

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18572 of 2010 (O&M)

Reserved on:23.03.2023

Pronounced on:13.04.2023

Bimla Devi and another

...Petitioners

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. J.S. Bedi, Advocate
for respondent Nos.2 to 5.

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JAISHREE THAKUR J.

1. The present writ petition has been filed by the petitioners seeking quashing of order dated 29.08.2007 (Annexure P-4) and 29.03.2013 (Annexure P-9) whereby compassionate appointment to petitioner No.2 on account of death of his father (husband of petitioner No.1) has been declined.

2. In brief, facts are that petitioner No.1 is widow of late Sh. Raj Singh, who died while in service on 02.10.2003. Petitioner No.1 on account of death of her husband, moved an application for giving compassionate appointment to her son i.e. petitioner No.2. The case of petitioner No.2 for ex-gratia appointment was forwarded to respondent No.4 namely S.E. (Operation Circle), U.H.B.V.N., Sonapat, Haryana, who vide letter dated 29.03.2004 declined the case of petitioner No.2 for compassionate appointment on the ground that petitioner No.2 was Middle pass and as per notification dated 29.11.2002, a person having minimum qualification of Matric shall be eligible for appointment as Clerk/Mali/Peon. Petitioner No.2 passed his Matriculation examination in April, 2005 and thereafter, applied for compassionate appointment along with necessary

documents. Respondent No.5 forwarded documents of petitioner No.2 to respondent No.4, which were further forwarded by respondent No.4 to respondent No.3 vide letter dated 08.08.2005. In the meantime, new Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred to as Rules of 2006) were notified and the Managing Director, UHBVN, Panchkula held that petitioner No.2 would not be eligible for compassionate appointment under the ex-gratia scheme but would have the option to opt for lump sum ex-gratia grant provided in the Rules of 2003 or 2005. However, since no action had been taken on the request of petitioner No.2 for giving compassionate appointment, present writ petition has been filed.

3. During the pendency of the instant writ petition, the General Manager/Admn, UHBVN, Panchkula passed another order dated 29.03.2013 giving reasons as to why ex-gratia employment cannot be offered to petitioner No.2.

4. Learned counsel appearing on behalf of the petitioners would argue that husband and father of petitioners No.1 and 2, respectively, had died on 02.10.2003 and therefore, the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003 (hereinafter referred to as Rules of 2003) would be applicable. According to Rules of 2003, ex-gratia appointment on compassionate ground is to be offered to a member of a family, who was completely dependent upon the deceased and is facing extreme financial distress due to loss of the deceased namely the government employee, who dies in harness. He further argued that ex-gratia financial assistance @Rs.2.5 lacs to the family of the deceased employee over and above all other benefits is to be paid in cases where the family of the deceased does not opt for

ex-gratia employment. It was further argued that petitioner No.2-son of the deceased, upon completion of his Matriculation had opted for the ex-gratia employment well within time, which has not been granted to him.

5. Learned counsel appearing for the petitioners relied upon judgment passed by a Division Bench of this Court in LPA No.325 of 2017 titled as *Gaurav son of late Subhash Chander Vs. State of Haryana and others* decided on 03.07.2018 where the petitioner therein, who was minor at the time of death of his father and his mother declined to accept ex-gratia financial assistance under Rules of 2003, was directed to move an appropriate application before the respondents under Rules of 2006 and on doing so, respondents were directed to process the same in accordance with Rules of 2006. Further in the judgment rendered by a Coordinate Bench in CWP No.22196 of 2015 titled as *Roshni Devi Vs. State of Haryana and others* decided on 22.05.2017, it has been held that since in the year 2008 when case of the petitioner therein for compassionate appointment was rejected, Rules of 2006 were applicable, therefore, his case was to be considered for financial assistance under Rules of 2006.

6. Per contra, learned counsel appearing on behalf of the respondents No.2 to 5 would argue that after filing of the writ petition, case of petitioner No.2 was reconsidered and as per Rule 7 (c) of the Rules of 2003, appointment is to be offered one step lower than the post of the deceased government employee except in cases where the employee was working at the lowest level in the category. Father of petitioner No.2 at the time of his death was working as Assistant Sub Station Attendant (ASSA) a class III post and therefore, name of petitioner No.2 was placed in the seniority list of Class IV candidate category. Under the instructions, employment under ex-gratia scheme was to be given under 5% quota of the sanctioned posts according to seniority. The respondent-Nigam was able

to give employment under the ex-gratia scheme in death cases upto December, 1999 and as such, case of petitioner No.2 could not figure for employment, as the same related to the year of 2003. Petitioner No.1 had been offered a lump sum compensation @Rs.2.5 lakhs but she declined to accept the same. He would rely upon Rule 6 of the Rules of 2003 wherein validity of the list prepared of such dependents was three years and appointments were to be given by the department strictly in accordance with the seniority so maintained. Validity of the list so prepared was to expire after three years. It was argued that name of petitioner No.2 was at Sr. No.263 in the seniority list, which was exhausted upto Sr. No.48 from December, 1999 till 31.07.2006 i.e. before coming into force of Rules of 2006 and after promulgation of Rules of 2006, family of the deceased employee is entitled to only financial assistance. It was also argued that since petitioner No.1 has refused to accept the ex-gratia assistance of Rs.2.5 lakhs as offered to her under Rules of 2003, it would itself establish that she was not under any distress and need of financial assistance.

7. I have heard the counsel for the parties and with their assistance have gone through the pleadings and case law.

8. The father of petitioner No.2 and husband of petitioner No.1 died on 02.10.2003 while in service and at the relevant time, Rules of 2003 were in existence which allowed for compassionate appointment or in the alternative a lump sum grant of Rs 2.5 lacs in lieu thereof. The deceased was a class IV employee and as per Rule 7 (c) of the Rules of 2003, appointment is to be offered one step lower than the post of the deceased government employee, except in cases where the deceased employee was working at the lowest level in that category. Appointment could not be offered immediately, as the son of the

deceased had not completed his Matriculation, and as per rules, a class IV employee had to have the minimum qualification of having cleared his 10th class.

9. Respondent No.1 is a welfare State, and it has framed various Rules from time to time to provide compassionate assistance to the family of the deceased employees, so that the family does not live in penury. The Rules in existence at the time of death of the deceased were to be made applicable, which in the present case, would have been the Rules of 2003. Petitioner No.2 was placed in the waiting list for appointment, however, could not be offered appointment as only 5% quota of the sanctioned posts according to seniority were to be filled up and the petitioner was below in seniority list. The list, which was valid only for a period of three years, expired before the turn of petitioner No.2 could come as per his seniority. Therefore, no illegality has been committed by the respondent State in declining ex gratia appointment to petitioner No.2. The plea that petitioner No.2 is entitled to appointment under the Rules of 2003 is untenable, in view of the fact that the list was valid only up to three years and appointment cannot be offered beyond 5% quota of the sanctioned posts according to seniority.

10. However, once it is found that the post is not available for appointment on compassionate ground after the expiry of validity of the list prepared by respondents, an option was to be given for grant of financial assistance in terms of Rule 6 (c) of the 2003 Rules. There is nothing on the record to establish that such an option was given, other than a submission made in the written statement based on an office order dated 29.03.2013 passed during the pendency of the writ petition. In ***Kuldip Kumar v. Managing Director, Uttar Haryana Bijli Vitran Nigam Limited and another, 2008(2) SCT 254 (P&H)*** decided on 12.3.2008, wherein, in a case where the option was not sought

from the dependents of the deceased Government employee after the expiry of the validity of the list, it was treated as pending case and the financial assistance in terms of the 2006 Rules was ordered to be granted to the dependents of the deceased employee. The ratio of judgments as relied upon would be applicable in the facts of the present case.

11. The petitioner No.1 was informed about exercising her option under Rules of 2006 vide communication dated 29.8.2007, which was duly replied to by petitioner No.1 as per Annexure P-6 dated 8.3.2010, after she had again applied for compassionate appointment on 23.4.2008. Even though petitioner No.1 had exercised her option for financial assistance, the matter was never decided in respect of grant of financial assistance 2006 Rules, which has led to the filing of the present writ petition.

12. Therefore, this writ petition is allowed with liberty to petitioner No.1 to submit her option within a period of one month from today so as to seek ex-gratia financial assistance in terms of Rules of 2006. On receipt of such option, the respondents shall take final decision for payment of ex-gratia financial assistance to the petitioners within one month thereafter.

(JAISHREE THAKUR)
JUDGE

April 13, 2023
Pankaj*

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