(2013) 02 P&H CK 0144

In the Punjab And Haryana At Chandigarh

Case No : LPA No. 257 of 2012 (O and M)

Chaudhary Charan Singh Haryana Agricultural University, Hisar — APPELLANT

Vs

Smt. Vimla Dhankar and Another — RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:
Constitution of India, 1950 — Article 309

Citation : (2013) 2 SCT 92

Hon'ble Judges : A.K. Sikri, C.J;Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Naveen S. Bhardwaj, for the Appellant; Gunjan Mehta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, C.J.—The facts necessary for deciding the present appeal are as under:-

The husband of the respondent No. 1 herein was working with the appellant i.e. Chaudhary Charan Singh Haryana Agricultural University, Hisar. He died in harness on 03.02.2005 leaving behind his widow i.e. respondent No. 1 herein and three daughters. At that time, there was a policy of the State of Haryana for compassionate appointment or grant of ex-gratia lump sum amount of Rs. 2.5 lacs under the then prevalent Rules, namely, Haryana Compassionate Assistance to the Dependents of Deceased Employees Rules, 2005 (hereinafter referred to as Rules, 2005). Under this policy, the respondent No. 1 exercised her option on 03.04.2006 opting for ex-gratia lump sum payment of Rs. 2.5 lacs. However, no decision was taken by the appellant on this application of the respondent No. 1. In the meantime, the aforesaid policy of 2005 was replaced by another policy known as the ''Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2006'' (hereinafter referred to as Rules, 2006). Under this policy, the ex-gratia payment is permissible for varying period depending upon the age of the deceased. It would be pertinent to mention that these Rules have been framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India with the object 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 bread-earner while in service by giving financial assistance. These Rules were made applicable to Group A and B employees on 12.12.2006. Rules 5 and 6 of these Rules are relevant and reproduced hereunder:-

(1) On the death of any government employee, the family of the employees would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim:-

(a) For a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty five years;

(b) For a period of twelve years or till the date the employee would have retired from government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty five years but had not attained the age of forty eight years;

(c) For a period of seven years or till the date the employee would have retired from government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty eight years.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) The family of a deceased government employee who was in occupation of a government residence would continue to retain the residence on payment of normal rent/license fee for a period of one year from the date of death of the employee.

(4) Within fifteen days from the date of death of a government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance.

(6) 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 Dependents of the Deceased

Government Employees Rules, 2006.

It is clear from the above that under Rule 6 of Rules 2006, even in pending cases, chance was given to the dependents to give an option to opt for lump sum ex-gratia grant provided in Rules 2003 or 2005 or to exercise the option under Rules 2006. The respondent No. 1 gave her option on 12.03.2007. However, this option was ignored. Instead, on the basis of earlier option exercised on 03.04.2006 under Rules 2005, the respondent No. 1 was paid lump sum amount of Rs. 2.5 lacs. Prayer of the respondent No. 1 was that her case was now covered by Rules 2006 and she should be given financial assistance, as opted by her, in terms of that policy. As this request was not accepted, the respondent No. 1 filed writ petition in this Court, which has been allowed by the learned Single Judge vide impugned orders dated 08.11.2011. Challenging that order, present intra-Court appeal is preferred.

2. The entire thrust of the appellant is on the Full Bench judgment of this Court in CWP No. 4303 of 2009 and connected petitions decided on 20.04.2012 with lead case titled as Krishna Kumari Vs State of Haryana and others. In that case, the Full Bench was concerned with Rules 2003 under which application was submitted by the dependent of the deceased seeking appointment on compassionate grounds. However, application of the dependent was kept pending and in the meantime Rules 2006 were promulgated, which were less favourable to the dependent. The case of the dependent was considered under the latter Rules. The Full Bench was of the view that merely by keeping the request pending and delaying the matter, the authorities could not take advantage of their own wrong and the case would be governed by the policy in vogue at the time when the death had occurred. It is on this basis, learned counsel for the appellant argues that since the husband of the respondent No. 1 died on 03.02.2005 when Rules 2005 were prevalent and she even exercised her option under this policy for lump sum amount of Rs. 2.5 lacs, she has to be paid that amount only and cannot claim the benefit of Rules 2006.

3. Precisely, this very question came up for consideration before this very Division Bench in Haryana Vidyut Prasaran Nigam Limited and others Vs Smt. Kelo Devi and another, LPA No. 1078 of 2012 decided on 07.11.2012. The Division Bench took note of the aforesaid Full Bench judgment and clarified that the ratio of the case was that the benefit which was more beneficial to the dependent of the deceased could not be taken away by its own fault by the department in delaying the matter. Moreover, provisions of Rules 5 and 6, as extracted above, were taken into consideration on the basis of which it was held in that judgment that since Rule 6 gives an option to the dependent whose case is still pending even to opt for a benefit under Rules 2006, this benefit would be available to the dependent of the deceased. Relevant discussion, in this behalf, is contained in the following portion of the said judgment:-

Still normally, following the aforesaid Full Bench judgment, we could hold that Rules 2003 would be applicable which were prevalent at the time of death of the husband of the respondent No. 1. However, in Rules 2006, a provision is made, which changes the entire complexion of the case. It is Rule 6 thereof which gives option to the family of the deceased and has already been reproduced above. This Rule 6 is framed keeping in view the provision of financial assistance in mind. It states that two cases of ex-gratia assistance would be covered under the new Rules. Moreover, option is given to the families to opt for the lump sum ex-gratia provided in Rules 2003 or 2005, as the case may be, in lieu of monthly financial assistance provided under Rules 2006. The objective of this Rule can be summarized by observing that the intention of the government was to provide monthly financial assistance, as per Rules 2006, instead of lump sum amount of Rs. 2.5 lacs under Rules 2003. The scheme of 2006 provides, as per Clause 5, this monthly financial assistance for a period of 15 years from the date of death of an employee to a sum equal to the pay and other allowances that was last drawn by the deceased employee, if the deceased had not attained the age of 35 years; for a period of 12 years if the employee had attained the age of 35 years but had not attained the age of 48 years; and for a period of 7 years if the deceased had attained the age of 48 years.

Alternatively, whether the family of such a deceased employee wants lump sum ex-gratia under the old Rule or monthly financial assistance under Rules 2006, the option for that purpose is given to the family. If the judgment of the Full Bench is read in the context of financial assistance as well (though that judgment was given in the context of compassionate appointment), it would amount to annihilating Rule 6 altogether. Therefore, the ratio of the Full Bench judgment is to be limited to the cases of compassionate appointment and it cannot be read in the context of ex-gratia financial assistance which was not the subject matter before the Full Bench. Extending that principle here would not only lead to illogical results, but will be contrary to the expressed provision contained in Rule 6. Furthermore, the spirit behind the Full Bench judgment was to construe a provision which is favourable to such persons, scheme being benevolent in nature.

Going by these considerations and particularly having regard to the plain language of Rule 6 of Rules 2006, when we find that option was given to the respondent No. 1 and she exercised her option to be covered by Rules 2006 and on that basis the appellants had even passed the order dated 08.02.2007 granting her the benefits in terms of Clause 5 of Rules 2006 which she was enjoying, such a benefit cannot be taken away by recalling that order.

We, thus, do not find any merit in this appeal, which is accordingly dismissed.

