

CWP-16191-2006 (O&M)

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

CWP-16191-2006 (O&M)

**Judgment reserved on 03.05.2023
Date of pronouncement :- 04.07.2023**

Suman Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Shyam Singh Chhokar, Advocate
for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana
for the respondents.

...

SUVIR SEHGAL, J (ORAL)

1. Petitioner has approached this Court *inter alia* for issuance of a writ in the nature of certiorari seeking quashing of impugned orders dated 10.02.2004 and 30.08.2006 (Annexures P-5 and P-10, respectively), whereby, family pension and appointment on compassionate basis has been denied to the legal heirs of late Shri Chander Singh.

2. Factual position is not in dispute. Chander Singh, husband of the petitioner, was selected and he joined the Education Department as a Maths Master on ad-hoc basis on 23.10.1995 vide appointment letter (Annexure P-1). He, unfortunately, died in harness on 05.05.2003 after rendering service

of 7 years, 6 months and 9 days. Representation (Annexure P-4) was submitted after his death for grant of compassionate appointment to his widow, petitioner herein, as well as for release of family pension, which was rejected by the respondents vide impugned letter 10.02.2004 (Annexure P-5). A writ petition was filed by the petitioner for regularization of the services of her husband, which was withdrawn on 16.03.2004 (Annexure P-6) with liberty to challenge the constitutional validity of the cut off date specified in the regularization instructions. Another writ petition viz. CWP-7261-2004, was filed, which came to be rejected by this Court vide order dated 16.08.2005 (Annexure P-7) against which S.L.P. filed before the Supreme Court was dismissed on 10.02.2006 (Annexure P-8). Legal notice dated 16.06.2006 (Annexure P-9) was served upon the respondents, which resulted in impugned letter dated 30.08.2006 (Annexure P-10).

3. Upon notice, writ petition has been contested by the respondents by filing a response, wherein, it has been submitted that as the services of petitioner's husband were never regularized, petitioner can neither be granted compassionate appointment nor family pension.

4. Counsel for the petitioner has placed reliance upon the judgments of this Court in ***CWP-5777-1995 titled as Anita Chauhan Versus State of Haryana and others***, decided on 08.01.2003, ***CWP-1169-2011 titled as Balwinder Kaur Versus State of Punjab and others***, decided on 16.12.2014 as well as upon ***CWP-14734-2006 titled as Panpauri Versus State of Haryana and others***, decided on 16.01.2019, to contend that the rejection of the claim of the petitioner vide Annexures P-5 and P-10, is not based on the

settled legal propositions. Countering the submission, learned State counsel has invited the attention of this Court to the Family Pension Scheme, 1964 as well as the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (for short “the 2003 Rules”), to assert that the petitioner does not satisfy eligibility conditions for grant of any benefit under the said rules.

5. Having heard counsel for the parties, this Court is of the view that the relief claimed by the petitioner cannot be accepted for reasons, which are more than one and are enumerated hereinafter.

6. Petitioner had approached this Court at an earlier stage by filing CWP-7261-2004, wherein, she claimed the following relief:-

“i. Issue a writ in the nature of certiorari for quashing the partly impugned condition No.1 of the notification dated 01.10.2003 (Annexure P-8) only to the extent of ‘were in service on that date’ being irrational and arbitrary; and also quashing the office letter dated 24.03.2004 (Annexure P-9);

ii. a writ of mandamus directing the respondents to regularize the services of the husband of the petitioner-posthumously, in view of the Government notification dated 01.10.2003; and provide her Government employment on compassionate ground; and also granting the family pension and gratuity etc., along with all consequential benefits arising thereof.”

7. After contest by the respondents, this petition was rejected by a

Division Bench of this Court on 16.08.2005 (Annexure P-7) with the following observation:-

“We find that the husband of the petitioner was not in service on the cut-off date i.e. 30.09.2003. Thus, the petitioner is not entitled to appointment on compassionate grounds.

Dismissed.”

8. This order was unsuccessfully challenged by the petitioner before the Supreme Court.

9. Now, by way of the present writ petition, the petitioner is raising the same claims again on the premise that a legal notice served on her behalf, has been rejected by the respondents by communication (Annexure P-10). This, however, is clearly barred by the principle of res judicata. Petitioner cannot be permitted to stake the same claims again, which have been adjudicated upon and settled upto the Apex Court.

10. Not only this, after examining the Family Pension Scheme and the Punjab Civil Services Rules (as applicable to Haryana State) Volume II, Part I, Hon’ble Supreme Court in **State of Haryana Versus Shakuntala Devi (2008) 15 SCC 380**, held as under:

“31. Clause 3.17 of the Rules in no uncertain terms explains as to what is meant by substantive and permanent employment. The contention of the counsel that it applies only to a person who has retired is not correct because holding of a substantive permanent post on the date of retirement is followed by the words “his temporary or officiating service under the State

Government”. Confirmation in service, therefore, whether before retirement or before death must be held to be sine qua non for becoming eligible for grant of pension. Only when an employee renders service in a pensionable service, he would be entitled to pension.”

11. The dictum of the Apex Court has been followed by a Full Bench of this Court in **Smt. Sita Devi Versus State of Haryana and others 2014 (2) SCT 586** and is fully applicable to the facts of the present case. Although, Chander Singh, deceased, had rendered service for more than seven years with the Government, but his status was that of an ad-hoc employee. Posthumous attempts by the petitioner to get his service regularized by invoking the writ jurisdiction, were unsuccessful. As petitioner’s husband was not confirmed in service, petitioner cannot claim to be entitled for grant of family pension.

12. In so far as the claim of the petitioner for grant of compassionate appointment is concerned, the same has to be considered in the light of the 2003 Rules. Sub-Clause (d) of Rule 3 of the said Rules, which defines a deceased Government employee, deserves to be noticed and is reproduced as under:-

(d) “deceased Government employee” means a Government employee-

i. appointed on regular basis, and not working on daily wages, casual, apprentice, work charged, ad-hoc, contractual or re-employment basis;

ii. *who has served the Government for at least three years;*

iii. *who should not have crossed the age of 55 years.”*

13. When examined in the light of the definition as given in the 2003 Rules, which are applicable in the instant case, this Court is of the firm view that the case of the petitioner is not covered under the aforesaid Rules as the spouse of the petitioner rendered service as an ad-hoc employee till his demise. In view of the clear enunciation of law by the highest Court of the Country, judgments of this Court relied upon by the counsel for the petitioner would not come to his aid. Ergo, petitioner is not entitled to any relief.

14. Petition being bereft of merit, is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

04.07.2023
Pardeep

Whether speaking/reasoned	Yes
Whether reportable	Yes