IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(224) **CWP-36946-2019**
Date of Decision : August 28, 2023

Nisha Devi **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parth Goyal, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Ms. Himani Jain, Advocate, for
Mr. H.S. Oberoi, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present petition has been filed challenging the order dated 20.12.2011 (Annexure P-6) by which, the claim of the petitioner for compassionate financial assistance as per the Haryana Compassionate Assistance to the Dependent of the Deceased Government Employee, Rule 2003 as amended in the year 2005, has been declined.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner's husband namely Hisam Singh who was working as a JBT Teacher since the year 2004 unfortunately died on 15.06.2006. It may be noticed that as per the ex-gratia policy issued titled Haryana Compassionate Assistance to the Dependent of the Deceased

Government Employee Rules 2005 was applicable at the time of death of the husband of the petitioner. Within a period of one month of the death of the husband of the petitioner, the respondents issued new Rules titled as Haryana Compassionate Assistance to the Dependent of the Deceased Government Employee Rules 2006 and as per Rule 8 of 2006 Rules, 2005 Rules were repealed and claim which was pending under 2003/2005 Rules, were to be considered under new Rules of 2006.

4. Despite Rule 8 of 2006 Rules, the respondents considered the claim of the petitioner under 2003/2005 Rules and declined the grant of ex-gratia benefits on the ground that the late husband of the petitioner did not had three years service to his credit at the time of his death, which was a mandatory condition under 2003/2005 Rules, hence, no benefit of ex-gratia can be granted. The said denial of the benefit is under challenge in the present petition.

5. Learned counsel for the petitioner argues that in the present case, the respondents have rejected the claim of the petitioner without appreciating the actual facts and the rules applicable upon the petitioner for the grant of ex-gratia financial assistance. Learned counsel for the petitioner submits that the death of the husband of the petitioner took place on 15.06.2006 and within a period of fortnight new Rules titled Haryana Compassionate Assistance to the Dependent of the Deceased Government Employee Rules 2006 were promulgated. As per Rule 8 of the 2006 Rules, all the pending claims were to be considered under 2006 Rules and the eligibility provided under 2006 Rules were to be taken into account while adjudging the admissibility of a benefit under the ex-gratia scheme and as the claim of the petitioner for the grant of ex-gratia was not decided by the respondents till the promulgation of 2006 Rules, 2006 Rules were to be

made applicable in the case of petitioner. Learned counsel for the petitioner further submits that as per 2006 Rules, the eligibility was as provided under 1964 Pension Scheme wherein, the pension scheme is admissible to an employee, who had discharged duties for a period of one year and in the present case, as the husband of the petitioner was appointed on 12.07.2004 and had rendered more than one year of service upto 15.06.2006, he was eligible to be granted benefit under 2006 Rules for ex-gratia financial assistance.

6. Learned counsel for the respondents submits that in the present case, the claim of the petitioner has been considered keeping in view the death of an employee, which occurred prior to the promulgation of 2006 Rules. Learned counsel for the respondents does not dispute that as per Rule 8 of 2006 Rules, any claim which is pending upto date when 2006 Rules were notified on 01.08.2006, the same were to be considered under the new Rules of 2006.

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

8. Prima facie, the respondents considered the claim of the petitioner for the grant of ex-gratia under 2003/2005 Rules wrongly. The said Rules were not applicable qua the claim of the petitioner for the grant of ex-gratia as new Rules have been promulgated on 01.08.2006 within a period of fortnight after the death of the husband of the petitioner and upto the date when new Rules of 2006 were enforced, respondents had not decided the claim of the petitioner for the grant of ex-gratia amount, the claim of the petitioner for ex-gratia amount was pending when 2006 Rules came into operation. As per Rule 8 of 2006 Rules, any claim pending on the date when 2006 Rules were published, the same was to be considered

under 2006 Rules. Hence, the claim of the petitioner was required to be considered under 2006 Rules for the release of the ex-gratia amount and was wrongly considered by the respondents under repealed Rules of 2003/2005.

9. A bare perusal of 2006 Rules would show that as per the eligibility given in Rule 3, the eligible is same as given in Pension Scheme of 1964. Under the Pension Scheme of 1964, an employee having one year service to his credit is entitled for the grant of family pension. That being so, only one year service was required to be taken into account for adjudging the admissibility of a family to get ex-gratia amount under 2006 Rules and concededly, the husband of the petitioner had more than one year of service to his credit upto 15.06.2006 when he unfortunately died, hence, the petitioner is fully eligible to get the ex-gratia financial assistance under 2006 Rules.

10. Learned counsel for the respondents has not been able to dispute the fact that three years service was only required under the un-amended Rules of 2005 whereas, in the present case 2006 Rules were to be made applicable for adjudging the admissibility of the ex-gratia financial assistance.

11. Keeping in view the above, the claim of the petitioner is allowed. Petitioner is held entitled for the grant of ex-gratia financial assistance as envisaged under 2006 Rules.

12. Learned counsel for the respondents submits that as the petitioner has already been given family pension in the integrum, the said benefit needs to be adjusted while computing the entitlement of the petitioner under 2006 Rules for the grant of ex-gratia financial assistance.

13. Learned counsel for the petitioner raises no objection that the amount already received by the petitioner under the family pension scheme be adjusted while computing the entitlement of the petitioner under 2006 Rules for the grant of ex-gratia financial assistance and the remaining arrears be paid to the petitioner and after the expiry of the period for which the petitioner will be paid ex-gratia amount, the respondents be directed to restart the payment of family pension.

14. Ordered accordingly.

15. Keeping in view the above, the petition is allowed. Impugned order dated 20.12.2011 (Annexure P-6) is set aside. The respondents are directed to calculate the entitlement of the petitioner for the grant of ex-gratia financial assistance under 2006 Rules and grant the petitioner the said benefit within a period of two months from the receipt of certified copy of this order with the liberty that the amount already paid under the family pension scheme be adjusted towards the arrears.

16. Any civil miscellaneous application pending, if any, is also disposed of.

August 28, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes