

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

**CWP No. 23156 of 2018 (O&M)
Reserved on: October 11, 2022
Date of Pronouncement: October 29, 2022**

Sunil Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Dhiraj Chawla, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR, J.

1. The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ in the nature of mandamus directing respondents to grant ex-gratia compensation of ₹15 lakhs to the petitioner in terms of Policy dated 12.7.2018 (Annexure P/8) for loss of vision of his left eye.

2. The facts are that the petitioner was appointed as Constable in the Haryana Police on 10.6.2007. During service, the petitioner was deputed for maintaining law and order with regard to procession led by followers of Baba Rampal, who had been summoned as an accused in a criminal case in the District Courts at Hissar. The procession turned violent and the followers started using criminal force and rioting against the police

force which had been deputed for maintaining law and order. The petitioner, along with other police officials, received injuries, which ultimately led to the registration of FIR No. 154 dated 25.3.2016 under Sections 148, 149, 186, 188, 323, 322, 341, 353, 506 IPC at Police Station Hissar. Due to the injuries received, the petitioner lost total vision of his left eye and was declared as 20% permanently disabled by the Medical Superintendent, Agroha, on 5.5.2016. The petitioner wrote a letter dated 12.4.2016 to his seniors to get interim relief, which was not released. The petitioner then sent a legal notice dated 12.10.2016 (Annexure P/9) through his advocate and claimed ₹15 lakhs as ex-gratia compensation for loss of complete sight of his left eye on account of the rioting. Since the said amount was not released, the instant writ petition has been filed.

3. Mr. Dhiraj Chawala, learned counsel for the petitioner, argued that the petitioner herein was a member of the police force deputed to ensure law and order at the time when Baba Rampal was being taken to the courts at Hissar. His followers, who were in large number, were agitating on the road and a police task force had been deputed to maintain law and order situation. Rioting took place and the petitioner herein suffered an injury in his left eye which resulted in loss of vision and he has been assessed with a 20% permanent disability. It is submitted that a policy dated 10.7.2018 had come into effect which allows for '*Benefits of Special Ex- Gratia Grants to Haryana Police Officers/Officials*' and as per the said policy, in case a police official who while dealing with natural calamities or saving of people, life and property gets injured, such a person would be entitled to ₹ 15 lakhs as compensation. It is submitted that in terms of the policy the

petitioner is entitled to the said amount, which has been denied to him.

4. Per contra, Mr. Tapan Yadav, DAG learned counsel appearing on behalf of the respondent State would submit that the petitioner herein suffered injuries during the period he was in duty, to quell the followers of Baba Rampal, who had been summoned as an accused before the criminal courts. He would not dispute the fact that the petitioner herein suffered injuries during the said period, but would dispute the fact that the petitioner is handicapped to the extent of 20%. It is submitted that the petitioner has suffered impairment in the left eye to the extent of 20%. It is also pointed out that the petitioner is not covered under the policy/instructions issued on 10.7.2018, as the cause of action accrued to the petitioner in the year 2016, and he has already been paid an amount of ₹5 lakhs under the policy/instructions issued by the Government of Haryana dated 06.01.2010.

5. Learned counsel for the petitioner would then submit that the amount of ₹5 lakhs was released only on 20.8.2019 when the new policy was already in existence and, therefore, he would be entitled to ex-gratia benefit under the Policy of 10.7.2018.

6. In the opinion of the court, the question that requires determination is, whether the petitioner would be governed by the policy in existence on the date when he suffered his injury or the policy in existence when the relief was granted. To clarify, the petitioner suffered an injury in his left eye, which left him with a disability and the injury suffered was assessed at 20%. The policy in existence regarding grant of compensation at the relevant time is dated 06.01.2010, which allowed for compensation of ₹5 lakhs. The compensation was released on 20.8.2019, when a new policy

10.7.2018 was in existence, which had enhanced the compensation payable to ₹15 lakhs.

7. The Supreme Court in the matter of **Secretary to Govt. Department of Education (Primary) and others Versus Bheemesh alias Bheemappa 2021 SCC OnLine SC 1264**, was dealing with an issue as to whether an application for appointment on compassionate ground will be considered on the basis of the policy prevalent on the date of death, or on the date of application. In that case, when an unmarried girl employee died there was no provision to allow a brother of an unmarried girl to seek compassionate appointment, which policy was subsequently modified. After the new policy came into effect, the brother of the unmarried deceased girl employee applied for compassionate appointment, which was allowed by the Tribunal and affirmed by the High Court. However, the appointment was set aside by the Supreme Court in appeal holding that *‘modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.’* The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependent. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a

rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependents of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor”

8. Therefore, relying upon the ratio of the afore-said judgment, and the law as settled in **State Bank of India v. Jaspal Kaur (2007) 9 SCC**

571, wherein it was held that the application of the dependant made in the year 2000, after the death of the employee in the year 1999, cannot be decided on the basis of a Scheme which came into force in the year 2005; and **Canara Bank & Anr vs M. Mahesh Kumar (2015) 7 SCC 412**, wherein the appellant bank was directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee, it is held that the claim of the petitioner can not be considered under the new policy for grant of ex-gratia compensation of ₹ 15 lakhs.

9. However, this court finds that the state has been derelict in its duty of releasing the compensation within reasonable time. The petitioner, who was on active police duty suffered an injury which resulted in a loss to his vision. The disability was incurred on the 25.3.2016, and the petitioner remained admitted in hospital as well. The disability certificate was issued on 15.5.2016 and claim for compensation was submitted verbally and through legal notice dated 12.10.2016, but to no avail. Ultimately, the petitioner was constrained to file the present writ petition and it is only thereafter the compensation has been released as late as 28th of August 2019 and that too after a year of filing of the writ petition. This delayed payment and that too after the writ petition had been filed is nothing but sheer apathy to the claim of the petitioner for compensation and dereliction of duty of a welfare State towards its citizens. The petitioner has been paid the compensation after an inordinate delay of three years and that too after he had to approach the court in writ jurisdiction. For the delayed payment, this

court holds that the petitioner is entitled to 8% interest per annum on the delayed payment of compensation/ex-gratia, from the date due till payment is made, and costs of ₹50,000/- on account the undue harassment caused to him. The same be released within one month of submitting a certified copy of this order to the respondent department.

10. The writ petition stands disposed of on the above terms.

October 29 , 2022

prem

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned :

Yes

Whether Reportable :

No