
(2008) 02 P&H CK 0191
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 374 of 2007

Rajinder Kumar

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Citation : (2008) 4 RCR(Civil) 32

Hon'ble Judges : M.M.Kumar, J and T.P.S.Mann, J

Advocate : Mr. H.S. Jaswal, Advocate. Ms. Charu Tuli, Sr. DAG, Punjab.,
Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This petition filed under Article 226 of the Constitution of India prays for issuance of directions to the Civil Surgeon, Roparrespondent No. 2 and the Director, Health Services, Family Welfare, Punjabrespondent No. 3 for grant of benefit/incentive to the petitioner as per the provisions made by the State of Punjabrespondent No. 1 under the Scheme "Balri Rakshak Yojna" for the year 200405.

2. Brief facts of the case are that the petitioner is an employee in private sector. He is married and has two minor daughters. The elder daughter was born on 5.9.1996 and the younger daughter was born on 21.3.2001. After the birth of younger daughter, the petitioner underwent N.S.V. operation on 10.9.2002 vide C.R. No. 503 at Employee State Insurance Hospital, Mohali. The certificate to that effect was issued on 13.2.2003 (P1). The State of Punjabrespondent No. 1 had announced a policy on 24.3.2005 providing that the couples who had undergone sterilization operation after the birth of one girl or two girls were to be given incentive of Rs. 500/ in case of one, and Rs. 700/ in case of two daughters per month till the girl(s) attain the age of 18 years under the scheme titled as "Balri Rakshak Yojna" for the year 200405 (P2). The petitioner applied on 22.11.2005 for the release of the benefits and attached all the documents like form in original, affidavits duly attested, birth certificates of the daughters,

photostat copy of the passbook issued by the Post Office with the Civil Surgeonrespondent No. 2 (P3). On a complaint made to the Deputy Commissioner, Mohali, an enquiry was ordered and a report was to be submitted by the Civil Surgeon, Roparrespondent No. 2 (P 4). Despite issuance of reminders and personal visits of the petitioners to the office of respondent Nos. 2 and 3, no cognizance has been taken on his grievances, which resulted into issuance of a legal notice dated 25.10.2006 on them (P5).

3. In reply, it has been submitted that census of 2001 shows a low decline in population growth rate during the last decade. The sex ratio between male and female in the State of Punjab at 876 females per 1000 male population and there is steep decline in the sex ratio in the age group of 06 years. The data presented in the aforementioned age group shows that nearly 798 girls against 1000 boys, which is the lowest sex ratio in the country. It was in this context that State of Punjabrespondent No. 1 introduced "Balri Rakshak Yojna" Scheme. The principal stand taken by the respondent is that the "Balri Rakshak Yojna" became applicable in the respondentState w.e.f. 3.3.2005 (R2) and that the petitioner was not eligible to get the benefits under the scheme as he had already undergone sterilization operation on 10.9.2002. The receipt of application on 22.11.2005 submitted to the Civil Surgeon, Roparrespondent No. 2 for release of benefits has been conceded and an additional affidavit dated 19.2.2008 filed with letter dated 2.2.2006, have been brought on record. The aforementioned letter has been issued by the Director, Health Services and Family Welfare, Punjab, Chandigarhrespondent No. 3 imposing certain restrictions on the Scheme issued on 3.3.2005 (P2).

4. Mr. H.S. Jaswal, learned counsel for the petitioner has submitted that the stand taken by the respondentState in the written statement is not sustainable if under the heading eligibility conditions; general criteria is minutely examined. According to the learned counsel, the benefit of the scheme has been made available to the child/children of those couples who have adopted terminal method and the age of the youngest child is less than 5 years at the time of commencement of the scheme. He has maintained that at the commencement of the scheme on 3.3.2005, the younger daughter of the petitioner was less than five years of age and the petitioner has already adopted the terminal method of family planning. Learned counsel has further submitted that by the letter dated 2.2.2006 which has been produced with the affidavit of Civil Surgeon, Roparrespondent No. 2, certain conditions have been imposed which include that the eligible couple should be registered in advance to avail the benefit of scheme that is to be given only to such eligible couple who were registered after implementation of the scheme and had also adopted permanent method of family planning.

5. On the other hand, learned Counsel for the State has submitted that the petitioner cannot possibly claim any benefit of the scheme because when the second/younger daughter of the petitioner was born on 21.3.2001 or when the

petitioner himself underwent N.S.V. operation on 10.9.2002, the scheme was not in operation and the petitioner could not have availed the benefit. Learned counsel for the State has maintained that the aforementioned position has been clarified by clarificatory instructions dated 2.2.2006 (R1). She has further submitted that the petitioner is not eligible because he was neither registered after the implementation of the scheme on 3.3.2005 nor the couple was registered in advance, which would mean that the couple should have been registered before the birth of the younger daughter and adoption of permanent method of family planning.

6. We have thoughtfully considered the respective submissions made by the learned counsel for the parties and are of the view that this petition deserves to be succeeded. A perusal of the "Balri Rakshak Yojna" shows that the main objectives of the scheme are :

- (a) To promote the cause of girl child for correcting the skewed sex ratio;
- (b) To stabilize the population by motivating couples to adopt terminal method; and
- (c) To reduce Infant Mortality Rate by declining the number of higher birth order.

The scheme provided a monthly incentive of Rs. 500/ after the birth of one girl child and Rs. 700/ after the birth of second girl child provided the first child is also girl. The eligibility conditions have been listed in the scheme, which reads thus:

General Criteria :

None of the partners constituting the couple should be an Income Tax Payee.

To be eligible under the scheme a couple would have to get themselves registered with the Local Gram Panchayat/Municipal Committee within whose jurisdiction the couple resides.

Couples within the age group upto 45 years for male and 40 years for female are covered under the scheme irrespective of their date of marriage.

The benefit will be available to the child/children of those couples who have adopted terminal method and the age of the youngest child is less than 5 years at the time of the commencement of this scheme.

In case neither of the parties adopts a terminal method of family planning after the birth of the first child, then in order to be eligible for this scheme, he/she will have to adopt terminal method of family planning before the youngest girl child attains the age of 5 years.

The birth of the child must have been registered with the appropriate birth registration authority within the stipulated period.

The italic portion of the eligibility conditions shows that the benefits of the

scheme were available to the child/children of those couples, who have adopted terminal method and age of the youngest child is less than 5 years at the time of commencement of the scheme. It is undisputed that the scheme has come in operation w.e.f. 3.3.2005 and the benefit of the scheme has been made available to those couples who have adopted terminal method which means that they should have adopted such methods before the commencement of the Scheme. According to the second requirement, the age of the younger child is required to be less than 5 years at the time of commencement of the scheme. The petitioner fulfills both the conditions. The younger daughter of the petitioner born on 21.3.2001 was less than 5 years on 3.3.2005 when the scheme came into operation and the petitioner himself adopted terminal method of family planning on 10.9.2002 before the commencement of the scheme as required by the aforementioned provision. There is no dispute that the petitioner was eligible in other respects namely that he is not an income tax payee, he has sent all the particulars to respondent No. 2 including the form endorsed by the Municipal Council, Mohali and proof of age etc. The only ground for rejecting the claim made by the petitioner is that the petitioner has adopted permanent terminal method of family planning before the commencement of the Scheme on 3.3.2005. The aforementioned stand has emanated after the petitioner has made claim on 22.11.2005 by sending the application to Civil Surgeon, Roparrespondent No. 2 (P3). On the basis of instructions dated 2.2.2006, it has been claimed that the benefit of the scheme would be available to those eligible couples who have registered themselves after implementation of the scheme and have adopted any terminal method under family planning. Thereafter firstly such a clarification is not to operate retrospectively and secondly the Italics portion extend the benefit to the petitioner when he filed the application on 22.11.2005. The right of the petitioner which comes into existence on the date of filing the application, cannot be snatched by subsequent clarification. We are further of the view that such like schemes which aims at removing the grave social evil must be given a liberal interpretation so as to bring in its scope, a large number of beneficiaries, rather than to adopt an interpretation which restricts the number of beneficiaries on the basis of the express provision as indicated in the Italic clause. We are of the view that the petitioner is entitled to the benefit of the scheme as sought to be implemented on 3.3.2005. The subsequent amendment made by circular dated 2.2.2006 would not adversely affect the right of the petitioner. It is noteworthy that for removal of the menace of female foeticide resulting in skewed malefemale ratio, wide campaign has been started by both the States of Punjab and Haryana and by its Legal Services Authorities. There are encouraging results which flow from the sustained campaign.

For the reasons aforementioned, this petition succeeds. The petitioner shall be granted the benefit of "Balri Rakshak Yojna" (R1). The adverse order dated 7.7.2006 (Annexure R5) shall not have any effect on the right of the petitioner. Let a sum of Rs. 700/ be released to the petitioner in respect of his both daughters w.e.f. 3.3.2005 when the Scheme has come in operation. The arrears

shall be paid within a period of 2 months from the date of receipt of a certified copy of this order along with interest at the rate of 9% per annum from the date the amount is due till the date of its payment. If the amount is not paid within the prescribed time then the petitioner would become entitled to interest at the rate of 12% per annum. The petitioner is also entitled to cost which is quantified as Rs. 5,000/.