

Before Jasbir Singh & Jitendra Chauhan, JJ

SHEELA DEVI,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 8844 of 2007

22nd August, 2008

Constitution of India, 1950—Art. 226—Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003—Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2005—Dependents of deceased Government employees claiming compassionate appointment/assistance—Govt. making various modifications/amendments in policies for grant of financial assistance—Determination of claim of dependant of deceased employee—Whether policy prevalent at time of death of deceased employee or policy prevalent at time of deciding case of his dependent applicable for grant of compassionate appointment or financial assistance—Policy prevalent at time of death of Government employee applicable—Respondents directed to consider claim of petitioners in accordance with schemes applicable at time of death of Govt. employee.

Held, that while deciding the cases pertaining to the subject in question the Hon'ble Supreme Court as well as a Division Bench of this Court has specifically held that policy at the time of death of the deceased employee is to be taken into consideration while deciding the claim of the dependent for compassionate appointment or financial assistance. By following the above settled proposition of law, we observe that policy in force at the time of death of deceased Government employee shall be applicable for determination of the claim of the dependent of the deceased employee.

(Para 21)

Further held, that the prime object of the State Government in framing the various schemes, policies and rules from time to time is to rehabilitate the dependants of the deceased Government employee. All the ex-gratia Schemes are drawn for the welfare of the bereaved family whose bread earner has served the State and died while in service of the State.

(Para 23)

Rajesh Sheoran, *Advocate for the petitioner*

H. S. Hoods, *Advocate General, Haryana with*

Harish Rathee, *Sr. DAG, Haryana and*

Ajay Gupta, *Sr. DAG, Haryana*

JITENDRA CHAUHAN, J.

(1) This order shall dispose of CWP Nos. 655, 3279, 3468, 6992, 8844, 9707, 10787, 11608, 12102, 13264, 13552, 13690, 14795, 14906, 15789, 17059, 17734, 17904, 18318, 19419 of 2007 and CWP Nos. 853, 908, 1169, 1913, 2794, 2890, 5969, 6258, 6280, 11886, 12102, 12124, 12170, 12230, 12301, 12584, 12589, 12878, 13086, 13172, 13311, 13324, 13362 and 13369 of 2008 as the controversy involved in all the writ petitions is similar. However, the facts are being extracted from CWP No. 8844 of 2007 titled as **Sheela Devi versus State of Haryana and others**.

(2) The petitioner filed the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order, dated 6th March, 2007 (Annexure P-8) whereby the claim of the petitioner has been rejected and also for quashing/setting aside the order dated 9th August, 2006 (Annexure P-9),—*vide* which respondent No. 5 has been appointed as a Constable in the Haryana Armed Police ignoring the claim of the son of the petitioner. The petitioner has further prayed for issuance of a writ

of mandamus thereby directing the respondents to appoint her son on the post of Constable in Haryana Police in place of respondent No. 5 under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003/2005, dated 18th November, 2005 (Annexure P-10). Further prayer is for issuance of any other appropriate writ, order or direction which might be deemed fit in the facts and circumstances of the present case.

(3) The brief facts of the instant case are that the husband of the petitioner was working with respondent No. 3 as ASI. At the time to the death, the husband of the petitioner was 48 years 5 months and 6 days old. It has been averred in the writ petition that deceased was the sole bread earner of the family and all the family members were solely dependent upon the earning of the deceased. On account of the death, the family was facing acute starvation. To meet the mitigating circumstances of the family of the deceased employee, on 24th October, 2005 the petitioner applied for appointment of her son, namely Vikash on the basis of compassionate ground. As per the averment, on 26th July, 2006, case of the petitioner was recommended by the Superintendent of Police, Rohtak—respondent No. 4 for appointment as a Constable and to the Inspector General of Police, Rohtak as well as to the Director General of Police, Haryana,—*vide* letter dated 26th July, 2006. As per record, the Superintendent of Police, Rohtak informed the petitioner through letter dated 11th September, 2006 for sending her consent for making one time payment according to the *ex gratia* Policy of 2003/2005 or monthly financial help according to the *Ex gratia* Policy of 2006. However, the petitioner in pursuance of the letter dated 11th September, 2006 sent by the Superintendent of Police, Rohtak made a request for considering the case of her son for appointment as a Constable in the Haryana Police as per the *Ex gratia* Policy of 2003/2005.

(4) On 20th October, 2006, the office of Superintendent of Police denied the claim of the son of the petitioner on the ground that as per the new *Ex gratia* Policy formulated in the Month of August, 2006, there is no provision of job and as per policy only monthly

financial help or assistance or one time amount could be availed by the petitioner. It is further averred that the petitioner visited the office of respondent No. 4 on 22nd October, 2006 requesting to forward the case of her son for appointment but she was conveyed that case of her son could not be recommended on the ground that the Government has formulated new policy in August, 2006 i.e. *Ex-gratia* Policy of 2006 and there is no provision of offering a job on compassionate ground in the said policy. Thereafter, the petitioner served an advance notice of writ petition-cum-final demand notice on 25th October, 2006. Left with no alternative remedy, the petitioner preferred Civil Writ Petition No. 18598 of 2006 titled as **Smt. Sheela Devi versus State of Haryana and others** and the same was disposed of on 23rd November, 2006 by a Division Bench of this Court with a direction to the respondents to decide the legal notice sent by the petitioner within a period of two weeks.

(5) In response to this, respondent No. 4 decided the legal notice and rejected the claim of the petitioner observing therein that as per revised policy dated 1st August, 2006, the son of the petitioner is not entitled to get job on the compassionate ground.

(6) The petitioner has raised grouse in the present writ petition that claim for appointment of her son has been rejected, whereas respondent No. 5 has been appointed as Constable in Haryana Armed Police by giving the benefit of the compassionate policy. The appointment of respondent No. 5 is particularly resented for the reason that father of respondent No. 5 died on 13th April, 2006 whereas the husband of the petitioner died on 11th October, 2005 and the petitioner had completed all the formalities by 24th October, 2005. In the seniority list maintained by the respondent the son of the petitioner is higher and above to respondent No. 5 and deserved consideration for appointment prior to respondent No. 5 as per the policy/guidelines of the respondent. The petitioner has also enclosed a copy of the appointment letter issued by respondent No. 2 in favour of respondent No. 5. On the basis of the same, the petitioner asserted that the vacancies were available as on 9th August, 2006 and claim for appointment of her son has wrongly been rejected. It is further averred that,—*vide* instructions dated 28th February, 2003/18th November, 2005, the Government of Haryana

framed rules that on account of death of an employee, one of his legal heirs can opt for *ex-gratia* appointment on compassionate financial assistance amounting to Rs. 2.5 lacs, which was subsequently revised on 18th November, 2005 enhancing to Rs. 5 lacs. The petitioner has emphasized that at the time of death of her husband, *ex-gratia* policy/ Rules 2003—2005 was in existence and the case of her son was required to be considered according to the *Ex-gratia* Policy 2003—05.

(7) Para No. 2 (i) of the Haryana Compsionate Assistance to the Dependents of Deceased Government Employees, Rules, 2003 is reproduced as under :—

“The matter has been considered by the Govt. and “The Haryana Compsionate to Dependent of Deceased Government Employees Rules, 2003” have been framed under article 209 of the Constitution of India which have been notified on 28th February, 2003 in Govt. Gazette dated 4th March, 2003 with a view to assist the family of a deceased employee in tiding over the emergency situation resulting from the loss of Bread Earner by giving either of the following options :—

- (i) *Ex-gratia* appointment on compassionate grounds to a member of the family who was “completely dependent” on the deceased employee and is in extreme financial distress due to the loss of the deceased, namely, the Govt. employee who dies in harness” :

(8) The relevant para 6 (1) and (2) of the Haryana Compassionate Assistance to the Dependents of deceased Government Employees Rules, 2005, is reproduced as under :—

“6(1)The Head of the concerned department where the deceased/ missing Government employee was employed, is competent to give appointment/provide compassionate financial assistance to the completely dependent indigent eligible family members of the deceased/missing Government employee.

- (2) The Head of the Department shall prepare a list of such eligible family members, who have applied within the stipulated period of 6 months. The names of the eligible family members shall be arranged with reference to the date of death of the deceased/missing Government employee. The name of the eligible family member shall remain on the list for a period of 4 years from the date of death and appointment will be given by the dependent strictly in accordance with the seniority so maintained.”

(9) The petitioner has further raised grouse that under given circumstances offering the job to respondent No. 5 and denial of the same of her son, who was eligible for job as per *Ex-gratia* Policy of 2003—05 was manifestly unjust and arbitrary to harass him and defeat the purpose of the policy framed by the State Government for the welfare of the families, who lost their bread earner.

(10) All said and done, the grievance of the petitioner has still not been redressed and the petitioner was constrained to move to this Court by filing the present writ-petition as noticed above.

(11) In all of the writ petitions, an identical question of law and facts is involved. Reply has been filed by the State in most of the writ petitions, and a common stand has been taken by the respondents that either the case of the petitioner(s) is not covered under the policy of *ex-gratia* scheme or the vacancy is not available.

(12) The State of Haryana introduced number of policies/ instructions and rules for the rehabilitation of its employes for the employment of the dependents of the deceased employees under *ex-gratia* scheme. With the passage of time and change of circumstances, numbers of modifications/alterations have been made at intervals by the Government itself and some times in the light of the various judicial decisions of the Hon’ble Supreme Court and the High Court. The last notification of Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee’s Rules, 2006 in this regard is dated 1st August, 2006 issued by the Haryana Government General

Administration Department while exercising the powers conferred by the proviso of Article 309 of the Constitution of India. The rules were made to grant the compassionate appointment/financial assistance on compassionate grounds to the members of the family of a deceased government employee who dies while in service/missing Government employee.

(13) All the above mentioned cases pertain to grant of compassionate appointment or compassionate assistance, in the eventuality of death of an employee during service or on account of discharge of employee due to disablement. All the cases relating to the policies made by the State of Haryana in different years mentioned in the foregoing paras right from the year 1995 when the policies of the State for grant of compassionate appointment or compassionate assistance came into force till the issuance of Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee's Rules, 2006, in which various modifications/amendments have been made keeping the exigency of the situation and various pronouncements made by the Hon'ble Apex Court and this Court, are to be decided/considered according to the new Rules of 2006 referred to above.

(14) We feel that there is no necessity of going through the details of policies at this stage for the reason that there are large numbers of petitioners and span of the bereavement period of the families being fairly long and coupled with the fact that the date of death of the deceased employee is also different in each and every petitions. In this view of the matter, the material question is to determine as to which policy would be applicable to the dependents of the deceased government employee for grant of compassionate appointment or financial assistance, i.e., whether the policy prevalent at the time of death of the deceased employee or the policy prevalent at the time of deciding the case of his dependent. This question already stands answered by the Hon'ble Supreme Court in the case of **Abhishek Kumar versus State of Haryana and others (1)**. The relevant para 5 of this judgment is reproduced as under :—

“Appellant herein had sought for appointment on compassionate grounds at a point of time when 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in existence in the year

(1) 2007 (2) S.C.T. 457

2001. Evidently, in the State of Haryana a State-wise list is maintained. In terms of the said list so maintained by the State of Haryana, the appellant was entitled to obtain an appointment on compassionate grounds. He was offered such an appointment by the State. It was the District Magistrate who come on the way and refused to provide for the post.”

(15) Similar controversy was also decided by this Court in CWP No. 15649 of 2006 titled as **Premo Devi versus Uttar Haryana Bijli Vitran Nigam Ltd. and another**, decided on 29th November, 2007 and in case titled as **Neeraj Malik versus State of Haryana and others (2)**.

(16) In re: **Jai Ram versus Uttar Haryana Bijli Vitran Nigam Ltd. and another (3)**, wherein it has been observed thus :

“We are inclined to accept the submissions of the learned counsel. The respondents cannot be permitted to take advantage of their own wrong. The petitioner had become eligible for being appointed on compassionate ground on the death of his father on 24th August, 2002. The necessary application was made on 3rd September, 2002 (Annexure P-1). It was duly recommended by the competent authorities also. There was no justification as to why the petitioner could not have been appointed within a short period of time. The very purpose of compassionate appointment is to render assistance to the family whose sole bread earner has died.”

(17) This Court has also answered identical question in CWP No. 6890 of 2007 titled **Lalita Sharma versus State of Haryana and others** decided on 11th July, 2007. This Court put the controversy at rest by framing the following specific questions of law details as under :—

“(a) Which of the policies is applicable to the dependents of deceased Government employee, whether the policy prevalent at the time of death of deceased or the policy prevalent at the time of deciding the case for grant of *ex-gratia* employment ?

(2) 2007 (1) R.S.J. 235 (DB)

(3) 2004 (5) S.L.R. 851 (DB)

- (b) Whether the dependents are entitled to *ex-gratia* employment on account of death of Government employee in the present set of circumstances as that involved in the above writ petitions ?
- (c) Whether the case of the petitioners i.e. dependents of the deceased Government employees for grant of financial assistance under the scheme of 2003, 2005 and 2006 is made out on account of death of Government employee”.

(18) In re: **Smt. Sushma Gosain versus Union of India and others (4)**, the Hon’ble Apex Court has held as under :—

“We heard counsel on both sides and gave our anxious consideration to the problem presented. It seems to us that the High Court has made the order in a mechanical way and if we may say so, the order lacks the sense of justice. Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid Government Memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.”

(19) In re: **Ashok Kumar versus State of Haryana and others** unreported CWP No. 11313 of 2004, date of decision 1st September, 2005, this Court has decided the same proposition, which reads as under :—

“We are clearly of the opinion that as the petitioner’s case had been decided under the old policy, there was no authority with the respondents to re-consider the case under the new policy in the light of the above quoted paragraph. We are further of the opinion that even assuming that the petitioner’s case had to be considered under the new policy, the plea of the respondents that the petitioner’s father was over age at

the time of his death, disentitled the petitioner for appointment on compassionate ground, could not be accepted as in the new policy, Annexure P-9, no stipulation with regard to the age of the deceased employee has been provided. This matter has been specifically dealt with by a Division Bench of this Court in **Jai Ram versus Uttar Haryana Bijli Vitran Nigam Limited**, 2004(4) SCT 664, wherein it has been held that the embargo of 55 years could not be applied to the policy dated 31st March, 2005.”

(20) The same question involved was also examined by a Division Bench of this Court in **Smt. Kamlesh versus State of Haryana and others**, unreported CWP No. 6183 of 2006 decided on 17th August, 2006 and observed as under :—

“Having heard learned counsel for the parties, we are of the considered view that a strict view as has been taken by the respondents would be unwarranted in matter concerning compassionate appointment. The object of Rules contemplating compassionate appointment is to provide some succour to the family of the deceased government employee, who is virtually the bread earner of the family. It advances a social object of rescuing such a family from the clutches of a sudden event plunging the whole family into penury and helplessness. The object as sought to be achieved by the Rules cannot be defeated by strictly construing the rules as has been done by the respondents.”

(21) While deciding all the aforementioned cases pertaining to the subject in question the Hon’ble Supreme Court as well as a Division Bench of this Court has specifically held that policy at the time of death of the deceased employee is to be taken into consideration while deciding the claim of the dependent for compassionate appointment or financial assistance. By following the above settled proposition of law, we observe that policy in force at the time of death of deceased Government employee shall be applicable for determination of the claim of the dependent of the deceased employee.

(22) We have heard the arguments advanced by the learned counsel for the parties and have perused the record of the case.

(23) The prime object of the State Government in framing the various schemes, policies and rules from time to time is to rehabilitate the dependents of the deceased government employee. All the *ex-gratia* Schemes are drawn for the welfare of the bereaved family whose bread earner has served the State and died while in service of the State. Learned Counsel appearing for the petitioner(s) has submitted that the scheme/policies/rules should be construed liberally and in that context we are inclined to make a reference of decision in the case of **Secy., H.S.E.F. versus Suresh (5)**. In this case, their Lordships held that the Court must decide in the interest of public inspired by principles of justice, equity and good conscience. Similarly the case of **Steel Authority of India Ltd. versus National Union Waterfront Workers (6)**, guides us in the context of the interpretation of the statutes that how social welfare legislation should be interpreted. In that context their Lordships have observed that provisions of such a social legislation providing for economic empowerment to workers and poor classes should be considered in the light of public law principles not of private or common laws. So far as the philosophy behind construing a social legislation is concerned, there are no two opinions social legislations are primarily meant for welfare of a particular section of the Society and should be construed liberally so as to advance the cause of the public at large.

(24) In our considered opinion, the schemes, policies and the rules framed by the State for the dependents of deceased government employees under *ex-gratia* scheme are in the nature of welfare for the bereaved family of any deceased government employee of Haryana State who dies while in service.

(25) In all these cases, the respondents in one way or the other have denied the claim of the petitioner. In the instant case the respondents have admitted the death of the husband of the petitioner on 11th October, 2005 and further that the petitioner moved an application on 24th October, 2005 for appointment of her son, who was studying in Class 10+2. The application of the petitioner is enclosed as Annexure R-1. The case of the petitioner's son was forwarded on 26th July, 2006 to the Inspector General of Police, Rohtak Range for compassionate

(5) 1993 (3) S.C.C. 601

(6) 2001 (7) S.C.C. 1

appointment under *Ex-gratia* Scheme. This is also reflected in the written statement that the petitioner was not interested in accepting the amount as per the Government Policy/Instructions and accordingly, the case of the petitioner was sent to the Director General of Police, Haryana for necessary action on 28th August, 2006. On 4th October, 2006, the office of the Director General of Police, a option was given to the petitioner either to opt for the lump sum *ex-gratia* grant provided under the Rule 2003-05 or the monthly assistance provided under the new Rules, 2006. However, the petitioner appeared personally and gave her option in writing that she neither wants to opt for lump sum amount nor the monthly assistance as provided under the Rules, 2003-2005 or 2006. The petitioner categorically insisted upon that her son be appointed as Constable as has been done in case of respondent No. 5 particularly when the father of respondent No. 5 died much after the death of her husband and the respondents are duty bound to offer the job as per the seniority maintained by the respondents in this regard. Whereas the stand of the respondent is that there is no provision of *Ex-gratia* appointment under new policy and the petitioner already stands informed in this regard. The petitioner can get only one time amount or monthly financial help/assistance on compassionate ground as per *Ex-gratia* Policy.

(26) We are unable to appreciate and accept the stand taken by the respondents, whereas we find substance in the averments made by the petitioner(s). As noticed above the husband of the petitioner expired on 11th October, 2005 and the application for compassionate appointment was moved on 24th October, 2005. The said application was to be considered under the then prevalent Rules/Policy/Scheme. Admittedly, the same has not been done in the present case and as such the petitioner has been deprived of the benefit of being considered under the applicable Rules/Policy/Scheme.

(27) In these circumstances, we dispose of these writ petitions and direct the respondents to consider the claim of the petitioner(s) afresh in the light of Instructions/Rules applicable at the time of death of the government employee.