

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

CWP-1379-2010 (O&M)

Date of decision: 09.11.2022

DAYA RANI

...Petitioner

VS

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sunil Kumar Nehra, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

This is third foray of the petitioner before this court, seeking, *inter alia*, issuance of a writ in the nature of certiorari for quashing the impugned order dated 04.06.2009 (Annexure P-7) whereby the claim of the petitioner for appointment under Ex-gratia Scheme was rejected. Further prayer has been made for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioner as Clerk per the administrative sanction already granted vide office letter dated 03.11.2005 (Annexure P-1) in accordance with the applicable ex-gratia Rules.

2. Brief facts as pleaded in the petition. Husband of the petitioner died in harness on 07.01.2004. She applied for ex gratia appointment and respondent No.2 issued letter dated 03.11.2005 sanctioning her appointment on the post of Clerk under the ex-gratia scheme exercising powers conferred by Govt. Instructions dated

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08.05.1995 and 31.08.1995 (Annexures P-1 to P-3).

Notwithstanding, she was not offered appointment and allowed to join her duties.

2.1 Aggrieved, the petitioner approached this Court by way of CWP No.1518-2007. Same was disposed of vide order dated 05.02.2007 directing the respondents to decide the legal notice. Her claim was not accepted by respondents per office order dated 11.05.2007 (Annexure P-5). Petitioner assailed the rejection order by yet another CWP No.12584-2007, which was disposed of vide common order dated 22.08.2008 (Annexure P-6) along with other writ petitions.

2.2. Thereafter, petitioner served a contempt notice dated 30.01.2009. During pendency of the contempt petition, the respondents then passed impugned order dated 04.06.2009 (Annexure P-7) vide which claim of the petitioner for compassionate appointment and ex gratia assistance was rejected. Hence, the third writ petition herein.

3. I have heard learned counsel for the parties and gone through the case file.

4. It emerges that short controversy herein is whether petitioner is entitled to seek appointment as per the Rules which existed on the date of death of her husband or the Rules when sanctionqua the post in question was accorded ? Answer is not far to seek, being *res judice* vide a Division Bench Judgment of this court¹,

wherein speaking for the Bench Jitendra Chauhan, J. (as he then was in this Court) *inter alia* observed as under:-

“We feel that there is no necessity of going through the details of policies at this stage for the reason that there are large numbers of petitioners and span of the bereavement period of the families being fairly long and coupled with the fact that the date of death of the deceased employee is also different in each and every petitions, in this view of the matter, the material question is to determine as to which policy would be applicable to the dependents government employee of the deceased for grant of compassionate appointment or financial assistance, i.e. whether the policy prevalent at the time of death of the deceased employee or the policy prevalent at the time deciding the case of the dependant. The question already stands answered by the Hon'ble Supreme Court in the case of Abhishek Kumar Versus State of Haryana and others 2007 (2) Service Cases Today 457.

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While deciding all the afore mentioned cases pertaining to the subject in question the Hon'ble Supreme Court as well as a Division Bench of this Court has specifically held that policy at the time of death of the deceased employee is to be taken into consideration while deciding the claim of the dependent for compassionate appointment or financial assistance. By following the above settled proposition of law, we observe that policy in force at the time of death of deceased Government employee shall be applicable for determination of the claim of the dependent of the deceased employee.

x-x-x-x-x-x-x-x-x

We are unable to appreciate and accept the stand taken by the respondents whereas we find substance in the averments made by the petitioner (s). As noticed above the husband of the petitioner expired on 11.10.2005 and the application for compassionate appointment was moved on 24.10.2005. The said application was to be considered under the then prevalent Rules/Policy/Scheme. Admittedly, the same has not been done in the present case and as such, the petitioner has been deprived of the benefit of being considered under the applicable Rules/Policy/Scheme.

In these circumstances, we dispose of these writ petitions and direct the respondents to consider the claim of the petitioner (s) afresh in the light of

instructions/Rules applicable at the time of death of the government employee.”

5. In view of the aforesaid judgment, which has since attained finality, I see no reason as to why petitioner be also not accorded the benefit of the same.

6. In the premise, impugned order dated 04.06.2009 (Annexure P-7) is quashed. Respondents are directed to issue a letter to the petitioner to join duty as a clerk, within 10 days of receipt thereof, and treat the date of her appointment as Clerk with effect from 24.11.2005 i.e. date of issuance of sanction letter dated 03.11.2005 contained at Annexure P/1. However, since the petitioner did not physically work on the post, it is made clear that she shall not be entitled to any monetary benefits, which are confined with effect from the actual date of her joining duty. The other consequential benefits flowing from the notional date of appointment shall not be denied to the petitioner.

7. Needful exercise be carried out within one month of the petitioner approaching the respondents with the web print of this order.

November 09, 2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No