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

CWP-15302-2012
Date of Decision: 12.12.2024

SANTOSH DEVI

…PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

… RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. P.L. Verma, Advocate
for the petitioner.

Mr. K. K. Chahal, Additional A.G., Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed seeking a writ of *certiorari* quashing the order dated 12.04.2012, whereby ex-gratia monthly financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'the 2006 Rules') has been denied to the petitioner; and further, a writ of *mandamus* has been sought directing the respondents to grant the petitioner monthly financial assistance for twelve years as per the Rules.

2. As per facts, the petitioner's husband, born on 01.06.1960, was appointed as Science Master in the School Education Department on 26.11.1983. He unfortunately died while in service on 09.06.2005, leaving behind the petitioner/widow and two minor sons; at that time, he was posted

at Government High School, Garhi, Bajidpur, Gurugram. After his death, the petitioner requested the Department for ex-gratia assistance and compassionate appointment to her son Rahul, who was born on 14.01.1991. Before any decision on her request could be taken, the Government notified the 2006 Rules for giving financial assistance to the dependents of deceased employees, and rejected the petitioner's case for compassionate appointment on the ground that the Rules did not provide for it. She was, therefore, asked to submit a proforma in terms of the 2006 Rules for financial assistance of ₹2.5 lacs.

2.1 Since at the time of death the deceased was above thirty-five years and less than forty-eight years of age, the petitioner became entitled to receive monthly financial assistance in terms of Rule 5(1) (b) of the 2006 Rules for twelve years equal to the monthly pay and other allowances that would have been drawn by the deceased employee. However, her representation/legal notice in that regard was rejected, vide impugned order dated 12.04.2012, on the ground that financial assistance was not admissible as she had already been getting family pension.

3. In this factual position, learned counsel for the petitioner contends that the rejection is *per se* illegal, as the petitioner is entitled to monthly financial assistance in terms of the 2006 Rules which provide that all pending cases of ex-gratia assistance at the time of notification of these Rules will be covered thereunder. Accordingly, the claim could not have been rejected on the ground that the petitioner was drawing family pension.

4. *Per contra*, learned State counsel contends that the claim has been rightly rejected in terms of clear stipulation in Rule 5 (2) of the 2006 Rules that a family shall be eligible to receive family pension only after the period during which it is receiving financial assistance, gets completed. This has also been clarified by the Government on 16.01.2009 that in those cases where Pension Payment Order/Gratuity Payment Order (PPO/GPO) has been issued prior to 01.08.2006, i.e., the date on which the 2006 Rules were made applicable, these Rules will not apply. And the petitioner un-disputedly had been sanctioned family pension prior to 01.08.2006.

5. Submissions made by learned counsel for the parties have been considered.

6. The petitioner's husband admittedly died in harness on 09.06.2005, when he was between thirty-five to forty-eight years of age. On that account, the petitioner had been sanctioned family pension. However, before her request for ex-gratia assistance and compassionate appointment to her minor son under the 2005 Rules could be finally decided, the Government notified the 2006 Rules with effect from 01.08.2006. And the case for compassionate appointment, as also for monthly financial assistance under the new Rules, was rejected in terms therewith on the ground that she had already been sanctioned family pension prior to notification of the Rules. In the light of these facts, the issue arising for consideration is, '*whether the petitioner is entitled to compassionate financial assistance in terms of the 2006 Rules, despite having been sanctioned family pension on account of her husband's demise in harness.'*

6.1 To decide the issue, it is apt to refer to Rules 5 and 6 of the 2006 Rules, which are as under:

> 5. (1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim.-
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> (a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years;
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> (b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years;
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> (c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.
>
> (2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.
>
> (3) to (5) xxx xxx xxx
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> 6. All pending cases of ex-gratia assistance shall be covered under the new rules. The calculation of the period and payment shall be made to such cases from the date of notification of these rules. However, the families will have the option to opt for the lump sum ex-gratia grant provided in the Rules, 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under the Haryana Compassionate

Assistance to the Dependents of the Deceased Government Employees Rules, 2006.

6.2 A bare perusal of these Rules shows that on death of a government employee, his/her family will continue to receive the same pay and allowances that were last drawn by the deceased, as financial assistance. As per sub-clause (a) to sub-rule (1) to Rule 5, in case at the time of death the employee had not attained the age of thirty-five years, his family would be entitled to financial assistance for fifteen years; as per sub-clause (b), in case an employee at the time of death was above thirty-five years and less than forty-eight years of age, the family would get financial assistance for a period of twelve years or till the employee would have retired on attaining the age of superannuation, whichever was less. And financial assistance for a period of seven years or till the retirement of deceased employee, whichever was less, would be admissible in case an employee had attained the age of forty-eight years at the time of death. Sub-rule 2 provides that the family would be entitled to receive family pension as per normal rules only after completion of the period of financial assistance. Further, Rule 6 provides that all pending cases of lump sum ex-gratia grant under the 2003 and 2005 Rules shall be covered under the 2006 Rules for payment of monthly financial assistance thereunder. However, it will be payable from the date of notification of the 2006 Rules; at the same time, the family has been provided an option to opt for lump sum ex-gratia grant provided under the Rules of 2003 or 2005 *in lieu* of monthly financial assistance under the 2006 Rules.

6.3. Undisputedly, at the time of notification of the 2006 Rules on 01.08.2006, the petitioner’s case for payment of lump sum ex-gratia assistance/grant of ₹2.5 lacs was pending consideration under the then existing 2005 Rules. Resultantly, as per Rule 6 the Department was required to consider it for monthly financial assistance under the new rules- the 2006 Rules, which had been made applicable to the pending cases seeking one-time financial grant under the old Rules. And in terms therewith, before so considering, she was required to be given an option whether she wanted to opt for lump sum ex-gratia grant. Instead of doing so, the respondents while rejecting her case for compassionate appointment, straightway directed her to submit a proforma for financial assistance of ₹2.5 lacs. This is violation of the mandate of the 2006 Rules, and consequently unsustainable. The mandate was to consider her case for the benefit under the new Rules, provided she had chosen not to claim benefit under the old Rules; instead, the respondents on their own, without giving an option to the petitioner, considered her case under the old Rules by directing her to submit documents for release of one-time lump sum grant which fell foul of Rule 6 of the 2006 Rules. When she herself requested to sanction the monthly financial assistance under the new Rules, it was also declined vide the impugned order dated 12.04.2012, in derogation of the 2006 Rules.

6.4. Further, the reason assigned for rejecting the petitioner’s case for the benefit of monthly financial assistance under the 2006 Rules is, grant of family pension to her prior to notification of these Rules. This is also not sustainable as grant of family pension does not create any bar upon her to get monthly financial assistance under the 2006 Rules. Rule 5(2) only stipulates that an applicant who has been released monthly financial assistance will be eligible to get family pension only after completion of the period of financial assistance in terms of the 2006 Rules. However, the financial assistance was given to the petitioner despite her entitlement under Rule 5, as discussed hereinabove, and the family pension had been sanctioned to her prior to notification of the 2006 Rules. Neither the impugned order nor the written statement refer to any provision in these Rules preventing release of monthly financial assistance to an applicant who has been given family pension prior to notification of the Rules. In this situation, one's right to get family pension under pension rules as well as financial assistance under the 2006 Rules needs to be synthesised and harmoniously construed. Accordingly, it is held that in case an applicant, who is getting family pension prior to notification of the 2006 Rules, opts to get monthly financial assistance under the 2006 Rules, he/she will not be entitled to family pension for the duration of financial assistance. Pension will remain suspended during subsistence of financial assistance only to be restored thereafter for the residual period of entitlement. The restored pension will be at the rate admissible on the date of restoration, with notional benefits for the period of hiatus. This would give effect to the provisions of Rule 5 (2) read with Rule 6 of the 2006 Rules.

6.5. Accordingly, the petitioner, who wishes to be paid monthly financial assistance under the 2006 Rules, is held entitled to the same, subject to her not getting family pension for the duration of financial assistance. The pension will be restored only for the residual period of entitlement, after the period of financial assistance gets over.

7. In view of the discussion, the petition is allowed and the impugned order, dated 12.04.2012, is set aside. The respondents are directed to consider and grant monthly financial assistance to the petitioner in the aforementioned terms as per entitlement, and release the same or arrears thereof, as the case may be, with interest at the rate of six per cent per annum from the due date till the date of actual payment. The directions are to be carried out within four weeks of receiving a certified copy of this order.

7.1. It is also clarified that as the petitioner is not entitled to get family pension during the period of monthly financial assistance, the amount already paid to her by way of family pension shall be deducted/adjusted against the monthly financial assistance to be paid in terms of this order.

7.2. In the facts and circumstances of the case, there shall be no order as to costs.

8. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(TRIBHUVAN DAHIYA)
JUDGE

12.12.2024
Seema

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*