IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9436-2022 (O&M)
Date of Decision: 04.02.2025

BALDEV KUMAR AND OTHERS **-PETITIONERS**

V/S

STATE OF PUNJAB AND OTHERS **-RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Hitesh Verma, Advocate
for the petitioners.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J. (ORAL)

1. The instant petition under Article 226/227 of the Constitution of India, has been filed for issuance of a *mandamus* upon the respondents to grant pensionary and other benefits, on account of death of a female family member of the petitioners no.1 to 5, namely Manpreet Kaur, and also on account of death of one Kuldeep Kaur, a female family member of petitioners no.6 and 7, during the Covid-19 Pandemic, in pursuance of the Government Instructions and letter dated 21.06.2021 (Annexure P-4).

2. The instant petition was, subsequently, amended vide order dated 20.02.2024, and a prayer was also made for quashing the instructions issued by respondent no.1, vide order dated 25.05.2021 (Annexure P-7), 16.06.2021 (Annexure P-8), and 21.06.2021 (Annexure

P-4), while issuing a writ in the nature of *certiorari*.

3. The cause of action germinates from the death on account of Covid-19 pandemic, of female members of the petitioners family. Their grievance is that State Government while granting the relief of "distress mitigating measures" for the families who lost the only breadwinner due to Covid-19 pandemic, has infact discriminated while not considering the female members of the family, who were homemaker and contributing towards the family by staying at home, doing daily work, including washing cloths, cocking, look after children, providing guidance to them etc. The instructions issued by the State of Punjab, are being put to legal scrutiny of this Court by casting the instant petition under Article 226/227 of the Constitution of India, on the ground of discrimination as well as, as to whether same qualifies the test of rationality or not.

4. Succinctly, the petitioners no.1 to 5, are seeking the relief of pensionary and other benefits on account of death of late Smt.Manpreet Kaur (wife of petitioner no.1 and mother of petitioners no.2 to 5), who unfortunately died on 24.04.2021, due to Covid-19 pandemic. Similarly, petitioners no.6 and 7, are also seeking the same relief on account of death of late Smt.Kuldeep Kaur (wife of petitioner no.6 and mother of petitioner no.7) on 17.05.2021.

5. Learned counsel for the petitioners in order to through challenge to the Government Instructions (*supra*), submits that the State of Punjab, while granting the family pensions to a family, who lost their breadwinner during Covid-19 pandemic, and the same has not taken into

consideration, the contribution of a woman, being a wife or a mother, who, though not a breadwinner, yet contributes/extends all possible help and support for the smooth functioning of a family, therefore, such a bereaved family, which has suffered a loss in such like incidents as in Covid-19 pandemic, also requires to be compensated by granting them pensionary benefits.

6. He further placed reliance upon a judgment passed by the Supreme Court in **"Arun Kumar Agrawal and another vs. National Insurance Company and others", Law Finder Doc Id #212004.** The *ratio,* as laid by the Supreme Court therein, is extracted hereinafter:-

> 32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs. 15,000/- per annum and in case of a spouse, rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others (supra), U.P.S.R.T.C. v. Trilok Chandra (supra), Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another (supra) and also take guidance from the judgment in Lata Wadhwa's case. The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker.
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> 33. Reverting to the facts of this case, we find that while in his deposition, appellant No. 1 had categorically stated that the deceased

> was earning Rs. 50,000/- per annum by paintings and handicrafts, the respondents did not lead any evidence to controvert the same. Notwithstanding this, the Tribunal and the High Court altogether ignored the income of the deceased. The Tribunal did advert to the Second Schedule of the Act and observed that the income of the deceased could be assessed at Rs. 5,000/- per month (Rs. 60,000/- per annum) because the income of her spouse was Rs. 15,416/- per month and then held that after making deduction, the total loss of dependency could be Rs. 6 lacs. However without any tangible reason, the Tribunal decided to reduce the amount of compensation by observing that the deceased was actually non-earning member and the amount of compensation would be too much. The High Court went a step further and dismissed the appeal by erroneously presuming that neither of the claimants was dependent upon the deceased and the services rendered by her could be estimated as Rs. 1250/- per month.
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> 34. In our view, the reasons assigned by the Tribunal for reducing the amount of compensation are wholly untenable and the approach adopted by the High Court in dealing with the issue of payment of compensation to the appellants was ex facie erroneous and unjustified.
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> 35. In the result, the appeal is allowed. The impugned judgment as also the award of the Tribunal are set aside and it is held that the appellants are entitled to compensation of Rs. 6 lacs. Respondent No. 1 is directed to pay the said amount of compensation along with interest at the rate of 6% per annum from the date of filing application under Section 166 of the Act till the date of payment. The needful shall be done within the period of 3 months from the date of receipt/production of copy of this order. The appellant shall get cost of Rs. 50,000/-.

7. On the other hand learned State counsel vociferously opposed the asked for relief to the present petitioners.

8. He submits that the Government of Punjab issued specific instructions vide letters dated 25.05.2021 (Annexure R-1) and 16.6.2021 (Annexure R-2) for providing relief measures to the families who lost their breadwinners, or the children who lost both their parents to Covid pandemic. The Letter dated 21.6.2021 (Annexure R-3, produced by petitioners as P-4) was issued by respondent no.4, in the continuation thereafter. As such, vide letter dated 21.06.2021, the answering respondents have only directions to provide pension/relief measures to the families which have lost their breadwinner to the COVID-19

pandemic and the abovesaid petitioners have not been considered under this scheme, as they failed to provide requisite proofs/documents with regard to abovesaid fact and further, no such proof/document has been attached with this petition as well.

9. This Court has considered the rival submissions, as made by learned counsel for the parties concerned, and has perused the entire record.

10. Before this Court proceed to adjudicate the legality of the instructions/policy 21.06.2021 (Annexure P-4), promulgated by the State of Punjab, lets have glimpse over the said instructions/policy. These instructions were issued by the State of Punjab for providing fixed pensions to the dependents of the families, upon death of only breadwinner therein, during Covid-19 pandemic, as "distress mitigation measures." The eligibility conditions of the applicant (family/dependents) are enumerated in final instructions/policy dated 21.06.2021 (Annexure P-4), are extracted hereinafter:-

> 1. If the head of family has expired during corona, then pension form of his wife & their children below the age of 21 years, be filled & sent to this office.
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> 2. If the only earning member in the family was female & she has died during corona & her husband is unable to earn due to handicap, then forms of their children below the age of 21 years be filled & sent to this office.
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> 3. If parents have died earlier & the head of family is the eldest child & he is maintaining younger siblings & if he dies during covid pandemic, then pension forms of his younger siblings will be filled.
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> 4. For taking benefit of pension due to death during covid pandemic, income certificate or documents related to land are not required.

11. It is pertinent to note here that, on an earlier occasion as well two different policies/notifications were issued i.e. on dated 25.05.2021

(Annexure P-7) and dated 16.06.2021 (Annexure P-8), however, the sphere and scope these policies, on account of eligibility conditions of families/persons, was widened in the instructions/policy finally issued on dated 21.06.2021 (Annexure P-4). As per the instruction no.1, of this latest policy, if the head of the family has died during Covid-19 pandemic, then the pension forms of his wife and their children below 21 years of age, should be filled and sent to the office concerned. Further, the instruction no.2, speaks that, if the only breadwinner of the house was a woman, and she has died during Covid-19 pandemic, and her husband is not able to earn due to disability, then the pension forms of their children under 21 years of age, will also be filled. As per instruction no.3, if the parents have died earlier (before pandemic), and the elder child is the head of the family and he is taking care of his younger siblings, has died during Covid-19, then the pension form will be filled by his younger siblings.

12. One of the foremost salient feature of this latest policy/ instructions (*supra*), is that such pensionary benefit, is not restricted to any particular class or classes of income group.

13. A close scrutiny of the above latest policy/instructions (Annexure P-4), it reflects that it was framed by the State of Punjab to immediately provide financial help to meet daily needs of a family whose sole breadwinner has lost his life due the Covid-19 pandemic. Through this policy/instructions a social security net has been created to bring within its sphere those needy families, which requires immediate help for

their financial stability and to eradicate the possibility of starvation.

14. The policy/instructions (Annexure P-4) has been framed not with intent to grant pension on account of death of each and every family member during the Covid-19 Pandemic, rather, for the reasons discussed above. Further, this Court is of the considered view that this policy/instruction does not discriminate on account of gender, as even if the breadwinner is a female in family, has lost her life, then the dependents of such female are eligible under the said policy/instructions. Hence, the said policy/ instructions (Annexure P-4) does clearly pass the test of rationality as it clearly serve the purpose, for which it has been framed.

15. This Court has also considered the submissions as made by learned counsel for the petitioners, especially, the sole judgment (*supra*), on which he has placed reliance upon. It deals with the issue on account of providing compensation on account of untimely death of a person in a roadside accident, to the dependents of a family, and specifically considering the Section 163-A and 166 of the Motor Vehicles Act, 1988.

16. Section 166 of Act of 1988, creates a fair and efficient system for compensation for each and every roadside accidental injury/death, and it is fault based system follows principle of Tort Law, whereas Section 163-A of said Act, deals with no-fault system, therefore, someone seeking compensation under this provision does not require to prove fault of anyone rather he is eligible for a compensation which is already pre-decided in a set formula prescribed under the Act of 1988.

The sphere of operation of Act of 1988, providing compensation under therein, is entirely different to the sphere of the policies/instructions (*supra*), which are under challenge. Therefore, the aforesaid provisions of Act of 1988, cannot be equated to declare the policies/instructions (*supra*) as irrational, as their sphere and object is altogether different. Therefore, the reasons on which the policies/instructions (*supra*), are sought to have been challenged are flawed and accordingly, rejected.

17. *Insuma* the instant petition is hereby **dismissed,** being devoid of any merits.

18. All pending application(s), if any, also stand **disposed** of accordingly.

(KULDEEP TIWARI)
JUDGE

February 04, 2025
dharamvir

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No