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

**CWP-16529-2021
Date of Decision : 11.08.2023**

Mukesh Lata Saini

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Preetam Singh, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

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<u>Harsimran Singh Sethi, J. (Oral)</u>

1. The present petition has been filed raising a grievance that the husband of the petitioner was a Doctor and was employed with the respondents and unfortunately died on 09.03.2007 while in service and as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred to as 'Rules'), an employee who died while in service, his dependents are entitled for salary along with the allowances upto the date when the deceased employee was to superannuate on attaining the age of superannuation, which benefit has not been granted to the petitioner.

2. Learned Senior counsel for the petitioner submits that the petitioner was given the benefit under under 2006, Rules while computing the benefit for which the petitioner was entitled for the pay which the late husband of the petitioner was getting but even the allowances which were being paid to him were taken into account for computing the entitlement of the petitioner under 2006 Rules. Learned counsel for the petitioner further

submits that after a period of one year of the grant of the benefit under 2006 Rules the respondents, without giving any opportunity of hearing to the petitioner, came to the conclusion that while extending the benefits under 2006 Rules, only the pay is to be given and not the non-practicing allowance which the husband of the petitioner was getting and the said benefit was withdrawn and a sum of Rs.62,550/- was recovered from the petitioner. The petitioner approached the respondents that once as per 2006 Rules, all the allowances are also to be paid to the dependent of the deceased, the petitioner is entitled for the benefit of NPA also while being extended the benefits under 2006 Rules.

3. The prayer of the petitioner in the present petition is that the respondents be directed to release the benefit of NPA also while releasing the benefits under 2006 Rules along with arrears and interest upon the same upto the date late husband of the petitioner was to attain the age of superannuation i.e. 31.03.2014. The further prayer is that the enhanced gratuity of Rs.1 lac which was paid to the petitioner only in the year 2015, the petitioner is entitled for interest on the same as the same was admissible at the time of the death of her husband in the year 2007.

4. Learned counsel for the respondents submits that the non-practicing allowance can only be extended to a doctor and not to his dependents hence, though the entitlement of the petitioner under 2006 rules was calculated by taking into consideration the NPA also but as the said act on the part of the department was not correct, the same was withdrawn later on, hence, the prayer being made by the petitioner in the present petition is liable to be rejected as the petitioner is not entitled for the grant of NPA

while getting benefit under 2006 Rules. With regard to the grant of interest on the enhanced gratuity which was paid to the petitioner in the year 2015, learned counsel for the respondents submits that once the gratuity has already been released in favour of the petitioner, no interest is liable to be paid.

5. I have heard the learned counsel for the parties and have gone through the records with their able assistance.

6. It is a conceded position that the benefit under 2006 Rules were to be extended to the petitioner after the death of her husband. Only dispute is as to whether, the non-practicing allowance is to be taken into account while computing the benefit under Rule 5 (1) of the 2006, Rules for which the petitioner is entitled for. The Rule 5 of 2006 Rules, is as under;-

> **‘Rule 5: Criteria for Financial Assistance**
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> *(1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim-...*
>
> *(5) House Rent allowance shall not be a part of the allowance for the purpose of calculation of assistance.”*

A bare perusal of the above reproduction would show that on the death of the government employee the family of the said employee is entitled to receive the financial assistance which is equivalent to the pay and other allowances that was last drawn by the deceased employees. Once it is a conceded position that the NPA was being drawn by the late husband of the petitioner till his death, the same has to be taken into account by the respondents for assessing the entitlement, keeping in view the simple language of Rule 5(1) of 2006, Rules. Hence, withdrawing the part of NPA while fixing the entitlement of the petitioner under 2006 Rules, is contrary to Rule 5(1) of 2006 Rules. All the allowances which a deceased employee was getting at the time of his death are to be made available to the dependent family upto the date the deceased employee would have attained the age of superannuation. Hence, the action of the respondents in withdrawing the benefit of NPA from the benefits being extended to the petitioner under 2006 Rules, is totally arbitrary and illegal and contrary to Rule 5(1) of the 2006 Rules. Hence the petitioner is held entitled for the component of non-practicing allowance to be paid to her under 2006 Rules, upto the date when her late husband would have attained the age of superannuation had he remained alive i.e. upto 31.03.2014.

7. Further, the benefit which is being extended by this Court to the petitioner is on the basis of the Rule 5(1) which was in existence even at the time of the death of deceased employee but the same has wrongly been interpreted by the respondents so as to withdraw a particular benefit of non practicing allowance from the petitioner, while assessing new entitlement under 2006 Rules, hence, the petitioner has been deprived of the benefit for which she was very much entitled, hence, she is also entitled for the interest on the amount which, the respondent will release to her under this order.

8. A Coordinate Bench of this Court in '***J.S. Cheema Vs. State of Haryana***', has held that where an amount belonging to an employee has been retained by the department and used, the employee will be entitled for the interest on the said amount. The relevant of the paragraph of the said judgment is under:-

> *5. In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.*
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> *8. In the circumstances, I hold the petitioner entitled to interest @ 8% p.a. on the delayed payment of retiral benefits. The interest will become due w.e.f. 01.05.2000. Let the interest on the above components i.e. gratuity, arrears of pension and leave encashment be computed @ 8% p.a. from 01.05.2000 till the date of payment and the same be released to the petitioner within a period of two months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 9% p.a.*

9. With regard to the second claim of the petitioner for the grant of interest on the gratuity, there are no specific pleadings as to on which date the gratuity was enhanced and the same as paid for the petitioner. In the absence of such pleadings before this Court, no order for the grant of interest on the enhanced gratuity can be made by this Court, but the petitioner is given liberty to file an appropriate representation to the respondents to claim the same in case she makes out a case for the grant of interest on alleged delayed payment of enhanced gratuity.

10. Keeping in view the above, the present petition is allowed in above terms.

11.08.2023 **(HARSIMRAN SINGH SETHI)**
ps-I **JUDGE**
Whether reasoned/speaking? *Yes*
Whether reportable? *No*