

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

**CWP No.7525 of 2017 (O&M)
Reserved on: 20.02.2023
Date of Decision: 23.03.2023**

Dharmo Devi

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Malik, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

Mr. Surinder Dalal, Advocate
for the respondent No.3.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the impugned resolution dated 01.06.2016 vide which the claim of the petitioner for financial assistance as well as for release of retiral benefits (gratuity etc.) after considering the revised pay scale w.e.f. 01.01.2006 has been rejected. The petitioner has further prayed for the issuance of a writ in the nature of mandamus directing the respondents to grant financial

assistance to the petitioner as per Haryana Compassionate Assistance to the dependant to the deceased Government Employees Rules, 2006 along with interest.

[2]. The husband of the petitioner was serving in Gajlana Co-operative Society Gajlana as a regular employee since 15.11.1982. There was no complaint against the husband of the petitioner in his entire service period. The husband of the petitioner died on 21.12.2007 while in service. The petitioner submitted a representation to the respondent-Department for grant of ex-gratia financial assistance in terms of the Haryana Compassionate Assistance to the dependant to the deceased Government Employees Rules, 2006.

[3]. Owing to the inaction on behalf of the respondents, the petitioner ultimately served a legal notice upon the respondents on 22.10.2012. Thereafter the petitioner filed CWP No.4338 of 2013 for granting financial assistance under the aforesaid policy of financial assistance. The said writ petition was disposed of vide order dated 12.04.2016 by observing that as per resolution dated 19.04.2008 passed by the respondent-Society, the payment of leave encashment amounting to Rs.1,02,691/- was granted to the petitioner after deducting the dues of the Society. In the written statement filed in the said writ petition, the respondents had taken a conscious decision vide

communication dated 29.08.2011 that the payment of Rs.2.50 lakhs to the PACS employees shall not be depending on the condition of accumulated profits available with the PACS. The Court further observed that in view of the aforesaid decision and the fact that the loan amount had already been recovered while releasing the gratuity and leave encashment to the petitioner and, therefore, the petition was disposed of by giving a direction to the Branch Manager of the respondent-Society/respondent No.2 to look into the legal notice dated 22.10.2012 and pass appropriate order in accordance with law, within a specified period.

[4]. The case of the petitioner was considered in the meeting of the respondent-Society on 01.06.2016 and was declined on the ground that the petitioner is not entitled for retiral benefits (gratuity) after considering the revised pay scale w.e.f. 01.01.2006 along with Ex-gratia compensation as per policy dated 01.08.2006. The amount due to the petitioner towards gratuity and leave encashment has already been disbursed as per rules.

[5]. Learned counsel for the petitioner submitted that vide letter dated 07.03.2007 issued by the Registrar, Co-op. Societies, Haryana, Panchkula/respondent No.2 it was held that all the pending cases regarding ex-gratia financial assistance

will be disposed of under new rules as per provisions of Rules, 2006 for providing Ex-gratia Financial Assistance to the dependents of Haryana Government employees. Vide the aforesaid letter Ex-gratia financial assistance on compassionate ground has been made available to the family members of deceased government employees and the letter was circulated to all the Sub-Registrars, Co-op. Societies in Haryana State, All Managing Directors, Central Co-operative Bank Ltd. in Haryana State and all the Assistant Registrars, Co-op. Societies in Haryana State. The respondent No.3/Society is governed by the Haryana State Supply and Marketing Cooperative Service (Common Cadre), Rule 1988. As per Rule 22(2)m, Haryana Government instructions issued for ex-gratia grant shall be applicable to the respondent No.3/Society. On the strength of aforesaid position, learned counsel for the petitioner submitted that the petitioner is covered under the financial ex-gratia notification dated 01.08.2006.

[6]. Learned counsel for the petitioner also by relying upon the order dated 10.08.2016 passed in **CWP No.5049 of 2013** titled **'Prem Devi vs. State of Haryana and others'** submitted that the husband of the said Prem Devi was working as a Driver in the Rewari Cooperative Marketing Society Ltd., Rewari and he died on 02.03.2009 in harness leaving behind his wife and

four minor children. In the written statement filed in the said writ petition, stand was taken by the respondent-Department that the services of the husband of the petitioner-Prem Devi were governed by the Haryana State Supply and Marketing Cooperative Service (Common Cadre) Rule 1988 and not by the Rules applicable to the Government Employees, therefore, Prem Devi was not entitled to the claim of ex-gratia assistance in terms of the Rules 2006.

[7]. The stand of the respondent-Society which was highlighted by way of resolution before the Court declining the grant of financial assistance was negated on the strength of letter dated 07.03.2007 issued by the Registrar Co-operative Societies. The writ petition was allowed with reference to number of precedents. It was also observed that the respondent-Society is controlled by the Registrar of Co-operative Societies, Haryana. It has its own Rules and if the Rules are violated while denying the compassionate financial assistance to the family of deceased-employee then this Court has got the jurisdiction to issue a writ to quash such an act. The writ petition was allowed and a direction was issued to the respondent-Society to provide financial assistance to the petitioner therein in view of Rules 2006 within a specified period along with interest.

[8]. Per contra, learned State counsel duly assisted by learned counsel for the respondent No.3 submitted that the writ is not maintainable against the respondent-Society as the State has no direct or indirect control over the affairs of the Society and has no pervasive control. The respondent-Society is not a State within the ambit of Article 12 of the Constitution of India. There is no violation of any act or Rule while declining the claim of the petitioner.

[9]. Learned State counsel further submitted that the husband of the petitioner was an employee of the Gajlana Co-operative Society, Gajlana on consolidated pay and he died on 21.12.2007. He was getting pay of Rs.7780/- per month and his services were governed by the Primary Co-operative Credit and Service Rule, 1992. Payment of Rs.1,02,691/- was made on account of gratuity/leave encashment vide resolution dated 19.04.2008 and further an amount of Rs.18,989/- was paid vide cheque dated 24.04.2016 to the petitioner as said amount was deducted from gratuity and leave encashment on account of some recovery against loan availed by the husband of the petitioner. It was considered by the Society that the service cannot be provided to the dependent of deceased and as per the instructions of the Government for want of any provision in the Rule of the Society. It was left open for the Registrar for

taking decision and making policy regarding the amount to be given to the dependents. The instructions dated 09.06.2011 issued by the Registrar, Co-operative Societies in the context of granting ex-gratia amount to the dependents of the deceased employees of the Society were in the context of society being in profit. In the subsequent letter dated 29.08.2011, the Registrar removed the conditions of availability of profits and funds and the instructions are prospective in nature. Since the instructions were not made applicable with retrospective effect, therefore, the same are not applicable to the petitioner as the husband of the petitioner died on 21.12.2007 before the instructions came into being.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. Evidently, the husband of the petitioner was regular employee of the respondent-Society since 15.11.1982, who died on 21.12.2007 while in service. The Registrar Co-operative Societies vide instructions dated 07.03.2007 has already communicated to the to all the Sub-Registrars, Co-op. Societies in Haryana State, all Managing Directors, Central Co-operative Bank Ltd. in Haryana State and all the Assistant Registrars, Co-operative Societies in Haryana State that the benefits of ex-gratia financial assistance on compassionate ground are

applicable to the family members of the deceased employee and all the pending cases regarding financial assistance are to be disposed of under the new Rules, 2006. At the time of death of husband of the petitioner, the Rules to grant compassionate assistance by way of ex-gratia financial assistance on compassionate grounds to the family members of the deceased employee are applicable and these Rules are known as the Haryana Compassionate Assistance to the dependants of deceased Government Employees, Rules 2006 which were made applicable to the Societies by the letter dated 07.03.2007 issued by the Registrar Co-operative Societies, Haryana.

[12]. Even the benefit has already been implemented qua the cases of number of similarly situated persons. The reference of which finds mention in the letter dated 26.08.2022 issued by the Assistant Registrar, Cooperative Societies, Loharu to one Amit Kumar son of the petitioner. In the said communication, Amit Kumar has been informed in respect of details of the cases wherein financial help was given to the number of persons. The stand of the respondent-Society has to be negated as there is provision for compassionate assistance which has to be governed specifically by Rule/Scheme providing such a facility. Since the Rule is in existence, therefore, no divergence can be made from applicability of the Rule in question for grant of

compassionate assistance.

[13]. For the reasons recorded hereinabove, this writ petition is allowed. The impugned order dated 01.06.2016 passed by the respondent No.3 is set aside. The respondents are directed to consider the case of the petitioner under the applicable rules and pass necessary order in terms of grant of financial assistance to the petitioner in accordance with law.

March 23, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No