IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(235) **RSA-844-2016 (O&M)**
Date of Decision : May 15, 2023

Haryana Urban Development Authority HUDA and others
.. Appellants

Versus

Veranama and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jasmeet Singh Bedi, Advocate, for the appellants.

Mr. Ashutosh Kaushik, Advocate, for respondents No. 1 to 4.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2321-C-2016

As prayed for, the application is allowed.

RSA-844-2016

1. In the present Regular Second Appeal, the challenge is to the judgments and decrees of the Courts below by which, the claim of the respondents-plaintiffs has been allowed for the grant of benefits under Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003/2006.

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

3. One Smt. Shanti Devi was working with the HUDA as Baildar. Smt. Shanti had joined the Department in the year 1988 and was made

regular in the year 1997. While working on the post of Baildar, unfortunately she died on 24.05.2004. At the time of the death, Shanti Devi was survived by husband namely Rajendran, two daughters namely Veranama and Rajni and two sons namely Mani Kanda and Raj Kumar.

4. It is not a disputed fact that the service benefits in respect of the service rendered by Shanti Devi had already been given to her legal heirs and the only dispute is with regard to the grant of benefits, which are being claimed by the legal heirs under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006.

5. It may be noticed that at the time of death of Shanti Devi, a policy formulated by Haryana Government titled Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003, was in operation. There was an eligibility criteria given under the said Rules as to who are eligible to get the benefits under the said policy, which eligibility condition was mentioned in Rule 8 of 2003 Rules.

6. As per Rule 8-D of 2003 Rules, where a spouse of the deceased is already a Government servant, no other dependent shall be eligible for appointment or ex gratia compassionate financial assistance as envisaged under 2003 Rules. Keeping in view the fact that the spouse of Smt. Shanti Devi namely Rajendran was also in Government service, no benefit under the said 2003 Rules was extended to the dependents of Shanti Devi.

7. It is being alleged that in December, 2004, after the death of Shanti Devi, the husband of Shanti Devi namely Rajendran again got married in December 2004 after which date, the children of Smt. Shanti Devi raised a claim for the grant of benefits under 2003 Rules, which were

applicable even in December 2004. As per the averments in the suit, during the pendency of the raised claim, 2003 Rules were amended with 2005 Rules.

8. It is a conceded position that the eligibility condition as envisaged under Clause 8-D of 2003 Rules, remained the same even under 2005 Rules but only change was with regard to the benefits which were to be extended to the dependents of the deceased employee.

9. The 2005 Rules were further amended in the year 2006 for the grant of ex gratia financial assistance to the dependents of the deceased employee. It was mentioned in the 2006 Rules that the claim of the employees which has not been settled so far under 2003 or 2005 Rules, can be claimed under 2006 Rules. As the benefit claimed by the dependents of the deceased under 2006 Rules for the grant of ex gratia financial assistance, was not being accepted, the respondents-plaintiffs-dependents of the deceased filed a civil suit claiming the benefit of ex gratia financial assistance under 2006 Rules.

10. Keeping in view the facts and evidence which came on record, the trial Court came to the conclusion that once the claim raised by the respondent-plaintiff which was pending upto the date of promulgation of 2006 Rules, the claim of the dependents of the deceased employee was required to be considered under 2006 Rules and the suit filed was allowed with the direction to the appellant/respondent that option be given to the claimants either to claim financial assistance of Rs.2.5 lacs as ex gratia, as admissible under 2003 Rules or the last drawn pay of the deceased employee upto the date the deceased employee was to attain the age of superannuation, as envisaged under 2006 Rules and the Department was

directed to comply with the option so as to be exercised by the claimants.

11. Against the judgment and decree of the trial Court dated 19.01.2015, the appeal was preferred by the HUDA and even the cross-objections were raised by the claimants as, the interest on the benefits extended to them by the trial Court was not granted. The appeal filed by the HUDA was dismissed and the cross-objections filed by the claimants were allowed and 9% interest was given on the benefits which were to be extended to the claimant-plaintiffs as per the judgment and decree of the trial Court. Hence, the present Regular Second Appeal.

12. Learned counsel for the appellants argues that in the present case, keeping in view the settled principle of law that the instructions which were applicable at the time of the death of an employee, are to be implemented and in the present case, on the date of death of Smt. Shanti Devi, which took place in May 2004, 2003 Rules were applicable so as to decide the claim of the plaintiffs and the eligibility of the dependents of the deceased was to be assessed under the said 2003 Rules and only in case, they were eligible, benefits under 2003 Rules could be extended to them. But in the present case, the claimants did not had the eligibility as per 2003 Rules to be granted benefit of ex gratia, keeping in view the conceded fact that the husband of Smt. Shanti Devi was employed with HUDA itself hence, the respondents-plaintiffs were ineligible to get the benefits keeping in view Rule 8 (D) of 2003 Rules with regard to ex gratia financial assistance whereas, the Courts below have not considered the said aspects in the correct perspective and have held that as 2003 Rules have been subsequently amended, with Rules of 2006, 2006 Rules will come into play in the present case rather than the rules governing the aspect at the time of

the death of the employee i.e. 2003 Rules.

13. Learned counsel for the respondents-plaintiffs, on the other hand, submits that in the present case, the claim for the grant of ex gratia amount which was raised, was pending at the time when 2006 Rules came into force hence for the grant of benefit, 2006 Rules have rightly been considered by the Courts below to be applicable keeping in view Rule 6 of 2006 Rules according to which Rule, any claim though raised under 2003 or 2005 Rules but is pending consideration with the authorities concerned upto the date of promulgation of 2006 Rules, is to be considered under 2006 Rules, the plaintiffs were duly entitled for the benefits under 2006 Rules as granted by the Courts below, hence, the present Regular Second Appeal filed by the HUDA is liable to be dismissed.

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

15. The question which arises for determination is whether, in the facts and circumstances of the present case, 2003 Rules for the grant of ex gratia benefits to the dependent of a deceased employee will be available or 2006 Rules, which came into existence after the death of the employee, as made applicable by the Courts below, are to be taken into consideration.

16. Learned counsel for the respondents-plaintiffs though conceded that the claimants were ineligible under 2003 Rules which were applicable at the time of the death of Shanti Devi, but submitted that change of the circumstances have to be taken into account so as to adjudicate the eligibility of the applicant especially when spouse of Smt. Shanti Devi, had remarried in the year 2004.

17. The said argument of the learned counsel for the respondent-plaintiff cannot be accepted.

18. First of all, it may be noticed that the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules were enacted in the year 2003 and the object of the same has been provided in Rule 2, which is to mitigate the hardship or the emergent situation which has resulted due to the loss of the bread earner. In order to assist the family, the ex gratia financial assistance or compassionate appointment was to be offered. Further, Rule 8, which deals with the eligibility to get benefit under 2003 Rules states that where a spouse of the deceased is in Government service, no other dependent member shall be eligible for compassionate appointment or grant of ex gratia financial assistance. This was for the reason that the object of the rules was that where there was no bread earner in the family, financial benefit was to be given to the dependents of the deceased employee but where a family member i.e the spouse of the deceased is already in Government service, it cannot be said that the family is in such financial distress, which needs financial assistance or the compassionate appointment, hence the claim of the respondent-claimant is to be seen keeping in mind the objective of 2003 Rules.

19. Further, it is also a settled principle of law that the instructions which are applicable at the time of the death of employee is to be made applicable. In the present case, it is a conceded position that 2003 Rules were applicable at the time when Smt. Shanti died in May 2004. That being so, the claim of the respondents-plaintiffs was liable to be considered under 2003 Rules only. Once, under Clause 8-D, the family was found ineligible

to get the relief under 2003 Rules, it cannot be said that the non-grant of the benefit to the respondents-plaintiffs by the appellants-Department was in any way contrary to the rules governing the said aspect. The Courts below have totally misdirected themselves qua the applicability of 2006 Rules in the facts and circumstances of the present case. Once the eligibility under the basic rule is seen and the respondents-plaintiffs were not entitled for the benefit under the said 2003 Rule, the said benefit cannot be claimed under the subsequent Rules which are issued by the Government subsequent to the death.

20. Keeping in view the 2003 Rules, which was applicable at the time of the death of the deceased, coupled with the fact that once of the plaintiff i.e. Husband of the deceased was employed with the HUDA itself and was earning member of the family, the family of the deceased i.e. Respondent-plaintiff could not have raised a claim, keeping in view the eligibility clause so as to get benefit under 2003 Rules, not being eligible for the grant of ex gratia amount.

21. Once, the respondents-plaintiffs were ineligible to raise claim under 2003 Rules, which were applicable at the time of the death of the deceased, direction given by the Courts below that their claim subsists till the promulgation of 2006 Rules, is without appreciating the issue in correct perspective.

22. Concededly the claimants were not eligible to get any benefit under the ex gratia being the dependents of the deceased employee, whether, it can be said that the claim under 2003 Policy remained pending consideration with the Government till 2003 Rules were amended in the year 2005 and further amended in the year 2006. Pending claim can be

carried-forward to the amended Rules keeping in view Rule 6 of 2006 Rules but where, a claimant is not eligible under 2003 Rules, whether the said claim can be treated as subsisting claim under 2003 Rules so as to be considered under 2006 Rules. Once, it is a conceded fact that the respondents-plaintiffs were not eligible under 2003 Rules to claim ex gratia, it cannot be said that their claim was pending under 2006 Rules keeping in view Rule 6 of 2006 Rules hence, the facts and circumstances of the present case and the eligibility of the respondents-plaintiffs under 2003 Rules which was very material, has been ignored by the Courts below while granting the benefit in favour of the respondents-plaintiffs.

23. Even otherwise, the subsistence of their claim under 2003 Rules is being claimed on the ground that Rajendran i.e. husband of the deceased, got married again in December 2004. It may be noticed that Rajenderan, who is one of the plaintiff, had filed a civil suit claiming the benefit which has been allowed. Once, no such fact that Rajendran got married in the year 2004 was raised, the said fact could not have been taken into account by the Court below.

24. Further, learned counsel for the respondents-plaintiffs has not been able to point out any evidence which has come on record to show that Rajindran got married in December, 2004 so as to make children of the deceased Smt. Shanti Devi eligible for the grant of ex gratia benefits under 2003 Policy. In the absence of any evidence on record with regard to the second marriage of Rajendran in December 2004, it cannot be said that the children became eligible under 2003 Policy. Hence, the eligibility being claimed under 2003 Policy is totally misplaced and has not been proved on the basis of evidence which has come on record and hence, the same cannot

be accepted so as to grant the benefit under 2003 Rules or 2006 Rules as the case may be.

25. It may be noticed here that 2003 Rules were framed to help a family where the bread earner has lost life. In the present case, on the death of Smt. Shanti Devi, though she was earning but she was not the only bread earner of the family as her spouse namely Rajendran, who is also a plaintiff in the suit filed and was already employed with the HUDA and was earning. Hence the argument that the subsequent marriage of Rajendran in December 2004 will grant the eligibility to the children of the deceased-Shanti Devi, cannot be accepted.

26. Even otherwise, as per the judgment of the Full Bench of this Court in ***Krishna Kumari vs. State of Haryana 2012 (2) SCT 736,*** the eligibility of a applicant is to be seen on the date of death of an employee and not keeping in view the subsequent event. The subsequent event will not decide the eligibility. Policy which was applicable at the time of the death is to be seen for availing the benefits, hence, even as per the settled principle of law, the relevant date for considering the eligibility is the date of the death of the employee and the policy admissible therein, hence, as 2003 Policy was inforce, the direction given by the Court to grant the benefit under 2006 Rules is without any valid justification and is rather perverse to the settled principle of law.

27. Learned counsel for the respondents-plaintiffs has also cited a judgment in ***LPA No.1078 of 2012 titled as Haryana Vidyut Prasaran Nigam Limited and others vs. Smt. Kelo Devi and another, decided on 07.11.2012***. In the said case, it is a conceded position that the the claimants were eligible under all the Rules i.e. 2003, 2005 and 2006 Rules and their

application remained pending consideration and it was only under these circumstances, while interpreting Rule 6 of 2006 Rules according to which, any application of a claimant remains pending, the same was to be taken as a valid application under 2006 Rules for the grant of enhanced benefits that the benefit of 2006 Rules was granted in the said case.

28. The said judgment is not applicable in the present case for the reason that under 2003 Rules, it is a conceded position that the family was not eligible to be granted ex gratia financial assistance or ex gratia appointment hence, the reliance being placed by the learned counsel for the respondents on the said judgment is totally misplaced.

29. No other argument has been raised.

30. Keeping in view the facts and circumstances of the present case, as the Courts below have misdirected themselves in granting the benefits under 2006 Rules to the respondents-plaintiffs by treating them eligible without noticing the fact that under the basic policy of 2003 which was applicable at the time of death of Shanti Devi, it could not have been said that their application stood pending to be considered under 2006 Rules. Hence, the judgments of the Courts below are set aside and the suit filed by the respondents-plaintiffs is also dismissed.

31. The present appeal is allowed in above terms.

CM-2322-C-2016

As the main appeal has been allowed, present application also stands disposed of.

May 15, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes