

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

CWP-11067-2021 (O&M)

Date of decision: August 23, 2022

Ankit

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amit Parashar, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing sanction dated 12.07.2019 (Annexure P-3) granted by respondent No.2 whereby mother of the petitioner has been ordered to be paid the last pay drawn by her deceased husband till 06.01.2031 as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'Rules of 2006) instead of granting appointment to the petitioner in view of the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 (for short Rules of 2019) (Annexure P-1) despite repeated representations and legal notice dated 15.02.2021 (Annexure P-7).

2. Succinct factual background first. Father of the petitioner, who was working on the post of Clerk in the office of SDO (C), Loharu, District Bhiwani died on 06.01.2019 due to cardiac arrest. On 12.02.2019, mother of the petitioner applied for compassionate financial assistance under the Rules

of 2006. In the meantime, the Government of Haryana notified Rules of 2019 granting compassionate financial assistance or appointment to the family of Government employee who dies or disappears while in service. Since as per the knowledge and belief of the petitioner, case for financial assistance under Rules of 2006 was pending and no order whatsoever was ever communicated to his mother or to him regarding financial assistance nor any assistance had started, therefore, mother of the petitioner moved representation dated 19.11.2019 (Annexure P-2) stating that she does not want to have the financial assistance instead prayed that her son be given compassionate appointment under the Rules of 2019. Mother of the petitioner was told that sanction dated 12.07.2019 (Annexure P-3) for providing financial assistance as per Rules of 2006 has already been given by respondent No.2. She again on 18.12.2019 (Annexure P-4) represented to the respondent-Department. It is pleaded that though order dated 12.07.2019 (Annexure P-3) granting sanction was passed, but no payment at all was released to the mother of the petitioner. In the letter dated 19.10.2020 (Annexure P-5) issued by respondent No.3-Deputy Commissioner, Bhiwani to respondent No.2-Commissioner Rohtak Division, Rohtak, it was *inter alia* submitted that except an amount of Rs.25,000/- for the purpose of cremation and last rites, nothing had been given to the family and respondent No.3 recommended to consider the matter sympathetically. Mother of the petitioner yet again moved a representation dated 20.01.2021 (Annexure P-6). Lastly petitioner served a legal notice dated 15.02.2021 (Annexure P-7) upon respondents No.2 to 4 claiming the relief. Petitioner came to know of the order dated 12.07.2019 (Annexure P-3) granting sanction for releasing salary till

06.01.2031, only at the time of filing representation dated 19.11.2019 (Annexure P-2).

3. I have heard the rival contentions and perused the record.

4. It is trite to say that compassionate appointment is not a reservation of any kind to stake a claim/right for employment on the ground of death in harness of the earning member of the family. The nobility and benevolence of the compassionate appointment Policy/ Rules is to save the family members from immediate penury with which it is visited on the sudden death of earning member and thus, provide immediate succor to ameliorate the financial hardship. Instant is a case where father of the petitioner died in harness on 06.01.2019 and at the relevant time, the widow of the deceased employee had sought financial assistance as per the applicable compassionate assistance policy of 2006. The said policy envisages monthly payment of last drawn salary minus just deductions by the deceased until he would have attained superannuation.

5. Request for seeking financial assistance was accepted vide an order dated 12.07.2019 (Annexure P-3), receipt of which has though been denied by the petitioner saying that the said order came to knowledge for the first time when upon not receiving the financial assistance, she made a representation dated 19.11.2019 (Annexure P-2) and it was then, she was first time told that appropriate sanction of the financial assistance had already been accorded. The close scrutiny of the record appended with the writ petition would reveal that no doubt the widow had, at first stage, opted for the financial assistance of her free volition as per the applicable policy since benefit of seeking employment was not there, but having got her case

sanctioned, she later turned around to seek benefit of subsequent enactment of the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 wherein a saving clause has been provided that those cases which were pending as on the date of the Rules coming into operation, shall be treated as per the subsequent Rules.

6. It is in this background that she wrote a letter/ representation dated 19.11.2019 that she was not interested in any financial assistance and instead her son, who is the petitioner herein, be given compassionate employment under the applicable Rules which came in force after the death of her husband. Learned counsel has though strenuously argued that mere fact that monthly financial assistance had not started, reflects that petitioner was never communicated the said order and in any case, having not implemented the same, the said sanction is a dead letter and has to be treated otiose and cannot be put to the detriment of the petitioner. However, I am unable to convince myself with the said argument for the reasons; (a) In case, sanction order dated 12.07.2019 (Annexure P-3) was not received by the petitioner, however, she referred to the same in her letter/ representation dated 19.11.2019, wherein she clearly stated in as many words as “Kindly stop my financial aid”; (b) In the return, it has been specifically stated that when the administrative order sanctioning the financial assistance was tried to be served on the petitioner, she flatly refused to take delivery of the same. To be noted, no replication and/ or any affidavit has been filed denying the said stand. In any case, such disputed questions of facts cannot be decided on the basis of affidavit in the extraordinary writ jurisdiction. The same are best

left open to be adjudicated by way of adducing evidence by respective parties before the appropriate forum and the writ Court is not the forum for the same.

7. As an upshot of the above discussion, no grounds for interference are made out.

8. Pending application(s), if any, shall also stand disposed of.

9. In the parting, it is however, made clear that in case, financial assistance has not been remitted to the petitioner owing to the pendency of the writ proceedings, same shall be forthwith started with effect from the date of first month and the arrears will be paid within a period of 2 months.

10. Disposed of as above.

(ARUN MONGA)
JUDGE

August 23, 2022

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No