

2025:PHHC:071026



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

247

**CWP-5924 of 2023
Date of Decision: 21.05.2025**

MRS. NEELAM

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Promila Nain, Advocate for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Seeking release of the service benefits to the petitioner w.e.f. 28.05.2001, as per the order dated 18.03.2021 passed by respondent No.2, i.e. from the date when the petitioner submitted her application for appointment to Class-IV post on compassionate basis after the death of her husband on 22.04.2001, the instant writ petition has been filed.

Learned counsel for the petitioner contends that late Sanjiv Kumar, the deceased husband of the petitioner was appointed as Forest Guard in the Forest Department of Government of Haryana in the year 1996. He however died in harness on 22.04.2001. After the death of her husband, the petitioner applied for compassionate appointment as per the policy/instructions bearing Memo No.16/5/95-6 GS II dated 08.05.1995 that was in force, on 28.05.2001. The said application was however kept pending and eventually, a final order was passed by the respondents on 29.08.2005 rejecting the claim of the

petitioner for compassionate appointment without any valid reason/basis. The petitioner was thus constrained to approach this Court to seek the benefit of compassionate appointment under the erstwhile policy by way of CWP No.3662 of 2013 titled as Neelam Versus State of Haryana and others.

Vide order dated 19.02.2018, this Court noticed the contention of the counsel for the petitioner that the respondents declined her claim for appointment in terms of the State Policy for the reason that only 5% of the total vacancies were to be filled up by way of compassionate appointment and that too within three years of the death of the employee. It was recorded that even though the petitioner had moved the application well in time, yet, the same was not considered by the respondents and that such a delay could not have been relied to the prejudice of the petitioner, whereupon the State Counsel sought time to take appropriate instructions. Eventually, the respondents took a final decision and offered appointment to the petitioner. The aforesaid CWP No.3662 of 2013 came up for hearing on 14.08.2018, when the appointment letter dated 21.06.2018 was taken note of. The writ petition was disposed of as having been rendered infructuous but without prejudice to the rights of the petitioner to claim any other service benefits that may be available to her in accordance with law or as a result of delayed appointment. The said order reads thus: -

“RAJIV NARAIN RAINA, J. (Oral)

The petitioner has been offered the post of Peon and has joined service. Her appointment letter is attached as R-1 with the affidavit filed by K.C. Meena, Conservator of Forests, North Circle, Ambala, Haryana. This renders the petition infructuous as far as appointment is concerned.

Dismissed as having been rendered infructuous.

However, the dismissal of this case as having been rendered infructuous will not prejudice or affect any other service benefits which may be available to her in accordance with law or as a result of delayed appointment.”

(Emphasis supplied)

Counsel contends that the petitioner thereafter got issued a legal notice dated 20.02.2021, demanding the service benefits for the delay caused by the respondent-Authorities in accepting and acknowledging her entitlement to appointment without any fault attributable to the petitioner herein. The Chief Conservator, Forests considered the petitioner's claim and vide letter dated 18.03.2021, acknowledged that the petitioner is entitled to all the service benefits w.e.f. 2001 as per the policy of 1995 and made a recommendation in her favour. The operative part of the said recommendation made by the Chief Conservator, Forests is extracted as under:

“Citing the above decision a legal notice has been sent by the respondent on 22.02.2021 in which the petitioner has filed an application dated 28.05.2001 for appointment in 2018 (approximately 17 years) has sought service benefits. Smt. Neelam wife of Late Sh. Sanjeev Singh case comes under Notification of 1995 because when the employee died in 2001 at time employment to the dependent of the deceased govt. employee under Ex Gratia Scheme 1995 was applicable. Legal opinion has been given by ADA working in this office on legal notice which is as follow: -

"Legal opinion on the claim of Smt. Neelam for granting all the service benefits to her by considering her to be in service from May, 2001 i.e. the date when she applied for the Ex-Gratia appointment on compassionate grounds.

On the title noted above it is submitted that when petitioner Smt. Neelam made the application for ex-gratia

employment on compassionate grounds the relevant rules governing the subject were "Employment to a dependent of a deceased Govt. Employee under the ex-gratia scheme dated 08.05.1995 bearing memo no. 16/5/95-GS-II (as amended by the circular dated 31.05.1995).

The claim of the petitioner was rejected by PCCF vide order bearing memo no. E-IV-1/718/21 dated 29.08.05 on account of the fact that employment could be provided within a period of 3 years only. This was challenged by the petitioner by filing CWP No. 3662 -2013 and in view of this CWP the petitioner's case was reconsidered by the department and the petitioner was finally given employment in the office of DFO, Ambala on 21.06.2018 at the post of peon. Keeping in view of the employment of the petitioner the Hon'ble High Court dismissed the CWP No. 3662-2013 finally on 14.08.2018 while particularly mentioning that "the dismissal of this case as having been rendered infructuous will not prejudice or affect any other service benefits which may be available to her in accordance with law or as a result of delayed appointment.

Keeping in view of the above stated order of the Hon'ble High Court, it is submitted that, if the petitioner fulfils all the eligibility conditions under the policy of 1995, the case of petitioner should be considered under the policy of 1995 as at the time of making of application by the petitioner the policy of 1995 was in force. Accordingly, all the service benefits should be released in favour of petitioner from the date of her application to the date of her appointment in accordance with the relevant rules applicable."

According to the above benefit of the appointment of Smt. Neelam Guard becomes payable from the year 2001. Therefore you are take necessary action regarding the above."

It is submitted that notwithstanding the said recommendation made by the Chief Conservator of Forest about the entitlement of the petitioner to the benefits w.e.f. 2001, the needful has not been done by the respondents, hence the present writ has been filed.

Learned State Counsel, on the other hand, contends that the Chief Conservator, Forest was not competent to make any such recommendation on behalf of the Government and such recommendation is also not binding upon the Government. It is further argued that the petitioner had accepted the letter of appointment without any protest and objection; and as such she is not entitled to raise any challenge to the denial of service benefits w.e.f. 2001. She contends that the recommendation made by the Chief Conservator, Forest is at best an opinion which has no binding force on the Government.

No other argument has been raised nor any judgment has been cited by either of the parties.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The undisputed facts which emerge from the above are that the petitioner was even though entitled to compassionate appointment consequent upon the death of her husband in April 2001, however, the said appointment was initially delayed and later denied to her and an order was passed in this regard on 29.08.2005.

It also remains undisputed that the petitioner had filed CWP No.3662 of 2013 before this Court seeking setting aside of order dated 29.08.2005 declining her claim for compassionate appointment. It was during

the pendency of the said petition that the respondents issued the letter of appointment on 21.06.2018 in favor of the petitioner. When the CWP No.3662 of 2013 was finally disposed of on 14.8.2018, the petitioner was granted the liberty to take recourse to the remedy(ies) available to her for seeking other service benefits, that may have accrued in her favour, as a result of delayed appointment. It was only thereafter that a representation was submitted by the petitioner by way of a legal notice to which the comments/opinion was forwarded by the Chief Conservator, Forest to the Principal Conservator, Forest about entitlement of the petitioner to the benefits as claimed w.e.f. 2001. The respondent-State has disputed the binding force of such a recommendation/letter forwarded by the Chief Conservator, Forest holding that the same at best can be perceived as an opinion of the Chief Conservator, Forest and the same has no binding force so far as the respondent-State is concerned.

It also remains undisputed that even though the respondents have passed the order declining the claim of the petitioner for compassionate appointment on 29.08.2005, the writ petition was filed by the petitioner only in 2013 i.e. after 8 years. Still further, the said writ petition had even though been disposed of in 2018, the instant writ petition has been filed after 05 years thereafter. Although an effort has been made by the counsel for the petitioner to contend that it was on account of the pressing financial circumstances, that the petitioner could not approach the Court earlier, however, this Court cannot lose sight of the fact that the delay post rejection of the claim of the petitioner was attributable solely to the petitioner. At this juncture, even though the respondent-Chief Conservator, Forest may have forwarded his comments to the Principal Chief Conservator, Forest acknowledging the entitlement of the

petitioner to the claimed benefits by noticing that she is entitled to the said benefits by taking into consideration the scope of the scheme for compassionate appointment, however, the delay in approaching the Court would restrict the entitlement of the petitioner to claim benefits.

Under the given circumstances, I feel that the respondents, by issuing the letter of appointment to the petitioner in June 2018, have acknowledged the lapse on their part. The defects of the earlier order rejecting the claim of the petitioner thus stands admitted and acknowledged by them by their subsequent conduct in issuing the letter of appointment. The rights of the petitioner to other service benefits have been protected by the Single Judge vide its order dated 14.08.2018 when the CWP No.3662 of 2013 was disposed of as having been rendered infructuous to the extent of appointment but the cause of action for other service benefits on account of delay in issuance of the letter of appointment was kept open. Hence, the petitioner is within her rights to agitate the said issue and would not be barred from filing the instant writ petition solely because she did not file any objection at the given point of time against the terms and conditions incorporated in the letter of appointment. There would thus be no estoppel since the legal notice was submitted by the petitioner in quick succession of disposal of CWP No.3662 of 2013 on 14.08.2018. The issuance of Legal Notice has to be perceived as an objection by the petitioner w.r.t. the prejudice caused to her on account of delayed admission of her claim and issuance of letter of appointment in her favor. Thus, the submissions advanced by the learned State Counsel do not hold much substance.

However, it is also worth noticing that the delay in approaching the Court against the order dated 29.08.2005 cannot be attributed to anyone but the

Petitioner herself and the Respondent state cannot be burdened with the financial liability for the period lost on account of inaction on the part of the petitioner who kept sitting as a fence sitter. Thus, in the totality of the circumstances of the present case, equities can be well balanced by partly allowing the instant writ petition.

The petitioner is thus held entitled to the service benefits for a period of three years and two months prior to the institution of CWP No.3662 of 2013 notionally and actually w.e.f. the date of her appointment. The respondents are directed to re-compute the admissible benefits accordingly and extend the benefits of revised pay along with arrears, if any.

Let the necessary exercise be carried out by the respondents within a period of three months of the receipt of certified copy of this order and the admissible benefits be released to the petitioner within a period of two months of completion of the above exercise regarding re-computing the admissible benefits, failing with the petitioner shall be entitled to interest @ 6% per annum from the date of passing of the instant order till the actual disbursement of the benefits. The additional financial burden on account of interest, if any, may be recovered by the respondents from the erring official/ officer.

Petition stands partly allowed in above terms.

MAY 21, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No