

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

CWP-23820-2011

Date of decision: 16.11.2022

SHEELA DEVI

...Petitioner

VS

STATE OF HARYANA AND OTHERS

...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)

Widow of a police constable, who died in harness, is before this Court, seeking enforcement of her right having failed after running from pillar to post in the offices of State functionaries. Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing order dated 18.11.2008 (Annexure P-7) passed by respondent No.2 whereby earlier order dated 23/29.12.2006 (Annexure P-3) granting monthly financial assistance to the petitioner has been withdrawn and she has been granted lumpsum financial assistance to the tune of Rs.2,50,000/-. Further prayer is made for issuance of a writ in the nature of Mandamus directing the respondents to grant monthly financial assistance to the petitioner as per order dated 23/29.12.2006 (Annexure P-3).

2. Succinct facts as pleaded in the petition. Husband of the petitioner was working as Constable with the Police Department. He

died on 28.07.2005 while in service. After the death of her husband, the case of the petitioner was recommended for grant of monthly financial assistance. On 19.10.2006, respondent No.2 wrote a letter (Annexure P-2) to respondent No.3 seeking option under the Ex-gratia Rules, 2006. Thereafter, on 29.12.2006, petitioner was granted monthly financial assistance as per State Government Instructions (Annexure P-3) and the petitioner was being paid the monthly financial assistance. However, vide letter dated 12.02.2008 (Annexure P-4), petitioner was directed to deposit an amount of Rs.1,57,152/- on the ground that same has been given to her in violation of Rules of 2006. The petitioner submitted reply dated 25.02.2008 (Annexure P-5) and requested that her son be given suitable appointment and stating she is ready to deposit the alleged amount. On 28.04.2008, petitioner again submitted a representation (Annexure P-6) that she is ready to deposit the amount in case her son is given suitable employment as the son of the petitioner has attained majority and his qualification is 10+2. Respondent No.2 passed the impugned order dated 18.11.2008 (Annexure P-7) vide which the earlier order dated 29.12.2006 (Annexure P-3) was withdrawn and sanction of Rs.2.5 lakh was accorded in respect of financial assistance. It was also mentioned in the said order that the amount of Rs.1,57,152/- be deducted from Rs.2.5 lakh.

3. Learned counsel for the petitioner submits that later on rules were amended and the lumpsum ex-gratia financial assistance of Rs.2.5 lakh was increased to Rs.5.00 lakh and on 01.08.2006,

rules were again amended vide notification (Annexure P-8). He submits that in the amended rules, the benefit of job has been totally withdrawn and only monthly financial assistance and lump sum financial assistance has been provided. He further submits that when the case for grant of benefit of monthly financial assistance was considered, at that time the Policy/Rules 2006 was applicable. Therefore, the petitioner is entitled for the grant of monthly financial assistance. Hence, the writ petition.

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

5. The controversy involved herein can be confined in narrow compass as to whether the petitioner is entitled to ex gratia benefit under 2003 Rules or 2006 Rules? What is relevant to be noted herein is two things i.e., the date of death and the nature of option exercised by the widow-petitioner after the death. Concededly, her husband died in harness on 28.07.2005 and on the relevant date 2003 Ex Gratia Rules were applicable which envisage three-fold rights on the dependents of the deceased i.e., (a) to opt for compassionate appointment or (b) to opt for one time ex gratia financial assistance amounting to Rs.2.5 lakh and (c) in addition to get family pension as per service rules. As against the subsequent policy of 2006, wherein further benevolent provision was made that in case a dependent chooses not to seek compassionate appointment, last drawn full salary of the deceased would be payable for a certain period to ameliorate the penury which the family members are

visited on account of losing the sole bread winner of the family. Furthermore in subsequent policy, following clause was inserted which is relevant for adjudicating the controversy in hand:-

“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 employee Rules, 2006.”

6. Perusal of the above leaves no manner of doubt that even if the death has taken place prior to 2006 Rules, those cases which had not attained finality, are to be dealt with by the subsequent Rules of 2006. The rival interpretations of the aforesaid Clause by the parties have led to the writ proceedings before this Court. While learned counsel for the State strenuously relies upon the affidavit dated 28.04.2008 (Annexure R-2) given by the widow petitioner clearly stating therein *that I am not interested to get employment against the above said deceased under Ex-gratia appointment on compassionate grounds. That I am ready to get Rs.2.5 Lacs under new Scheme the Haryana Compassionate Assistance to Dependents of Deceased Govt. Employees Rules, 2005 of Haryana Govt.:* He argues that the petitioner's case stood concluded under the earlier 2003 Rules. He would submit that the petitioner subsequently as a volte-face took a U-turn and stated that being illiterate, she was not aware of her rights and therefore wrongly gave such an affidavit and instead her son, who was a minor at the relevant time, had since

attained the age of majority on 06.12.2006 being 18 years and he being 10+2 pass be provided with the job in accordance with his qualifications.

7. Having heard the rival contentions, I am of the view that it is the respondents, who themselves kept the pot boiling despite the petitioner having given the specific affidavit that one time monetary compensation be given to her, as did not take any steps whatsoever to make remittance in terms of the option exercised by the petitioner. Not only that, the respondents also accorded the benefit of subsequent policy of 2006 vide an office order dated 23.12.2006 (Annexure P-3), whereby permission was accorded for financial assistance equivalent to the last pay and other allowances drawn by her deceased husband in terms of Rule 5 (1) of the Ex Gratia Rules 2006 for a period of 12 years. Though it is now claimed that this was done by mistake, but the same is attributable wholly to the respondents themselves.

8. Needless to say that in view of the grant of aforesaid benefit of monthly assistance, the petitioner was held not entitled to any family pension. Viewed from any angle, one cannot possibly attribute any misrepresentation and/or concealment or any overt act by the petitioner owing to which she can be held responsible for sanction of according the benefit under the subsequent policy of 2006. Once the petitioner was given the benefit of 2006 policy, it presupposed two things:- 1) her case was then pending and 2) the Department itself gave her an impression that since she was given

the benefit of monthly assistance under 2006 policy, in case she opts not to take monthly assistance and she can also alternatively exercise the option of compassionate appointment.

9. It is in this premise, that the petitioner was advised that since the department itself has given the benefit under 2006 policy, though the death took place prior to that and her case was pending, she should rather exercise the option of seeking compassionate appointment. When she opted for compassionate appointment, it is then that the department turned around and said that not only the monthly assistance equivalent to the last drawn salary of the deceased husband has been wrongly accorded, the petitioner should refund the amount paid pursuant thereto and all that she would be paid is Rs.2.5 lakh in terms of her affidavit (Annexure R-2).

10. I do not find the stand of the respondents to be sustainable, as has already observed hereinabove. It is the respondents, who are responsible in every way for keeping the case pending. Therefore, the petitioner ought to have been given the right to exercise her option, either to seek compassionate appointment, or in the alternative, monthly financial assistance since for no fault of her, she was denied the right to exercise her option.

11. *Qua* the applicability of the policy, reference may be had to single Bench Judgment of this Court dated 11.11.2014 rendered by my learned Brother Tejinder Singh Dhindsa, J. in CWP No. 8018 of 2011 which in turn relies on a Division Bench Judgment in CWP

No.4074-2008 titled ***Raj Kumari Vs. Uttar Haryana Bijli Vitran***

Nigam Ltd. and others. Speaking for the Court, he held as below:-

8. Concededly, the claim of the petitioner was pending as on 1.8.2006 i.e. the date the 2006 Rules came into force. The petitioner had never submitted an option for grant of lump sum ex-gratia grant of 5 lacs under the 2005 Rules. To the contrary, placed on record at Annexure P9 is the option submitted by the petitioner for grant of financial assistance as per 2006 Rules. The submission of such option vide representation dated 4.6.2009 stands admitted in para 8 of the written statement.

9. The basis furnished in the written statement as regards denial of ex-gratia monthly financial assistance to the petitioner under the 2005 Rules ie. on account of a clarification dated 16.1.2009 cannot sustain. The claim of the petitioner is founded on the strength of statutory Rules i.e. the 2006 Rules which were framed in exercise of the powers conferred under proviso to Article 309 of the constitution of India. The right conferred upon the petitioner on the strength of such statutory provisions i.e. The 2006 Rules cannot be curtailed by the issuance of any subsequent executive instructions. This very issue came up for consideration before a Co-ordinate Bench of this Court in Civil Writ Petition No. 9295 of 2008 titled as Sushila Devi v. State of Haryana and others, decided on 9.7.2009 and while considering the scope of the clarification dated 16.1.2009, it was observed as follows:

"This clarification is contrary to the Rule position as would emerge from Rule 6 noticed above. The clarification issued by the Chief Secretary can not have over-riding effect over the Rules framed under Article 309 of the Constitution of India. Clearly, the case of the petitioner was pending and would be governed by 2006 Rules. She had given an option for ex-gratia assistance under these Rules and she did not opt for 2003 or 2005 Rules. The clarification issued by the Chief Secretary is contrary to the Rule position and, thus, can not be sustained. Even the Division Bench of this Court in the case of Raj Kumari v. Uttar Haryana Bijli Vitran Nigam Ltd. And others, 2008(4) SCT 411, has viewed that all pending cases of ex-gratia assistance are to be covered under 2006-Rules."

10. As such, it is held that the clarification dated 16.1.2009 cannot stand as an embargo for consideration of the claim of the petitioner for grant of ex-gratia monthly financial assistance under the 2006 Rules.

11. Accordingly, in view of the discussion above, the instant petition is allowed. Directions are issued to consider the claim of the petitioner for grant of ex-gratia financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 and by ignoring the clarification dated 16.1.2009. Let such exercise of consideration be finalized within a period of two months from the date of receipt of a certified copy of this order. In case the petitioner is otherwise found entitled to the requisite financial benefit under the 2006 Rules, the same be released to her without any further delay.”

12. It transpires that not only at the time of coming in force of later policy of 2006, the case of the petitioner was pending and it is only for the first time on 18.11.2008 vide Annexure P-7 that administrative sanction was accorded for remittance of Rs.2.5 lakh as one time ex gratia compensation.

13. It does remain an uncontroverted factual position that as on the date of coming into force of later policy of 2006, the case of the petitioner was pending. Mere according of sanction for one time ex gratia compensation on 18.11.2008 after issuance of notice in the writ petition would, therefore, not take away the rights of the petitioner which stood crystallized prior to the filing of the writ petition.

14. As an upshot of the discussion herein above, the impugned order is quashed. Writ petition is allowed. Petitioner is held entitled to the monthly assistance in terms of the 2006 policy.

15. Consequential benefits arising out of quashing of the order impugned herein including payment of arrears be accorded to the petitioner within a period of two months from today along with interest @5% per annum.

16. In case any amount has been remitted in the account of the petitioner after filing of the writ petition, the same shall be adjusted from the arrears payable to the petitioner.

17. Allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

November 16, 2022

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No