## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO.5593 of 2011(O&M)

DATE OF DECISION: FEBRUARY 07, 2013

Kelo Devi ......Petitioner

Versus

State of Haryana and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.RK Malik, Senior Advocate with

Ms.Renu, Advocate for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General,

Haryana.

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TEIINDER SINGH DHINDSA, I.

CM No.1691 of 2013

Application is allowed as prayed for. Annexure P10 is taken on record.

2. CM disposed of.

CWP No.5593 of 2011

3. The petitioner, who is the widow of late Shamsher Singh, has filed the instant writ petition impugning the action of the respondent-Department in declining her claim for ex-gratia assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006

(hereinafter to be referred to as '2006 Rules').

- Facts of the present case are in a very narrow compass. It has been pleaded that the husband of the petitioner was appointed as a Driver, vide appointment order dated 21.6.2008, under the Haryana Transport Department. Such appointment was in pursuance to a regular selection process. It has further been averred that the husband of the petitioner was even declared medically fit prior to joining the post of Driver on 26.6.2008. Shri Shamsher Singh, husband of the petitioner, died in harness on 5.9.2010. As the petitioner had no other source of income and even had to support two minor children being 5 and 7 years of age, a representation dated 9.11.2010 was submitted to the General Manager, Haryana Roadways, Jind for grant of monthly financial assistance. Vide memo dated 20.7.2011, Annexure P8, issued from the Chief Secretary to Government of Haryana and addressed to the Director General, State Transport Haryana, the claim of the petitioner for grant of financial assistance under the 2006 Rules had been rejected. The present writ petition has been filed impugning the memo dated 20.7.2011. Annexure P8.
- 5. Learned Senior counsel appearing for the petitioner would submit that a perusal of the impugned order at Annexure P8 would reveal that the sole basis for denying the benefit of financial assistance to the petitioner under the 2006 Rules is that such benefit is admissible only to the dependents of deceased regular employees, falling in category 'A', 'B', 'C' and 'D', whereas the husband of the petitioner had been serving in the State

Transport Department on the post of Driver on a contractual basis. Learned Senior counsel would vehemently argue that the rejection of the claim of the petitioner smacks of arbitrariness and suffers from a total non-application of mind. It has been argued that the appointment of the husband of the petitioner in the year 2008 on the post of Driver was in pursuance to a regular selection process whereby the post had been advertised and selection criteria had been followed prior to issuance of appointment letter. Learned Senior counsel would even refer to the Haryana Transport Department (Group 'C') Haryana Roadways Service Rules, 1995 and to the notification dated 18.3.2004, Annexure P4, whereby the service Rules were amended in the year 2004 to contend that under the statutory service Rules, the initial appointment to the post of Driver (Class 'B') was envisaged only As per the statutory Rules, the on a contractual basis. respondent-Department has devised a method to initially appoint Drivers on contractual basis for two years on a fixed salary of ₹3,000/- per month and thereafter for a further period of two years on fixed salary of ₹4,000/- per month and it is only upon completion of four years service that the Drivers would be entitled to the regular pay scale. In sum and substance, the submission raised by the learned Senior counsel is that the husband of the petitioner was appointed strictly in terms of the statutory Rules governing the service and such appointment on the post of Driver, Class 'B', cannot be construed to be an employment on contractual/daily wage basis. Learned counsel would even refer to the 2006 Rules to contend that the eligibility of dependent of a deceased Government employee of Group 'C' and 'D' category to receive financial assistance under these Rules would be as per provisions in the pension/Family Pension Scheme, 1964. It has been contended that under the Family Pension Scheme, 1964, a Government employee having completed a minimum period of one year of continuous service without break would be eligible and such period of one year continuous service would be inclusive of permanent/temporary service in a pensionable establishment. The contention raised on behalf of the petitioner is that since her husband has been appointed on 21.6.2008 and had served continuously on the post of Driver, Class 'B' till the date of his death i.e. 5.9.2010 and such appointment had been effected in terms of the statutory Rules, the benefit of financial assistance under the 2006 Rules could not be denied to her.

- 6. Per contra, learned State counsel would contend that the husband of the petitioner had been appointed as Driver on a contractual basis for a period of 89 days, initially on 21.6.2008, and it was such contractual appointment that continued upto the date of his death i.e. 5.9.2010. Stand of the State Government is that 2006 Rules are applicable only to regular employees and since the petitioner is the widow of a contractual employee, the benefit of ex-gratia financial assistance would not be admissible to her.
- 7. Learned counsel for the parties have been heard at length and the pleadings on record have been perused.
- 8. The claim of the petitioner for grant of financial assistance on account of the death of her husband and the

validity of the rejection order dated 20.7.2011, Annexure P8, would require examination in the light of the statutory Rules governing the subject.

- 9. The 2006 Rules were notified on 1.8.2006. Rules 2 and 3 of the 2006 Rules would be relevant for consideration of the controversy raised in the present writ petition and the same read in the following terms:
  - "2. The object of the rules is to assist the family of a deceased/missing Government employee of Group C and D category, in tiding over the emergent situation, resulting from the loss of the bread-earner while in regular service by giving financial assistance.
  - 3. The eligibility to receive financial assistance under these rules shall be as per the provision in the pension/family pension scheme, 1964."
- 10. Clearly, the object of the 2006 Rules is to mitigate the sudden financial crisis that has fallen upon the family of a deceased Government employee on account of the loss of a bread-winner. Undoubtedly, under Rule 2 of the 2006 Rules, the expression 'regular service' pertaining to such deceased Government employee has been used. However, Rule 3 of the 2006 Rules clearly stipulates that the eligibility of a dependent to receive financial assistance under such Rules shall be as per provision in the pension/Family Pension Scheme, 1964.
- 11. Para 4 of the Family Pension Scheme, 1964 reads in the following terms:
  - "4. This scheme is administered as below:-

(i) The family pension is admissible in case of death while in service or after retirement on or after the lst July, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.

Note 1: The term one year continuous service used in para 4(i) above is inclusive of permanent/temporary service in a pensionable establishment but does not include periods of extraordinary leaves, boy service and suspension period unless that is regularised by the competent authority or before completion of one year continuous service provided the deceased Government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service.

Note 2: In the case of persons who were in service in composite State of Punjab prior to Ist November, 1966 and came over to Haryana State on or after Ist November, 1966 or those who have been recruited by the Haryana Government on or after Ist November,

1966, or who are transferred to the Haryana State from the Central Government or other State government and to those cases it has been agreed to count their previous service for pension, the family pension scheme would be applicable in the event of their death/retirement without putting in one year continuous service under the State Government; if their total service at the time of death (inclusive of service rendered under the previous Government) exceeds one year.

- (ii) 'Family' for purposes of this Scheme includes the following relatives of the officer:-
  - (a) wife, in the case of a male officer;
  - (b) husband, in the case of a female officer;
  - (c) minor sons; and
  - (d) unmarried minor daughters.
- Note 1- (c) and (d) include children adopted legally before retirement.
- Note 2- Marriage after retirement is not recognised for purposes of this scheme.
- Note 3- A judicially separated wife/husband does not lose her/his legal status of wife/husband of the Government employee and is thus eligible for the benefit of the Family Pension Scheme, 1964 -
- (iii) The pension is admissible:-
- (a) in the case of widow/widower upto the date of death or remarriage whichever is earlier.

- (b) in the case of minor son until he attains the age of 21 years (w.e.f. 10.5.88, 25 years)
- (c) in the case of unmarried daughter until she attains the age of 24 years or marriage whichever is earlier (25 years vide letter No.1/1(4) 80-2FRII dt.10.5.88)
- Note- (i) Where an officer is survived by more than one widow, the pension will be paid to them in equal shares. On the death of a widow, her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child the payment of her share of the pension will cease.
- (ii) Where an officer is survived by a widow but has left behind an eligible minor child from another wife, the eligible minor child will be paid the share of pension which the mother would have received, if, she had been alive at the time of the death of the officer.
- (iv) "Except as provided in the Note below sub-para (iii) of this para, pension awarded under this scheme will not be payable to more than one member of an officer's family at the same time. It will first be admissible to the widow/widower and thereafter to the eligible minor children."
- (v) In the event of remarriage or death of the widow/widower the pension will be granted to the minor children through their natural guardian, if any,

otherwise through their defacto guardian on production of indemnity bond, etc. on the analogy of the orders contained in F.D. circular letter No.6837-(5) FRI-61/8358, dated the 29<sup>th</sup> July, 1961. In disputed cases, however, payments will be made through a legal guardian (i.e. guardian appointed by a court of law).

- (vi) The adhoc increase granted under the Punjab Government circular letter No.8206-FRI-64/7668, dated 13<sup>th</sup> August, 1964, will not be admissible on the family pension granted under this scheme."
- 12. As per the relevant clause under the Family Pension Scheme, 1964 re-produced hereinabove, the benefits are admissible in the case of death while in service of a Government employee who has completed minimum period of one year of continuous service without any break. As per Note-1 appended to para 4, sub clause (i), the term of one year continuous service is inclusive of permanent/temporary service in a pensionable establishment. Still further, a rider has been imposed that such deceased Government employee immediately prior to his recruitment to the service or post was required to be examined by the appropriate Medical Authority and declared fit for Government service.
- 13. The short issue that arises for consideration in the present case is with regard to the nature of appointment and service rendered by the deceased-husband of the petitioner.
- 14. The appointment letter dated 21.6.2008 in respect of the husband of the petitioner has been placed on record at

Annexure P1. Undoubtedly, such appointment letter has been captioned as appointment as Heavy Vehicle Driver, Class 'B' on A further perusal of such contractual/daily wage basis. appointment letter would reveal that the husband of the petitioner was appointed on a consolidated salary of ₹3,000/- per month and against a temporary post. As per condition No.2 of such letter of appointment, the husband of the petitioner was obligated to serve a one month's notice or salary in lieu thereof in the eventuality of his choosing to resign from the post. husband of the petitioner had also been called upon to obtain a Medical Fitness Certificate from the Chief Medical Officer concerned as required under Rule 3.1 of the Punjab Civil Service Rules, Volume-I, applicable to the Haryana State. It was further stated that such appointment could be governed by the Haryana Service Rules, 1995 governing the post of driver. The admitted position of fact is that prior to joining the post of driver, the husband of the petitioner was medically examined and the requisite Medical Certificate of Fitness on first entry into Government service as per Rule 3.1 of the Haryana Civil Service Rules had been issued by the competent Medical Officer/Civil Surgeon, Jind, Annexure P3.

15. The categorical averments made in the petition as regards the posts of Drivers having been duly advertised and the husband of the petitioner having been duly selected and appointed in pursuance to a regular selection process have not been rebutted in the written statement filed on behalf of the State.

- 16. Upon the petitioner having submitted a representation for grant of financial assistance on the death of her husband, apparently such claim was processed and a clarification in that regard was sought by the General Manager, Haryana Roadways, Jind from the Director General, State Transport, Haryana vide letter dated 16.11.2010, appended as Annexure R2 along with the written statement. Such document would be a clincher in the present case. A perusal of the same would reveal that the husband of the petitioner had been selected and appointed to the post of heavy vehicle driver/bus driver in pursuance to a process of selection conducted by the Haryana Staff Selection Commission. As such, for all intents and purposes, the appointment of the husband of the petitioner would have to be construed to have been effected on a regular basis even though against a temporary post. It is only on account of the operation of the statutory Rules that the language 'contractual/daily wage' has been implied in the appointment letter. Such language cannot work to the detriment of the present petitioner insofar as her claim for grant of ex-gratia assistance under the 2006 Rules is concerned. The service rendered by the late husband of the petitioner would certainly fall within the scope and ambit of the expression 'temporary service' under the Family Pension Scheme, 1964 which, in turn, would render the petitioner to be eligible for the grant of financial assistance under the 2006 Rules.
- 17. Even otherwise, the 2006 Rules have been promulgated with a laudable object i.e. to provide assistance to the family of the deceased Government servant who dies in

harness. Such provisions are in the nature of a beneficial provision and are to be given a wider meaning while interpreting the same, rather than a restricted one which would negate the very object of such provisions. The observations of the Hon'ble Supreme Court in the case of Bombay Anand Bhavan Restaurant v. The Deputy Director, ESI Corporation and Anr., 2009(4) SCT 421 would be most relevant in this behalf which are in the following terms:

"The Employees State Insurance Act is a social security legislation and the cannons of interpreting a social legislation is different from the cannons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects. This Court, in the case of ESI Corporation, Hyderabad v. Jayalakshmi Cotton and Oil Products (P) Ltd., (1980) Lab IC 1078 has observed that the ESI Act is a social security legislation and was enacted ameliorate the various risks to and contingencies which the employees face while working in an establishment or factory. It is thus intended to promote the general welfare of the workers and, as such, is to be liberally interpreted."

- 18. For the reasons recorded above, the memo dated 20.7.2011, Annexure P8, is set aside. The petitioner is held to be entitled for the grant of ex-gratia assistance under the 2006 Rules in terms of taking the service rendered by the late husband of the petitioner i.e. with effect from 26.6.2008 till 5.9.2010 to be 'temporary service'. Consequently, the petitioner shall be released the admissible financial assistance as per the 2006 Rules within a period of one month from the date of receipt of a certified copy of this order.
- 19. Writ petition is allowed in the aforesaid terms.

( TEJINDER SINGH DHINDSA )
JUDGE

FEBRUARY 07, 2013

Note: Whether to be referred to Reporter? Yes/No