

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

**LPA-2255-2017 (O&M)
Decided on : 24.11.2022**

State of Haryana & others

.....Appellant(s)

Versus

Roshni Devi

.....Respondent(s)

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

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

Mr.R.K.Malik, Sr.Advocate
with Mr.S.S.Randhawa, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

Challenge in the present Letters Patent Appeal is to the order dated 22.05.2017 passed in CWP-22196-2015 titled *Roshni Devi Vs. State of Haryana & others*. The learned Single Judge while allowing the writ petition, awarded damages of Rs.1,00,000/- for the delay in payment and for the fact that she had to approach the Apex Court for her rights and State was directed to make payment under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 notified on 01.08.2006 (Annexure P-10) .

By virtue of the said Rules, financial assistance on the death of the Government employee, the right to receive financial assistance for a sum equal to the pay and allowances of the last drawn by the deceased employee can vary from a period of 15, 12 & 7 years, depending upon the age slabs mentioned in Clause 5. Needful was to be done within a period of 4 months and apparently has not been adhered to inspite of the fact that

there was no stay order passed by this Court. This aspect is important as the interest element is also liable to be granted from the date of passing of the order so that the interest of the respondent is kept intact.

State Counsel has referred to the judgment of the Apex Court in CA-2144-2016 titled *Haryana Vidyut Prasaran Nigam Ltd. & others Vs. Kelo Devi & another* which specifically referred to the facts of CA-1550-2020 to submit that the purpose of compassionate appointment is that the same is not availed of immediately then the purpose of the scheme stand frustrated and therefore, directions as ordered by the learned Single Judge were not sustainable. It is accordingly submitted that it is stale claim and would not fall within 2006 Scheme. Relevant portion of the said judgment reads as under:

“Civil Appeal No. 1550/2020 @ SLP(Civil) No.6034 of 2010

22. Leave granted.

23. The father of the respondent was an employee of the appellant and passed away in 1991. The wife of the deceased employee submitted application Dated 9th March, 1992 for compassionate appointment on behalf of her son aged 1-1/2 years while she was unwilling to do service, it is the say of the respondent that thus the said application should be treated as still pending when the Rules of 2006 came into force and benefit under the said Rules be granted.

24. On the other hand learned counsel for the appellants has drawn our attention to a clarification dated 9th January, 1992 (Annexure R-1) which stipulates that in case of such minor children, they could be considered even within one year of attaining majority provided the application is received within three years of the death. On the application submitted, clarification was issued (Annexure P-2) stating that such an application cannot be endlessly kept pending and the privilege would be available for a period of three years after death, if the minor becomes major within that window of time. We may notice here that all other

benefits were granted to the deceased employee as per order dated 21st October, 1991.

25. The very objective of providing such appointments or ex-gratia payment is to provide succour at that time when the incident occurs and there cannot be any open ended Scheme in this behalf. Thus, in a case like the present one where wife could have availed of the option, but declined to do so, and wanted that her son be considered who was only 1-1/2 years of age, it cannot be stated that for 16-1/2 years that application would be kept alive and then would be considered on the respondent attaining the age of 18 years. It is for the above reason, apart from the claim being a stale one, the case of the respondent would not fall within the 2006 Scheme.

26. We have examined this case keeping in mind the principles enunciated in Kelo Devi's case.

27. The result of the aforesaid is that the impugned order has to be set aside and the appeal is accordingly allowed leaving the parties to bear their own cost."

Keeping in mind the above-said principles we go on to apply the facts of the present case. The date of death of the employee was 14.11.1996 and the application as per the written statement which was filed for the grant of benefit of compassionate appointment was filed on 03.01.1997 when the son was a minor and as per the prevalent policy at that point of time since he was born on 20.11.1986 and was to attain majority on 19.11.2004. On attaining the said age, apparently claim was made and was rejected on 07.10.2005 (Annexure P-5) on the ground that it was made after a period of 8 years and 6 months after the death of the deceased employee. It is not disputed that at that point of time, the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 notified on 28.02.2003 was in force which provided under Rule 2(ii) compassionate financial assistance was to be provided to the tune of Rs.2.5 lakhs on account of loss of the

Government employee who dies in harness. As per Clause 4 option was to be given within 3 years from the date of death of the Government employee and as per Sub-clause (b), the benefit was to be granted in case the family of the deceased has not opted for the ex-gratia employment. Same reads as under:

"4. Option:- (1) xxxx

(a) xxxx

(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 @ Rs.2.5 lacs in case of the family of the deceased not opting for ex-gratia employment."

The said benefit was not granted and thereafter on 25.10.2005 (Annexure P-6), another order was passed rejecting the claim, followed by another order dated 24.04.2007 (Annexure P-7) without applying the 2003 Rules and granting benefits though the respondents were supposed to follow the said procedure.

The writ petition bearing CWP-13690-2007 was filed claiming the relief to be considered for compassionate appointment which got clubbed with the bunch of cases in CWP-8844-2007 titled *Sheela Devi Vs. State of Haryana & others*, decided on 22.08.2008 (Annexure P-11) wherein it was directed that the claim be considered afresh in the light of the instructions/rules applicable at the time of death of the Government employee. The matter was taken to the Apex Court which was eventually dismissed on 28.01.2015 wherein SLP filed by the State bearing SLP (C) Nos.7224-7238-2010 titled *State of Haryana & others Vs. Sonia Gandhi & others*, was dismissed leaving the question of law open to be agitated in appropriate case.

Resultantly, writ petition was filed challenging the order dated 20.01.2009 wherein another rejection order had been passed on account of the fact that there was a delay in filing the application. Resultantly, the learned Single Judge noticed that a wrong stance had been taken in the impugned order and rather there was an admission that appropriate application had been filed immediately after the death of the Government employee as has been noticed by us earlier which was on 03.01.1997 and was within 4 months of the death. Resultantly, the impugned order came to be passed.

Thus, from the above sequence of events, it would be apparent that the respondent was not interested in seeking employment and had forwarded the case of her son for consideration at that point of time and therefore, the need for immediate financial help had been deferred and therefore, the observations in Kelo Devi (supra) would come into force. However, keeping in view the fact that no financial assistance or ex-gratia was granted at that point of time and the 2003 Rules were in force, it was the bounden duty of the State to have granted a sum of Rs.2.5 lakhs at that point of time. Had the said amount been paid, the family would have been duly compensated as per the policy at that point of time and the matter would have settled. It is for the State's own inaction which has now burdened it with the extra compensation on account of the delay for which interest necessarily would have to be paid @ 8% per annum which has also been laid down in CA No.2362 of 2018 decided along with Kelo Devi (supra). Relevant portion of the judgment reads as under:

“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.”

Resultantly, we are of the opinion that a sum of Rs.2.5 lakhs along with 8% per annum interest became payable from 07.10.2005 when the State took a decision to reject the case. The amount be paid along with interest within a period of 2 months. The judgment of the learned Single Judge dated 22.05.2017 accordingly, stands modified to that extent and the present appeal is partly allowed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

24.11.2022
sailesh

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