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

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CWP-5767-2008 (O&M)

Date of decision: 25.09.2024

Jasveer Kaur

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Yagsimant Attri, Advocate for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

AMAN CHAUDHARY, J. (Oral)

1. Prayer made in the present petition for quashing the impugned orders dated 20.08.2007 and 13.02.2008, whereby claim of the petitioner for grant of ex-gratia appointment on compassionate grounds has been rejected.

2. The husband of the petitioner, who was working as Canal Petrol (Baildar) on regular basis, unfortunately passed away on 06.12.2004, whereupon she submitted an application for appointment on compassionate ground in May, 2005, for the post of Peon, which the respondents in para 2 of their written statement have admitted, however stating that certain deficiencies were found in the same and it was sent back to the Executive Engineer, Rori, W.S. Division, Sirsa-respondent No.3 for removal of the objections and further sent to Head Office for necessary action.

3. During the said period, the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006, came to be notified effective from 01.08.2006, withdrawing the previous 2003 and 2005

Policies and as such, the petitioner could not be considered for appointment,



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however, was entitled only for financial assistance of 2.5 lakhs/5 lakhs, that too upon exercise of an option, which she did not give.

4. When the claim is pending on coming in effect of new Rules, the case has to be considered in terms of those that were applicable at the time of death of the employee, which was held by the Division Bench of this Court in **Neeraj Malik vs. State of Haryana and others**¹, against which SLP² stands dismissed, squarely covering the present case, relevant paras thereof read thus:

“5. We have heard learned counsel for the parties at length and gone through the entire paper book carefully. The material question, which requires to be determined in the present case, is whether the rights of the petitioner for compassionate appointment could be governed by the Policy instructions of 1995 or by the rules framed in 2003, which came into existence much after the death of petitioner's father on 1.9.1998. The matter is not res integra. The same question had cropped up in the case of Jai Ram (supra). In the said case father of Jai Ram had died on 24.8.2002. His son and mother had moved an application dated 3.9.2002 for appointment on compassionate grounds. Despite recommendations of all the competent authorities their claim was rejected on the basis of Rule 3(d)(iii) of 2003 Rules, which prohibited the grant of compassionate appointment in case the deceased Government employee had crossed the age of 55 years. The claim of Jai Ram had been kept pending for an unreasonable long period. It was held in para 7 of the judgment as follows:-

“.....The respondents cannot be permitted to take advantage of their own wrong. The petitioner had become eligible for being appointed on compassionate ground on the death of his father on 24.8.2002. The necessary application was made on 3.9.2002 P-1). It was duly recommended by the competent authorities also. There was no justification as to why the petitioner could not have been appointed within a short period of time. The very purpose of compassionate appointment is to render assistance to the family whose sole bread winner has died. Clause (vii) of the instructions dated 8.5.1995 (Annexure P-5) provides as under:
(vii) All cases of ex-gratia appointment shall be processed and decided by the Heads of Departments within three months of the receipt of the application.”

¹ CWP-6061-2006, decided on 18.08.2006.

² SLP-18972-2006, decided on 04.05.2011.



from the above extract of the instructions, it becomes clear that Heads of Departments were required to process and decide the claims of appointment on compassionate ground within a period of three months. Had the claim of the petitioner been considered within three months of the receipt of the application, the 2003 Rules would not have been applicable. These rules were promulgated by a Circular dated 31.3.2003 and were adopted by the respondent no.1 in its meeting held on 26.5.2003. We are of the considered opinion that the impugned order (Annexure P-7) dated 3.10.2003 is liable to be quashed on the short ground that the claim of the petitioner had to be considered under the instructions dated 8.5.1995.....

6. This view is similar to the one expressed by Hon'ble the Supreme Court in the case of Smt. Sushma Gosain and others v. Union of India and others, AIR 1989 Supreme Court 1976, wherein it was held as follows:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant

7. When the petitioner had approached this Court earlier, a specific direction was issued to the respondents to consider the case of the petitioner in the light of Jai Ram's case (supra). We deprecate the approach adopted by the Transport Commissioner who while passing impugned order dated 4.4.2006 (Annexure P-13) has contravened the ratio of the judgment in Jai Ram's case (supra) (Annexure P-10). It defies ignorance. A perusal of the order dated 4.4.2006 (Annexure P-13) clearly reflects that respondent No. 2 has tried to by-pass and avoid the directions issued by this Court and had made an attempt to circumvent the law laid down in Jai Ram's case (supra). Respondent No. 2 has considered the case of the petitioner as per 2003 Rules. Instead of understanding the ratio of the judgment in Jai Ram's case which has laid down that the case of the petitioner is to be governed by the instructions of 1995, respondent No. 2 has entered into controversy of comparison of facts in the case of the petitioner and that of Jai Ram's case while preparing a comparative table. It would be apposite to refer to the observations made in the impugned order dated 4.4.2006 which reads as follows:-



“.....The case of the applicant was kept in waiting list till the new rules came into force. After coming into force of new rules on 31.3.2003 as the orders were received that all the pending cases will also be decided as per new rules, we returned the case of the applicant for compassionate appointment to the General Manager after removing his name from the waiting list and directed the General Manager to give financial assistance of Rs. 2.50 lacs to the applicant because as per new rules the waiting list will survive only for 3 years from the date of death of the employee.”

8. The above said observations reflected the lack of sense of interpretation of judicial orders and an attempt to abuse the process of law. It is surprising as to how respondent. No. 2 could apply the provisions of 2003 Rules for rejecting the claim of the petitioner for compassionate appointment when Jai Ram's case (supra) specifically prohibited the respondents from considering the case of the petitioner under 2003 Rules.

9. For the reasons aforementioned the impugned order dated 4.4.2006 is held to be illegal and contrary to the ratio of the ruling in Jai Ram's case as well as the judgment of Hon'ble the Supreme Court in Smt. Sushma Gosain and others (supra). Thus we set aside the same. The writ petition is allowed and the respondents are again directed to consider the case of the petitioner in the light of instructions Annexures P-2 and P-3 as has been held by this Court Jai Ram's case (supra). The needful shall be done within a period of three months from the date of receipt of certified copy of this order. The petitioner shall also be entitled to costs as he has been unnecessarily dragged to file petition, which we quantify at Rs. 10,000/-.”

5. Hon'ble the Supreme Court in **The State of Madhya Pradesh and others vs. Ashish Awasthi**³, held that claim for compassionate appointment must be decided only on the basis of scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into, relevant paras whereof read thus:

“6. In Indian Bank v. Promila [Indian Bank v. Promila, (2020) 2 SCC 729 : (2020) 1 SCC (L&S) 312] , it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view



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has been taken by this Court in State of M.P. v. Amit Shrivastava [State of M.P. v. Amit Shrivastava, (2020) 10 SCC 496 : (2021) 1 SCC (L&S) 68] . It is required to be noted that in Amit Shrivastava [State of M.P. v. Amit Shrivastava, (2020) 10 SCC 496 : (2021) 1 SCC (L&S) 68] the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order [Ashish Awasthi v. State of M.P., 2018 SCC OnLine MP 1824] passed by the Division Bench is unsustainable and deserves to be quashed and set aside.”

6. Learned State counsel is unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

7. In view of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Neeraj Malik** (supra).

(AMAN CHAUDHARY)
JUDGE

25.09.2024
ashok

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No