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

CWP-6455-2017

Date of decision : 06.12.2022.

Bimla Devi and another

... Petitioners

Versus

The Haryana Viduyt Prasaran Nigam Ltd. and others

.. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Deepak Sonak, Advocate for the petitioners.

Mr. Vivek Chauhan, Advocate for the respondents.

Anupinder Singh Grewal, J. (Oral)

The petitioners have challenged the action of the respondents for not granting appointment to petitioner No.2 on compassionate grounds and in the alternative, prayed for issuance of a direction for grant of financial assistance in terms of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short, 'the Rules, 2006').

Learned counsel for the petitioners submits that he is confining the prayer in this petition to the grant of financial assistance to the petitioners under the Rules, 2006 which were adopted by the respondent/Nigam by memo dated 01.08.2006. He further submits that the husband of the petitioner, who was working as an Assistant Lineman with respondent No.3, had expired on 20.01.2001. The petitioners had made an application for compassionate appointment on 27.02.2001 but their claim for compassionate appointment was not considered. Petitioner No.1 had applied for the financial assistance which remained pending and by order dated 30.05.2008, she had been granted ex-gratia amount of Rs.2.5 lacs in lumpsum in terms of the policy issued by the

respondents in the year 2003. Thereafter, the Rules, 2006 for grant of compassionate assistance had come into force and as the case of the petitioners was considered and decided thereafter, they ought to have been granted financial assistance in terms of the Rules, 2006. In support of his submissions, he has relied upon the judgment of a Division Bench of this Court in the case of **Raj Kumari versus Uttar Haryana Bijli Vitran Nigam Ltd. and others**, bearing CWP No.4074 of 2008 and the judgments of the Coordinate Benches in the cases of **Birmati versus State of Haryana and others**, bearing CWP No.8018 of 2011, decided on 11.11.2014 and **Sheela Devi versus State of Haryana and others**, bearing CWP No.23820 of 2011, decided on 16.11.2022.

Learned counsel for the respondents, while referring to the written statement, submits that as the husband of petitioner No.1 had expired in the year 2001, the petitioners had rightly been granted financial assistance in terms of the Rules, 2003 which had been disbursed to them on 30.05.2008 (Annexure R-3).

Heard.

The husband of petitioner No.1 had expired in harness on 20.01.2001. She is stated to have applied for compassionate appointment to petitioner No.2 on 27.02.2001 in terms of the Ex-gratia Scheme, 1995 applicable to the State of Haryana, but no action appears to have been taken thereon by the respondents. She was released the ex-gratia compassionate financial assistance amounting to Rs.2.5 lacs under the Rules, 2003 on 30.05.2008 (Annexure R-3). The application of the petitioners was, thus, pending when the Rules, 2006 had come into force and had been decided thereafter.

It has been held by this Court in the case of **Sheela Devi versus State of Haryana and others (supra)** that as the application of the petitioner therein was pending and decided after coming into force of the 2006 Rules, the petitioner was held entitled to financial assistance in terms of the Rules, 2006. It has also been held by this Court in the case of **Birmati versus State of Haryana and others(supra)**, that when the claim of the petitioner was pending before the Rules, 2006 came into force, the petitioner therein would be entitled for the financial assistance under the Rules, 2006.

Reference can also be made to the judgment of the Division Bench of this Court in the case of **Raj Kumari versus Uttar Haryana Bijli Vitran Nigam Ltd. and others(supra)**. The relevant extract of the judgment is reproduced hereunder:-

“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 Coordinate 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."

Consequently, the petition is allowed and the claim of the petitioners would be considered for grant of ex-gratia financial assistance under the Rules, 2006. The amount be released to the petitioners within a period of two months from the date of receipt of certified copy of this order. In case, the payment is not made within the stipulated period, the petitioners would also be entitled to interest @ 6% p.a. thereafter.

(ANUPINDER SINGH GREWAL)
JUDGE

December 06, 2022

sonia gugnani

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No