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**R.N.R.**

***Before Permod Kohli, J***

**RENU BALA—Petitioner**

***versus***

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 8291 of 2008**

9th August, 2010

***Constitution of India, 1950—Art. 226—Haryana Compassionate Assistance to the dependents of the deceased Rules, 2003-Rls. 3(k) & 18—Parents of petitioner both working as JBT teacher died in an accident—Petitioner only 1½ years old at that time—Claim for ex-gratia payment and compassionate appointment on attaining majority—Rl. 18 provides that claim for appointment of an orphan shall remain alive till one child has attained majority for entry into service—Petitioner falling within definition of expression ‘orphan’ as defined under Rl. 18—Petition allowed, respondents directed to release ex-gratia amount to petitioner and for consideration of claim for compassionate appointment in terms of Rl. 18.***

***Held,*** that from the reading of Rule 18 it appears that the intention of the Government is to create a special category for grant of *ex-gratia* appointment i.e. an orphan child whose claim remains intact till he/she attains majority for entry into Government service. It is specifically provided that the claim of appointment of such orphan shall remain alive till such child has attained majority for entry into Govt. service. No doubt, this Government Policy/Rules came into being much after the date of death of the deceased employees. Rule 18 itself has been created as an exception to the general rules of *ex-gratia* appointment/financial assistance. Keeping

in view the spirit, object and purpose of the rules, the claim of the petitioner is required to be considered in terms of Rule 18 of the Haryana Compassionate Assistance to the dependents of the deceased Rules. The petitioner falls within the definition of the expression 'Orphan' as defined under rule 18.

(Paras 11 & 12)

R.N. Sharma, Advocate, *for the petitioner.*

R.S. Kundu, Addl. A.G.; Haryana.

**PERMOD KOHLI, J (ORAL) :**

(1) It is an unfortunate case, where the petitioner, female child lost her parents when she was only 1½ years of age. Father of the petitioner late Shri Ashok Kumar and her mother late Smt. Kanta Devi both were working as J.B.T. Teachers in the Haryana Education Department, While travelling in a bus on 25th September, 1988 both died in accident. Petitioner's date of birth is 9th April, 1986, thus, she was 1½ years of age at the time of death of her parents. Office of the Director, Primary Education, Haryana,—*vide* order dated 23rd May, 1989 sanctioned Rs. 15,220 as *ex-gratia* grant in favour of the petitioner. However, the amount could not be disbursed, the petitioner being minor at the relevant time. After the death of her parents, petitioner was brought up by her grand father. Petitioner passed her B.A. from Punjabi University, Patiala on 21st June, 2007. She became major on 9th April, 2004. It is stated that neither the *ex-gratia* amount nor the G.P.F. of her late parents has been released to the petitioner or even to her grand father, who was the guardian after the death of her parents. The petitioner submitted a representation dated 15th July, 2004 for release of the G.P.F. amount, which was followed by another request dated 20th August, 2006 (Annexure P-6). Petitioner also applied for compassionate appointment,—*vide* her letter dated 12th September, 2007 being an orphan. It is also stated that the *ex-gratia* amount has been enhanced by the Government—*vide* order dated 26th April, 1998 equal to 10 months emoluments with minimum of 10,000 and maximum of Rs. 25,000. Since the petitioner was not paid *ex-gratia* and G.P.F. amount of her parents nor compassionate appointment was granted to her, this petition has been filed seeking a direction for compassionate appointment being an orphan and release of G.P.F. and *ex-gratia* amount payable to her being

the sole surviving Legal Representative of the deceased Government employees with interest @ 18%.

(2) On being put to notice, the State-respondents admitted the facts alleged in the writ petition relating to death of the petitioner's parents and her age etc. It is, however, stated that ex-gratia amount of Rs. 15,220 sanctioned on 25th May, 1989 could not be paid to the petitioner she being a minor at that time and this amount was kept in a Fixed Deposit. Fixed Deposit receipt No. 0077 has been released in favour of the petitioner. It is stated that on maturity she will be entitled to an amount of Rs. 69,470.50. It is also stated that the final payment of G.P.F. amount of Rs. 13,123 has been received by the petitioner on 16th April, 2009. In respect to the claim of the petitioner for compassionate appointment, it is stated that the petitioner was minor at the time of death of her parents and there is no provision for keeping a post reserved for the minor under the *ex-gratia* policy of the State Government dated 31st October, 1985, which was applicable at the time of death of her parents.

(3) *Vide* order dated 5th November, 2009 this Court directed the respondents to file a comprehensive affidavit with regard to other claims of the petitioner particularly her right for family pension and other pensionary benefits as also whether she could be offered compassionate appointment. It has also been observed that on the G.P.F. amount of Rs. 12,137 only an interest of Rs. 986 has been paid up to March, 1989. *Vide* another order dated 7th January, 2010 respondents were directed to pay the interest on G.P.F. and gratuity up to the date of release of the amount.

(4) Admittedly, only G.P.F. amount has been released with interest up to March, 1989. The G.P.F. amount remained with the respondents till disbursement. It must have earned interest thereon. No interest beyond March, 1989 has been paid to the petitioner. In terms of the order dated 7th January, 2007 the respondents have failed to pay any interest after March, 1989. The respondents have also placed on record copy of the receipt dated 22nd December, 2009, whereby an amount of Rs. 10,000 was paid to the petitioner on account of *ex-gratia*. Under the Government instructions dated 26th April, 1998 the *ex-gratia* amount was revised equal to 10 months emoluments admissible to the Legal Representative of the deceased Government employees with minimum of Rs. 10,000 and a maximum of Rs. 25,000. This amount, in fact, has been fixed on account of the death of a Govt. employee. Petitioner lost her parents and both of

them were in Govt. service at the time of their death. Thus, the petitioner is entitled to double *ex-gratia* amount under the Govt. instructions. She has been paid only Rs. 10,000. It is also not disclosed whether this amount of Rs. 10,000 is equal to 10 months emoluments being received by the deceased Government employees.

(5) The petitioner is claiming compassionate appointment invoking the Compassionate Appointment Rules, 2003, whereunder special relaxation has been given in case of an orphan child. Rule 18 reads as under :—

**“Relaxation 18.** There shall be no relaxation of any provision of these rules. However, as a special case, these rules shall be relaxed only in the cases of children who have become orphans upon the demise of the Government employee. The claim of appointment of such orphans, shall remain alive till one child has attained majority/minimum eligible age for entry into Government service.”

(6) Normally the petitioner’s claim could only be considered under the Government policy i.e. *ex gratia* instructions as were applicable at the time of death of her parents. Petitioner being minor at the relevant time could not have been granted *ex gratia* appointment.

(7) It is a settled law that *ex gratia* appointment is not an independent source of recruitment. Hon’ble Supreme Court has unequivocally held in various judgments that the object and purpose of *ex-gratia* appointment is to provide immediate relief to the family in penury and it cannot be extended to make it a separate source of recruitment. It has also been held that *ex-gratia* appointment is an exception to the mandate of Articles 14 and 16 of the Constitution. In this regard, reference can be made to **Umesh Kumar Nagpal versus State of Haryana & Ors. (1)**, wherein following observations have been made :—

“However, it is now a well settled principle of law that appointment on compassionate ground is not a source of recruitment. The reason for making such a benevolent scheme by the State or the Public Sector Undertaking is to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.”

(8) In case of **General Manager (D&PB) & Ors. versus Kunti Tiwary & Anr. (2)**, Hon'ble Supreme Court has held as under :—

“Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood.”

(9) In case of **State of J&K & Ors. versus Sajad Ahmed Mir (3)**, the Hon'ble Supreme Court considered the question of delay in the matter and held as under :—

“16. Furthermore, about 12 years have passed. Appellant's son is aged about 20 years and daughter is aged about 16 years. Therefore, they have become major. Appellant herself would be aged about 38 years now. She cannot be given any appointment at this age.”

(10) However, the present case seems to be an exceptional case, where the petitioner lost her both parents. The State of Haryana in its wisdom introduced the policy of granting compassionate appointment to orphans under the 2003 Rules. These rules came into operation on 28th February, 2003. The expression ‘Orphan’ has been defined under Rule 3(k) which is reproduced hereunder :—

‘(k) “Orphan” means a child who has previously lost one parent and has become an orphan upon the demise of the Govt. employee.’”

(11) Rule 18, however, is an exception to the general and usual policy of giving *ex-gratia* appointment. From the reading of the rule it appears that the intention of the Govt. is to create a special category for

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(2) (2004) 7 S.C.C. 271

(3) 2006(3) S.C.T. 598

grant of ex-gratia appointment i.e. an orphan child whose claim remains intact till he/she attains majority for entry into Govt. service. It is specifically provided that the claim of appointment of such orphan shall remain alive till such child has attained majority for entry into Govt. service. No doubt, this Govt. Policy/Rules came into being much after the date of death of the deceased employees. Rule 18 itself has been created as an exception to the general rules of ex-gratia appointment/financial assistance.

(12) Keeping in view the spirit, object and purpose of the rules, I am of the considered opinion that the claim of the petitioner is required to be considered in terms of Rule 18 of the Haryana Compassionate Assistance to the dependants of the deceased. The petitioner falls within the definition of the expression 'Orphan' as defined under rule.

(13) In view of the above, this petition is allowed. Respondents are directed in the following manner :—

1. To release further ex-gratia amount on account of death of the parents of the petitioner, both of them being govt. employees.
2. The amount of ex-gratia already paid and to be paid to the petitioner be re-calculated equal to 10 months emoluments of the deceased Govt. employees at the time of their death and if, the amount of ex-gratia on such calculation is more than Rs. 10,000 the balance amount on account of death of one of the Govt. employee and the total ex-gratia on account of the death of the other Govt. employee be paid to the petitioner within two months.
3. The claim of the petitioner for compassionate appointment as an orphan be considered within a period of two months from the date of receipt of the certified copy of this judgement.