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

CWP-11971-2019 (O&M)

Date of Decision: 06.05.2022

Manpreet Kaur

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vipin Kumar Sharma, Advocate and
Mr. S.K. Rohilla, Advocate
For the petitioner.

Mr. R.K.S.Brar, Additional A.G., Haryana.

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ARUN MONGA, J. (ORAL)

CM-4531-CWP-2020

Application is allowed, as prayed for.

Replication is taken on record, subject to all just exceptions.

Main case

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to release the retiral benefits of the petitioner's father who died on 05.02.2005 while in service and to give compassionate appointment to the petitioner.

2. Learned counsel for the petitioner submits that father of the petitioner was serving as Punjabi Teacher. The petitioner was born on 26.01.1997. The relations between her parents were not cordial. On 17.04.2001, her mother filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage by way of decree of divorce. The petition was decreed vide judgment and decree dated 02.09.2002. The petitioner was living with and dependent on her father till his death on

05.02.2005. Following the divorce from the petitioner's father, her mother remarried. After her father's death, she is dependent on her maternal grandfather. On 16.03.2005, respondent No.4 wrote a letter to respondent No.3 to release the retiral benefits to the petitioner but to no avail. At the time of death of her father, the petitioner was just 8-year old and she was unaware of her rights. Petitioner after attaining the age of majority submitted representations dated 25.05.2017, 12.12.2017 and 16.03.2018 (Annexure P-4) to respondents No.3 and 4 to give her appointment on compassionate grounds and to release the retiral benefits of her father. This was followed by a legal notice dated 10.07.2018 (Annexure P-5) and reminder dated 19.09.2018 (Annexure P-6) but in vain. Hence, the instant petition.

3. In the return filed opposing the writ petition, the respondents have maintained silence qua the averments in para 5 of the petition to the effect that petitioner after attaining the age of majority submitted representations dated 25.05.2017, 12.12.2017 and 16.03.2018(Annexure P-4) to respondents No. 3-4 requesting them to give appointment to her on compassionate grounds and for releasing the reitiral benefits of the deceased. They pleaded *inter alia*, as under:

“2.That the writ petition came for hearing before this Court on 07.05.2019 and after hearing the learned counsel for the petitioner, this Hon'ble High Court pleased to serve notice of motion upon respondents. Having the notice of motion, the grievance of the petitioner has been considered and following benefits have been released to her:-

- i.) General Provident Fund (GPF)
=Rs.1,00,740/-*
- ii) Leave Encashment= Rs. 6,862/-*
- iii) General Insurance Scheme (GIS)
=Rs.32,447/-*

Granting/releasing of other ex-gratia benefits, e.g. DCRG, family pension, one time financial assistance of Rs.2.5 lac (as per provisions of the Haryana Compassionate

Assistance to the Dependents of Deceased Government Employees Rules, 2003) are under active consideration of the respondents.

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5. *That it is also relevant to submit further that at the time of death of Sh. Sukhdev Singh, Punjabi Teacher (date of death-05.02.2005), the statutory provisions of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 were applicable. As per Rule-4 of these Rules 2003, the dependents had to submit its option for financial assistance for service within a period of 3 years of death of Govt. employee. The petitioner has not enclosed any document or substance which may prove that she submitted an option well in time and claimed appointment under ex-gratia rules 2003. Hence, the petitioner is not entitled to claim appointment under ex-gratia policy.”*

4. In her replication, the petitioner has admitted that the retiral benefits of her deceased father on account of General Provident Fund, leave encashment and Group Insurance Scheme have been disbursed.

5. Learned counsel for the petitioner submits that case of the petitioner for compassionate appointment is covered by The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 2006 Rules) (Annexure P-7) notified on 01.08.2006. This is contested by the learned Additional Advocate General appearing for the State. On a Court query, learned State counsel submits that in case any retiral benefit has not been disbursed yet the needful will be done in due course.

6. Having heard the rival contentions, I am of the view that claim of the petitioner to the extent of seeking compassionate appointment on account of her father's death in harness when she was a minor girl aged 8 years only, deserves to be accepted.

7. The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (for short 2003 Rules) were in force at the time of death of the petitioner's father on 05.02.2005. The 2006 Rules relied upon by the learned counsel for the petitioner were

notified on and came into force from 01.08.2006. The claim of the petitioner for compassionate appointment has, therefore to be examined in accordance with 2003 Rules. For ready reference, the relevant provisions thereof are reproduced below:

The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003:

Xxx xxx

3. Definitions .- In these rules, unless the context other requires,-

Xxx xxx

(j) “orphan means a child who has previously lost one parent and has become an orphan upon the demise of the Government employee.

Xxxxx Xxxxx

4. Options.- (1) a dependent of the deceased/missing Government employee shall give in writing his/her preference of option, within 3 years from the date of death of the Government employee for one of the following:-

(a) ex-gratia appointment on compassionate grounds to a member of the family who was “completely dependent “ on the deceased employee and is in extreme financial distress due to the loss of the deceased namely, the Government employee who dies in “service”

OR

(b) ex-gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex gratia grant due to his/her family, to be paid @ Rs. 2.5 lacs in case of the family not opting for ex-gratia employment.

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8. Criteria of eligibility-. The criteria of eligibility under these Rules shall be as under:-

(a) The family is indigent and deserves immediate assistance for relief from the financial destitution.

18. Relaxation-. There shall be no relaxation of any provision of these rules. However, as a special case, these rules may be relaxed only in the case of children who have become orphans upon the demise of the Government employee. The claim of appointment of such orphans shall remain alive till one child has attained majority/minimum eligible age for entry into Government service.”

8. It would be seen that under Rule 4, *a dependent of the deceased/missing Government employee has to exercise option within three years of the death of the Government employee, either for ex-gratia appointment on compassionate grounds or for ex-gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex gratia grant due to his/her family. This time limit is relaxable under Rule 18 in the case of a minor orphan and remains alive till the child has attained majority/minimum eligible age for entry into Government service. To my mind, these benevolent provisions ought to be construed liberally for advancing the intent and object of the Rules to provide succour to the unfortunate minor child, who is rendered without any parental protection and is a destitute.*

9. As noted above, the petitioner was born on 26.01.1997; relations between her parents were not cordial and petitioner's mother filed a petition for dissolution of her marriage on 17.04.2001, which was decreed on 02.09.2002. Subsequently, her mother remarried and the petitioner was living with, and dependent on her father till his death on 05.02.2005. After his death, she was raised by her maternal grand-father. Learned counsel for the petitioner also pleaded that petition for guardianship of the minor petitioner was filed by the maternal grandfather namely Sarup Singh @ Roop Singh, which was allowed 15.05.2009. Obviously, the petitioner has been practically abandoned by her mother since the latter's divorce from the petitioner's father on 02.09.2002. When her father died on 05.02.2005, the petitioner was rendered without any parental protection and became a destitute. Her position was thus no better than that of an orphan. In my opinion, the petitioner's case is of extreme hardship and deserves the

benefit of relaxation of the time limit as provided under Rule 18 for an orphan to exercise his/her option under Rule 4. Taking a contrary view, in my opinion, would defeat the ends of justice and would be against the intent and object of the Rules to provide succor to the unfortunate minor child, who is rendered totally without parental protection and is a destitute.

10. The petitioner was born on 26.01.1997 and attained majority on 26.01.2015. She submitted the representations dated 25.05.2017, 12.12.2017 and 16.03.2018 (Annexure P-4) to respondents No.3 and 4 requesting them to give her appointment on compassionate grounds. Thus, she exercised her option for compassionate appointment within three years of attaining majority, as required by the 2003 Rules.

11. In the aforesaid premise, writ petition is allowed to the extent that the petitioner is held entitled to the benefit of relaxation of time limit as available for an orphan in terms of Rule 18 to exercise her option under Rule 4; the petitioner's option for compassionate appointment exercised vide representations dated 25.05.2017, 12.12.2017 and 16.03.2018 is held within time and the respondents are directed to consider her case for compassionate appointment in accordance with the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003. Petitioner shall submit proof of her educational qualifications to respondents No.2 and 3 within one month and thereafter, the competent authority shall consider her case for compassionate appointment and pass an appropriate order within two months.

(ARUN MONGA)
JUDGE

06.05.2022

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No