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

LPA No. 2091 of 2017 (O & M)
Reserved on: 10.11.2022
Date of Decision: 09.12.2022

State of Haryana and others .....Appellant(s)

Versus

Somwati ....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Ms. Palika Monga, DAG, Haryana.

Ms. Deepika, Advocate,
for Mr. S.K. Yadav, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

The State is in appeal against the order passed by the learned Single Judge on 03.10.2016 whereby CWP No. 13011 of 2014, Somwati vs. State of Haryana was allowed. The learned Single Judge directed payment of Rs.5,00,000/- as ex gratia financial assistance to the writ petitioner in terms of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 (in short 'the 2005' Rules').

The finding was recorded that since the financial assistance was applied for in April, 2006 and, therefore, interest @ 9% p.a. was payable after a period of three months starting from 01.07.2006 till payment. The learned Single Judge was dealing with the challenge to the order dated 05.06.2014 (Annexure P-8) wherein, the claim for compassionate assistance had been declined by the Director, Secondary Education, Haryana on the ground that the case for financial help had been forwarded by the District

Elementary Education Officer on 19.04.2012. Under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (in short 'the 2003' Rules'), the same was to be done within 3 years, since the death of the employee Sube Singh, Physical Training Instructor was on 30.07.2005. Keeping in view the earlier orders passed whereby directions had been issued in CWP No. 26886 of 2013 on 04.12.2013 to decide the case by passing a speaking order, he rejected the same on the ground that as per both the Rules of 2003 and 2005, the family income from all sources in respect of family pension was not to be more than Rs.6,000/-. He was swayed by the fact that the deceased government employee's sons were working in Indian Army and their monthly income was of more than Rs.6,000/- each, thus, the rejection had been ordered. The learned Single Judge was of the opinion, while applying the 2005 Rules, that the said exclusion under Rule 8(b) of the 2005 Rules was only pertaining where appointment was being sought on compassionate grounds and would not apply in the case of death of the government employee and in such circumstances, the impugned order dated 05.06.2014 (Annexure P-8) had been quashed.

Ms. Palika Monga, DAG, Haryana has vehemently argued that firstly the wrong Rules had been applied in as much as the 2003 Rules would be applicable and not the subsequent 2005 Rules which had come into force only on 18.11.2005 and it was specifically provided under Rule 19 that pending cases of the deceased government employees whose family members were eligible were to be disposed of in accordance with the Rules at the time of commencement of the new Rules. Another aspect which has also been brought to our notice and as pleaded in the grounds of appeal is that in both the set of Rules either wise, the eligibility of the dependents as such would depend upon the service period of the deceased government employee who had served the government for minimum three years. In the peculiar facts and circumstances, since the employee in the present case had only served for six months, therefore, the wife was not entitled. However, on checking of the record by the State Counsel, it has been confirmed that employee had joined on 04.06.2001 and not as pleaded on 04.06.2005 and, therefore, had the necessary 3 years of service at the time of his death.

Counsel for the respondent, on the other hand, has submitted that the purpose of the Rules is salutory to the extent that the benefit of consideration for ex gratia appointment on compassionate grounds is one aspect which is to be considered by the State on the death of the government employee while in service. The other aspect of the Rules was as to payment of the ex gratia amount provided to the tune of Rs.2,50,000/- under the 2003 Rules and a sum of Rs.5,00,000/- which is payable under the 2005 Rules. It is, thus, submitted that the learned Single Judge did not commit any error in as much as the 2005 Rules were applied since the consideration was done at a subsequent point of time on the filing of the writ petition and, therefore, justified the decision making process by the learned Single Judge.

A perusal of the writ petition would go on to show that it was averred that the husband of the petitioner was appointed as a Physical Training Instructor (PTI) on 04.01.2005 (wrongly averred that it was 04.01.2005 since his application form would go on to show that he was appointed on 04.06.2001 and the fact has been confirmed by Ms. Palika Monga). It had been averred that he was to retire on 31.12.2013 since his date of birth was 10.12.1955. He unfortunately died on 30.07.2005 after having rendered a little over 4 years of service. It is the case of the writ petitioner that she had applied for ex gratia compassionate financial assistance on 20/26.04.2006 in form 'B' as per Rule 5 in which specifically she has mentioned that one of her sons was in military service and married. Similarly, the other son was also shown as married and resultantly sum of Rs.2,50,000/- was claimed as it is also apparent from the said form that the date of birth of the deceased was 10.12.1955 and he would have retired at the age of 58 years on 31.12.2013. The said case was duly recommended by the Block Education Officer on 26.04.2006 for a sum of Rs.2,50,000/- and as per the information received on 18.03.2011 from the Block Education Officer, the ex gratia financial assistance had not been granted. Resultantly, application dated 19.08.2012 was filed wherein it was mentioned that the applicant-writ petitioner had received only Rs.25,000/- and no money had been released in her favour. Subsequently, legal notice dated 06.05.2013 (Annexure P-5) was served and on non-consideration of the same, CWP No. 26886 of 2013 came to be filed before this Court in which directions were issued to decide the claim. Resultantly, the impugned order has been passed on 05.06.2014 (Annexure P-8), which was the subject matter of the writ petition.

The claim as such was objected to by filing the written statement defending the said order that two sons namely Pawan Kumar and Pardeep Kumar were working in the Indian Army and earning Rs.20,000/- each per month. The eligibility criteria being not fulfilled, the case was rightly rejected as monthly income of the family was exceeding Rs.6,000/- per month, which led to the writ petition being filed. Necessary affidavits whereby the writ petitioner had mentioned that both of them were married and working in the Indian Army and getting Rs.20,000/- whereas she was drawing family pension of Rs.2,740/- per month were also attached.

The learned Single Judge, however, as noticed, has applied the 2005 Rules while granting the relief whereby firstly a higher sum has become payable of Rs.5,00,000/- instead of Rs.2,50,000/-, which was the claim. The 2005 Rules provide that the 2003 Rules were to be repealed and pending cases were to be decided of the deceased government employees as per the eligibility in accordance with old Rules. The relevant portion reads thus:-

> *"19. Repeal and saving :- (1) The Haryana Compassionate Assistance to the dependents of deceased Government Employees Rules, 2003 which are in force immediately before the commencement of these rules are hereby repealed:*
>
> *Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.*
>
> *(2) Pending cases of all those deceased Government employees whose family members are eligible under the rules so repealed, shall be disposed of in accordance with the old rules at the commencement of new rules."*

This aspect missed the consideration of the learned Single Judge who has applied the 2005 Rules which only came into force on 18.11.2005. As noticed, the form was also filled out under the 2003 Rules and apparently, the claim as such also as per Form 'B' under Rule 5 was to the extent of Rs.2,50,000/- only. Thus, this finding of the learned Single Judge cannot be upheld as the 2005 Rules could not be applied.

The 2003 Rules which had been notified regulate the compassionate assistance by way of ex gratia financial assistance and the ex gratia appointment on compassionate grounds to the members of the family of deceased government employee who dies while in service. The object of the Rules is to assist the family of the deceased government employee in tiding over the emergency situation resulting from the loss of the bread earner by giving two options under Rule 2(i) and Rule 2(ii). The first option would be whereby the claim as such is made for ex gratia appointment on compassionate grounds to the member of the family who was completely dependant on the deceased employee and would be in extreme financial distress due to the loss of the deceased government employee who died in harness.

We are not concerned with the first option but concerned with the second option which provides for grant of financial assistance as ex gratia amount on compassionate basis to the family of the deceased over and above the other benefits which is due to the family which does not opt for ex gratia employment. Under Rule 3(b), the amount of compassionate financial assistance as such has been fixed at Rs.2,50,000/- which is to be paid over and above of the other benefits to the completely dependent members of the indigent family. The person who could be dependent could be the spouse, son or unmarried daughter or any other person who was wholly dependent. The indigent family has been defined under Rule 3(h) which prescribes the assistance for relief from destitution and the income was not to exceed Rs.6,000/- excluding the family pension. The said option had to be exercised within a period of 3 years from the date of death under Rule 4 as to what option is to be exercised. Rule 8 further provides the criteria and eligibility that the family is indigent and further provides the exclusion clause wherein

Rs.6,000/- is the amount fixed and that the income of the entire family of the deceased government employee is to be taken into account and not just the income of the dependent who has applied for appointment on compassionate grounds and cannot be applied for the ouster of the dependent wife claiming the financial compensation. The relevant Rules of 2003 read thus:-

> *"**2.** Object of rules:- The object of the rules is to assist the family of a deceased employee 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."*
>
> *3. Definitions- In these rules unless the context otherwise requires.-*
>
> *(a) xxx xxx xxx*
>
> *(b) "compassionate financial assistance" means the financial assistance to the tune of 2.5 lacs, provided as ex-gratia assistance over and above all other benefits to the completely dependent members of the indigent family of the deceased.*
>
> *(c) and (d) xxx xxx xxx*
>
> *(e) "dependent" means*
>
> *(i) spouse of the deceased Government employee or missing Government employee:*

(ii) son (including adopted son) till he attains the age of 25 years subject to the proof of adoption as envisaged in the Hindu Adoption and Maintenance Act, 1956. (78 of 1956);

(iii) unmarried daughter (including adopted daughter) till she attains the age of 25 years subject to the proof of adoptions as envisaged in the Hindu Adoption and Maintenance Act, 1956 (78 of 1956);

(iv) the person who was wholly dependent at the time of his/her death."

(f) and (g) xxx xxx xxx

(h) "Indigent family" Where the family of the deceased/missing Government employee is completely dependent upon him/her and deserve immediate assistance for relief from destitution and whose income does not exceed Rs. 6000/- per month excluding the family pension."

4. Option:- (1) A dependent of the deceased/missing Government employee shall give in writing his/her preference of option, within 3 years from the date of death of the Government employee for one of the following:-

(a) xxx xxx xxx

(b) ex-gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex-gratia grant due to his/her family, to be paid @ 2.5 lacs in case of the family of the deceased not opting for ex-gratia employment."

***5.** Submission of application: A dependent of the deceased/missing Government employee shall make an application in Form 'A' or Form 'B' for ex-gratia appointment on compassionate grounds or ex-gratia compassionate financial assistance, as the case may be.*

8. Criteria of eligibility:- The criteria for *eligibility under these Rules shall be as under:-*

(a) The Family is indigent and deserves immediate assistance for relief from financial destitution.

(b) The monthly income of the family shall not exceed Rs. 6000/- per month, from all sources other than family pension. For this purpose, the income of the entire family of the deceased Government employee will be taken into account and not just the income of the dependent who has applied for appointment on compassionate grounds.

(c) The applicant for appointment should be eligible and suitable for the post in all respects under the provision of the relevant recruitment rules.

(d) Where spouse of the deceased is already in Government service, no other dependent member shall be eligible for appointment or ex-gratia compassionate financial assistance.

(e) Married son of the deceased will be eligible only if no other member of the family is eligible for Government service and his spouse is not already in Government service and unmarried eligible dependent is not willing to join service and give an affidavit to this effect.

(f) Where dependent of the deceased Government employee does not become eligible for appointment on any ground or within three years of the death of the Government employee he/she shall not be eligible for the ex-gratia compassionate financial assistance also.

(g) The prescribed educational qualifications and lower/upper age limits, would not be relaxed for appointments."

We are of the considered opinion that the Rule 8 (b) cannot be applied for the purpose of financial assistance as it would frustrate the purpose of the grant of the benefit of the ex gratia compassionate financial assistance and the purpose of the Rule is frustrated if the benefit of the family income is to be calculated for the purposes of the grant of the amount. A perusal of the above reproduced provisions would also go on to show that the dependency of the spouse of the deceased government employee would be the criteria as such and apparently as noticed, her monthly pension is paltry amount of Rs.2,740/- per month as per the Annexures attached by the State itself. Rule 8 and its sub rules except (d) all talk about the criteria which is prescribed for the appointment under all the sub clauses on a close reading. The clubbing of the income with the income of her sons is totally unfair as such to deny the benefit of compassionate financial assistance, the purpose of which is as elaborated under the Rules to give the benefit on account of the loss of the bread earner by way of two options. Apparently, the Rules are stringent to the extent of Rs.6,000/- limit and the indigency of the family only which is applying for appointment. The case of an employee is also to be processed for compassionate appointment for which a criteria has been prescribed but clubbed together wrongly by the decision making that the indigency of the family is to be seen for the payment of Rs.2,50,000/- and in such circumstances, the denial as such cannot be held to be justified as it would frustrate the whole purpose. The salutory purpose which has been incorporated by the State to grant relief to the family of the deceased government employee who was working on a regular basis for a period of more than 3 years but expired before the age of 55 years is the criteria to award the amount. The purpose of 55 years cap is also apparent since after the age of 55, keeping in view the age of retirement to be 58, the family would earn the maximum amount of pension. This also was done away with on 10.02.2004 and even employees who died at the age of 55 years or thereafter, their dependents became entitled for the said amount. But the spouse as such who was entitled for the claim and being his dependant in her own right under Rule 3(e)(i) cannot be denied the payment of Rs.2,50,000/- on account that the sons are employed in the Army who have their own independent house hold being married. Thus, deprivation of the amount to the widow of Rs.2,50,000/- is not held to be justified in any manner.

Resultantly, we partly allow the appeal by holding that firstly on account of the death of the employee on 30.07.2005, the entitlement under 2003 Rules should have given and not the entitlement under subsequent Rules of 2005 which were notified on 18.11.2005. Resultantly, the claim can only be Rs.2,50,000/- not 5,00,000/-. However, the interest element which has been granted to the extent of 9% by the learned Single Judge is modified to the extent that the State itself noticed that while passing the speaking order that the case was pending but sent by the District Elementary Education Officer, Narnaul to the Directorate after a period of 3 years, for which his explanation has also been called for. Thus, apparently for no fault of the writ petitioner, she has been denied the benefit of Rs.2,50,000/- which became payable in the year 2006 when she had applied. Accordingly, the only way she can be compensated for the wrongful denial of the amount is by way of interest, as rightly directed by the learned Single Judge.

In ***Civil Appeal No. 2362 of 2016, Uttar Haryana Bijli Vitran Nigam vs. Ram Dia*** 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,*** it has been held by the Apex Court that on account of deprivation of the amount which was due under the three Schemes of 2003, 2005 and 2006, interest would be payable @ 8% per annum. 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 the State has made no effort to comply with the order of the learned Single Judge which was passed way back on 03.08.2016 and payment was to be made within 3 months and there has been no interim order of stay in its favour in spite of which the amount has been withheld.

Accordingly, keeping in view the above, the present appeal is partly allowed with directions to the State to pay a sum of Rs.2,50,000/- alongwith interest @ 8% p.a. from 01.07.2006 till the date of final realization within a period of 2 months from the date of receipt of certified copy of the order.

(G.S. SANDHAWALIA)
JUDGE

09.12.2022
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes/No
Whether reportable Yes/No