before 29.06.2004 on account of death of the petitioners husband/father having taken place on 29.06.2001, failing which the claim for employment would be rejected by the competent authority.

5. That petitioner No. 1 received another communication Annexure P/3 dated 25.05.2003 from the Superintending Engineer/Administration, DHBVNL, Hisar informing of introduction of the ‘‘Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003’’ with the object of assisting the family of the deceased employee in tiding over the emergency situation resulting from the loss of bread earner by giving option of ex-gratia appointment on compassionate grounds to a member of the family who was completely dependent on the deceased employee and was in extreme financial distress due to the loss of the deceased, namely the government employee who had died in harness or ex gratia compassionate financial assistance to the family of the deceased over and above all other benefits like ex gratia grant due to the family of the deceased to be paid at the rate of Rs. 2.5 lakhs in case the family of the deceased employee did not opt for ex gratia employment. It was also made clear in the aforementioned communication that due to non-availability of sufficient posts, employment cases were lying pending since a number of years and were likely to take 4 – 5

years more to finalise as the posts were being reduced due to restructuring in

the Nigam therefore the chance of employment under the ex gratia scheme were very bleak. It was mentioned that in case the dependents of the deceased were interested to avail the facility of ex gratia compassionate assistance of Rs. 2.5 lakhs, acceptance/option as per enclosed pro forma be submitted failing which it would be treated that the dependants was not willing to avail the cash benefit facility in lieu of ex gratia employment but that option once exercised could not be changed.

6. Petitioner No. 1 claims to have again submitted request by way of affidavit Annexure P-3/4 dated 26.04.2004 signifying no objection if petitioner No. 2 was granted compassionate appointment. Thereafter petitioner No. 1 was issued communication Annexure P/5 dated 30.05.2005 informing that as per the seniority list of claim for ex gratia employment maintained w.e.f. 01.04.2003 in accordance with the provisions of rule 6 (1) sub rule (a) and (b) of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules 2003 and as per rule 9 (b) of the ibid Rules 2003 appointments could be made up to a maximum of 5% of the sanctioned posts falling under the direct recruitment quota in Group C and D categories and claims for ex gratia employment were dealt strictly by taking into account the date of death of the employee in each case but if the case of the petitioner's was not finalised within a period of 3 years from the date of issue of the 2003 rules or within 3 years from the date of death of the employee due to non-fulfilment of the conditions laid down in the rules due to non-availability of vacancies for the purpose, the claim of the petitioners would be considered for grant of compassionate financial assistance of Rs. 2.5 lakhs only in terms of the ibid rules adopted and circulated vide office memo No. Ch – 12/EXG – 3

dt. 16. 5. 03 read with memo No. Ch – 29/EXG – 3 dt. 10. 3. 04 and Memo No. Ch – 38/EXG – 3 dt. 13. 9. 04.

7. That thereafter, petitioner No. 1 applied for ex gratia financial assistance under the “Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2003” Scheme on 26.04.2004. Pursuant to the submission of aforementioned application, petitioner No. 1 was released ex gratia compassionate financial assistance of Rs. 2.5 lakhs by way of cheque No. 929954 dated 23.10.2007.

8. That 12 years thereafter, i.e. on 12. 09. 2019, petitioner No. 1 served a legal notice on the respondents vide Annexure P/6 dated 12. 09. 2019 that she was willing to surrender the ex gratia compassionate financial assistance but that her son should be granted compassionate appointment. In response thereto petitioner No. 1 was informed that the claim of her son for grant of compassionate appointment could not be considered as he was a minor, that during the pendency of the matter the “Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2003” came into existence as per which all previous policies were repealed and all pending cases required to be dealt with accordingly, that as per the said rules, appointments could be made up to a maximum of 5% of sanctioned posts falling under direct recruitment quota in Group C and D categories to be determined by the head of the department on 31st March of each year and since no class four posts for the purpose were available in the Nigam and therefore the chances of compassionate appointment were very bleak, the position was conveyed vide communication Annexure P/3 dated 25. 05.03 and further as per Clause 6 (1)(c) of the ibid rules it was mentioned that dependents of deceased

government employee could exercise preference with regard to option as contained in rule 4 (1) (b) of the rules for compassionate financial assistance of Rs. 2.5 lakhs if no post existed in the Department for compassionate appointment and in the circumstances petitioner No. 1 was advised to exercise her option with regard to compassionate financial assistance in lieu of compassionate appointment whereupon petitioner No. 1 exercised option on 24. 04. 2006 to avail facility of financial assistance in lieu of employment. Petitioner No. 1 was also asked to specify the objection vide memo No. Ch – 18/Pen/EG – 609 dt. 16.05.2006 in response to which petitioner No. 1 vide letter dated 12. 06. 2006 informed that she wanted compassionate appointment but in case the same was not possible she would like to avail the option for compassionate financial assistance of Rs.5 lakhs. Petitioner No. 1 vide memo dated 18.07.2006 informed that financial assistance of Rs. 5 lakhs was applicable only in cases where death of employee had occurred after 18.11.2005 and that all pending cases of deceased employees whose family members were eligible under the rules repealed by the 2005 rules was to be disposed in accordance with the old rules, as such she was eligible for financial assistance of Rs. 2.5 lakhs only. Thereafter petitioner No. 1 gave her option on 05.06.2007 for availing benefit of lump sum financial assistance of Rs. 2.5 lakhs in lieu of employment as provided under clause 4 (1) (b) and 6 (1) (c) of the rules 2003 without any objection where after on completion of formalities, payment of Rs. 2.5 lakhs was released in favour of petitioner No. 1.

9. Ld. counsel contended that in view of the decision of the full bench in Krishna Kumari versus State of Haryana and others- 2012 (2) RSJ 473 as was

upheld by the Supreme Court, rules applicable on the date of death /

incapacitation of an employee are applicable and in view thereof the petitioner's son i.e. petitioner No. 2 is entitled to compassionate appointment.

10. I have considered the submission of Ld. Counsel, There is no dispute with the law laid down by the full bench. However, I am unable to agree with the claim of petitioner No. 1 for grant of compassionate appointment to her son i.e. petitioner No. 2 for the reason that the father of petitioner No. 2 unfortunately expired on 29.06.2001. Application for compassionate appointment was submitted on behalf of petitioner No. 2 vide Annexure P-8/1 dated 12. 09. 2001. Petitioner No. 1 was informed vide letter Annexure P/2 dated 25/03/2002 to submit application on behalf of her son for compassionate appointment on his attaining the age of 17 years i.e. 18.04.2004 but before 29.06. 2004 i.e. within 3 years of death of deceased employee. Thereafter intimation was given to petitioner No. 1 vide Annexure P/3 dated 25. 05. 2003 of the introduction of the "Haryana Compassionate Assistance to the Dependents of Deceased Government Employees, Rules, 2003". No doubt the petitioner No. 1 sought compassionate appointment for her son but due to non-availability of posts, petitioner No. 1 eventually sought financial assistance under the "Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees, Rules, 2003" vide option dated 05.06.2007 in lieu of employment as provided under clause 4 (1) (b) and 6 (1) (c) without agitating her grievance for grant of compassionate appointment to her son before a court of law and accepted the payment of Rs. 2.5 lakhs as released to her vide cheque No. 929954 dated 23. 10. 2007. Thereafter, the petitioners maintained a stoic silence and it was only vide Annexure P-3/6 dated 12. 09.2019 that a legal notice was served for grant of compassionate appointment

No. 2's father are the rules on the basis of which rights of petitioner No. 2 were to be determined yet in view of petitioner No. 1 having opted for financial assistance and got the same on 23.10.2007 and petitioners not having agitated their grievance qua non-grant of compassionate appointment to petitioner No. 2 till the filing of the instant writ petition in the year 2020 even though petitioner No. 2 attained the age of employment in 2004 besides even the legal notice Annexure P/6 dated 12.06.2019 having been served only on behalf of petitioner No. 1, the writ petition is not maintainable, besides is highly belated. Accordingly, the writ petition is dismissed in the light of the observations made above.

(B.S. Walia)
Judge

29.05.2020
DP&S

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