

(15) For the reasons afore-mentioned this petition succeeds. Appointment of respondent No. 4 on the post of Assistant Director (Lab.) is set aside. Respondent Nos. 1 to 3 are directed to reconsider the whole matter by considering the case of the petitioner alongwith other eligible candidates in accordance with the provisions of Rule 7 of the rules by ignoring the relaxation given to respondent No. 4. The needful shall be done within a period of three months from the date of receipt of certified copy of this order. If the petitioner or the added respondent No. 5 or any other candidate with requisite qualifications are found suitable then they shall be given promotion with effect from the date promotion was given to respondent No. 4 on the post of Assistant Director (Lab.). Such a selected candidate on promotion would be entitled to ante dated appointment by giving him the same date which was given to respondent No. 4 alongwith all other consequential benefits except arrears of pay.

R.N.R.

Before M.M. Kumar and Jitendra Chauhan, JJ.

RAMBATI,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 19006 of 2007

5th 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, 2006—Husband of petitioner died in harness—Son of petitioner after attaining majority applying for ex-gratia appointment—Which of policies for compassionate appointment apply to petitioner—2003 Rules in operation at time of death—Whether such rules applicable in deciding case for compassionate appointment—Held, yes.

Held, that the policy of compassionate appointment is a welfare measure of the State and a very liberal interpretation is required to implement these welfare policies. The State should make a very serious endeavour to ameliorate the sufferings of the family which lost its sole bread earner while serving the State. In some of the cases, as it is in the present case as well that the dependents do not own any assets and are invariably drawn from the poorest strata of the Society and such class of people who come from the lower income segment of the society deserve to be given much better treatment instead of harassing them by raising technical pleas and by citing the niceties of rules.

(Para 15)

Tribhuvan Dahiya, Advocate *for the petitioner.*

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

JITENDRA CHAUHAN, J

(1) This order shall dispose of CWP Nos. 19006 and 19008 of 2007 as the controversy involved in both the writ petitions is similar. However, the facts are being extracted from CWP No. 19006 of 2007.

(2) The present case has been filed by the petitioner-Rambati widow of Shri Udai Beer, Head Constable in the Haryana Police who died while in service on 10th January, 2005. The deceased left behind the petitioner—widow, one daughter and three sons. At the time of the death of the deceased two minor sons were dependent upon the deceased. It is important to record here that petitioner and her two children were completely dependent upon the deceased and as per the pleadings, petitioner is extremely poor and has no land or property or any other source of income. It is also made out from the record that the petitioner has not remarried. To support her assertion, petitioner has appended the certified copy of the Certificate issued by the Sarpanch of the village Malerna, Tehsil Ballabgarh, District Faridabad as Annexure P-1.

(3) As noted above, the petitioner being extremely poor, made an application to respondent No. 3 for giving *ex-gratia* appointment to one of her sons namely Davinder. At the time of making the application, the son of the petitioner namely Davinder had not attained majority

as his date of birth in the 10th class certificate has been reflected as 15th December, 1988. As the son of the petitioner had not attained majority, the petitioner requested the respondent to reserve one post for providing appointment to her son under *Ex-gratia* Scheme i.e. Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003 (for brevity '2003 Rules'), notified on 28th March, 2003. As per the 2003 Rules, respondent No. 3 was under obligation to provide either the job to the dependent or Rs. 2.5 lacs to the family of the deceased/dependent.

(4) As per record, after receiving the application of the petitioner the name of her son was registered in the minor register maintained by the respondents at serial No. 42 by keeping one post reserved for him. It is also relevant to note that an intimation to this effect was sent by respondents No. 3 to respondent No. 2 and a copy of the same was sent to the petitioner,—*vide* endorsement No. 6417, dated 7th March, 2005. It is further relevant to note that a telegram dated 11th March, 2005 (P-3) was received by the petitioner from respondent No. 2 directing her to submit the complete case for the *ex-gratia* appointment of her son within a period of three years from the date of death of the deceased.

(5) In para four of the writ petition, it has been asserted that the petitioner's son passed his matriculation examination and the certificate to this effect was issued against his name on 5th March, 2006 by the Board of School Education Haryana. After passing of matriculation examination and on his attaining majority, the petitioner approached the respondent and brought all these facts to the notice of the respondents without any delay. After completing all the formalities, the petitioner submitted the case of her son and requested the respondents to consider his case for *ex-gratia* appointment in terms of 2003 Rules. As the petitioner's son fulfilled all the conditions of eligibility under the Rules for *ex-gratia* appointment but unfortunately in the meanwhile, the Government notified the new rules known as Haryana Compassionate Assistance to Dependents of the Deceased Government Employees Rules, 2005 with effect from 18th November, 2005.

(6) The petitioner kept meeting the respondents however no action was taken on the request made by the petitioner by the respondents and the case remained pending with them. On 5th March, 2007 a letter was received from the office of respondent No. 3 informing the petitioner that now 2006 Rules (Haryana Compassionate Assistance to Dependents of the Deceased Government Employees Rules, 2006) have come into operation wherein there was no provision for giving employment and she was instructed to opt either for compassionate assistance of Rs. 2.6 lacs or 12 years salary. The petitioner was shocked to receive this communication dated 5th March, 2007 whereby the prayer made by the petitioner had been declined. However, the petitioner sent another representation marked as Annexure P-6, wherein the petitioner asserted that the husband of the petitioner died in January 2003 and at that time, 2003 Rules were applicable for grant of compassionate appointment under the *Ex-gratia* Scheme. The new Rules 2006 have come into operation with effect from 1st August, 2006 and have no application upon the case of the petitioner. Respondent No. 3 paid no heed to the request of the petitioner regarding compassionate appointment. In this regard, it is relevant to peruse the provisions of 2003 Rules. The relevant provisions of the rules are reproduced as under :—

4. (1) A dependent of the deceased/missing Government employee shall give in writing his/her preference of option, within 3 years from the date of death of the Government employee, for one of the following :—
 - (a) *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 Government employee who dies in “service”.
 - (b) *ex-gratia* compassionate financial assistance to the family of the deceased, over and above all other benefits like *ex-gratia* grant due to his/her family, to be paid @ 2.5 lacs in case of the family of the deceased not opting for *ex-gratia* employment.

- (2) Exercise option of the opinion shall be permitted only once and shall not be changed, once exercised.
5. A dependent of the deceased/missing Government employee shall make an application in Form "A" of Form "B" for *ex-gratia* appointment on compassionate ground or *ex-gratia* compassionate financial assistance, as the case may be.
- 6(1) The head of the concerned department where the deceased/missing person was employed is competent to give appointment/provide compassionate financial assistance to the completely dependent indigent member of the family of the deceased/missing Government employee.
 - (a) The Head of the Department shall prepare a list of such departments which shall be valid for a period of 3 years and appointments will be given by the department strictly in accordance with the seniority so maintained.
 - (b) The validity of the list shall lapse after 3 years.
 - (c) The dependent of the deceased Government employee can exercise his preference with regard to option as contained in clause (b) of sub rule (1) of rule 4 of these rules within a period of one month after the expiry of the validity of list prepared by the department, if no post exists in the department for *Ex-gratia*.
- (2) The competent authority for the purpose of providing *ex-gratia* appointment/compassionate financial assistance to the completely dependent indigent members of the family of a missing government employee, shall be the Chief Secretary to Government Haryana."
- (7) To controvert the averments made by the petitioner the respondents filed a detailed reply to the present writ petition. Though

the respondents have not disputed the factual position and have positively admitted all the facts as asserted by the petitioner in the aforementioned paras put forth by the petitioner. The sole reason as projected in the written statement for not providing the relief to the petitioner is that during the interregnum period new rules known as Haryana Compassionate Assistance to Dependents of the Deceased Government Employees Rules, 2006 came into existence and the notification in this respect was issued to all concerned by respondent no. 1,—*vide* letter dated 3rd August, 2006. In these rules, it is clearly mentioned at serial No. 6 that :

“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 Dependent of the Deceased Government Employees Rules, 2006.”

(8) The respondents have further given the details as to how the petitioner was apprised of the new rules and showing their inability to accede to the prayer of the petitioner and further a letter dated 11th October, 2006 was sent to petitioner by respondent No. 3 wherein the petitioner was suggested to submit her option till 20th October, 2006 either to receive an amount of Rs. 2.5 lacs as compassionate finance assistance or the salary of 12 years. It is further mentioned in preliminary objections of the written statement that the petitioner kept the letter with her but refused to put signatures on the office copy of the letter in token of having receipt the same and thereafter another letter dated, 10th November, 2006 was sent to the petitioner mentioning the same conditions but the petitioner refused to receive that letter too. However, as per written statement the letter was received by Shri Attar Singh stated to be the brother of the deceased. As per written statement another letter dated, 5th March, 2007 was also sent to the petitioner repeating the same version therein and suggesting the petitioner to submit her option in that regard. The written statement reads that the petitioner has approached this Hon'ble court by way of present writ petition without responding

to the communication addressed to her by the respondents and the petitioner is not eligible/entitled to get her son appointed in service and, therefore, the present petition is liable to be dismissed.

(9) We have heard learned counsel for the parties and have perused the record of the case.

(10) In the circumstances narrated above, the question as to which policy is applicable to the case of petitioner acquires paramount position. Admittedly, the husband of the petitioner died on 10th January, 2005. The son of the petitioner after attaining majority applied for *ex-gratia* appointment in December, 2006 as it has been averred in para 5 of the petition. The question emerges for consideration is as to which of the policies for compassionate appointment shall apply to the petitioner(s)' case? Whether the date of the applicability upon the case of the petitioner is the clincher and needs to be settled for proper adjudication of the present proposition.

(11) A similar situation arose before Hon'ble the Supreme Court in **Abhishek Kumar versus State of Haryana (1)** wherein Hon'ble the Supreme Court has noted in para 5 as follows :—

“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 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 came on the way and refused to provide for the post.”

(12) In **Jai Ram versus Uttar Haryana Bijli Vitran Nigam Ltd. and another (2)**, 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

(1) (2007) 3 SLR 837

(2) 2004(5) SLR 851 (DB)

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 winner has died.”

(13) Similar controversy was also decided by this Court in CWP No. 6061 of 2006 titled as **Neeraj Malik versus State of Haryana and others**, decided on 18th August, 2006 and this Court has observed as under :—

“When the petitioner had approached this Court earlier, a specific direction was issued to the respondents to consider the case of the petitioner in the light of **Jai Ram’s case** (*supra*). We deprecate the approach adopted by the Transport Commissioner who while passing impugned order dated 4th April, 2006 (Annexure P-13) has contravened the ratio of the judgment in **Jai Ram’s case** (*supra*) (Annexure P-10). It defies ignorance. A perusal of the order dated 4th April, 2006 (Annexure P-13) clearly reflects that respondent No. 2 has tried to by-pass and avoid the directions issued by this Court and had made an attempt to circumvent law laid down in **Jai Ram’s case** (*supra*): Respondent No. 2 has again considered the case of the petitioner as per 2003 Rules. Instead of understanding the ratio of the judgment in **Jai Ram’s case** which has laid down that the case of the petitioner is to be governed by the instructions of 1995, respondent No. 2 has entered into controversy of comparison of facts in the case of the petitioner and that of **Jai Rams’ case** while preparing a comparative table. It would be appropriate to refer to the observations made in the impugned order dated 4th April, 2006 which reads as follows :—

“.....The case of the applicant was kept in waiting list till the new rules came into force. After coming into force of new

rules on 31st March, 2003 as the orders were received that all the pending cases will also be decided as per new rules, we returned the case of the applicant for compassionate appointment to the General Manager after removing his name from the waiting list and directed the General Manager to give financial assistance of Rs. 2.50 lacs to the applicant because as per new rules the waiting list will survive only for 3 years from the date of death of the employee.”

The above said observations reflected the lack of sense of interpretation of judicial orders and an attempt to abuse the process of law. It is surprising as to how respondent No. 2 could apply the provisions of 2003 Rules for rejecting the claim of the petitioner for compassionate appointment when **Jai Ram's case (supra)** specifically prohibited the respondents from considering the case of the petitioner under 2003 Rules. For the reasons aforementioned the impugned order dated 4th April, 2006 is held to be illegal and contrary to the ratio of the ruling in **Jai Ram's case** as well as the judgment of Hon'ble the Supreme Court in **Smt. Sushma Gosain and others (supra)**. Thus we set aside the same. The writ petition is allowed and the respondents are again directed to consider the case of the petitioner in the light of instruction Annexures P-2 and P-3 as has been held by the Court **Jai Ram's case (Supra)**. The needful shall be done within a period of three months from the date of receipt of certified copy of this order. The petitioner shall also be entitled to costs as he has been unnecessarily dragged to file this petition, which we quantify as Rs. 10,000.

(14) This same questions was answered in CWP No. 6890 of 2007 titled (*Lalita Sharma versus State of Haryana and others*, decided on 11th July, 2007). This Court has formulated very specific and definite issues regarding the applicability of the Scheme/Policy/Rules upon the claimants under the scheme of Compassionate Appointment. The Division Bench formulated the questions mentioned below :

“(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”.

(15) The Division Bench of this Court has also recorded a very categorical finding in the cases of the nature under adjudication and recorded specific finding that the policy in operation as the time of the death of the deceased would be applicable in deciding the cases for compassionate appointment. The policy of compassionate appointment is welfare measure of the State and a very liberal interpretation is required to implement these welfare policies. The state should make a very serious endeavour to ameliorate the sufferings of the family which lost its sole bread earner while serving the State. In some of the cases, we have noticed, as it is in the present case as well that the dependents do not own any assets and are invariably drawn from the poorest strata of the Society and such class of people who come from the lower income segment of the society deserve to be given much better treatment instead of harassing them by raising technical pleas and by citing the niceties of rules, which are contradictory to law laid down by Hon’ble the Supreme Court, without feeling the pain of the bereaved families. In that context, we are inclined to make a reference of decision in the case of **Secy., H.S.E.B. versus Suresh (3)**, their Lordships held that the Court must decide in the interest of public inspired by principles of justice, equity and good conscience. Similarly in the case of **steel Authority of India Ltd. versus National Union Waterfront workers (4)** guides us in the context of the interpretation of the statutes that how

(3) 1993 (3) SCC 601

(4) 2001(7) SCC 1

social welfare legislation should be interpreted. In that context their Lordships have observed that provisions of such a social welfare 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.

(16) In the light of facts discussed above, we do not think the contention of the respondents is well founded.

(17) In view of the above, the present petition is allowed and annexure P-5 is hereby quashed with a direction to the respondents to consider the case of the petitioner under the rules prevalent in the year 2003.

R.N.R.

Before M.M. Kumar J.

RAJINDER PAL GAUTAM & OTHERS,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 10759 of 1990

30th May, 2008

Constitution of India, 1950—Arts. 14 & 226—Discrimination—Acceptance of recommendations of pay commission for granting benefit of pay scale to all categories on basis of qualification of matriculation and ITI—No intelligible differentia between Pump Operators and those who have been granted benefit of higher pay—Action of excluding petitioners Pump Operators would have no rational basis without their being any differentia to the object sought to be achieved—Petitioners held entitled to be