

(2009) 09 P&H CK 0134
In the Punjab And Haryana At Chandigarh

Jasbir Kaur and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-09-2009

Acts Referred:

Citation : (2009) 156 PLR 676

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—Being aggrieved against the action of the respondents in withdrawing the compassionate financial assistance allowed to the petitioners under Haryana Compassionate Assistance to the Dependent of Deceased Government Employee Rules, 2006 (for short "2006 Rules"), the petitioners have filed this writ petition. The husband of petitioner No. 1 who was working as a Constable, died on 1.5.2006. On 29.3.2007, Director General of Police, Haryana issued order granting financial assistance to petitioner No. 1 under 2006 Rules. The husband of petitioner No. 2, who was working as a Constable, died on 26.8.2004. On 6.3.2007, Director General of Police, Haryana issued order granting financial assistance to petitioner No. 2 under 2006 Rules. The husband of petitioner No. 3, who was working as a Constable, died on 23.2.2005. On 14.3.2007, Director General of Police, Haryana issued order granting financial assistance to petitioner No. 3 under 2006 Rules. The husband of petitioner No. 4, who was working as a Constable, died on 27.11.2003. On 13.11.2006, Director General of Police, Haryana issued order granting financial assistance to petitioner No. 4 under 2006 Rules. Accordingly, a sum equal to the pay and other allowances that were last drawn by the husbands of the petitioners were allowed to the petitioners. Subsequently, Superintendent of Police has informed the petitioners through letter dated 27.2.2008 that the relief of salary under the compassionate financial assistance Rules, 2006, which was given earlier, is found to be against the rules as per the instructions issued by Chief Secretary,

Haryana. The copy of this letter is annexed as Annexure P-6. The petitioners have accordingly challenged this action through the present writ petition.

2. Vide order dated 18.8.2009, this writ petition was treated on behalf of petitioner No. 1 alone. The order reads as under:

The petitioners having a separate cause have joined together to file this single petition. This cannot be maintained as such. The petition qua petitioners No. 2 to 4, accordingly, is dismissed as withdrawn with liberty to file a fresh petition. The present writ petition is treated on behalf of petitioner No. 1 alone.

3. The matter in regard to grant of financial assistance under 2006 Rules is no more *res integra*. As per Rule 6, all pending cases of *ex-gratia* assistance are to be covered under the new Rules. The families will have the option to opt for lump-sum *ex-gratia* grant provided in the Rules 2003 or 2005 or for assistance in terms of 2006 Rules. In number of cases where such assistance after having been granted was withdrawn on the basis of instructions issued by the Chief Secretary came to be challenged before this Court. Such action has been held to be bad.

4. The respondents had rightly granted the *ex-gratia* compassionate financial assistance to petitioner No. 1 under 2006 Rules and action either to withdraw or not to pay the said assistance is misconceived. Rule 6 of 2006 Rules categorically provides that *ex-gratia* assistance shall be covered under the new rules. It is only that the families effected will have the option to opt for lump sum *ex-gratia* grant provided under Rules 2003 or 2005 in lieu of monthly financial assistance. In this case, petitioner No. 1 had sought monthly financial assistance on being apprised by the Rule position as contained in 2006 Rules. Thus, petitioner No. 1 did not opt for lump sum *ex-gratia* grant provided under Rules 2003 or 2005. Their claim had not been finalised when the new rules came into existence w.e.f. 1.8.2006. As per Rule 6, the pending cases are to be covered by the new Rules. Thus, 2006 Rules will clearly apply to the case of the petitioner. This aspect has already been considered by this Court in Civil Writ Petition No. 3653 of 2009 (*Babita Rani v. State of Haryana and Ors.*), which was allowed on 2.7.2009. Even the aspect of the applicability of previous rules on the ground that death was prior to 1.8.2006 was considered by this Court in *Babita Rani's* case (*supra*) and it is observed as under:

In the absence of Rule 6, the respondents could have had some justification to say that these Rules would not apply to the cases where death had taken place prior to the coming into force of 2006 Rules but on the face of Rule 6, they certainly can not be permitted to make such a plea. Without doubt, the case of the petitioner was pending on 1.8.2006, when 2006 Rules came into operation, though the death of her husband was prior to this date. The petitioner has clearly averred in Para 5 of the petition that she had opted for grant of financial assistance in terms of 2006-Rules and these averments have been admitted by the respondents. Still, it is stated that as per the instructions of the Government,

the petitioner is not entitled to get compassionate financial assistance in terms of 2006-Rules. This stand of the respondent-Government is clearly in violation of the provisions of Rule 6 of 2006 Rules and, thus, is totally misconceived. The respondents could have had some justification to take this stance if the case of the petitioner had been finalized prior to 1.8.2006.

5. Even a Division Bench of this Court in case of *Raj Kumari v. Uttar Haryana Bijli Vitran Nigam Ltd. and Ors.* 2008(4) S.C.T. 411 has viewed that all pending cases of ex gratia are to be covered under 2006 Rules. This was also a case where the ex gratia payment having been allowed was withdrawn on the basis of a letter issued by the Financial Commissioner. The Division Bench of this Court held that executive/administrative or clarification cannot amend the statutory rules framed under Article 309 of the Constitution. Thus, the justification given by the respondents to withdraw the assistance after having provided the same to the petitioner is wholly unjustified, unwarranted and cannot be sustained. The writ petition is accordingly allowed. Petitioner No. 1 is held entitled to monthly financial assistance from the date of notification of 2006 Rules, i.e., 1.8.2006. The payment due to petitioner No. 1 on this ground be released within a period of one month from the date of receipt of copy of this order.

The amount shall carry an interest at the rate of 9% per annum from the date it was due to the date of payment.