

CWP No.8070 of 2011

[1] 2023:PHHC:038867

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

207

CWP No.8070 of 2011
Date of decision:13.03.2023

Saroj

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Jitender Nara, Advocate
for the petitioner.

Mr. R.K.S.Brar, Addl.A.G., Haryana.

SUVIR SEHGAL, J. (Oral)

By way of present petition filed under Articles 226/227 of the Constitution of India, petitioner has approached this Court seeking issuance of a writ in the nature of mandamus directing the respondents to consider her son for ex-gratia appointment or in the alternative, to grant compassionate financial assistance to her as per the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003, (for short “the 2003 Rules”). Petitioner has also sought quashing of impugned order dated 26.03.2004 (Annexure P-2).

Facts, in brief, are that petitioner's husband, Ramesh Chander, who was working as Clerk in the District Industries Centre, Rohtak expired on 13.07.1995. Petitioner submitted a request on 20.11.1995 for appointment

of her son on the post of Peon under the 'Ex-Gratia Scheme' after completing the age of majority, which was turned down by impugned order, Annexure P-2.

Upon notice, respondents have contested the petition by filing a written statement and have submitted that pursuant to interim order passed by this Court, petitioner was heard and by order dated 10.04.2013, Annexure R-1, the case was again rejected. It is their stand that the petitioner has not challenged the subsequently passed order.

At the outset, counsel for the petitioner has restricted the claim to grant of compassionate financial assistance and has invited the attention of the Court to interim order 11.09.2019 passed by this Court, which is reproduced as under:-

“Learned counsel for the petitioner contends that the claim of the petitioner for grant of compassionate appointment to her son on account of death of her husband on 13.07.1995 was rejected vide order Annexure P/2 dated 26.03.2004, however, in view of instructions Annexure P/4 dated 31.03.2003, the Haryana Compassionate Assistance to Dependents of Deceased Government Employee Rules, 2003, is applicable to dependents of deceased government employees whose cases were pending prior to the coming into force of the aforementioned rules and in view thereof ex-gratia grant of Rs.2.5 Lakh was to be made to the petitioner/family of the deceased but no action has been taken in respect thereto.

Learned Sr. DAG requests for an adjournment to get the aforementioned claim of the petitioner considered and decided as per rules applicable.

Adjourned to 22.10.2019.

Copy of decision on the aforementioned claim of the petitioner be placed on record by the next date.”

Counsel submits that repeated adjournments have been sought by the respondents over the last three and half years, but they have not been able to inform the Court as to whether the financial assistance has been paid.

I have heard counsel for the parties and examined the documents appended with the paper book with their able assistance.

The death of the bread-earner of the family of the petitioner, who was a regular Govt. employee is not in dispute. Petitioner's son was a minor when her husband died. Petitioner's request for his compassionate appointment was rejected after the notification of the 2003 Rules, on 04.03.2003. Rule 2, *ibid*, gives a choice to the dependents of the deceased Government employee to either opt for Ex-Gratia appointment on compassionate grounds or apply for Ex-Gratia compassionate financial assistance and lays down as under:-

“2. The object of the rules is to assist the family of a deceased employee in tiding over the emergency situation, resulting from the loss of the bread-earner by giving either of the following options:-

(i) ex-gratia appointment on compassionate grounds to a member of the family who was “completely dependent” on the deceased employee and is in extreme financial distress due to the loss of the deceased, namely, the Government employee who dies in “harness”.

(ii) ex-gratia compassionate financial assistance to the family of the deceased, over and above all other benefits like ex-gratia grant due to his family to be paid @ 2.5 lacs, in cases where the family of the deceased does not opt for ex-gratia employment.”

Para No.3 of the instructions dated 31st March, 2003 provides thus:-

“3. These rules shall also be applicable to those dependents of the deceased Govt. employee, whose cases are pending as on the date of coming into force of these rules. The cases already decided shall not be reopened.”

It is apparent from the above that the case of the petitioner had not been decided till the coming into force of the 2003 Rules. In the light of interim order passed by this Court, matter was re-examined. After affording personal hearing to the petitioner, by order dated 10.04.2013, Annexure R-1, passed during the pendency of the petition, authorities rejected her claim for grant of compassionate appointment to her son. Once the authorities were of the view that the petitioner's son is not entitled to compassionate appointment, it was required of them to process her case for grant of

compassionate financial assistance. Merely because the widow sought compassionate appointment for her ward and the claim was found to be unsustainable, does not mean that she is dis-entitled from seeking financial assistance. Therefore, the claim for financial assistance has to be acceded to.

What has really shocked the conscience of the Court is that despite the fact that the petitioner had applied for compassionate appointment in the year 1995, the authorities took eight years to decide and reject her case. Later petitioner was heard and second rejection order was passed in 2013. Hon'ble Supreme Court in a recent judgment delivered on 03.03.2023 in Civil Appeals Nos.8842-8855 of 2022 titled as '**The State of West Bengal Vs. Dababrata Tiwari and others**', has deprecated the practice of the authorities in delaying decision on the application for compassionate appointment. It has been held that:-

“14. However, we must sound a strong word of reproach directed at the authorities of the Appellant-State, about the manner in which the applications for compassionate appointment of hundreds of dependents have been dealt with. Much uncertainty looms around the scope, extent and beneficiaries of the various schemes formulated by the State for governing compassionate appointment and therefore, the concerned authorities are unable/unwilling to positively decide claims for compassionate appointment. This may have ultimately resulted in prejudice to the families of many Govt. employees dying in harness. Delay on the part of the

authorities of the State to decide claims for compassionate appointment would no doubt frustrate the very object of a scheme of compassionate appointment. Govt. officials are to act with sense of utmost pro-activeness and immediacy while deciding claims of compassionate appointment so as to ensure that wholesome object of scheme is fulfilled.”

Adverting to the objection raised by the State that the petitioner has not challenged the order dated 10.04.2013 (Annexure R-1) passed during the pendency of this petition, this Court is of the view that it would be travesty of law if after 28 years of death of her husband, the petitioner is compelled to initiate fresh round of litigation. Exercising the extra ordinary power vested in this Court under Article 226 of the Constitution of India and in order to do complete justice between the parties, impugned order dated 26.03.2003 (Annexure P-2) as well as order dated 10.04.2013 (Annexure R-1) are set aside and the respondents are directed to make the payment of compassionate financial assistance of Rs.2.5 lacs to the petitioner alongwith interest @ 6% per annum from the date order (Annexure P-3) was passed, in case the amount has not been paid so far.

Writ petition is disposed of.

March 13, 2023
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes