



115+218

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-1119-1120-CWP-2025 in/and
CWP-22470-2024 (O&M)
Date of Decision : 11-08-2025

PANKAJ KUMAR

.....Petitioner

VERSUS

UNION OF INDIA AND ORS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Vijaydeep Rathee, Advocate for the petitioner.

Mr. Parvesh K. Saini, Advocate
for the respondent-UI (joined through V.C).

HARSIMRAN SINGH SETHI, J. (Oral)

CM-1119-1120-CWP-2025

These are applications for placing on record short reply by way of an affidavit on behalf of respondent Nos.1 to 3 along with Annexure R-1 to R-3 and exemption from filing certified and typed copies of the same.

Keeping in view the contents mentioned in the applications, the same are allowed. Affidavit on behalf of respondents No.1 to 3 along with Annexure R-1 to R-3 are taken on record subject to all just exceptions.

Exempted from filing certified and typed copies.

CWP-22470-2024 (O&M)

In the present petition, the challenge is to the order dated 29.05.2024, copy of which has been appended as Annexure P-9, passed by the Armed Forces Tribunal, Chandigarh (hereinafter referred as “AFT”), which is arbitrary and illegal.

2. Learned counsel for the petitioner argues that the petitioner had approached the AFT by filing an Original Application (“hereinafter referred as “OA”) No.884 of 2015 claiming certain relief and the same was granted by the Tribunal vide order dated 21.12.2022, execution of which was filed.

3. Learned counsel for the petitioner submits that once, a direction was given by the Tribunal vide order dated 21.12.2022 that ex-gratia amount admissible to the petitioner should be released within a period of three months failing which, the said amount will also carry interest @ 8% per annum from 25.03.2014 (Annexure A-21) till the date of actual payment, the respondents were bound to pay the entitled amount to the petitioner.

4. Learned counsel for the petitioner submits that though, the ex-gratia amount was granted but the same was not paid in accordance with Instructions/Policy, which were applicable in the year 2010 and petitioner is entitled for ex-gratia amount payable as per 2010 Policy.

5. Learned counsel for the petitioner submits that the benefit of the ex-gratia amount has been declined by the AFT in the execution proceedings, which is beyond the jurisdiction of the executing Court hence,

the impugned order dated 29.05.2024 (Annexure P-9) is liable to be set aside.

6. Learned counsel for the respondent-UOI submits that keeping in view the direction given by the Tribunal vide order dated 21.12.2022 as well as the Policy in force on the date of death of the father of the petitioner, claim of the petitioner was considered qua ex-gratia amount and due amount was paid to the petitioner.

7. We have heard the learned counsel for the parties and have gone through the records of the present case with their able assistance.

8. For better understanding, the relevant portion of order passed by the AFT on 21.12.2022 (Annexure P-4), which was sought to be executed by the petitioner is as under:-

“ In view of the above, the application succeeds and the same is accordingly allowed. The impugned order dated 25.03.2014 (Annexure A-21) is quashed. The respondents shall release the amount payable as ex-gratia within three months from the date of receipt of certified copy of this order by learned Central Govt. Counsel/OIC, Legal Cell, failing which, together with interest @ 8% per annum from 25.03.2014 till the date of actual payment. ”

9. A bare perusal of the above order would show that nothing has been mentioned as to which policy has to be made applicable for the grant of benefit of ex-gratia amount to the petitioner.

10. The petitioner filed an execution of the said order but vide impugned order dated 29.05.2024, execution application was disposed of as having been rendered infructuous on the ground that as the ex-gratia amount admissible was not mentioned in the order dated 21.12.2022 and no date of

policy was mentioned hence, the same can only be granted keeping in view the settled principle of law and hence, the ex-gratia amount liable to be paid keeping in view the date of death, the same stands paid .

11. In the present case, the father of the petitioner had died in the year 1992, on which date, the Policy dated 26.06.1978 was in force/operation. The said Policy was made applicable upon the case of the petitioner and the benefit of ex-gratia amount was granted accordingly, which was held valid by the AFT while deciding the execution application of the order dated 21.12.2022.

12. In the absence of any date of Policy mentioned in the order while granting the relief, the AFT is vested with the right to hold as to whether on the date of death of the father of the petitioner in the year 1992, the Policy dated 26.06.1978 was applicable or not. The view taken by the AFT cannot be treated to be incorrect especially when, no date of the Policy was mentioned in the order dated 21.12.2022 (Annexure P-4).

13. As per the settled principle of law settled by the Full Bench of this Court in ***CWP No.4303 of 2009 titled “Krishna Kumari Vs. State of Haryana and ors.”, decided on 20.04.2012***, the ex-gratia policy, which was applicable on the date of the death of the employee concerned, is to be taken into consideration for the grant of financial assistance. The relevant paragraph 11 of the said judgment is as under:-

“11. In view of above judgment of the apex court and principles laid down therein, it is clear that the employer is within its power to lay down a policy for compassionate employment. It has to strictly adhere to the such policy. Though compassionate employment is in an exception to the general rule, power of the Government or public authority to frame policy to offer compassionate employment has been accepted by the courts in the interest of justice and to meet sudden

*crisis which befalls the family when an employee dies in harness or is incapacitated. The question whether the policy in operation at the time of death of the employee would be applicable or that at the time of consideration of application would operate, arises for consideration. In Raj Kumar's case (supra) decided by the apex court it was held that there being no vested right for compassionate employment scheme in force at the time application is actually considered would apply, not the scheme in force earlier to said date. Subsequent policy would impliedly abolish the earlier policy. In this case, scheme which was in operation at the time of consideration of the application specifically provided that all pending applications would be considered under the new scheme. In a later judgment in Bhawani Prasad Sonkar's case (supra) the apex court took the view that the scheme in operation at the time of incapacitation of the employee would be applicable and not the scheme framed subsequently. In our considered view date of death of an employee is an important factor to be taken into consideration as schemes for compassionate appointment are floated with a view to provide immediate relief to families of deceased employees to meet the financial crisis they face on death of sole bread winner. Travails of the family begin immediately thereafter. In that context, date of death assumes significance. Purpose of providing compassionate appointment is to mitigate the hardship at that time. Thus policy applicable on the date of death needs to be invoked to provide immediate relief. Application seeking compassionate appointment should be moved promptly thereafter by his dependent and considered by the employer without undue delay. In case an application is considered by the authority after lapse of time, objective of scheme is defeated. Such schemes which are in the nature of social welfare measure and have been recognised as an exception to the general rule for offering public employment would necessarily be applicable strictly in the parameters laid down therein and accepted by the apex court in its various decisions. Particular reference may be made here to **Umesh Kumar Nagpal v. State of Haryana & Ors, 1994(3) S.C.T. 174 : (1994) 4 SCC 138**, wherein it was held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution. This favourable treatment given to dependent of the deceased employee was accepted as it bore a rationale nexus to the object sought to be achieved viz. relief against destitution. The Supreme Court held :-*

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. *It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis."*

In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed. Needless to observe it is upto the authority to consider the application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognised by the apex court in its recent judgment in Bhawani Prasad Sonkar's case. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly. Before parting with the judgment, however, we may mention that in present bunch of petitions facts of each case vary. Since issue referred to this bench has already been decided, individual cases be placed before learned Single Judge for decision in accordance with law and facts and circumstances of each case."

14. Learned counsel for the petitioner has not been able to dispute the said principle of law settled by the Full Bench of this Court in ***Krishna Kumari's case (supra)***.

15. Keeping in view the above, the view taken by the AFT so as to deny relief in execution that 2010 Policy should be made applicable in the facts and circumstances of this case, cannot be treated as perverse to the settled principle of law settled by the Hon'ble Supreme Court of India in ***Krishna Kumari's case (supra)***.

16. Keeping in view the facts and circumstances of the present case, when no date of the policy was mentioned in the order dated 21.12.2022 (Annexure P-4), execution of which was sought, impugned order passed by the AFT dated 29.05.2024 (Annexure P-9) cannot be faulted with.
17. No ground is made out for any interference by this Court in the facts and circumstances of the present case.
18. Present petition stands dismissed.
19. Pending application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

11-08-2025
Sapna Goyal

(VIKAS SURI)
JUDGE

Note:	Whether speaking:	YES
	Whether reportable:	YES