

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

(235)

RSA-3444-2016

Date of Decision : 25.04.2023

Smt. Kamlesh Devi

...Appellant

Versus

Director General of Police, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Satinder Kumar Rana, Advocate and
Mr. Ashish Rana, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present regular second appeal has been filed challenging the judgment and decree of the trial court dated 26.05.2012 by which, the claim of the appellant-plaintiff for the grant of financial assistance under the Haryana Compassionate Assistance to the Dependents of the deceased Govt. Employee's Rules, 2006 (hereinafter referred to as '2006 Rules') has been rejected and the suit filed by the appellant-plaintiff was dismissed as well as the appeal filed against the order dated 26.05.2012, which was also dismissed vide judgment and decree of the lower appellate court dated 07.01.2016.

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

3. The husband of the appellant-plaintiff, namely, Naresh Kumar was working as a Constable in the Haryana Police and he, unfortunately,

died in a road accident while on duty on 17.02.2005. After his death, a claim was raised by the appellant-plaintiff for the grant of benefits to the legal heirs of the deceased employee as admissible under the Haryana Compassionate Assistance to the Dependents of the deceased Govt. Employee's Rules, 2003 (hereinafter referred to as '2003 Rules'), which were applicable at the time of the death. Under 2003 Rules, the ex-gratia amount to the tune of Rs. 2.5 lac was admissible in case the family of the deceased employee does not opt for the ex-gratia employment. The appellant-plaintiff applied for the appointment but was not granted the ex-gratia appointment.

4. Before any appointment could be given, 2003 Rules were amended by the Government of Haryana vide Notification dated 18.11.2005 and in the said Scheme also, the ex-gratia appointment was envisaged but the ex-gratia amount was enhanced from Rs. 2.5 lac to Rs. 5 lac. The claim of the appellant-plaintiff remained pending and 2006 Rules were framed in November, 2006 titled as Haryana Compassionate Assistance to the Dependents of the deceased Govt. Employee's Rules, 2006 by which the earlier rules of the year 2005 were repealed. In 2006 Rules, only the ex-gratia assistance was to be given but the families of the employees, who were eligible for the grant of relief under 2003 or 2005 Rules were given option either to continue with their claim under the said Rules or to opt for monthly financial assistance as envisaged under 2006 Rules. It was further mentioned that unless an option was exercised, all the pending cases of the ex-gratia assistance shall be covered under the 2006 Rules.

5. After the promulgation of 2006 Rules, the appellant-plaintiff claimed the benefit of monthly financial assistance under 2006 Rules, which

claim was also considered and approved but the same was not extended rather, in the year 2008, a sum of Rs. 2.5 lac as envisaged as ex-gratia financial assistance under 2003 Rules, was given to the appellant-plaintiff. Feeling aggrieved against the non-grant of monthly financial assistance as envisaged under 2006 Rules, the appellant-plaintiff filed a civil suit before the trial court claiming the benefit of monthly financial assistance under 2006 Rules. The trial Court dismissed the suit of the appellant-plaintiff vide order dated 26.05.2012 on the ground that once the death of husband of the appellant-plaintiff was in the year 2005 on which date, 2003 Rules were in operation, the benefit of Rs. 2.5 lac as ex-gratia financial assistance, as admissible under 2003 Rules, have already been extended hence, no interference is called for by the civil court.

6. The judgment and decree of the trial court dated 26.05.2012 was challenged before the lower appellate court, which was also dismissed vide order dated 07.01.2016, hence the present regular second appeal.

7. Learned counsel for the appellant-plaintiff argues that in the present case, the facts have not been appreciated in a manner required, especially that under 2006 Rules, as per Clause-VI, all the pending cases were to be treated under the new rules for the grant of monthly financial assistance unless and until the family claiming financial assistance, was also entitled under 2003 as well as 2005 Rules and also opts for the said benefit under either 2003 or 2005 Rules but as the appellant-plaintiff claimed the benefit under 2006 Rules, the same was perfectly valid and legal as per terms and conditions of 2006 Rules but has not been appreciated in a correct perspective by the courts below while dismissing the suit as well as the

appeal filed by the appellant-plaintiff.

8. Learned counsel for the respondents-defendants submits that once the appellant-plaintiff was entitled for the benefit under 2003 Rules keeping in view the death of the employee concerned, the said benefit has already been extended to her hence, no further grievance can be raised and the judgments and decrees of the courts below are perfectly valid and legal.

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

10. It may be noticed that at the time of the death of the husband of the appellant-plaintiff in the year 2005, 2003 Rules were in operation. Thereafter, the rules were amended in the year 2005 for the enhancement of the ex-gratia amount admissible to the family of the deceased employee from Rs. 2.5 lac to Rs. 5 lac. In the year 2006, 2005 Rules were re-appealed and in Clause-VI of 2006 Rules, it was mentioned that all the pending cases of ex-gratia financial assistance will be considered under 2006 Rules unless and until the claimants opt for the applicability of the repealed rules. It is the case of the appellant-plaintiff that she applied to be considered under 2006 Rules for the grant of monthly financial assistance as her claim remained pending with the Govt. upto the promulgation of 2006 Rules but without any valid justification a sum of Rs. 2.5 lac was extended to her as admissible under 2003 Rules.

11. Learned counsel for the respondents on the other hand submits that the appellant-plaintiff asked for the benefit under 2005 Rules, which was extended to her in the year 2008.

12. The contention of the learned State counsel cannot be presumed correct for the reason that in case the appellant-plaintiff had demanded the benefit under 2005 Rules, she would have been paid ex-gratia amount of Rs.

5 lac, which approval was applicable under 2005 Rules, whereas it is a conceded position that she was paid Rs. 2.5 lac, which is only envisaged under 2003 Rules. Further, once the appellant-plaintiff had already claimed the benefit under 2006 Rules by filing application, it was incumbent upon the respondent-department to consider her claim for the grant of monthly financial assistance under Clause-VI of 2006 Rules. It is a conceded position that the claim of the appellant-plaintiff has not been considered under 2006 Rules at all for the grant of monthly financial assistance despite the fact that upto the date of promulgation of 2006 Rules, claim of the appellant-plaintiff for the grant of ex-gratia financial assistance pending consideration of the recognize department.

13. Keeping in view the above, in the facts and circumstances of the present case, the judgments of the courts below declining the benefit of monthly financial assistance have been passed without appreciating the relevant provisions of 2006 Rules according to which, the pending cases are to be considered under 2006 Rules. Similar question of law has already been settled by the Hon'ble Supreme Court of India in Civil Appeal No. 2144 of 2016 titled as ***Haryana Vidyut Prasaran Nigam Ltd. and others Vs. Kelo Devi and another***, decided on 13.02.2020. Relevant paragraphs 12 and 14 of this judgment are as under :-

“12. The aforesaid clause thus gives an option to be governed by the earlier Rules or the latter Rules for the purposes of ex-gratia payment alone. Thus, if a case is covered by Rules of 2003, the beneficiaries may claim under those Rules for ex gratia payment or under 2006 Rules for ex-gratia payment and the same position would prevail qua 2005 Rules. Needless to add here that if the benefit has already been

claimed and granted under the earlier Rules, then that aspect cannot be revisited if the new Rules have come into force.

13. xxx xxx xxx xxx xxx xxx xxx

14. In our view the aforesaid Scheme is quite clear i.e. insofar as pending cases are concerned where benefit has not been taken under the earlier Schemes, those applications can be dealt with qua ex gratia payment under Rules of 2003 or 2005 or the current Rules of 2006 at the option of claimants.”

14. In view of the above, both judgments and decrees of the courts below are perverse to the 2006 Rules and cannot be allowed to be sustained and are accordingly set-aside.

15. The respondent-department is directed to look into the grant of benefit under 2006 Rules for the monthly financial assistance and an appropriate order be passed within a period of eight weeks of the receipt of copy of this order. In case, the appellant-plaintiff is found entitled for the benefit under 2006 Rules, the same be released to her along with arrears and interest to be computed by the department while passing the order.

16. The appeal filed by the appellant-plaintiff is allowed. Decree sheet be prepared accordingly.

April 25, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No