

203

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

CWP-24448-2019

Date of Decision: September 30, 2021

Parveen Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gaurav Kalsi, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of Certiorari for quashing the impugned order dated 08.08.2019 (Annexure P-19), whereby, claim of the petitioner for granting compassionate appointment on account of his missing father (considered to be dead in 2005 as per rules), has been declined and only a compensation of Rs.2.50 lakh has been granted.

2. Brief facts first. Father of the petitioner, namely Sh. Mahabir Singh was working as conductor in the Haryana Roadways Rohtak depot. Sh. Mahabir Singh remained absent from the duty with effect from 25.09.1997. Many letters were issued to him to join his duties, but he did not turn up. Finally, vide order dated 21.10.1997 he was suspended from the duty. An Enquiry Officer was appointed and charge-

sheet was issued to Sh. Mahabir Singh at his home address through registered post. However, the same was returned with the endorsement that he was out of his native village. Subsequently, Sh. Mahabir Singh was reinstated into service vide an order dated 10.03.1998 but on the same very day, he did not return back having left home to join his duty. The petitioner then lodged a report with the police station Sadar Dadri to this effect vide rapat No.7 dated 24.08.1998 (Annexure P-1).

3. However, father of petitioner remained missing and untraceable seeking recourse to the Haryana Compassionate Assistance to the dependents of deceased Government Employees Rules 2003, which came into existence w.e.f. 28.02.2003. The Rule 3 (i) defines the missing Government Employee which is as under: -

“missing Government employee” means a person who is in Government service and not traceable for the last seven years and whose where about are not known; and

(a) an FIR to this effect has been lodged with the police; and

(b) the “appointing authority” feels that the case is genuine;

Further Rule-11 describes about the ex-gratia appointment in case of missing employee which is reproduced as under: -

Ex-gratia Appointment in case of missing Govt. employee:-
The cases of missing Government employee are covered under these rules for appointment, subject to the following conditions:-

(a) The benefit of appointment with regard to missing Government employee shall be granted only after a lapse of seven years from the date from which the Government Employee is missing and a FIR has been lodged to this effect.

(b) This benefit will not be available in the case of a Government Employee;

(i) who had put in such years of service as entitle him/ her family to draw pensionary benefits of the age of 55 years

whichever is earlier on the date from which he has been missing; or

(ii) who is suspected to have committed fraud, or suspect to have joined any terrorist organization or suspected to have gone abroad.

Rule-9 of the above said rules describes about determination/ availability of costs:

9. Determination/ availability of posts:-

(a) Appointments under these rules shall be made only on regular basis and that too only, if regular posts meant for that purpose are available.

(b) Appointments under these rules can 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 of March of each year. The appointing authority may hold back upto 5% of posts in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such posts by appointment on compassionate grounds.”

4. In the return, stand taken inter alia is that the father of the petitioner is since missing from 10.03.1998 and as per above mentioned Rule-11, the case was to be considered after a lapse of seven years from the date from which the employee is missing and seven years were completed on 10.03.2005 and the case was considered as per Rules 2003 applicable at that time. The Haryana Compassionate Assistance to the dependents of deceased Government Employee Rules 2003 came into existence w.e.f. 28.03.2003 and the Haryana Compassionate Assistance to the dependents of deceased Government Employees Rules 2005 came into existence w.e.f. 18.11.2005. Thus, Rules of 2003 are applicable herein. State Government vide notification dated 10.02.2004 substituted clause (f) in Rule-8 which is reproduced as under: -

In the said rules, in rule 8, for clause (f) the following clause shall be substituted, namely: -

(f) in case the dependent of the deceased Government employee is not eligible for appointment on any ground

mentioned in clause 9(c) and (g) of this rule and rule 16(a), the family member shall be given ex-gratia assistance of Rupees 2.5 lacs.”.

At this highly belated stage, after more than 21 years from the date of missing of father of petitioner, the employment on compassionate ground can not be claimed as a matter of right is also the objection.

5. Learned counsel for the petitioner contends that impugned order dated 08.08.2019 (Annexure P-19) partly mitigates the grievance of the petitioner granting *ex gratia* as per the instructions dated 10.03.2005, but said instructions were later superseded by instructions dated 30.11.2005 (Annexure P-20) increasing the *ex gratia* amount from Rs.2.5 lakh to Rs.5.00 lakh. The respondent-Department has not taken into consideration the said instructions, thus the petitioner is entitled to Rs.5.00 lakh instead of Rs.2.5 lakh.

6. On the other hand, learned State counsel submits that the petitioner was not eligible for appointment. Even otherwise claim for compassionate appointment is an exception to the Rule of merit and since the petitioner has been able to survive for good period of 21 years post his father's missing, therefore, there cannot be any compassionate appointment in his favour.

7. I have heard rival contentions of learned respective counsels.

8. Conceded stand of respondents as per return filed by them is that the petitioner's father was since missing from 10.03.1998 and accordingly, a presumption *qua* his death was drawn after a lapse of 7 years as per Section 108 of the Indian Evidence Act, 1872 and the date

of presumption of his death is thus, 10.03.2005. In accordance thereof, the petitioner has been granted financial compensation as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (for short 'Rules of 2003'), which came into existence w.e.f. 28.02.2003.

9. A perusal of Rule 3(i) of 2003 Rules, *ibid* reflects that all it says is that missing Government employee is presumed to be the one who is not traceable for the last 7 years and whose whereabouts are not known and an FIR to this effect has been lodged. Meaning thereby, the 7 years are to be reckoned w.e.f. the date of FIR. In the instant case, FIR was registered on 24.08.1998 and calculating from the said date, the petitioner ought to have been given the benefit of applicable financial assistance as in August, 2005. To that extent, there is not quibble that on the relevant date, Rules of 2003 were applicable. However, the petitioner was still not given the financial assistance in accordance thereof. The petitioner was then earlier also compelled to file writ petition, i.e. CWP-7263-2019, before this Court wherein, an order dated 10.05.2019 was passed directing the respondents to decide his pending legal notice.

10. Pursuant to directions of this Court, vide impugned order dated 08.08.2019 (Annexure P-19), the petitioner was eventually given a sum of Rs.2.5 lakh on the ground that applicable rules on the relevant date were those of 2003.

11. While on the other hand, petitioner claims that since his case was kept pending for no fault of his, he ought to have been given the compensation as per subsequent rules, which are the Haryana

Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'Rules of 2006'). Rule 6 thereof is reproduced herein below: -

“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 Assistance to the Dependents of the Deceased Government Employees Rules, 2006.”

A subsequent clarification of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 (for short 'Rules of 2005'), as contained in letter No.16/88/2004-5GSII dated 30.11.2005 issued by the Chief Secretary to Government Haryana, reads thus: -

“i) Ex-gratia Compassionate financial assistance to the family of the deceased Govt. employees has been increased from existing Rs.2.50 lakh to Rs.5.00 lakh.”

12. A collective reading of the above Rule 6 with clarificatory letter leaves no manner of doubt that all those cases which have been kept pending for no fault of any surviving member of the deceased employee are to be dealt with as per 2006 policy. Accordingly, the petitioner is also held to be entitled to the benefit of additional Rs.2.5 lakh as envisaged in the aforesaid Rules of 2005 & 2006.

13. To that limited extent, writ petition is allowed and respondents are directed to pay additional sum of Rs.2.5 lakh along with interest @ 7% to be calculated from 60 days after the Rules of 2006 came into effect, i.e. 01.08.2006. The relaxation of 60 days is being

given as ordinarily that is a reasonable period to process the case of the petitioner and the Department cannot be burdened with delay on that count.

(ARUN MONGA)
JUDGE

September 30, 2021
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No