

CWP No. 2838 of 2017 :1: IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH * * * * *

CWP No. 2838 of 2017

Date of decision : December 14, 2018 * * * * *

Asha Rani and anotherPetitioners

Versus

State of Haryana and othersRespondents * * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI * * * * *

Present: Mr. Suresh Kumar Kaushik, Advocate for the petitioners. Ms. Palika Monga, DAG, Haryana. * *
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RITU BAHRI, J. Husband of petitioner no.1-Asha Rani and father of Vijay Kumar-petitioner no.2, Sh. Jaswant Lal S/o Sh. Bhag Ram was working with Haryana Police as Head Constable (Belt No.3/3). He expired on 22.7.1998. The son of petitioner no.1 was a minor at the time of death of his father and became a major on 10.8.2005. He made an application for the compassionate appointment and submitted all the relevant documents along with application. The claim of the petitioner was rejected vide order dated 17.11.2004 (Annexure P-1) on the ground that as per Instructions dated 28.2.2003 regarding Ex-gratia Appointment Rules, 2003 as per Clause 6(1) (b) (Annexure P-2) the same has become time barred. The petitioner has also placed on record the new policy dated 30.11.2005 known as Haryana 1 of 5 :: Downloaded on - 23-12-2019 21:32:13 :: CWP No. 2838 of 2017 :2: Compassionate Assistance to the Dependents of Deceased Govt. Employees Rules, 2005 (Annexure P-3) and the notification dated 01.8.2006 (Annexure P-4), whereby new rules known as Haryana Compassionate Appointment to the Dependents of Deceased Government Employee Rules 2006 was published by the State Government. Petitioner served a legal notice dated 5.12.2016 (Annexure P-5) for grant of compassionate appointment as well as financial assistance. Department replied to the said legal notice vide order dated 4.1.2017 (Annexure P-6), whereby the claim of the petitioners was rejected by saying that compassionate appointment cannot be given on the ground that any post cannot be kept reserved for any minor child of the deceased employee rather application for grant of service is to be made within three years of death of the employee and secondly, rejected the claim of financial assistance on the ground that the same is time barred. The petitioner has also placed on record Instructions dated 16.3.2011 (Annexure P-7), whereby Chief Secretary to Government of Haryana as a one time measure had given relaxation for applying ex gratia compensation in old cases pertaining to before 1.8.2006. As per these Instructions, a decision was taken that the Government will reconsider all the old cases where the family of the deceased under Rule 4 (2) and 6(1)(c) of Rules 2003 and under Rule 4(2) and 6(4) of the Rules 2005 of the Ex-gratia Scheme could not exercise option within time due to lack of requisite knowledge and other reasons and because of which the family of the deceased could not avail the benefit under Ex-gratia Scheme as being time barred. The question for consideration in the present writ petition is 2 of 5 CWP No. 2838 of 2017 :3: whether the petitioners are entitled for ex-gratia

appointment as well as Ex-gratia compassionate Financial Assistance as per Ex-gratia Appointment Rules, 2003. The stand taken by the respondents in the written statement is that the respondents had offered petitioner no.1, the wife of the deceased, a sum of Rs.2,50,000/-. The State has placed on record an affidavit given by the petitioner Asha Rani (Annexure R-1) wherein she refused to take financial assistance of Rs.2.5 lacs and wanted appointment for her son. They have further placed on record a letter dated 17.11.2004 (Annexure R-2), whereby the case of the petitioner for compassionate appointment has been rejected by observing that a period of three years has elapsed and the case of the petitioner has been filed being time barred and this order has never been challenged by the petitioners. While rejecting the case of the petitioner for ex-gratia appointment, reference has been made to Clause 6 (1) (c) of Rules 2003. A perusal of these Rules shows that the Head of the concerned Department has to prepare the list of dependents which shall be valid for three years and appointments will be given by the Department strictly in accordance with seniority so maintained. The validity of the list shall lapse after three years. In the case of the petitioner, the application has been made by his son after attaining the age of 17 years much after the expiry of the period of three years. Thus, the case of the son of the deceased for compassionate appointment has also been rejected being time barred. Now, the only benefit, the petitioner can get is the payment of ex gratia amount of Rs.2.50 lacs which petitioner no.1-Asha Rani had refused to receive as is 3 of 5 CWP No. 2838 of 2017 :4: evident from letter dated 17.4.2004 (Annexure R-1). The ex-gratia Instructions of 18.11.2005 are very clear. Para no.19 of the policy dated 18.11.2005 is reproduced as under: Repeal and saving-(1) The Haryana Compassionate Assistance to the Dependent of the deceased Government Employees Rules, 2003 which are in force immediately before the commencement of these rules are hereby repealed; Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under corresponding provisions of these rules. (2) Pending cases of all those deceased Government employees whose family members are eligible under Rules so repealed shall be disposed of or in accordance with the old rules at the commencement of new rules. Policy dated 18.11.2005 (Annexure P-3) is very clear that all pending cases which were eligible under the 2003 Rules had to be disposed of as per the Old Rules. The petitioner Asha Rani did not accept the financial assistance as per letter dated 17.4.2004 (Annexure R-1). Her case was rejected vide letter dated 17.11.2004 (Annexure R-2) on the ground that as per the Instructions dated 28.2.2003 regarding Ex-gratia Appointment Rules 2003, as per Clause 6(1)(b) the same has become time barred. Therefore, question of grant of appointment on compassionate grounds do not arise. Insofar as grant of financial assistance is concerned, it was the 4 of 5 CWP No. 2838 of 2017 :5: duty of the State Government that after rejecting the case of compassionate appointment of petitioner no.2, they had to give Rs.2.5 lacs to the petitioners, which she refused to take as per Annexure R-1. In this view of the matter, this petition is being partly allowed. Direction is being given to the respondents to pay Rs. 2.5 lacs to the petitioners as per the Instructions dated 28.2.2003 (Annexure P-2) after completing the necessary formalities within a period of three months of receipt of a certified copy of this order. However, it is made clear that the petitioners are entitled for interest @ 6% interest per annum on the financial assistance from 1.12.2004 till the payment is made. December 14, 2018 (RITU BAHRI) ritu JUDGE