

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

CWP-456-2006 (O&M)

Date of decision: May 20, 2022

Sumitra and another

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Geeta Singhwal, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing the impugned order dated 05.12.2005 (Annexure P-5) whereby claim of the petitioners for appointment under ex-gratia scheme was rejected. Further direction has been sought to appoint the petitioners on the post of Peon or any other post of Class IV on compassionate grounds under ex-gratia scheme/ instructions dated 08.05.1995 (Annexure P-3) issued by the Government of Haryana.

2. Succinct facts first. Husband of petitioner No.1, namely Satbir Singh was appointed on the post of Ward Servant (Class IV post) in the Health Department on regular basis vide appointment letter dated 13.09.1985 (Annexure P-1) died in harness on 16.05.1999 and after the death of her husband, petitioner No.1 moved an application to the respondents on 31.05.2000 (Annexure P-2) for her appointment to the post of Peon under ex-gratia scheme. At the time of death of her husband on 16.05.1999,

Government instructions dated 08.05.1995 (Annexure P-3) were holding the field for appointment under ex-gratia scheme. Said instructions were modified vide policy/ instructions dated 31.08.1995 and it was decided that at the time of assessing the income, the family pension shall not be taken into account. Subsequently, State of Haryana framed the Haryana Compassionate Appointment Rules, 2003. The petitioners have been representing and requesting the respondent authorities to provide appointment under the ex-gratia scheme from the very beginning. Respondent No.3-Civil Surgeon, Rohtak got filled up the forms from petitioner No.1 for her appointment. However, since in the interregnum, petitioner No.2 attained the age of majority, a fresh application was made on his behalf for compassionate appointment. Petitioner No.2 also served a legal notice-cum-demand notice on 25.10.2004, but to no avail. Subsequently, petitioners preferred CWP-2170-2005 before this Court, which was disposed of vide order dated 11.04.2005 with a direction to decide the legal notice dated 25.10.2004 within a period of two months. Pursuant to the same, respondents have passed order dated 30.06.2005 stating that case of the petitioners for appointment under ex-gratia scheme was sent to the Chief Secretary to Government of Haryana, but the same was rejected being time barred, vide letter dated 08.02.2005. Aggrieved by the orders dated 30.06.2005 as well as 08.02.2005, petitioners filed CWP-13011-2005, which was disposed of vide order dated 22.08.2005 with a direction to reconsider the case of the petitioner either for appointment on compassionate grounds or alternatively for payment of Rs.2.5 Lakh under the Policy of 2003. In compliance to the

abovesaid order, respondents have wrongly and arbitrarily rejected the claim of the petitioners vide impugned order dated 05.12.2005 (Annexure P-5).

3. 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 rendered in **CWP-2838-2017** titled '**Asha Rani and another versus State of Haryana and others**', relevant whereof, reads as under: -

“xxxxxxxxxxxxx. 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.”

4. Learned counsel also relies on **Note 1 of Rule 3** of the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 in support of her contention 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.”

5. I have heard learned counsel for the parties and perused the record.

6. Having perused the pleadings vis-à-vis record appended with the writ proceedings, it transpires that the petitioners had made a specific recital in Para-3 of the petition that in year 2000 that she had submitted an application seeking compassionate appointment on the ground of her husband having died in harness and in the corresponding para of the written statement though a bare denial has been given that no such application was received, but in this context, I may like to add that given that extraordinary writ jurisdiction one has to essentially rely on the documentary evidence and the affidavits filed by both sides, and 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. The petitioners have also appended the hand written application dated 31.05.2000 in Hindi (Annexure P-2) which bears the signature and stamp of the office of Senior Medical Officer and the said application is addressed to the Chief Medical Officer, Civil Hospital, Sampla. There is nothing coming forth in the return as to why the Senior Medical Officer who is also functionary of the

official respondents did not forward the same to the Chief Medical Officer nor is there any averment of the Chief Medical Officer that he has seen the application and the same is not genuine and/ or has been generated for the first time to be produced in this Court. In fact, denial is also very casual and made in routine manner inasmuch as it is stated that no such letter has been received in the office of the Chief Medical Officer. It is not even stated that Senior Medical Officer had ever received the application or not, and if not received, his affidavit ought to have been filed since his signatures as token of receipt alongwith the office stamp have been put on the said vernacular application appended as Annexure P-2. Furthermore, it is rather intriguing that the learned State counsel has emphatically relied on Annexure R-I dated 26.03.2003, which is a proforma maintained by the State to seek ex-gratia grant and the application has to be made in the said set proforma instead of simply writing an application in the manner petitioners have done in the past. How the said proforma was provided to the petitioner all of a sudden in 2003, which is stated to be for the first time, is not clear in the presence of her earlier application moved in 2000. Applicant/petitioner No.1 being illiterate widow should have been properly guided and helped by the concerned functionaries of the respondents, when she submitted application dated 31.05.2020 that unless she gave fresh application again in the standard proforma as prescribed for the purpose, her request for ex-gratia relief shall not be entertained. Seems that was not done by the concerned functionaries of the respondents. It is in this background that proforma Annexure R-1 had been submitted by her. As stated already, being an illiterate widow, if she would have been made known when she moved application dated 31.05.2000

that she was required to fill up the said proforma, certainly she would have done the same at that time. In the circumstances, the petitioners cannot be faulted for delay in submission of their claim.

7. As an upshot of the above discussion, I am of the view that the application of the petitioners was wrongly rejected being time barred and ought to have been entertained as per the applicable policy at the time of death of the husband of petitioner No.1.

8. Writ petition is accordingly, allowed. Respondents are directed to further process the pending application of the petitioners and accord her benefit as may be admissible to them as per applicable policy. Necessary exercise be done within a period of three months.

(ARUN MONGA)
JUDGE

May 20, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No