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

CWP No.8812 OF 2009 (O&M)

Date of Decision :05.08.2022

Mukesh Rani

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Parveen Kumar Rohilla, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter-alia*, seeks issuance of a writ in the nature of Certiorari for directing the respondents to appoint petitioner on the post of Clerk/Peon in the Education Department under ex-gratia scheme as per letter dated 15.09.2005 (Annexure P-1).

2. Succinct facts first. The husband of the petitioner –Sh. Ishwar Singh joined as J.B.T. Teacher on 29.01.1999. The family of Ishwar Singh was totally dependent upon him. The petitioner died on 04.08.2004 while in service. Immediately after the death of petitioner's husband, she submitted an application to the concerned authorities for appointment of the petitioner on the post of Clerk under the prevailing ex-gratia scheme. On the application of the

petitioner, the respondent-department prepared the case of the petitioner and ultimately on 15.09.2005, she was sanctioned the appointment for the post of Clerk in the Education department with a further direction to the Superintendent, M.E. (Local) Branch to issue appointment order. However, thereafter she had not received any reply from the department despite her repeated reminders for appointment order. Ultimately on 05.03.2007, the petitioner served a legal notice (Annexure P-5) under Section 80 C.P.C. through her counsel. On 17.07.2007, reply (Annexure P-6) to the said notice was served upon the petitioner as per which the request of the petitioner was completely declined stating that there was no vacancy for the post of Clerk in the Education Department. Therefore, sanction granted for appointment on the post of Clerk was considered cancelled.

3. Before advertizing further in the matter, it would be appropriate to first have a look at the relevant policy which held the field for appointments on compassionate grounds at the time of death of husband of the petitioner. Relevant part of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (*hereinafter referred to as '2003 Rules'*) regarding options and validity of waiting list is as under:-

“2. The object of the rules is to assist the family of a deceased employees in tiding over the emergency situation, resulting from the loss of the bread earner by giving either of the following options:-

- (i) *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 ‘harness’.*
- (ii) *Ex-gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex-gratia grant due to his family to be paid @ 2.5 lacs, in cases where the family of the deceased does not opt for ex-gratia employment.”*

4(2). *Exercise of option shall be permitted only once and shall not be changed, once exercised.*

6(1)(a) *The Head of the Department shall prepare a list of such dependents which shall be valid for a period of 3 years and appointments will be given by the department strictly in accordance with the seniority so maintained.*

(b) *The validity of the list shall lapse after 3 years.*

(c) *The dependent of the deceased Government employee can exercise his preference with regard to option as contained in clause (b) of sub rule (1) of rule 4 of these rules within a period of one month after the expiry of the validity of the list prepared by the department, if no post exists in the department for ex-gratia appointment.”*

4. The applicability of the aforesaid policy has to be read with the 2006 Rules which were later brought into force. Rules 5 & 6 are of concern in this petition and these provisions are reproduced below:-

"5. Criteria for financial assistance :-- (1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum

equal to the pay and other allowances that was last drawn by the deceased employee is the normal course without raising a specific claim :-

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years.

(b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years.

(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain the residence on payment of normal rent/ license fee for a period of one year from the date of death of the employee.

(4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance.

6. Pending cases :--*All pending cases of ex-gratia assistance shall be covered under the new rules. The calculation of the period and payment shall be made to such cases from the date of notification of these rules. However, the families will have the option to opt for the lump sum ex-gratia grant provided in the Rules, 2003 or 2005 , as the case may be, in lieu of the monthly financial assistance provided under the Haryana compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006."*

5. The mandate of the 2003 Rules clearly reflects that once the option has been exercised by the family member qua either the compassionate appointment and/or the financial assistance, the department has to proceed in accordance thereof.

6. In the aforesaid backdrop, while issuing notice of motion, my Learned Brother Ajay Tewari, J. (as he then was in this Court) passed the following order on 30.05.2009:-

“Learned counsel for the petitioner states that he restricts his claim only to financial assistance.

Notice of motion.

Mr. Harish Rathee, Senior D.A.G., Haryana accepts notice on behalf of the respondents.

Learned counsel for the petitioner undertakes to supply five copies of the writ petition to the learned Senior Deputy Advocate General, Haryana during the course of the day

Mr. Rathee prays for four weeks’ time to file the written statement. Replication, if any, be filed within two weeks thereafter.

To come up before the learned Registrar (Judicial-II) for completion of pleadings on 07.08.2009.”

7. In my opinion, the aforesaid order has attained finality as it was passed as far back as in the year 2009 and therefore the right of the petitioner to seek appointment on the post of Clerk cannot be agitated at this stage on the ground that counsel has been changed and that the statement made by earlier counsel cannot bind the petitioner.

8. Learned State counsel has also no objection if the benefit of financial assistance is granted to the petitioner, if found entitled otherwise.

9. Consequently, the petition is allowed to the extent that the petitioner is entitled to the benefit of financial assistance as per 2003 Rules and the same shall be disbursed to her alongwith interest @ 6% w.e.f. the date of entitlement till actual payment is made. Let needful be done within a period of three months.

10. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 05, 2022
ashish

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No