

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

CWP-6604-2019(O&M)

Date of decision: October 27, 2022

Kunal Kadian and another

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.N. Pillania, Advocate for the petitioners.

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondents to grant the appointment on ex-gratia basis to petitioner No.2 as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2003, or in the alternative, grant financial assistance or monthly ex-gratia financial assistance according to the aforesaid Rules of 2003, Rules of 2005 and Rules of 2006 whichever is more beneficial to the petitioners and pay arrears along with interest.

2. Succinct factual background first as pleaded in the petition. Mother of the petitioners, namely Kaushalya Devi was serving as a Lecturer (School cadre) on a regular basis in the Govt. Girls Senior Secondary School, Saman, District Rohtak. She died on 12.01.2003 while in service. The petitioners submitted all the relevant documents well within time for grant of all the benefits. State Government notified the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2003 vide

notification dated 28.02.2003 (Annexure P-1). Thereafter, the State Government also issued notification dated 18.11.2005 and 01.08.2006 notifying Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2005 and 2006, (Annexures P-2 & P-3 respectively). Matter remained pending with various offices of the respondents for a long time. Accountant General, Haryana raised certain queries/objections to the case of the petitioners, which were duly replied to by the Principal of the School through the District Education Officer, Rohtak vide letter dated 05.11.2009 (Annexure P-4). Upon getting information under RTI by petitioner No.2, it was intimated to the petitioners vide letter dated 03.01.2012 (Annexure P-7) that their case has been sent to the Accountant General, Haryana on 18.11.2011. Amount of gratuity was sanctioned in favour of the petitioners vide sanction dated 15.05.2012 (Annexure P-8). Further arrears of pension were also released to the petitioners on 21.08.2012 i.e., after more than 8 years from the due date, and an amount of Rs.25,000/- was also granted.

Respondents did not take any action to provide appointment or any financial assistance under ex-gratia scheme. Petitioners also served a legal notice dated 10.11.2018 (Annexure P-10), but the respondents did not consider the claim of the petitioners. Hence, the present petition.

3. Learned State counsel appears and strongly opposes the petition. He submits that mother of the petitioner died on 12.01.2003 i.e., before the commencement of the Rules of 2003, 2005 and 2006. He submits that the Chief Secretary to Govt. of Haryana had issued a letter dated 08.05.1995 (Annexure R-1) pertaining to ex-gratia appointment to the dependents of the deceased Govt. employees. He submits that all the pensionary as well as other due benefits have already been released to the petitioners. He further submits that

the Rules of 2003 & 2005 are no more in existence. Petitioners did not make any claim in accordance with the Rules of 2003 at the time of death of their mother; therefore, they are estopped from claiming the relief in view of Law of Estoppels.

4. I have heard the rival contentions of learned counsel for the parties and perused the record.

5. Learned counsel for the petitioners submits that claim of the petitioners cannot be rejected as time barred and relies on judgment dated 14.12.2018 (Annexure P-11) rendered in **CWP-2838-2017** titled '**Asha Rani and another versus State of Haryana and others**', relevant part whereof, reads as under: -

“xxxxxxxxxxxxxx. The ex-gratia Instructions of 18.11.2005 are very clear. Para no.19 of the policy dated 18.11.2005 is reproduced as under:

Repeal and saving-(1) The Haryana Compassionate Assistance to the Dependent of the deceased Government Employees Rules, 2003 which are in force immediately before the commencement of these rules are hereby repealed; Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under corresponding provisions of these rules.

(2) Pending cases of all those deceased Government employees whose family members are eligible under Rules so repealed shall be disposed of or in accordance with the old rules at the commencement of new rules.

Policy dated 18.11.2005 (Annexure P-3) is very clear that all pending cases which were eligible under the 2003 Rules had to be disposed of as per the Old Rules. The petitioner Asha Rani did not accept the financial assistance as per letter dated 17.4.2004 (Annexure R-1). Her case was rejected vide letter dated 17.11.2004 (Annexure R-2) on the ground that as per the Instructions dated 28.2.2003 regarding Ex-gratia Appointment Rules 2003, as per Clause 6(1)(b) the same has become time barred. Therefore, question of grant of appointment on compassionate grounds do not arise. Insofar as grant of financial assistance is concerned, it was the duty of the State Government that after rejecting the case of compassionate appointment of petitioner no.2, they had to give Rs.2.5 lacs to the petitioners, which she refused to take as per

Annexure R-1. In this view of the matter, this petition is being partly allowed.”

6. Note 1 of Rule 3 of the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 reveals that case of the petitioners ought to have been entertained as per applicable policy. Relevant extract of the Rules of 2019 *ibid* reads thus:

“Note 1.- The family of deceased Government employee who died before the date of notification of these rules but have not been sanctioned the compassionate financial assistance by the competent authority due to one reason or the other, they may exercise an option within a period of six months from the date of notification either to avail the benefit under the Haryana Compassionate Assistance to the Departments of Deceased Government Employees Rules, 2006 or these rules. Option once exercised shall be final.”

7. On perusal of the pleadings vis-à-vis record appended with the writ proceedings, it transpires that the petitioners had made a specific recital in Para-2 of the petition that they had submitted all the relevant documents well within time for the grant of all ex-gratia benefits. Learned State counsel canvassed his argument on the lines of Para-4 of the short reply dated 17.07.2019 filed on behalf of the respondents, stating that the petitioners had not made any claim in accordance with Rules of 2003 (Annexure P-1) and Rules of 2005 (Annexure P-2) at the time of death of their mother.

8. The stand taken by learned State counsel flies in the face of affidavit dated 14.07.2005 appended with the short reply *ibid* as Annexure R-2 and Annexure R-3, in which petitioner No.1 and Kiran, sister of the petitioners swore that they had no objection in case service benefits of their deceased mother were granted to their brother i.e. Ravi Kadian (Petitioner No.2). In this context, I may like to add that given that in extraordinary writ jurisdiction, the Court has to essentially rely on the documentary evidence and the affidavits filed by both sides, therefore, one has to necessarily let the record speak for

itself rather than making a simple assertion or denial in the pleadings without there being any corroborative proof appended thereto. Petitioners had also sought information under RTI regarding the status of their case, which was duly replied to vide letter dated 03.01.2012 (Annexure P-7) stating that their case has been sent to the Accountant General, Haryana on 18.11.2011. A bare perusal of the same shows that the case of the petitioners was under consideration, as stated aforesaid, because they had applied for the same within the stipulated period of the applicable policy.

9. Policy instructions dated 08.05.1995 (Annexure R-1) issued by the State Government were in force when the petitioners' mother died on 12.01.2003. Its perusal shows inter alia that besides other facilities, a dependent of the deceased employee is to be considered for appointment on compassionate grounds and that the dependent of the deceased employee shall be required to apply for employment within 3 years of the death of the employee. Affidavit of Kunal, petitioner No.1 (Annexure R-2) and Kiran, sister of the petitioners (Annexure R-3) dated 14.07.2005 have been produced with the written statement filed by the respondents. In them, the deponents deposed inter alia that they had no objection if the service benefits of their mother be given to their brother Ravi Kadian, petitioner No. 2 herein. It is thus clear that petitioner No. 2 had applied in 2005 for the grant of the service benefits of his mother within three years of her death on 12.01.2003.

10. The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (Annexure P-1) came into force on 28.02.2003. Vide Rule 19 thereof, the existing instructions issued by the Haryana Government from time to time regarding financial assistance and appointments under Ex-gratia Scheme were repealed with a proviso that any

action taken under the rules and instructions so repealed shall be deemed to have been taken under the corresponding provisions of these(2003) Rules.

11. In the premise, it seems inconsequential if thereafter, as contended by the learned State Counsel, the petitioners did not again make a fresh claim under the Rules of 2003 (Annexure P-1) and/or 2005 (Annexure P-2).

12. As an upshot of the above discussion, I am of the view that the case of the petitioners ought to have been entertained as per the applicable policy at the time of death of mother of the petitioners.

13. Writ petition is accordingly, allowed. Respondents are directed to further process the case of the petitioners and accord them benefit, if and as may be admissible to them as per applicable policy. Necessary exercise be carried out and a speaking order be passed within a period of two months of the petitioners approaching the competent authority with copy of the web print of instant order.

(ARUN MONGA)
JUDGE

October 27, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No