

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: JULY 02, 2009

Babita Rani

....Petitioner

VERSUS

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Jagbir Malik, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr.DAG, Haryana,
for the respondents.

RANJIT SINGH, J.

Petitioner, a widow of a Constable working with Haryana Police at Sonapat, has filed this writ petition, seeking quashing of an order, whereby her claim for grant of financial assistance as per Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short, "2006 Rules") has been rejected. She has also prayed for mandamus directing the respondents to pay her monthly financial assistance under 2006 Rules due to her on account of the death of her husband, who was the only bread earner in the family.

The respondent-Government though possessed with vast resources is unjustified in rejecting the claim of the petitioner without

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caring to read 2006 Rules. Rather the action of the respondent authorities in depositing the payment of Rs.5 lacs to the family of the deceased employee during January 2009 and to deny the applicability of 2006 Rules is unfair. This certainly should not be an approach on the part of welfare State towards the family of its deceased employee.

The facts necessary to have the hang of the issues involved may be noticed. The husband of the petitioner expired on 10.2.2006 while on duty. Government had framed rules dated 18.11.2005, regulating the compassionate assistance or appointment on compassionate grounds to members of family of deceased Government employee who died while in service or missing Government employee.

Ex-gratia assistance of Rs.5 lacs was payable to the family which did not opt for ex-gratia employment or where no such employment could be offered within a period of three years from the date of application. This was over and above all other service benefits to the dependent members of the family. With effect from 1.8.2006, the respondent-Government framed 2006 Rules repealing the earlier Rules dated 18.11.2005 referred to above. Through 2006 Rules, the Government has brought in some major changes regarding compassionate assistance to the family of the deceased Government employee. It is now provided in these rules that on death of any Government employee, his family 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 in the following

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manner:-

“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 thirty-five years.

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;

c. for a period of seven years or till the date of 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.”

The family shall be eligible to receive family pension as per normal rules only after the period during which he receives the financial assistance as noted above is completed. This assistance is in addition to remain in occupation of a Government residence in occupation of deceased Government employee on payment of normal rent/licence fee. Rule 6 of 2006 Rules provides that all pending cases of ex-gratia assistance shall be covered by these new rules. As per Rule 6 of 2006 Rules, the families have been given option to opt for lump-sum ex-gratia grant as regulated by earlier Rules framed in the year 2003 or 2005 in lieu of monthly assistance provided under 2006 Rules. Though 2005 Rules stands repealed but this is subject to the right of the family to opt for lump-sum ex-gratia

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assistance in terms of 2006 Rules.

It is averred in the writ petition that the petitioner submitted her option on 3.12.2007 for grant of financial assistance for monthly sum equal to the pay and allowance drawn by her late husband in terms of 2006-Rules (though she was not required to raise a specific claim). Copy of the representation is on record of the writ petition as Annexure P-3. When the Government did not take any action on the said representation, the petitioner followed it up with another representation dated 4.2.2008, claiming the said relief. Government still did not move. The petitioner then served a notice dated 2.5.2008 on the respondents as a final demand notice for justice-cum-advance notice of writ petition. The respondent-Government still remain unmoved. The petitioner thereafter filed Civil Writ Petition No.21579 of 2008 before this Court, which was disposed on 23.12.2008 with a direction to the respondents to decide the legal notice dated 2.5.2008 within a period of two months from the date of receipt of copy of the said order. Respondents, thus, were forced to deal and decide the claim of the petitioner. Instead of granting the prayer made by the petitioner for payment in terms of 2006 Rules, which was clearly admissible, the respondents sought the account number of the petitioner and then deposited a sum of Rs.5 lacs in the said account on 31.1.2009. Respondents, thus, rejected the claim of the petitioner for payment of monthly sum equal to the pay and allowance drawn by her late husband as was claimed. It is stated that the petitioner is not entitled to the benefit of sum equivalent to monthly salary as sought by her in terms of 2006-rules. This order (Annexure P-8) passed by the respondents has

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now been impugned by the petitioner through the present writ petition.

On a notice being issued, reply on behalf of respondent Nos.1 to 4 has been filed by respondent No.4. It is stated that the present writ petition is not maintainable as ex-gratia assistance amounting to Rs.5 lacs has already been paid to the petitioner. The respondents would point out that the death of late husband of the petitioner was prior to 1.8.2006 as he died on 10.2.2006 and hence, the petitioner is not entitled to get the compassionate assistance of a sum equal to pay and other allowances drawn by her late husband in terms of 2006-Rules. Plea is that the petitioner can not be granted monthly assistance as she has been paid ex-gratia payment of Rs.5 lacs.

A little application of mind would have informed the respondent that the claim made by the petitioner was fully justified in terms of the provision made in 2006-Rules itself. The respondent could still have seen reasons when they were put to notice of this writ petition. The pleas being raised now to pray for denying the relief to the petitioner would reflect not only the non-application of mind but insensitive approach on the part of the respondents towards the family of its deceased employee which had lost a bread-earner. The laudable aim of the rules is to help the family to tide over emergent situation seems to have been lost sight by the respondents.

The husband of the petitioner died on 10.2.2006 but still the ex-gratia payment of Rs.5 lacs was made to the petitioner only on 31.1.2009 that too after she had approached this Court leading to passing of the order requiring the respondents to decide her claim. If

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2005-Rules were to govern the case of the petitioner, then she should have been released this amount soon after the death of her husband on 10.2.2006. Respondent would be at great difficulty in applying 2005-Rules to make this ex-gratia payment to the petitioner. Perusal of 2005-Rules would show that ex-gratia financial assistance of Rs.5 lacs is to be paid in cases where family does not opt for ex-gratia employment or where no such appointment can be offered within a period of 3 years from the date of making application. This ex-gratia assistance is only granted when ex-gratia appointment on compassionate grounds is not opted for by the family or the post is not available. There is nothing on record to show that the petitioner had opted for payment of ex-gratia financial assistance of Rs.5 lacs.

All this, however, would now be academic as 2005-Rules were repealed w.e.f. 1.8.2006 and till this date, the case of the petitioner had not been finalized and, thus, was pending. Rule 6 of 2006-Rules, thus, would come into play and would regulate the grant of financial assistance. This rule clearly provide that all pending cases of ex-gratia assistance shall be covered under the new Rules. As per this Rule, ex-gratia lump-sum grant as provided in 2003 or 2005-Rules can be granted only if it is so opted by the families in lieu of monthly financial assistance provided under 2006-Rules. As already noted, 2005-Rules have been repealed by 2006-Rules and could validly govern the grant of ex-gratia payment only if so opted by the family. The record would show that the petitioner has opted for monthly financial assistance in terms of 2006-Rules and, thus, could not have been paid ex-gratia lump-sum grant of Rs.5 lacs under the rules, which stood repealed. Rule 6 of 2006-Rules unambiguously

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provide that all pending cases of ex-gratia assistance shall be covered under the new rules (2006-Rules). On the face of such clear and categorical rule position, there would have been no scope of any doubt but the respondents have still choose to plead this unfair stand. Rule 6 of 2006-Rules reads as under:-

“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.”

In the absence of Rule 6, the respondents could have had some justification to say that these Rules would not apply to the cases where death had taken place prior to the coming into force of 2006 Rules but on the face of Rule 6, they certainly can not be permitted to make such a plea. Without doubt, the case of the petitioner was pending on 1.8.2006, when 2006 Rules came into operation, though the death of her husband was prior to this date. The petitioner has clearly averred in Para 5 of the petition that she had opted for grant of financial assistance in terms of 2006-Rules and these averments have been admitted by the respondents. Still, it is stated that as per the instructions of the Government, the petitioner is not entitled to get compassionate financial assistance in terms of

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2006-Rules. This stand of the respondent-Government is clearly in violation of the provisions of Rule 6 of 2006 Rules and, thus, is totally misconceived. The respondents could have had some justification to take this stance if the case of the petitioner had been finalized prior to 1.8.2006. Concededly, a sum of Rs.5 lacs was deposited in the accounts of the petitioner on 31.1.2009 and that too after the direction by this Court on 23.12.2008, passed on an earlier writ petition filed by the petitioner. The averments made to this effect in Para 11 of the petition have again not been denied by the respondents. The action of the respondents, thus, in not applying 2006-Rules for providing monthly financial assistance to the petitioner is clearly unsustainable. Division Bench of this Court in the case of **Raj Kumari Vs. Uttar Haryana Bijli Vitran Nigam Ltd. And others**, 2008 (4) SCT 411, has viewed that all pending cases of ex-gratia assistance are to be covered under 2006-Rules. There is, thus, no scope of any doubt in this regard and even Rule 6 is abundantly clear that all pending cases of ex-gratia assistance are to be covered under 2006-Rules. Though not required but the petitioner has already opted for assistance under 2006-Rules and lump-sum ex-gratia payment could have been made to the petitioner only if she had opted for the same as provided under Rule 6.

The action of the respondent-Government, thus, in rejecting the claim of the petitioner for payment of sum equal to pay and other allowances last drawn by the deceased husband of the petitioner has been illegally and wrongly rejected and can not be sustained. The writ petition is allowed and order, Annexure P-8 passed by respondent No.4 is set-aside. Direction is hereby issued

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to the respondents to pay sum equal to pay and other allowances that was last drawn by the deceased husband of the petitioner in terms of Rule 5 of '2006 Rules' in addition to the other benefits, to which the petitioner is entitled to in terms of the said Rules. Since the ex-gratia payment of Rs.5 lacs has been deposited in the accounts of the petitioner without her consent and she has now been held entitled to monthly financial assistance under 2006 Rules, she would be required to return this amount of Rs.5 lacs. Let her do so by way of cheque/draft in the name of respondent No.4 within a period of one month from today. The petitioner would be entitled to the monthly financial assistance from the date of notification of '2006 Rules' as provided under Rule 6 of 2006-Rules. Since there is no justification on the part of the respondents in delaying the payment of this ex-gratia payment to the petitioner, I see no justification in directing the petitioner to return this amount with interest as prayed by the State counsel. Rather, I would find justification in directing the payment of the amount due to the petitioner, which is payable from 1.8.2006 with interest at the rate of 6% per annum from the date it is due to the date of payment. If the amount due is not released within a period of six weeks from today, then the respondents should pay the amount with 9% interest per annum from the date it is due to the date of payment. On the other hand, if the petitioner fails to refund the ex-gratia payment received by her within the time as directed, then interest as awarded shall not be payable.

July 02, 2009

Khurmi

**(RANJIT SINGH)
JUDGE**

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