

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

LPA No. 1724 of 2017 (O & M)

Date of Decision: 21.12.2022

State of Haryana and others

.....Appellant(s)

Versus

Smt. Pushpa Devi

....Respondent(s)

AND

LPA No. 1775 of 2017 (O & M)

Smt. Pushpa Devi

.....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Shakti Singh, Advocate,
for Mr. Aditya Yadav, Advocate,
for the respondent (in LPA-1724-2017)
for the appellant (in LPA-1775-2017).

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of two appeals i.e. LPA Nos.1724 and 1775 of 2017, which are directed against the order of the learned Single Judge dated 10.03.2017 passed in CWP No. 21895 of 2013, Smt. Pushpa Devi vs. State of Haryana and others. The learned Single Judge, while allowing the writ petition, directed that the respondent should pay financial assistance in accordance with the Rules/Orders or instructions to the writ petitioner within a period of 3 months from the date of judgment. The interest element of 9% has also been granted on the financial assistance from 10.03.2004 till payment.

The State is questioning the element of interest @ 9% on the

ground that the writ petitioner herself had refused to accept the said amount and was clamoring for appointment on compassionate grounds of the minor son of the deceased employee, who is stated to have expired on 01.09.1997. It is the case of the State that the writ petition was filed in the year 2013 and, therefore, the interest element from 2004 is not justified as the writ petitioner could not have kept the issue open as such by filing representation.

Counsel for the claimant Pushpa Devi, in her LPA, firstly claimed that compassionate appointment should be granted because the son was minor at the time of the death being born on 05.12.1990 and also justifies the interest element which has been granted.

A perusal of the paper book would go on to show that the husband of the appellant was working as a Constable in District Police, Sirsa and died in an accident on 01.09.1997. She being the wife of the deceased-employee claimed the benefit of compassionate appointment for the son who was 7 years of age at that time as she had no knowledge being an illiterate lady. Apparently, the matter was dragged as such for substantial period and as per the stand of the State as such, the claimant was insisting for the appointment. It is settled principle that appointment on compassionate ground is an exception to the general rules of recruitment and as per the law laid down in *Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138*, it has been held that appointment is to provide instant succor to the family as such which is going through financial distress at that point of time.

In the present case as such, if the family could postpone the appointment and not opt for financial assistance, we are of the considered opinion that the claim for compassionate appointment is not made out specially more so since the issue has already been clarified by the Apex

Court in *Civil Appeal No. 2362 of 2016, Uttar Haryana Bijli Vitran Nigam vs. Ram Dia* which was decided on 13.02.2020 with a bunch of appeals, the main appeal being *Civil Appeal No. 2144 of 2016, Haryana Vidyut Prasaran Nigam Ltd. and others vs. Kelo Devi and another*. Resultantly, the claim as such for compassionate appointment at this point of time after almost 25 years cannot be acted upon.

The only issue now which remains as to whether the learned Single Judge was justified in granting the interest from 2004 since it is the stand of the State itself that they were offering the money but the same was not being received as such by the claimant. Apparently, as per the stand in the written statement also, the State has averred that for *ex-gratia* employment, the order was passed on 18.02.2005 by the respondent and she was intimated that she was not entitled for the said benefit. However, apparently the State also did not pay the said amount and there is nothing on record as such that the amount was offered apart from the stand that she was refusing to take the compassionate assistance. The writ petition was apparently filed only in the year 2013 and from a perusal of the writ petition, it is apparent that reliance was placed upon various other orders passed wherein the benefit of financial assistance had been granted as such which was liable to be paid.

In such circumstances, we are of the considered opinion that the claim in the writ petition was for the benefit of compassionate appointment only when the son turned 18 in the year 2008 and the writ petition was filed in the year 2013. In such circumstances, once the amount has been offered, as mentioned above and was refused which fact has not been rebutted by filing any replication, we are of the considered opinion that the benefit of

interest as such is not liable to be granted from 2004 till the filing of the writ petition in the year 2013. Reliance can also be placed upon the judgment of the Apex Court in *Civil Appeal No. 2362 of 2016, Uttar Haryana Bijli Vitran Nigam vs. Ram Dia (supra)* wherein, it was held that interest is payable @ 8% per annum for the three schemes of 2003, 2005 and 2006, if not paid. The relevant portion reads as under:-

“29. In the meantime, the 2006 Scheme came into being and the respondent sought the benefit of the Scheme which gave an option to the claimants in respect of pending applications to be governed by either ex-gratia payment under 2003 Scheme or 2005 Scheme as the case may be or governed by the 2006 Scheme.

30. On perusal of the record, we find that the application of the respondent cannot be said to be pending as it had already been dealt with by offering a lumpsum amount to the respondent which he refused to accept or complete formalities. Thus, he would be governed by 2003 Scheme and in view thereof, the impugned order is not sustainable.

31. We have analysed the case on the principles enunciated in Kelo Devi’s case.

32. The amount has not been paid and thus we call upon the respondent to complete the formalities within a period of one month from today. However, in view of the deprivation over a long period of time over this amount, we exercise our powers under [Article 142](#) of the Constitution of India to do complete justice to the parties and direct the appellant to pay interest @ 8% p.a. simple interest on the said amount from the date the offer was made till the date of payment but the interest will cease to operate after one month from today in case the formalities are not completed by the respondent.

33. *The appeal is accordingly allowed in the aforesaid terms leaving the parties to bear their own cost.*

34. *The amount be remitted in terms of the aforesaid within a period of two months from today.”*

It is also to be noticed that even during the pendency of the present appeal, the State chose not to pay the amount and an order had to be passed by this Court on 02.09.2022 that a draft of the said amount be brought and it was only on 29.10.2022 last opportunity was granted, failing which, costs of Rs.25,000/- were to be imposed. Resultantly, draft dated 21.11.2022 for Rs.2,50,000/- was produced on 22.11.2022.

Counsel for the State has tried to justify that on 26.08.2022, the amount was offered as such but she had refused to accept the same and placed the copy of the said letter on record. Thus, apparently from 10.03.2017 when the order was passed and there was no stay but the State has not deposited the amount. Therefore, it is liable to pay interest from 10.03.2017 to 26.08.2022 and also from 01.07.2013 till 10.03.2017. The draft of Rs.2,50,000/- has been handed over to counsel for the claimant- Pushpa Devi for onward transmission, photocopy of which is already on record. The interest element accordingly be paid @ 8% per annum within a period of two months from the date of receipt of certified copy of the order for the period 01.07.2013 to 26.08.2022.

The appeals stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

21.12.2022
shivani

(GURBIR SINGH)
JUDGE