

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

LPA No. 689 of 2017 (O & M)

Date of decision: 23.08.2022

Sanjay Kumar

....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. K.S. Dhanora, Advocate,
for the appellant.

Ms. Palika Monga, DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

CM-1445-LPA-2017

Application has been filed for condonation of delay of 8 days in
refiling the appeal.

Keeping in view the averments made in the application duly
supported by affidavit of the counsel, application is allowed. Delay of 8
days in refiling the appeal is condoned.

CM stands disposed of.

CM-1446-LPA-2017

Application has been filed for condonation of delay of 70 days
in filing the appeal.

Keeping in view the averments made in the application duly
supported by affidavit of the counsel and in view of the nominal delay and
that the same has not been opposed by the State, application is allowed.
Delay of 70 days in filing the appeal is condoned.

CM stands disposed of.

The present letters patent appeal is arising out of the order passed by the learned Single Judge dated 29.11.2016 in CWP No. 1830 of 2011, Sanjay Kumar vs. State of Haryana and others. The appellant-writ petitioner is aggrieved against the non-grant of the compassionate appointment by the learned Single Judge.

The learned Single Judge had noticed that the breadwinner had died in the year 2002, who was serving as a Canal Patwari and the request had been made on account of the said fact for the job of the son by the mother on 17.02.2003. He was put in the wait list as per Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2003 (in short 'the 2003 Rules) and figured at Sr. No.256 and had been offered financial assistance of Rs.2.5 lakhs but it was refused in writing by the family on 20.01.2005 (Annexure R-1). On that ground, the benefit was denied of the financial assistance also while dismissing the writ petition and also by noting that nothing had been pointed out that any persons lower had been offered the compassionate appointment.

The appeal was thus filed and while issuing notice of motion, the contention of the counsel was noted that the appellant was willing to settle for the financial assistance which was indeed offered to him but he had not responded at that point of time.

On merits, we are of the considered opinion that at this stage since the breadwinner had died in the year 2002, the object of compassionate appointment does not survive in view of the settled principle in ***Umesh Kumar Nagpal vs. State of Haryana, 1994 (3) SCT 174*** that the purpose of compassionate appointment is only for the purposes of getting the family out of penury at that point of time. The said view has been reiterated by the

Apex Court in *Union of India and others vs. Sima Banerjee, 2017 (1) RSJ 351* and *Shreejit L. vs. Deputy Director (Education), Kerala and others, 2012 (7) SCC 248*. Recently, in the *Secretary to Government, Department of Education (Primary) and others vs. Bheemesh @ Bheemappa, 2022 (1) SCT 204*, the Apex Court took into account that the principle of appointment on compassionate basis was an exception and, therefore, her claim as such for compassionate appointment has been rightly declined as such by the learned Single Judge.

The only issue which remains for consideration now is as to whether the learned Single Judge was correct in denying the financial assistance which was offered but was refused. Counsel for the State had been asked to take a decision in this aspect within a period of 2 weeks from 10.10.2018. Counsel for the State has pointed out that the necessary affidavit was filed that the sum of Rs.2.5 lakhs was offered on 16.01.2019 (Annexure R-1) but the mother of the appellant as well as the appellant as such gave a joint affidavit that they did not want a sum of Rs.2.5 lakhs and only want appointment.

The matter has now been settled by the Apex Court in *Civil Appeal No. 2144 of 2016, Haryana Vidyut Prasaran Nigam Ltd. and others vs. Kelo Devi and another*, decided on 30.02.2020 regarding all the three schemes and it has been held that the pending cases are to be dealt with under Rules 6 and 7 of the 2003 Rules, which are reproduced as under:-

“10. The aforesaid thus shows that the provision is only for financial assistance and not for any employment and the eligibility under Clause 3 provides that the Rules are as per the provision in the Pension Scheme, 1964.

11. As to the manner in which pending

applications are to be dealt with is provided in Clause 6 which reads as under:

"Pending Case

6. 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."

12. The aforesaid clause thus gives an option to be governed by the earlier Rules or the latter Rules for the purposes of ex-gratia payment alone. Thus, if a case is covered by Rules of 2003, the beneficiaries may claim under those Rules for ex gratia payment or under 2006 Rules for ex-gratia payment and the same position would prevail qua 2005 Rules. Needless to add here that if the benefit has already been claimed and granted under the earlier Rules, then that aspect cannot be revisited if the new Rules have come into force.

13. We may also find it useful to reproduce Clause 7 which is for removal of doubts as it requires that, in case any doubt arises, the same should be referred to the Department of General Administration whose decision shall be final, that Clause reads as under:

"Removal of doubts If any doubt arises relating to the application, interpretation and scope of these rules, it shall be referred to the Government in the department of General Administration (In General Service-II Branch) whose decision thereon shall be final."

14. In our view the aforesaid Scheme is quite clear

i.e. insofar as pending cases are concerned where benefit has not been taken under the earlier Schemes, those applications can be dealt with qua ex gratia payment under Rules of 2003 or 2005 or the current Rules of 2006 at the option of claimants.

15. Insofar as the facts of the present case are concerned, the application for appointment on compassionate grounds was made in the year 2005 but the request was rejected on 10th August, 2006, after the new policy had come into force on 3 rd August, 2006. The operative portion of the impugned judgment dated 7th November, 2012, referring to the plain language of Rule 6 of 2006 granted the benefit under those Rules. On a special leave petition being preferred before this Court, the operation of the impugned judgment was stayed on 18 th March, 2013 but an interim order was passed that the case of the son of the deceased be considered under Rule 4 of the Scheme of 2003 without taking into account the rejection of his mother's application for compassionate appointment on 10th August, 2006. We are informed that no such compassionate appointment has been made.

16. In view of the aforesaid, we are in agreement with the view taken in the impugned judgment that the case of the respondent would be covered by 2006 Rules for ex-gratia payment.”

Resultantly, we are of the considered opinion that the State is under a bounden duty to pay a sum of Rs.2.5 lakhs to the appellant and his mother. The necessary payment be disbursed by way of demand draft in equal shares within a period of 3 months. We are declining the interest on account of the persistent stand as such of the appellant himself who had himself refused the financial benefit and, therefore, it cannot be said that

The appeal stands disposed of in the above said terms.

(G.S. SANDHAWALIA)
JUDGE

23.08.2022
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No