

CM No.15325 of 2023 in/and
CWP No.21305 of 2020 (O&M)

Neutral Citation No. 2023:PHHC:134926
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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107+248)

CM No.15325 of 2023 in/and
CWP No.21305 of 2020 (O&M)
Date of Decision : 17.10.2023

Anil Kumar Yadav

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No.15325 of 2023

Application is allowed.

Documents are taken on record.

CWP No.21305 of 2020

In the present petition, the grievance raised by the petitioner is that the respondents be directed to consider the petitioner under the Old Pension Scheme keeping in view of the facts and circumstances of the present case wherein, the direction was given by the competent Court of Law on 07.11.2005 according to which, the direction was given to appoint the petitioner forthwith which fact was prior to 01.01.2006.

Certain facts may be noticed for the correct appreciation of the issue in hand.

The father of the petitioner was working in the department of Education and while in service, he unfortunately died on 04.11.2001. The petitioner applied for ex-gratia appointment immediately after the death of his father but his claim was rejected by the department on 16.04.2004, which action was challenged by the petitioner by filing CWP No.3244 of 2005.

The writ petition filed by the petitioner was allowed by the Division Bench of this Court on 07.11.2005 in terms of another judgment passed in CWP No.11313 of 2004 titled as **Ashok Kumar Vs. State of Haryana and others** and direction was given to grant the petitioner the benefit of compassionate appointment forthwith.

Though, the direction was given to appoint the petitioner forthwith but the respondents took more than six months to implement the said order so as to appoint the petitioner vide order dated 28.04.2006 having endorsement dated 03.05.2006. Keeping in view the said delay, the petitioner has suffered prejudice as, the New Pension Scheme which has come into being w.e.f. 01.01.2006, which is being implemented upon the petitioner. The prayer of the petitioner is that once the direction was given to the department to appoint the petitioner forthwith much prior to 01.01.2006, the petitioner is entitled to be appointed under the Old Pension Scheme for all intents and purposes especially when there is an order passed by the competent Court of law.

The respondents have filed the reply in which, the respondents have stated that though, the claim of the petitioner was considered and

direction was given to the department to grant the petitioner the benefit of appointment, the process took time and therefore, as the actual appointment of the petitioner was after 01.01.2006, the New Pension Scheme has been made applicable upon the case of the petitioner which is perfectly valid and legal.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

The claim of the petitioner arose in the month of November, 2001 to get the compassionate appointment after the death of his father, who was serving in the Education department. To claim the appointment, the petitioner had raised a claim in December, 2001 itself. The position for the grant of appointment is to be seen keeping in view the date of the death of the employee which is November, 2001. Though, the respondents took three years time to consider the claim of the petitioner and then rejected the said claim in the year 2004 but the Division Bench of this Court set aside the said order of rejection of claim and gave direction to the department vide order dated 07.11.2005 to appoint the petitioner on compassionate basis forthwith. The said direction was also given prior to the implementation of the New Pension Scheme which came into being w.e.f. 01.01.2006. That being so, once the direction was given by this Court to appoint the petitioner forthwith on 07.11.2005, there was enough time with the respondents to process the claim of the petitioner and comply with the direction given by this Court prior to 01.01.2006. The delay which has occurred is not attributable to the petitioner but is attributable to the department only as they took six months time to implement the direction given by this Court dated 07.11.2005. Hence, the prejudice which has been

caused to the petitioner keeping in view the delay which is attributable to the department, the only remedy is that the petitioner needs to be considered under the Old Pension Scheme as, the direction to appoint him has already been given by the competent Court of law much prior to 01.01.2006, when the Old Pension Scheme was applicable.

Keeping in view the facts and circumstances of the present case, the direction is issued to the respondents to treat the petitioner under the Old Pension Scheme for all intents and purposes. It is made clear that whatever the deposits are required to be made by the petitioner, the same will be made by him along with statutory interest.

The present petition stands allowed.

October 17, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No