

parents from the definition expression 'family' as used in clause 3 of the 1994 Scheme. It is further pertinent to notice that in the present case the petitioner was not dependent on her son as her husband was in government service at the relevant time. For the sake of arguments it may be noticed that the amendment made in the year 1998 with effect from 1st January, 1996 including the parents in the definition of expression 'family' the requirement of being dependent on the deceased son would remain unsatisfied. Therefore, there is no merit in the instant petition and the same is accordingly dismissed.

R.N.R.

Before Jasbir Singh & K.C. Puri, JJ.

LALITA SHARMA,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 6890 of 2007

11th May, 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, 2006—Dependents of deceased Government employees claiming compassionate appointment—Grant of compassionate appointment—Object of—To enable family to tide over certain crisis—Death of an employee in harness does not entitle family to such source of living—Grant of financial assistance—Policy prevalent at time of death of Government employee applicable—Dependents held entitled for payment of financial assistance in accordance with schemes applicable to them.

Held, that so far as relief for grant of compassionate appointment is concerned, the same is available to the dependents of deceased Government employee only in case of extreme financial distress due

to loss of deceased i.e. Government employee who died in harness. The criteria of income from all the sources has been laid down in the schemes of 1995, 2003 and 2005. In none of the petitions, it has been pleaded that the income of the family was below the criteria laid down under the said scheme. The whole object of granting compassionate appointment is to enable the family to tide over certain crisis. The object is not to give to a member of such family a post much less a post held by the deceased. The death of an employee in harness does not entitle his family to such source of living.

(Para 15)

Further held, that so far as the relief of financial assistance in respect of dependent of Government employee who died prior to 4th March, 2003 is concerned, there was no provision in any of the instructions/policy issued by Government for grant of financial assistance. So, the Government employee who died prior to 4th March, 2003, his/her dependents of Government employees whose bread winner died after 4th March, 2003, are entitled to financial assistance under the schemes of 2003, 2005 and 2006 whichever is applicable to the dependents provided that fulfil the conditions laid down under the said schemes. There is no reason for withholding the relief of financial assistance to the dependents of Government employee who dies after 28th February, 2003 in case their case is covered under any of the schemes referred to above. So, in case the Government employee has died after 4th March, 2003, in that case, the petitioners are entitled to financial assistance, according to the scheme applicable to them. Therefore, the claim of the petitioners for grant of compassionate appointment in all the writ petitions stand declined. However, the respondents are directed to make the payment of financial assistance to the dependents in accordance with the schemes applicable to them.

(Paras 20 & 21)

R.K. Malik, Senior Advocate with Rajesh Kumar, Advocate. Jagbir Malik, J.P Sharma, Gaurav Sethi, R.N. Sharma, Vivek Singla, Surender Deswal, Devinder Punia, Raghbir Chaudhary, Om Parkash, Arun Yadav, Rakesh Nagpal, N.C. Kinra, H.S. Saini, Raj Kapoor

Malik, Ravi Verma, Rajinder Nain Advocates for the petitioners. Harish Rathee, Sr. D.A.G. Haryana

JUDGMENT

K.C. PURI, J.

(1) Since common questions of fact and law are involved in this Civil Writ Petition as well as Civil Writ Petition No. 17209 of 2006 titled **Ashish Kumar versus State of Haryana and others**, No. 20592 of 2006 titled **Surinder Singh versus State of Haryana and others**, 1446 of 2007 titled **Krishna Devi versus State of Haryana and others**, No. 3510 of 2007 titled **Yash Pal versus State of another**, No. 4352 of 2007 titled **Parveen Kumar versus State of Haryana and others**, No. 5413 of 2007 titled **Hamender versus State of Haryana and another**, No. 5971 of 2007 titled **Vikas Jakhar versus State of Haryana and others**, No. 7595 of 2007, titled **Rajbala versus State of Haryana and others**, No. 10918 of 2007 titled **Smt. Savitri Devi versus State of Haryana and others**, 11697 of 2007 titled **Mukesh Kumar versus State of Haryana and others**, No. 12080 of 2007 titled **Parmod Kumar versus State of Haryana and others**, No. 12996 of 2007 titled **Luna Ram versus State of Haryana and others**, No. 13125 of 2007 titled **Vinod Kumar and another versus State of Haryana and others**, No. 15237 of 2007, titled **Parveen Kumar versus State of Haryana and others**, No. 16933 of 2007 titled **Surinder versus State of Haryana and others**, No. 17420 of 2007 titled **Abhay Singh and another versus State of Haryana and others**, No. 18371 of 2007 titled **Bhateri versus State of Haryana and others**, No. 5025 of 2008, titled **Raj Kumari versus State of Haryana and others**, No. 9062 of 2008 titled **Murti Devi versus State of Haryana and others**, No. 9795 of 2008 titled **Purni Devi versus State of Haryana and others**, No. 9903 of 2008 titled **Vrinder Singh versus State of Haryana and another** and No. 10003 of 2008 titled **Smt. Rajpati versus State of Haryana and another**, so all these petitions are being taken up together for disposal, with the consent of counsel for the parties. However, facts are being extracted from Civil Writ Petition No. 6890 of 2007.

(2) The petitioner filed the instant Civil Writ Petition under Articles 226/227 of the Constitution for the issuance of a writ in the

nature of Mandamus directing the respondents to grant her compassionate financial assistance of Rs. 5 lacs instead of Rs. 2.5 lacs and in the alternative to consider her claim for compassionate appointment.

(3) The necessary facts, as culled out from the pleadings of the parties, are epitomised as under.

(4) The husband of the petitioner late Shri Patanjali Kumar Gaur was a Sub Inspector in the Police Department and he died during service on 6th August 2004. The date of birth of her husband was 12th March, 1952. Immediately after death, she had applied for compassionate appointment of her son namely Vipin Gaur whose name was kept in the waiting list of Clerks. The Haryana Government had issued Compassionate Appointment Rules on 28th February, 2003 which are called "The Haryana Compassionate Assistance to the dependents of deceased Government Employee Rules, 2003". In 2005 some amendments were made. On 1st August, 2006, the new rules were notified which are called "The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006."

(5) It is further alleged by the petitioner that she was informed vide letters dated 11th December, 2006 and 2nd March, 2007 that her son could not be considered for compassionate appointment and she was directed to give option for financial assistance. She approached the office of respondent No. 3 and she was informed that she was only entitled to financial assistance of Rs. 2.5 lacs.

(6) The petitioner has further averred that awarding of Rs. 2.5 lacs instead of Rs. 5 lacs as admissible under 2006 Rules was illegal, unjust, unfair, unconstitutional, arbitrary and was liable to be set aside.

(7) The respondents have contested the claim of the petitioner and filed detailed written statement in which besides raising certain preliminary objections, it has been denied that the name of Vipin Gaur was kept on the waiting list for the posts of Clerks. The petitioner was only entitled to financial assistance of 2.5 lacs and in the new rules of 2006, there was no provision for appointment on compassionate grounds. It is, however, admitted that the husband of the petitioner

Shri Pitanjali Kumar SI died on 6th August, 2007, the family of the deceased will not be entitled for lump sum financial assistance.

(8) We have heard arguments addressed by the counsel for the parties and have gone through the record of the case.

(9) All the above noted cases relate to grant of compassionate appointment or grant of compassionate assistance on account of death of an employee during service or an account of discharge of employee due to disablement. The cases relate to the policies made by the State of Haryana in the years 1995, 2003 and amended policies made in the years 2005 and 2006.

(10) The brief history regarding appointment of dependents of deceased Government employee under ex-gratia scheme and for grant of financial assistance relates to the year 1970. The State of Haryana vide notification No. 9054-4-GS-II-70/32230 dated 22nd December, 1970 framed the policy for appointment of dependents of deceased Government employee under ex-gratia scheme. The said scheme was amended from time to time. Various amendments were made vide No. 3442-GSII-71/19169 dated 13th July, 1971, No. 16/21-88-6, GS-II dated 23rd November, 1988 and NO. 34/114/93-5, GS-II dated 13th December, 1993. The Hon'ble Supreme Court in SLP No. 10504 of 1993 titled as **Umesh Kumar Nagpal versus State of Haryana and others**, has laid down certain guidelines for grant of appointment on compassionate grounds. Previously, the compassionate appointment was given indiscriminately even to Class I posts. The Hon'ble Apex Court while keeping in view the objective of the compassionate employment scheme deprecated the said practice and restricted the ex-gratia appointment to Class III and Class IV posts only according to the status of the deceased employee. In the said ruling, it has been laid down that compassionate appointment should not be granted as a matter of course even in Class III and Class IV posts. It has been held that the object of compassionate employment is to enable the family to get over the financial crisis which it faces at the time of death of the sole bread-winner and the compassionate employment cannot be claimed and offered whatever be the lapse of time and after the crisis is over. In the said ruling, the Hon'ble Apex Court has deprecated the conduct

of some Government and public authorities who have been offering compassionate employment sometimes as matter of course irrespective of the financial condition of the family of the deceased and sometimes even above Class III and Class IV posts. It has been held that the practice of the Government is legally impermissible.

(11) Keeping in view the said decision, the State of Haryana vide notification No. 16/5/95-6 GSII dated 8th May, 1995 restricted the grant of ex-gratia employment to Class III and Class IV posts only and it was further observed that the compassionate employment being offered shall be at least one step lower than that of the deceased employee. The applicants having a monthly income of less than Rs. 2,500 per month from all the sources were held eligible. The spouse of the deceased employee being in government service was held to be a bar for the dependent of the deceased from seeking employment. The dependents of the deceased employee were only spouse and unmarried children. It was further made clear that prescribed qualification for Class III post shall not be relaxed under the ex-gratia scheme. The time limit for making an application was within three years of the death of Government employee in harness. Minor amendments in the said scheme were made in the years 1996, 1997 and 1998. Ultimately, the State of Haryana, vide notification No. G.S.R.1/Const./Art. 309/2003 dated 28th February, 2003 published in Gazette on 4th March, 2003 in exercise of the powers conferred under Article 309 of the Constitution, framed a comprehensive scheme for compassionate employment or financial assistance and these Rules were called as "The Haryana Compassionate Assistance to the Dependents of deceased Government Employees Rules, 2003". Under the said scheme, ex-gratia appointment on compassionate grounds was to be given to a member of family who is completely dependent on the deceased employee and is in extreme financial distress due to loss of the deceased (Government employee) who dies in harness. A spouse, son including adopted son till he attains the age of 25 years, unmarried daughter till she attains the age of 25 years and a person who was wholly dependent at the time of death of Government employee were held to be dependents. Indigent family was that family whose income does not exceed Rs. 6,000 per month excluding family pension. Under the said scheme, ex-gratia compassionate financial

assistance to the family of the deceased to the tune of Rs. 2.5 lacs were allowed to the families who do not opt for ex-gratia employment. However, under the said scheme, ex-gratia employment was to be given only in case the family fulfils the conditions laid down in the said notification. In case the deceased employee attains the age of 55 years, the said scheme was made inapplicable.

(12) Vide notification No. G.S.R.17/Const./309/2005 dated 18th November, 2005, the amount of Rs. 2.5 lacs was increased to Rs. 5.00 lacs under ex-gratia financial assistance to the family of the deceased. It was also made clear in the said notification that ex-gratia appointment no compassionate grounds shall be granted subject to availability of post and subject to maximum of 5% sanctioned posts (falling under direct recruitment quota) in Group C and D categories. Thereafter, vide notification No. G.S.R. 19/Const/Art.309/2006 dated 1st August, 2006, further amended the Rules and clause of grant of compassionate employment was abolished, but, instead scheme for grant of financial assistance as envisaged in the said notification was made.

(13) After hearing both the sides, the following controversies are required to be resolved for the decision of present Civil Writ Petitions.

- (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 ?
- (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 schemes of 2003, 2005 and 2006 is made out on account of death of Government employee ?

(14) So far as the first controversy that is which of the schemes is applicable to the petitioners, that is whether the scheme applicable at the time of death of the Government employee or at the time of deciding the case of compassionate employment/financial assistance by the Government is concerned, the said controversy has been decided by the Hon'ble Apex Court in authority reported as **Abhishek Kumar versus State of Haryana and others, (1)**. In the said ruling, it has been held that the date of death of the Government employee is relevant consideration for applicability of the scheme. In other words, the scheme applicable at the time of death of deceased is to be made applicable regarding grant of compassionate employment/financial assistance and not at the time of decision by the Government. In the said ruling, the State of Haryana maintained a list of employees to be appointed on compassionate grounds and the name of the applicant was in the said list but the District Magistrate has refused to provide him the post on compassionate grounds. A Division Bench of Punjab and Haryana High Court in Civil Writ Petition No. 15649 of 2006 titled **Premo Devi versus Uttar Haryana Bijli Vitran Nigam Ltd. and another**, decided on 29th November, 2007, while keeping in view the judgments in **Abhishek Kumar's** case (supra) and in case reported as **Neeraj Malik versus State of Haryana and others, (2)** has held that the policy at the time of death of Government employee is to be taken into consideration while granting ex-gratia employment or seeking financial assistance. So, question No. 1, as stated above, stands decided accordingly.

(15) So far as relief for grant of compassionate appointment is concerned, the same is available to the dependents of deceased Government employee only in case of extreme financial distress due to loss of deceased i.e. Government employee who died in harness. The criteria of income from all the sources has been laid down in the schemes of 1995, 2003 and 2005. In none of the petitions before us, it has been pleaded that the income of the family was below the criteria laid down under the scheme. Various Division Benches of our own High Court in authorities reported in Civil Writ Petition No. 14671 of 2006,

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

(2) 2007(1) RSJ 235 (DB)

titled **Satya Devi versus State of Haryana and others**, decided on 29th November, 2007, No. 15649 of 2006 (supra) and No. 6005 of 2007 titled **Kuldip Kumar versus Managing Director, Uttar Haryana Bijli Vitran Nigam and another**, have held that compassionate employment to the dependents of deceased is not available unless the conditions laid down in the above-said schemes are fulfilled. There is consistent view of Punjab and Haryana High Court and the Hon'ble Supreme Court of India is that the whole object of granting compassionate appointment is to enable the family to tide over certain crisis. The object is not to give to a member of such family a post much-less a post held by the deceased. The death of an employee in harness does not entitle his family to such source of living. The Hon'ble Apex Court in **I.G. (Karmik) and others versus Prahalad Mani Tripathi, (3)** has held that public employment is considered to be a wealth and cannot be given on descent. It was held to the following effect :

- “5. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 30 of the Constitution of India. In the matter of appointment the State of obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the police department.
6. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only

for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.”

(16) In **State Bank of India and another versus Somvir Singh (4)**, in para No. 10, it has been held as under :

“10. There is no dispute whatsoever that the appellate Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

(17) In authority reported as **Ram Lal versus State of Haryana and others, (5)** it has been held that employment on compassionate grounds is not to be allowed to the minor who was not eligible at the time of death of his father. After attaining the age of majority, the minor has no vested right for compassionate appointment.

(18) In authority reported as **Mahipal versus State of Haryana and others, (6)** the grant of compassionate employment to the minor on attaining the age of majority has been discussed and rejected.

(4) (2007) 4 S.C.C. 778

(5) 2001 (4) RSJ 781

(6) 1999 (2) RSJ 53

(19) In authority reported as **Jai Ram versus Uttar Haryana Bijli Vitran Nigam Ltd. and the State of Haryana**, (7) it has been held that where the family of the deceased dependent could survive for a period of about three years, in that case, no appointment on compassionate ground can be ordered and the petitioner, in that case, was held entitled to ex-gratia assistance of Rs. 2,50,000 under the policy of 28th February, 2003.

(20) So far as the relief of financial assistance in respect of dependent of Government employee who died prior to 4th March, 2003 is concerned, there was no provision in any of the instructions/policy issued by the Government for grant of financial assistance. So, the Government employee who dies prior to 4th March, 2003, his/her dependents are not entitled to compassionate assistance. However, the dependents of Government employees whose bread winner died after 4th March, 2003, are entitled to financial assistance under the schemes of 2003, 2005 and 2006 whichever is applicable to the dependents provided they fulfil the conditions laid down under the said schemes. There is no reason for with-holding the relief of financial assistance to the dependents of Government employee who dies after 28th February, 2003 in case their case is covered under any of the schemes, referred to above. So, we have no hesitation in holding that in case the Governemnt employee had died after 4th March, 2003, in that case, the petitioners are entitled to financial assistance, according to the scheme applicable to them, as discussed above.

(21) Therefore, in the light of what has been held above, the claim of the petitioners for grant of compassionate appointment in all the above-said writ petitions stand declined. However, the respondents are directed to make the payment of financial assistance to the dependents in accordance with the schemes applicable to them. These directions are available only to the petitioners who fall within the ambit of definition of dependents under the relevant schemes and are otherwise found eligible according to the above noted scheme.

(22) All the above-said writ petitions stand disposed of, as ordered above.

R.N.R.

(7) 2005 (3) RSJ 313