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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4433-2017
Date of decision: 12.03.2024

NARAJI DEVI

...Petitioner

VERSUS

U.H.B.V.N. LTD. & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Naveen Daryal, Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for the respondents.

****

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 08.01.2015 (Annexure P-10), by which the claim of the petitioner for Financial Assistance as per Government instructions dated 01.08.2006 (Annexure P-8) has been rejected and further to issue a writ in the nature of *mandamus* directing the respondents to grant the ex-gratia employment to the petitioner after the death of her husband as per the Haryana Compassionate Assistance of Dependent Deceased Government Employee Rules, 2003, along with all consequential benefits.

2. The brief facts of the present case are that the husband of the petitioner, namely, Shri Ram s/o Ram Samujh worked as an Assistant Driller in

the Haryana State Minor Irrigation and Tubewells Corporation (hereinafter referred to as HSMITC). While he was working in the aforesaid HSMITC, he along with some of the other employees were retrenched on 30.07.2002 and there were various other Boards, Corporations etc. where the retrenchment had taken place during that time. In order to adjust the employees, who were retrenched by the various Boards, Corporations etc., the Government of Haryana took a policy decision to grant re-employment to the regular retrenched employees in Group-C and Group-D category of various Boards, Corporations, Public Sector Undertaking etc. who were retrenched during the period from 01.03.2000 to 01.03.2005 against the vacancies of direct recruitment of Group-C and Group-D category available in the Board/Corporations/Public Sector Undertaking/Co-federations/Urban Local Bodies/Panchayati Raj including the departments of the State of Haryana within a period of six months. In this regard, the State of Haryana in the Department of General Administration issued a Notification dated 21.06.2006 vide Annexure P-2 under Article 309 of the Constitution of India. The relevant portion of the aforesaid Scheme/Notification is reproduced as under:-

HARYANA GOVERNMENT

GENERAL ADMINISTRATION DEPARTMENT

Notification

The 21st June, 2006

> ***No. GSR 13/Const./Art. 309/2006.-*** *In pursuance of the provisions as contained in article 309 of the Constitution of India, the Governor of Haryana hereby constitutes a committee consisting of the following officers, to oversee the implementation of the following scheme and to appoint by way of adjustment the retrenched employees of Boards/Corporations/Public Sector*

Undertakings/Cooperative Federations etc including Government Departments, namely:-

1.	*Chief Secretary to Government, Haryana.*	*: Chairman*
2.	*Financial Commissioner and Principal Secretary to Government, Haryana, Finance Department.*	*: Member*
3.	*Financial Commissioner and Principal Secretary to Government, Haryana, Coordination Department.*	*: Member*
4.	*Legal Remembrancer and Secretary to Government, Member Haryana, Law and Legislative Department.*	*: Member*

Scheme

The scheme is regarding re-employment of regular retrenched Group C and D employees of Boards/Corporations/Public Sector Undertakings etc., who were retrenched during the period from 1.3.2000 to 1.3.2005 against the vacancies of direct recruitment of Group C and D available in the Boards/Corporations/ Public Sector Undertaking/ Co-federations/Urban Local Bodies/Panchayati Raj including the departments of the State Government within a period of six months.

XXX---XXX---XXX

5. The adjustment of employees retrenched from Boards/Corporations/Public Sector Undertakings including Co-operative Federations would be treated as a special case in itself in the public interest. The adjustment of retrenched employees shall be at the discretion of the Government and such employees will have no legal right in this regard. Therefore, all Departments/Boards/ State Public Sector Undertakings and other Government organizations would send a requisition for the number of posts to be filled up from amongst the retrenched employees to a Screening Committee to be constituted for the purpose.

6. The adjustment of the employees shall be as a one time measure.

XXX---XXX---XXX

3. The husband of the petitioner was also retrenched from the aforesaid HSMITC and he also gave a representation (Annexure P-3) in this regard for considering his name as per the aforesaid Policy of the Government of Haryana. Thereafter, vide Annexure P-4, the Uttar Haryana Bijli Vitran Nigam Limited, which is a Public Sector Undertaking, issued an appointment letter to the husband of the petitioner to the post of Helper Grade-II dated 27.10.2006. The aforesaid letter of appointment was issued in terms of the aforesaid Notification of the Government dated 21.06.2006 (Annexure P-2) and it has been so specifically incorporated in the aforesaid letter of appointment also. In the aforesaid letter of appointment, it was specifically stated that the husband of the petitioner is offered appointment against a temporary post of Helper Grade-II in the pay scale of Rs.2650/4000 plus usual allowances as may be sanctioned by the Nigam from time to time and the offer of appointment was purely on temporary basis and he was to be placed on probation for a period of 2 years, which may further be extended for a period of 1 year in case the work is not found to be satisfactory. The relevant portion of the aforesaid appointment letter (Annexure P-4) is reproduced as under:-

From
Xen/Workshops,
UHBVNL, Dhulkote.
To
Sh. Shri Ram S/o Ram Samujh
1191, Gali No.5, Shivaji Colony
Hansi Road, Karnal.

Memo No.
Dated:

Sub: Appointment of the post of Helper Gr-II.

In terms of Government Haryana General Administrative Deptt, Notification No.GSR

> *13/Const/Art.309/2006, dated 21 June 2006 and recommendation made vide memo No ……………………...... dated …………………… you are hereby offered an appointment against a temporary post of Helper Gr-Il in the pay scale of Rs.2650/4000 plus usual allowances as may be sanctioned by the Nigam from time to time.*
>
> *xxx-xxx-xxx-xxx*
>
> *2. It should be clearly understood that this offer of appointment is on a purely temporary basis. Consequently your services can be terminated without notice whenever there is no vacancy against which you can be retained.*
>
> *xxx-xxx-xxx-xxx*
>
> *4. You will be on probation for a period of two years, which may further be extended for period of one year in case your work on conduct is not found satisfactory during the period of probation; your services are liable to be terminated forthwith without assigning any reason.*
>
> *xxx-xxx-xxx-xxx*

4. Thereafter, the husband of the petitioner joined the respondent-Nigam, but unfortunately he died on 27.07.2007 i.e. after about 9 months while he was in service. Thereafter, the petitioner who is the wife of the aforesaid employee represented to the respondent-Nigam for release of family pension/GPF/ex-gratia/DCRG/leave encashment and other dues of her husband and also furnished the requisite affidavit in this regard vide Annexure P-5. The son of the petitioner also furnished an affidavit with regard to the relinquishment of his claim since the petitioner was the widow and she was entitled for the same. The petitioner thereafter, moved a representation before the respondent-Nigam vide Annexure P-6 for grant of ex-gratia employment and also for financial assistance in terms of the Policy dated 01.08.2006

(Annexure P-8). Thereafter, a legal notice was also served in this regard vide Annexure P-7 but no action was taken by the respondent-Nigam and consequently, the petitioner filed a writ petition before this Court bearing No.*CWP 22187-2014*, titled as *Smt. Naraji Devi versus Uttar Haryana Bijli Vitran Nigam Limited and others* and the said writ petition was disposed of by a Coordinate Bench of this Court on 31.10.2014 with a direction to the Managing Director, UHBVNL, Panchkula to look into the matter and consider the grievance of the petitioner raised in the legal notice and pass an appropriate order in accordance with law. Thereafter, vide Annexure P-10, the impugned order dated 08.01.2015 was passed by the Managing Director, UHBVNL, Panchkula, whereby the claim of the petitioner has been rejected for grant of Financial Assistance in terms of the aforesaid Policy/Notification issued by the Government of Haryana dated 01.08.2006 (Annexure P-8).

5. Learned counsel for the petitioner submitted that the aforesaid impugned order dated 08.01.2015 (Annexure P-10) is liable to be set aside since the said order is against the Policy/Notification of the Government (Annexure P-8) and the reasoning given in the aforesaid order is also perverse and arbitrary. He further submitted that as per the aforesaid impugned order, it has been so stated by the Managing Director of the respondent-Nigam that the petitioner was not entitled to family pension or any financial assistance in terms of the Policy dated 01.08.2006 (Annexure P-8) because later on vide letter dated 09.05.2008, which has been issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department (Annexure R-3/3), it has been clarified by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department that the

retrenched employees who got retiral/pensionary benefits from their previous offices such as MITC and other Corporations and were appointed in service on compassionate grounds as per the decision taken by the Government are not eligible for any pensionary benefits/financial assistance. He further submitted that the aforesaid letter dated 09.05.2008 (Annexure R-3/3), which has been issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department is in the nature of a clarificatory letter, which is clear from the subject of the aforesaid letter but the same was contrary to the Notification dated 21.06.2006 (Annexure P-2) which has been issued under Article 309 of the Constitution of India. He also submitted that such kind of administrative letters or instructions, if they are inconsistent with the statutory provisions or notifications or rules framed under Article 309 of the Constitution of India, then they are liable to be ignored since the present letter, which is in the nature of an administrative order, is contrary to the aforesaid Notification and not to supplement the aforesaid Notification. He further submitted that a letter issued by any administrative authority can only supplement but cannot supplant the statutory rules and notifications. He submitted that Notification Annexure P-2 was beneficial in nature as it clearly provided that it was a one time measure and in public interest.

6. Learned counsel for the petitioner further submitted that another stand has been taken by the respondent-Nigam that the petitioner was not entitled for grant of benefit of financial assistance as per Policy/Notification dated 01.08.2006 (Annexure P-8) because the husband of the petitioner was appointed on a temporary post and as per Rule 3 of the aforesaid Notification, the eligibility to receive financial assistance is restricted only as per the

provision in the pension/Family Pension Scheme, 1964. He further submitted that as per the stand taken by the respondent-Nigam now in the present petition, the husband of the petitioner was not covered under the aforesaid eligibility clause because as per the Family Pension Scheme of 1964, the husband of the petitioner should have been on a regular post and not on temporary employment. He further submitted that such a reasoning given by the respondent-Nigam is not sustainable in view of the fact that the husband of the petitioner was appointed, although on a temporary post, but by way of a regular appointment. In this regard, he again referred to Notification dated 21.06.2006 (Annexure P-2), which was issued under Article 309 of the Constitution of India, wherein the Scheme was framed for the absorption of the retrenched employees, which is the basic Scheme and while referring to the aforesaid Scheme itself, he submitted that it has been so expressly stated in the Scheme that the Scheme is regarding re-employment of regular retrenched Group-C and Group-D employees of Boards/Corporations etc. and the petitioner was working as a regular retrenched employee of HSMITC and it is further stated in the Scheme that the retrenched employees are to be employed under the vacancies of direct recruitment available in the Boards/Corporations etc. and it is not disputed even by the respondent-Nigam that the petitioner was appointed in pursuance of the aforesaid Scheme as Helper Grade-II vide Annexure P-4 against the post meant for direct recruitment. While, again referring to Annexure P-4, he submitted that since it was a fresh appointment even a probation period was kept for the husband of the petitioner and although the nomenclature used in the aforesaid appointment letter was against temporary post, but he was a regular employee in the earlier Corporation i.e. HSMITC and in pursuance of the aforesaid Notification, he has been appointed against a regular post meant for direct recruitment and even a period of 2 years' probation was kept and therefore, it cannot be said that the petitioner was holding any ad hoc or any other temporary arrangement. He further submitted that a perusal of the appointment letter (Annexure P-4) would show that there was no tenure of appointment mentioned. He further submitted that had it been a case of an ad hoc or a temporary arrangement, then tenure appointment is always made but in the present case, he was appointed on regular basis although stated to be on a temporary post and kept on probation and even granted a pay scale of Rs.2650/4000 plus usual allowances and therefore, now the respondent-Nigam cannot turn around and say that the petitioner who is a widow is not entitled for grant of financial benefits in terms of the Policy only because of the aforesaid reason.

7. Learned counsel for the petitioner has also referred to the Family Pension Scheme, 1964, which is under Rule 6.17 of the Punjab Civil Services Rules, Volume-II and while referring to the aforesaid provision, he submitted that even the aforesaid Rule so provides that in case of death while in service, the Government employee should have completed a minimum period of 1 year of continuous service without break but there is a proviso to the aforesaid provision which states that the condition of completing minimum period of 1 year of continuous service will not be applicable in case of a Government employee, who has been medically examined and declared fit for entry into Government service and it is further so provided that the term "one year continuous service" used in Clause (i) is inclusive of permanent and temporary service in a pensionable establishment. He further submitted that in the present

case, when the husband of the petitioner was re-employed in the respondent-Nigam, then he was medically examined by the CMO and even if in the respondent-Nigam, he did not complete one year of continuous service and the husband of the petitioner died after about 9 months, then also he will be covered by the aforesaid proviso which states that in case the employee was medically examined, then the aforesaid period of one year will not apply for the application of Family Pension Scheme. In this regard, he referred to para No.4 of the present writ petition, wherein he specifically stated that when the husband of the petitioner was appointed in the respondent-Nigam vide Annexure P-4, then he was medically examined by the CMO. He further referred to the written statement which has been filed by the respondent-Nigam in which the aforesaid averment made in para No.4 of the present writ petition has not been controverted by the respondent-Nigam and therefore, it will be deemed to have been admitted. He further submitted that once the factual position is deemed to be admitted by the respondent-Nigam that he was medically examined, then even the aforesaid minimum period of one year will not apply to the husband of the petitioner since he will be covered by the aforesaid proviso. He further submitted that even otherwise also, the plea taken by the respondent-Nigam that the husband of the petitioner was in a temporary service would also not apply because of Clause (ii) which states that one year continuous service includes temporary and permanent service in a pensionable establishment. The aforesaid relevant portion of Rule 6.17 of the Punjab Civil Services Rules, Volume-II, is reproduced as under:-

> *(2) The Scheme will be administered as below:–*
>
> *(i) The family pension will be admissible in case of death while in service or after retirement if at the time of*

> *death the retired Government employee was in receipt of a compensation, invalid, retiring or superannuation pension.*
>
> *In case of death while in service, the Government employee should have completed a minimum period of one year of continuous service, without break. The family pension will not be admissible in cases of death after retirement, if the retired employee at the time of death was in receipt of gratuity only:*
>
> *Provided that the condition of completing a minimum period of one year of continuous service will not be applicable in the case of Government employee who has been medically examined and declared fit for entry into Government service.*
>
> *(ii) The term "one year continuous service" used in clause (i) is inclusive of permanent and temporary service in a pensionable establishment and any period of leave including extraordinary leave but does not include Boy Service and suspension period unless that is regularised by the competent authority.*

8. Learned counsel for the petitioner also submitted that in view of the aforesaid position, the impugned order (Annexure P-10) is liable to be set aside and direction may be issued to the respondent-Nigam to grant the financial assistance to the petitioner being a widow of the aforesaid employee in terms of the Policy/Notification issued by the Government under Article 309 of the Constitution of India dated 01.08.2006 (Annexure P-8) since she is fully eligible for the grant of Family Pension Scheme of 1964.

9. On the other hand, learned counsel for the respondents submitted that the husband of the petitioner was appointed on temporary post which can be seen from the appointment letter itself, wherein it has been stated that husband of the petitioner was appointed on temporary post and therefore, now there can be no other interpretation of the same in this regard. To substantiate his arguments, he referred to a judgment of the Hon'ble Supreme Court in ***State***

of Haryana and others versus Shakuntla Devi, Civil Appeal No.6271 of 2008 (arising out of SLP (C) No.1502 of 2006) to contend that when an employment of an employee is of a temporary nature/ad hoc nature, then in that situation, the Family Pension Scheme, 1964 will not apply to the employee and therefore, the petitioner is also not entitled to the Financial Assistance Scheme on compassionate grounds of Annexure P-8. He further submitted that the another reason as to why the petitioner was not granted the benefit of financial assistance was that in terms of the letter issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department dated 09.05.2008 (Annexure R-3/3), it was so directed that those retrenched employees who have been absorbed and were receiving the retiral/pensionary benefits from their previous offices such as MITC and other Corporations will not be eligible for any pensionary benefits/financial assistance and therefore, in terms of the aforesaid letter, since the husband of the petitioner was receiving the retiral/pensionary benefits from his previous office, the petitioner would not be entitled for the benefit of Financial Assistance Scheme.

10. At this stage, learned counsel for the petitioner submitted that so far as the aforesaid letter dated 09.05.2008 (Annexure R-3/3), as referred to by the learned counsel for the respondents is concerned, so far as the present petitioner is concerned, while the husband of the petitioner was serving at HSMITC, he did not receive any pension as it was not a pensionable establishment and he was only retrenched but he received some amount of gratuity, leave encashment and retrenchment compensation. He further submitted that even if assumingly the aforesaid administrative letter (Annexure R-3/3), for the sake of arguments is to be implemented, then the petitioner is

ready and willing to refund the aforesaid benefits in case she is granted the benefit of Financial Assistance Scheme.

11. I have heard the learned counsel for the parties.

12. It is a case where the husband of the petitioner, who was working as an Assistant Driller in HSMITC was retrenched on 30.07.2002 along with some other employees and as per the Notification (Annexure P-2) issued by the Government of Haryana dated 21.06.2006 under Article 309 of the Constitution of India, a Scheme was framed for re-employment of regular retrenched Group-C and Group-D employees. Consequent upon the same vide Annexure P-4, the respondent-UHBVNL issued appointment letter to the husband of the petitioner on 27.10.2006 and it was specifically mentioned in the appointment letter that it has been issued in terms of the aforesaid Notification of the Government dated 21.06.2006 and he was appointed against a temporary post of Helper Grade-II in the pay scale of Rs.2650/4000 plus usual allowances. It was specifically provided in the appointment letter that the offer of appointment was on purely temporary basis and he was to be kept on probation for a period of two years. However, unfortunately on 27.07.2007, i.e. after about 9 months of joining, the husband of the petitioner died and therefore, the present petitioner, who is his widow made various representations to the respondent-Nigam for release of family pension/GPF/ex-gratia grant/DCRG/leave encashment and other dues. The petitioner is seeking enforcement of her rights for grant of financial assistance in terms of Notification issued by the Government of Haryana under Article 309 of the Constitution of India dated 01.08.2006 (Annexure P-8), whereby Rules were framed for grant of compassionate assistance by way of ex-gratia financial assistance on

compassionate grounds to the members of the family of a deceased Government employee who dies while in service. In the aforesaid Notification (Annexure P-8), criteria for financial assistance has been provided. However, the petitioner was denied the aforesaid benefit vide impugned order dated 08.01.2015 (Annexure P-10) passed by the Managing Director, UHBVNL, Panchkula. The reason so mentioned in the aforesaid impugned order was that the same has been declined in view of the clarification/letter issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department dated 09.05.2008, which has been attached by the respondents along with the written statement as Annexure R-3/3, wherein the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department clarified that the retrenched employees, who got retiral/pensionary benefits from their previous offices such as MITC and other Corporations and were appointed in service on compassionate grounds as per the decision taken by the Government are not eligible for any pensionary benefits/financial assistance. The aforesaid letter dated 09.05.2008 (Annexure R-3/3) is reproduced as under:-

> *From*
>
> *The Financial Commissioner & Principal Secretary to Government, Haryana Power Department.*
>
> *To*
>
> *The Managing Director, HVPNL,*
> *Panchkula.*
>
> *No. 16/33/2006-4 Power*
> *Dated: 09.05.2008*
>
> ***Subject: Providing of Compassionate Assistance to the Dependent of deceased Government Employees-New Rules of the "Haryana Compassionate Assistance to the***

Dependent of the Deceased Government Employees Rules, 2006"-Clarification of Rule-3 and sub-rule 4 of Rule 5.

Reference your Letter No.Ch-16/Pen/E-4546 dated 12.03.2008 on the subject noted above.

2. Government observed that the retrenched employees got retiral/pensionary benefits from their previous offices such as MITC and other Corporations. They were appointed in service on compassionate grounds as per decision taken by the Govt. are not eligible for any pensionary benefits/ financial assistance.

Sd/ - Superintendent Power
for Financial Commissioner & Principal Secretary
to Government Haryana, Power Department.

13. It is a case of the petitioner that the husband of the petitioner was a regular employee of HSMITC and thereafter, when he was retrenched, then by way of a Scheme framed by the Government of Haryana vide Notification under Article 309 of the Constitution of India (Annexure P-2), he was appointed on temporary basis vide Annexure P-4 but after about 9 months of joining, he died and therefore, the petitioner could not have been denied the benefit of family pension/GPF/ex-gratia grant/DCRG/leave encashment and other dues only on the ground that some clarification has been issued vide Annexure R-3/3 that those retrenched employees who got retiral/pensionary benefits from their previous offices and were appointed in service on compassionate grounds will not be eligible for any pensionary benefits/financial assistance because any administrative order etc. or any administrative instructions cannot supersede or run contrary to the Rules framed by way of a Notification issued under Article 309 of the Constitution of India. However, the stand which has been taken by the learned counsel for the respondents for objecting to the grant of aforesaid relief was two-fold. Firstly, in terms of the letter issued by the Financial

Commissioner and Principal Secretary to the Government of Haryana, Power Department vide Annexure R-3/3, the same had to be given effect to and therefore, no pensionary benefits can be granted to the petitioner and secondly, the husband of the petitioner was appointed on a temporary post and therefore, by virtue of Rule No.3 of the Notification (Annexure P-8), the petitioner was not eligible to receive the family pension etc. because it so provides that eligibility to receive financial assistance under these Rules shall be as per the provision in the Pension/Family Pension Scheme, 1964.

14. Dealing with the first objection raised by the learned counsel for the respondents that in terms of Annexure R-3/3, which is a letter/clarification issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department since the husband of the petitioner received retiral/pensionary benefits from his previous office and he was appointed on compassionate grounds and therefore, cannot be made eligible for pensionary benefits/financial assistance is concerned, the same is absolutely unsustainable. The husband of the petitioner was although earlier working in HSMITC but it was not a pensionable establishment and as per the learned counsel for the petitioner, some amount of gratuity, leave encashment etc. was given to him when he was retrenched. However, right accrued to the husband of the petitioner by virtue of Notification dated 21.06.2006 (Annexure P-2) issued under Article 309 of the Constitution of India and the same is so referred to in the appointment letter issued to the husband of the petitioner vide Annexure P-4. A perusal of the aforesaid Annexure P-4 would show that although it has been so stated that the husband of the petitioner was appointed against a temporary post but he was appointed on a pay scale and was kept on probation

for a period of two years. It is not a case where the husband of the petitioner was appointed on work charge or ad hoc basis for a particular tenure but he was appointed against a temporary post but without any fixed tenure and prior to his appointment when he was working in HSMITC, he was working as a regular employee. So far as the right which is being claimed by the petitioner is concerned, the same is by virtue of Annexure P-8 dated 01.08.2006, which is also a Notification which has been issued to the proviso to Article 309 of the Constitution of India, wherein under Rule No.5, criteria for financial assistance has been provided and it is under this Rule that the petitioner is claiming financial assistance. When the transition took place from HSMITC where the husband of the petitioner was retrenched then the absorption was by way of one time arrangement in public interest as a Policy of the State Government and therefore, it cannot be said that the husband of the petitioner was not employed on regular basis. A perusal of Annexure P-2, which is a Notification dated 21.06.2006, whereby a Scheme was framed by the Government of Haryana clearly shows that the Scheme was regarding re-employment of regular retrenched Group-C and Group-D employees and it has been made in public interest and as a one time measure only. Therefore, now at this stage, when the husband of the petitioner was re-employed in pursuance of the aforesaid Notification/Scheme under Article 309 of the Constitution of India, then the petitioner could not have been denied the benefit on the basis of such a clarification issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department that the husband of the petitioner received some retiral benefits from his previous employment. Such kind of condition was not mentioned in the aforesaid Notification dated 21.06.2006 (Annexure P-2) issued by the Government of Haryana.

15. It is a settled law that any order/administrative instruction/clarification issued by an administrative officer cannot go contrary to the statutory provision or any other notification issued under Article 309 of the Constitution of India. The administrative instructions cannot override and take away the rights which have been vested by way of a statutory provision. A Division Bench of this Court while dealing with this issue on similar proposition of law regarding the same Scheme of 2006 in ***Raj Kumari versus Uttar Haryana Bijli Vitran Nigam Limited and others, 2008 (4) SCT 411,*** wherein the benefit granted to the petitioner of that case was withdrawn observed that it is well settled that an order passed by the Financial Commissioner and Principal Secretary to the Government of Haryana cannot have the effect of wiping the Rules framed under Article 309 of the Constitution of India. Para No.8 of the aforesaid judgment is reproduced as under:-

> *8. The action of the respondents in withdrawing order dated 13.3.2007 on account of subsequent amendment, on that basis the amendment made by the State of Haryana on 9.8.2007 (R-1) is absolutely unwarranted and, therefore unsustainable in the eyes of law because the 2006 Rules have been framed under Article 309 of the Constitution and the letter dated 9.8.2007 (R-1) has been issued by the Financial Commissioner and Principal Secretary to Government of Haryana. It is well settled that an order passed by the Financial Commissioner cannot have the effect of wiping the rules framed under Article 309 of the Constitution, which in the present case were framed on 1.8.2006 (P-9). A perusal of the notification dated 1.8.2006 shows that the 2006 Rules have been framed under Article 309 of the Constitution. It is trite to observe that the rules framed under Article 309 of the Constitution cannot be varied, substituted or amended even by issuing executive*

> *instructions under Article 162 of the Constitution. In that regard reliance may be placed on a Constitution Bench judgment of Hon'ble the Supreme Court in the case of* ***Sant Ram Sharma v. State of Rajasthan, AIR 1967 Supreme Court 1910****, which has been repeatedly followed, relied and applied in a number of cases including* ***Dhananjay Malik v. State of Uttranchal, 2008(2) SCT 659:2008(3) RAJ 249: (2008) 4 SCC 171*** *and* ***A. Manoharan v. Union of India, (2008) 3 SCC 641****, wherein it has been held that in any case such executive instructions cannot be given retrospective effect. In the present case, a letter issued by the Financial Commissioner, which cannot even regarded as executive instructions under Article 162 of the Constitution, has been relied upon by the respondents to argue that the 2006 Rules framed under Article 309 of the Constitution (P-9) stand abrogated to adversely affect the rights of the petitioner. Such an argument apparently would not be acceptable. Therefore, issuance of impugned letters dated 21.9.2007 and 14.1.2008 (P-6 & P-7) respectively, asking the petitioner to change her option once again by opting for one time lump-sum ex-gratia payment on the basis of the letter of the Financial Commissioner, dated 9.8.2007 as adopted by respondent No.1 on 6.9.2007, would be unsustainable and the same are, thus, liable to be set aside.*
>
> *For the reasons aforementioned, this petition succeeds. The impugned letter dated 21.9.2007 (P-6) and the reminder dated 14.1.2008 (P-7) are hereby set aside. A direction is issued to the respondents to release all the benefits to the petitioner as envisaged by order dated 13.3.2007 (P-5). The needful shall be done within a period of two months from the date of receipt of a certified copy of the order.*
>
> *The petition stands disposed of in the above terms.*
>
> *Petition allowed.*

16. A Coordinate Bench of this Court in ***Smt. Veera Devi Widow of Late Sh. Surinder Pal versus The State of Haryana and others, CWP-3814-2011*** allowed the writ petition, where even the facts were also identical to the present case and provided the benefit of compassionate

assistance to the petitioner in that case. The relevant portion of the aforesaid judgment is reproduced as under:-

> *I have gone through the Rules and I do not find that the Rules restrict the applicability only to permanent employees. They merely use the expression of assistance to be given to the family of a deceased/Government employee. The status of such employee has not been spelt out to deny the benefit to the dependent or legal representative of a Government employee who was in temporary post. In this case, I find that the appointment of the petitioner's husband was in terms of the policy introduced by the State for re-employment/absorption of retrenched employees of a Government Corporation in Government institutions. The initial entry of the petitioner's husband in the UHBVN was in conformity with the relevant policy and the rules and, consequently, the application of compassionate assistance would also be extended to the petitioner.*
>
> *The impugned orders dated 12.5.2008 and 25.3.2010, Annexures P-7 and P-6 respectively, are quashed and the second respondent is directed to consider the petitioner's claim for compassionate assistance provided under the Rules, as adopted by the UHBVN. The decision shall be taken by the authority within eight weeks from the date of receipt of certified copy of the order.*
>
> *The writ petition is allowed subject to the above directions.*

17. In view of the aforesaid position, it is crystal clear that the aforesaid letter/clarification issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department vide Annexure R-3/3 is liable to be ignored because it takes away the rights which have been so vested in the petitioner in the Notifications issued under Article 309 of the Constitution of India vide Annexure P-2 and Annexure P-8.

18. So far as the second objection raised by the learned counsel for the respondents that by virtue of Rule No.3 of Notification (Annexure P-8), the

eligibility to receive the financial assistance under the Rules shall be as per the provision in the Pension/Family Pension Scheme, 1964 is concerned, a perusal of the aforesaid provision of Rule 6.17 of the Punjab Civil Services Rules, Volume-II as reproduced above would show that the aforesaid Rule so provides that in case of death while in service, the Government employee should have completed a minimum period of one year of continuous service without break and there is a proviso to the aforesaid provision which states that the condition of completing a minimum period of one year of continuous service will not be applicable in the case of Government employee who has been medically examined and declared fit for entry into Government service and it has also been provided that aforesaid term of “one year continuous service” used in clause (i) is inclusive of permanent and temporary service in a pensionable establishment. Although the husband of the petitioner had died after about 9 months of being appointed in the respondent-Nigam and before the period of one year but in the present case, the husband of the petitioner was medically examined by the CMO. A specific averment has been made by the learned counsel for the petitioner in para No.4 of the present writ petition, which has not been controverted by the respondent-Nigam by filing reply and therefore, it will be deemed to be admitted by the respondent-Nigam that the husband of the petitioner was medically examined by the CMO and therefore, even the condition of one year of minimum period will not apply to the husband of the petitioner because he will be covered by the aforesaid proviso. Therefore, the petitioner is certainly entitled for grant of pension/family pension under the Pension/Family Pension Scheme, 1964 and she is fully eligible by virtue of Rule No.3 of the aforesaid Notification (Annexure P-8).

19. Learned counsel for the respondents has relied upon a judgment passed by the Hon'ble Supreme Court in ***State of Haryana and others versus Shakuntla Devi (supra)*** to contend that since the husband of the petitioner was appointed on a temporary basis, the petitioner was not entitled for pension/family pension. However, a perusal of the aforesaid judgment would show that in that case the employees were appointed on ad hoc basis for a period of 6 months. It was rather observed by the Hon'ble Supreme Court that the Scheme in terms of paragraph 3 is applicable to all the regular employees and pensionable establishment, temporary or permanent, who were in service and therefore, whether temporary or permanent, the employees must be a regular employee which would mean employee appointed on a regular basis, i.e. in accordance with the Rules. Only because services of ad hoc employees were continued, the same would not mean that thereby their status was changed. In the present case, although in the appointment letter (Annexure P-4) it was so stated that the husband of the petitioner was appointed on temporary basis but he was appointed in accordance with law and in terms of the aforesaid Notification (Annexure P-2) issued by the Government of Haryana under Article 309 of the Constitution of India and therefore, he was a regular employee, although against a temporary post and was kept on probation for a period of two years. Therefore, the aforesaid judgment of the Hon'ble Supreme Court as relied upon by the learned counsel for the respondents is distinguishable on facts and not applicable to the present case.

20. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The impugned order dated 08.01.2015 (Annexure P-10) is hereby set aside and quashed. The respondent-Nigam is directed to grant the

benefit to the petitioner in terms of para No.5 of the Ex-gratia Assistance Scheme dated 01.08.2006 (Annexure P-8) and all consequential benefits and to pay her the entire arrears, along with interest @ 6% per annum (simple), within a period of three months from the date of receipt of certified copy of this order.

(JASGURPREET SINGH PURI)
JUDGE

12.03.2024
Chetan Thakur

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