

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

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**CM-629-LPA-2020 and
LPA-234-2020 (O&M)
Date of decision : 11.03.2022**

State of Haryana and others

....Appellants

V/s

Sanjay Kumar

....Respondent

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Hitesh Pandit, Additional Advocate General, Haryana.

(The proceedings are being conducting through Video
Conferencing, as per instructions)

G.S. SANDHAWALIA, J. (ORAL)

Application seeking condonation of delay of 509 days in filing the present Letters Patent Appeal against the impugned order dated 24.07.2018, passed by the learned Single Judge has been filed, in CWP-6187-2017.

The learned Single Judge, vide impugned order while noticing that the claim of the writ petitioner for compassionate appointment has been rejected, granted the benefit to petitioner for the grant of ex-gratia scheme under 2006 Rules. Reliance had been placed on the judgment passed in CWP-12263-2007 titled as *Takdir Singh vs. State of Haryana and others* (Annexure P-11). A perusal of the said order would go on to show that while keeping in mind Rule 6 of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006, the writ petition had been allowed and the respondents had been directed to accept the option of the petitioner for assistance

as per 2006 Policy. The necessary benefits were to be released within two months

from the date of receipt of a certified copy of the order. Learned Single Judge in the present case also, granted the same benefit along with interest at the rate of 8%.

In the considered opinion of this Court, the benefit for grant of employment under ex-gratia scheme to the petitioner, who was only 10 years old, has been given on account of death of his father, who died in a road accident on 24.03.1997. His mother had filed an application before the respondents/authorities and his name was entered in the '*nabalik*' register and registration number had been allotted to him. The writ petitioner and his mother had stated that the petitioner be recruited with the police department after attaining the age of majority. He had applied for the post on 24.10.2006 and he filed CWP-12124-2008 which was disposed of on 22.08.2008, with a direction that his case be considered in light of the instructions/Rules applicable at the time of death of the Government Employee and his claim had been rejected vide order dated 30.03.2015 by the Director General of Police, Haryana (Annexure P-6).

The Director General of Police, Haryana, rejected the case of the petitioner on the ground that he had applied on 24.10.2006, after a lapse of 9 years and 6 months. This aspect has not been interfered with by the learned Single Judge who has, thus, allowed the writ petition only to the extent that financial benefits as per 2006 Rules had to be granted to the petitioner by placing reliance upon the judgment in *Takdir Singh's* case (supra).

We have already noticed that the judgment in *Takdir Singh's* case (supra) has been kept in mind, which specifically referred that all pending cases of ex-gratia assistance are to be covered under the new Rules. The families were entitled for the lump sum ex-gratia grant provided in terms of the option exercised under the 2006 Rules, on account of the death of the employee. Therefore, the

benefit which has been granted as such is only under lump sum ex-gratia, as per Rule 6 and thus, we do not find any illegality in the order passed by the learned Single Judge, who had granted 8% interest in order to compensate the employee on account of the fact that the rejection was belated. The petitioner was entitled for the said benefit and on account of the delay, the interest element has to be granted. The relevant Rules read as under:-

“6. *Pending cases:-* 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. *Removal of doubts:-* If any doubt arises relating to the application, interpretation and scope of these rules, it shall be referred to the Government in the department of General Administration (In General Services-II Branch) whose decision thereon shall be final.

8. *Repeal and savings :-* 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 repeated.

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.”

A similar issue was considered by the Apex Court in **Civil Appeal No.2144 of 2016 'Haryana Vidyut Prasaran Nigam Ltd. & others Vs. Kelo Devi & another'** decided on 13.02.2020, regarding all three schemes of the State Government, which had been issued in the year 2003, 2005 and 2006. Resultantly, it was held that all pending cases have to be dealt with under Rule 6 and 7, which have already been reproduced above. Relevant portion of the said judgment reads as under:-

“12. The aforesaid clause thus gives an option to be governed by the earlier Rules or the latter Rules for the purposes of ex-gratia payment alone. Thus, if a case is covered by Rules of 2003, the beneficiaries may claim under those Rules for ex gratia payment or under 2006 Rules for ex-gratia payment and the same position would prevail qua 2005 Rules. Needless to add here that if the benefit has already been claimed and granted under the earlier Rules, then that aspect cannot be revisited if the new Rules have come into force.

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14. In our view the aforesaid Scheme is quite clear i.e. insofar as pending cases are concerned where benefit has not been taken under the earlier Schemes, those applications can be dealt with qua ex gratia payment under Rules of 2003 or 2005 or the current Rules of 2006 at the option of claimants.

15. Insofar as the facts of the present case are concerned, the application for appointment on compassionate grounds was made in the year 2005 but the request was rejected on 10th August, 2006, after the new policy had come into force on 3 rd August, 2006. The operative portion of the impugned judgment dated 7th November, 2012, referring to the plain language of Rule 6 of 2006 granted the benefit under those Rules. On a special leave petition being preferred before this Court, the operation of the impugned judgment was stayed on 18th March,

2013 but an interim order was passed that the case of the son of the deceased be considered under Rule 4 of the Scheme of 2003 without taking into account the rejection of his mother's application for compassionate appointment on 10th August, 2006. We are informed that no such compassionate appointment has been made.

16. In view of the aforesaid, we are in agreement with the view taken in the impugned judgment that the case of the respondent would be covered by 2006 Rules for ex-gratia payment.”

In the considered opinion of this Court, there is no sufficient cause to condone the delay since the judgment was passed on 24.07.2018 and admittedly as per the application (CM-629-LPA-2020) filed for condonation of 509 delay, the opinion tendered by the law officer is that the present case is not a fit case for filing the appeal. Learned Advocate General had also agreed to this on 08.09.2018. As per the averments itself, the appellants did not agree with the legal opinion and thus, the present appeal has been filed on 14.01.2020. The only plea taken is that the similar issues are pending and therefore, the present Letters Patent Appeal has been filed.

The Apex Court in judgment titled as ***Office of the Chief Post Master General and others vs. Living Media India Limited and another***, 2012(2) SCT 269, has held that the Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment and once they fail to give any cogent reasons to condone the delay, the delay is not liable to be condoned. They cannot take advantage of the impersonal machinery and inherited bureaucratic methodology and the law of limitation binds them equally.

Resultantly, keeping in view the aforesaid principles, we are of the

opinion that both i.e. the application for condonation of delay as well the appeal, is

bereft of any merit and is dismissed. The amount be paid in terms of the aforesaid directions within a period of two months from today.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 11, 2022
Ajay

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