



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

**LPA-2930-2025 (O&M)
Date of Decision: 01.10.2025**

SHEELA DEVI **... APPELLANT**
VS.

**STATE OF HARYANA THR. ITS SECRETARY TO GOVT. OF
HARYANA AND OTHERS**

.. RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. R.K. Doon, Advocate,
for the appellant.

Mr. Pankaj Midha, Addl. A.G., Haryana

ROHIT KAPOOR, J.

CM-7370-LPA-2025

1. The instant application has been filed under Section 5 of the Limitation Act, seeking condonation of delay of 1013 days in filing the accompanying appeal.
2. Notice.
3. Mr. Pankaj Midha, Addl. Advocate General, Haryana accepts notice on behalf of the respondents and waives service.
4. For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and the delay of 1013 days in filing the accompanying appeal is condoned.

LPA-2930-2025

1. Prayer in the present Letters Patent Appeal is for modification of the judgment and order dated 16.11.2022, passed by the learned Single Judge in CWP No 23820 of 2011, to the extent that the respondents be

directed to consider and grant compassionate appointment to the son of the appellant, under the applicable policy/rules.

2. Facts in brief are that the husband of the appellant was serving in the Haryana Police on the post of Constable and died on 28.07.2005, while performing his official duties. The appellant requested for the grant of compassionate assistance by way of ex-gratia financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (*hereinafter referred to as 'the 2006 Rules'*), on 22.09.2006. Letter dated 19.10.2006 was issued by the office of Director General Police, Respondent No. 2 to the Superintendent of Police Fatehabad, Respondent No. 3, for seeking option from dependents of the deceased employee regarding grant of lump sum ex-gratia grant as per Rules of 2003/2006 or monthly financial assistance under the new Rules of 2006.

3. Permission for grant of financial assistance under the 2006 Rules to a sum equal to the pay and other allowances last drawn by the deceased husband of the appellant, was accorded for a period of 12 years w.e.f. 01.08.2006, vide letter dated 23.12.2006. It was specified that the appellant will not get pension w.e.f. 01.08.2006. The office of the Chief Secretary to Government Haryana, vide letter No. 16/56/2006-5GSH dated 08.06.2007 issued a clarification, inter-alia to the effect that in case where death occurred prior to 01.08.2006, and where Pension Payment Order(PPO) has been issued by the office of the Accountant General, Haryana, then the option for availing the benefit under the new scheme introduced w.e.f. 01.08.2006, cannot be provided. Since the appellant had already been granted family pension by issuance of PPO on 21.10.2005 and death of her husband had occurred prior to 01.08.2006, respondent no. 3 issued letter

dated 12.02.2008 to the Appellant, seeking refund of an amount of Rs. 1,57,152/- on the ground that she had wrongly received both salary and pension in violation of the Rules. It is at this stage that the Appellant in her Reply dated 25.02.2008 stated that she is ready to deposit the said amount if her written undertaking, waiving right of appointment of her son, is returned and he is given appointment on compassionate grounds. The Reply was followed by a Representation dated 28.04.2008.

4. In supersession of its earlier order dated 29.12.2006, granting monthly financial assistance, respondent No.2 passed order dated 18.11.2008 according sanction for payment of ex-gratia compassionate lumpsum financial assistance to the tune of Rs.2,50,000/- to the appellant, on the ground that the family had re-opted for financial assistance under the 2003 Rules in lieu of financial assistance under the 2006 Rules. An affidavit dated 28.04.2008, whereby the appellant agreed for a lumpsum amount of Rs. 2,50,000/- as ex-gratia assistance and gave an undertaking that she is not interested in seeking employment, is part of the record.

5. Aggrieved by the said order dated 18.11.2008, whereby the financial assistance being granted under the 2006 Rules was withdrawn, the appellant filed CWP No. 23820 of 2011 under Article 226 of the Constitution of India. Perusal of the prayer clause in the said writ petition would reveal that a two-fold prayer was made therein. For quashing the order dated 18.11.2008, and for a direction to the respondents to grant monthly financial assistance to her as per order dated 23.12.2006.

The learned Single Judge vide its judgment and order dated 16.11.2022, allowed the writ petition, by inter alia making the following observations :-

“xxx xxx xxx xxx

The petitioner submitted reply dated 25.02.2008 (Annexure P-5) and requested that her son be given suitable appointment and stating she is ready to deposit the alleged amount. On 28.04.2008, petitioner again submitted a representation (Annexure P-6) that she is ready to deposit the amount in case her son is given suitable employment as the son of the petitioner has attained majority and his qualification is 10+2. Respondent No.2 passed the impugned order dated 18.11.2008 (Annexure P-7) vide which the earlier order dated 29.12.2006 (Annexure P-3) was withdrawn and sanction of Rs.2.5 lakh was accorded in respect of financial assistance. It was also mentioned in the said order that the amount of Rs.1,57,152/- be deducted from Rs.2.5 lakh.

3. *Learned counsel for the petitioner submits that later on rules were amended and the lumpsum ex-gratia financial assistance of Rs.2.5 lakh was increased to Rs.5.00 lakh and on 01.08.2006, rules were again amended vide notification (Annexure P-8). He submits that in the amended rules, the benefit of job has been totally withdrawn and only monthly financial assistance and lump sum financial assistance has been provided. He further submits that when the case for grant of benefit of monthly financial assistance was considered, at that time the Policy/Rules 2006 was applicable. Therefore, the petitioner is entitled for the grant of monthly financial assistance. Hence, the writ petition.*

4. *I have heard learned counsel for the parties and gone through the case file.*

5. *The controversy involved herein can be confined in narrow compass as to whether the petitioner is entitled to ex gratia benefit under 2003 Rules or 2006 Rules? What is relevant to be noted herein is two things i.e., the date of death and the nature of option exercised by the widow-petitioner after the death. Concededly, her husband died in harness on 28.07.2005 and on the relevant date 2003 Ex Gratia Rules were applicable which envisage three-fold rights on the dependents of the deceased i.e., (a) to opt for compassionate appointment or (b) to opt for one time ex-gratia financial assistance amounting to Rs.2.5 lakh and (c) in addition to get family pension as per service rules. As against the subsequent policy of 2006, wherein further benevolent provision was made that in case a dependent chooses not to seek compassionate appointment, last drawn full salary of the deceased would be payable for a certain period to ameliorate the penury which the family members are visited on account of losing the sole bread winner of the family. Furthermore in subsequent policy, following clause was inserted which is relevant for adjudicating the controversy in hand:-*

“6. Pending Cases: 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 employee Rules, 2006.”

6. Perusal of the above leaves no manner of doubt that even if the death has taken place prior to 2006 Rules, those cases which had not attained finality, are to be dealt with by the subsequent Rules of 2006. The rival interpretations of the aforesaid Clause by the parties have led to the writ proceedings before this Court. While learned counsel for the State strenuously relies upon the affidavit dated 28.04.2008 (Annexure R-2) given by the widow petitioner clearly stating therein that I am not interested to get employment against the above said deceased under Ex-gratia appointment on compassionate grounds. That I am ready to get Rs.2.5 Lacs under new Scheme the Haryana Compassionate Assistance to Dependents of Deceased Govt. Employees Rules, 2005 of Haryana Govt.: He argues that the petitioner’s case stood concluded under the earlier 2003 Rules. He would submit that the petitioner subsequently as a volte-face took a U-turn and stated that being illiterate, she was not aware of her rights and therefore wrongly gave such an affidavit and instead her son, who was a minor at the relevant time, had since attained the age of majority on 06.12.2006 being 18 years and he being 10+2 pass be provided with the job in accordance with his qualifications.

7. Having heard the rival contentions, I am of the view that it is the respondents, who themselves kept the pot boiling despite the petitioner having given the specific affidavit that one time monetary compensation be given to her, as did not take any steps whatsoever to make remittance in terms of the option exercised by the petitioner. Not only that, the respondents also accorded the benefit of subsequent policy of 2006 vide an office order dated 23.12.2006 (Annexure P-3), whereby permission was accorded for financial assistance equivalent to the last pay and other allowances drawn by her deceased husband in terms of Rule 5 (1) of the Ex Gratia Rules 2006 for a period of 12 years. Though it is now claimed that this was done by mistake, but the same is attributable wholly to the respondents themselves.

8. Needless to say that in view of the grant of aforesaid benefit of monthly assistance, the petitioner was held not entitled to any family pension. Viewed from any angle, one cannot possibly attribute any misrepresentation and/or concealment or

any overt act by the petitioner owing to which she can be held responsible for sanction of according the benefit under the subsequent policy of 2006. Once the petitioner was given the benefit of 2006 policy, it presupposed two things:- 1) her case was then pending and 2) the Department itself gave her an impression that since she was given the benefit of monthly assistance under 2006 policy, in case she opts not to take monthly assistance and she can also alternatively exercise the option of compassionate appointment.

9. It is in this premise, that the petitioner was advised that since the department itself has given the benefit under 2006 policy, though the death took place prior to that and her case was pending, she should rather exercise the option of seeking compassionate appointment. When she opted for compassionate appointment, it is then that the department turned around and said that not only the monthly assistance equivalent to the last drawn salary of the deceased husband has been wrongly accorded, the petitioner should refund the amount paid pursuant thereto and all that she would be paid is Rs.2.5 lakh in terms of her affidavit (Annexure R-2).

10. I do not find the stand of the respondents to be sustainable, as has already observed hereinabove. It is the respondents, who are responsible in every way for keeping the case pending. Therefore, the petitioner ought to have been given the right to exercise her option, either to seek compassionate appointment, or in the alternative, monthly financial assistance since for no fault of her, she was denied the right to exercise her option.

11. Qua the applicability of the policy, reference may be had to single Bench Judgment of this Court dated 11.11.2014 rendered by my learned Brother Tejinder Singh Dhindsa, J. in CWP No. 8018 of 2011 which in turn relies on a Division Bench Judgment in CWP No.4074-2008 titled Raj Kumari Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others. Speaking for the Court, he held as below:-

8. Concededly, the claim of the petitioner was pending as on 1.8.2006 i.e. the date the 2006 Rules came into force. The petitioner had never submitted an option for grant of lump sum ex-gratia grant of 5 lacs under the 2005 Rules. To the contrary, placed on record at Annexure P9 is the option submitted by the petitioner for grant of financial assistance as per 2006 Rules. The submission of such option vide representation dated 4.6.2009 stands admitted in para 8 of the written statement.

9. The basis furnished in the written statement as regards denial of ex-gratia monthly financial assistance to the petitioner under the 2005 Rules ie. on account of a clarification dated 16.1.2009 cannot sustain. The claim of the petitioner is founded on the strength of statutory

Rules i.e. the 2006 Rules which were framed in exercise of the powers conferred under proviso to Article 309 of the constitution of India. The right conferred upon the petitioner on the strength of such statutory provisions i.e. The 2006 Rules cannot be curtailed by the issuance of any subsequent executive instructions. This very issue came up for consideration before a Coordinate Bench of this Court in Civil Writ Petition No. 9295 of 2008 titled as Sushila Devi v. State of Haryana and others, decided on 9.7.2009 and while considering the scope of the clarification dated 16.1.2009, it was observed as follows:

"This clarification is contrary to the Rule position as would emerge from Rule 6 noticed above. The clarification issued by the Chief Secretary can not have over-riding effect over the Rules framed under Article 309 of the Constitution of India. Clearly, the case of the petitioner was pending and would be governed by 2006 Rules. She had given an option for ex-gratia assistance under these Rules and she did not opt for 2003 or 2005 Rules. The clarification issued by the Chief Secretary is contrary to the Rule position and, thus, can not be sustained. Even the Division Bench of this Court in the case of Raj Kumari v. Uttar Haryana Bijli Vitran Nigam Ltd. And others, 2008(4) SCT 411, has viewed that all pending cases of ex-gratia assistance are to be covered under 2006-Rules."

10. As such, it is held that the clarification dated 16.1.2009 cannot stand as an embargo for consideration of the claim of the petitioner for grant of ex-gratia monthly financial assistance under the 2006 Rules.

11. Accordingly, in view of the discussion above, the instant petition is allowed. Directions are issued to consider the claim of the petitioner for grant of ex-gratia financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 and by ignoring the clarification dated 16.1.2009. Let such exercise of consideration be finalized within a period of two months from the date of receipt of a certified copy of this order. In case the petitioner is otherwise found entitled to the requisite financial benefit under the 2006 Rules, the same be released to her without any further delay."

12. It transpires that not only at the time of coming in force of later policy of 2006, the case of the petitioner was pending and it is only for the first time on 18.11.2008 vide Annexure P-7 that administrative sanction was accorded for remittance of Rs.2.5 lakh as one time ex-gratia compensation.

13. *It does remain an uncontroverted factual position that as on the date of coming into force of later policy of 2006, the case of the petitioner was pending. Mere according of sanction for one time ex-gratia compensation on 18.11.2008 after issuance of notice in the writ petition would, therefore, not take away the rights of the petitioner which stood crystallized prior to the filing of the writ petition.*

14. *As an upshot of the discussion herein above, the impugned order is quashed. Writ petition is allowed. Petitioner is held entitled to the monthly assistance in terms of the 2006 policy.*

15. *Consequential benefits arising out of quashing of the order impugned herein including payment of arrears be accorded to the petitioner within a period of two months from today along with interest @ 5% per annum.”*

7. The respondent-State challenged the judgment and order dated 16.11.2022 by filing Letters Patent Appeal No. 683 of 2023, which was dismissed by a Division Bench of this Court on 17.11.2023. Admittedly, the appellant filed a contempt petition i.e. COCP-738-2023 (O&M), which was dismissed as having been rendered infructuous on 19.12.2023, since the State had complied with the orders dated 16.11.2022 and the arrears of monthly financial assistance alongwith interest were paid to the appellant-petitioner. It was at a much belated stage that the appellant and her son filed CWP No. 1831 of 2025 (O&M), for issuance of directions to the respondents to consider and grant compassionate appointment to petitioner No. 2 therein, i.e. the son of the appellant, under the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 (*hereinafter referred to as the ‘2019 Rules’*) dated 02.08.2019.

The said writ petition was withdrawn with liberty to pursue alternative remedies, if any, as may be available to the petitioners, in accordance with law. The petition in question was disposed of in the said terms vide order dated 23.01.2025.

8. The appellant then filed a review application i.e. RA-CW-342 of 2025 in CWP No. 23820 of 2011, seeking review of the judgment and order dated 16.11.2022 on the ground that on the date of the decision of the writ petition, the 2019 Rules had come into existence, which marked a significant shift from the approach under the provisions of 2006 Rules, which restricted dependents of deceased government employees to only monthly financial assistance. The new policy reintroduced the option of compassionate appointment for eligible family members, restoring the right that was previously taken away. It was alleged that due to lack of knowledge of this policy, the same could not be brought to the notice of the Court. It was further pleaded that as soon as the appellant-petitioner came to know about the 2019 policy, she alongwith her son filed CWP No. 1831 of 2025 (O&M), which was withdrawn vide order dated 23.01.2025, with liberty to pursue alternative remedies. The review filed by the appellant-petitioner was dismissed, after condoning the delay in filing the same.

9. Sh. R.K. Doon, learned counsel appearing on behalf of the appellant, has argued that at the time of decision of the writ petition, the ex-gratia Policy of 2019 was in force, and the same is in vogue till date. As per the same, the dependents of the deceased employee, have the right to serve in department of the State of Haryana. He contends that at the time of decision of the case neither the counsel for the appellant nor the State counsel brought to the notice of the Court that there is a saving clause in 2019 Rules wherein it is stated that all pending cases shall be decided as per the said Rules. The appellant being an illiterate lady was not aware about 2019 Rules/Policy and the crucial factor regarding the right of the eligible family members for compassionate appointment having been reintroduced

under the said Rules, could not be brought to the notice of the Court. It is further urged that the appellant should have been given an opportunity to exercise her option afresh regarding monitory assistance or compassionate appointment and it is argued that despite observations to the said effect in paragraph No. 10 of the judgment passed by the learned Single Judge, no directions were issued qua the consideration of compassionate appointment of the appellant's son, which was one of the key prayers of the appellant.

10. Per contra, Sh. Pankaj Midha, learned Additional Advocate General, Haryana appearing on behalf of the respondents has controverted the arguments raised by the learned counsel for the appellants and submits that the appellant has repeatedly retracted from the options exercised by her voluntarily and after receiving both pension and financial assistance under the 2006 rules, and restricting her challenge in her petition before the learned single judge for monthly assistance, she cannot be permitted to approbate and reprobate at the same time and that too at such a belated stage. It is contented that the 2019 Rules are not applicable in the facts and circumstances of the instant case and thus, the appeal is wholly misconceived and is required to be dismissed.

11. We have heard the learned counsel for the parties, and have gone through the material available on record, with their able assistance.

12. As noted by the learned Single Judge, the State of Haryana had framed 'The Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules' 2003" (*hereinafter referred to as the '2003 Rules'*) under Article 309 of the Constitution of India, vide notification dated 04.03.2003. These Rules provided for an option to a member of the family of the deceased employee, who was completely dependent and is in extreme

financial duress, for ex-gratia appointment on compassionate grounds 'or' for ex-gratia compassionate financial assistance of Rs. 2.5 lacs, over and above other benefits to the dependent members of the indigent family of the deceased. The option under the 2003 Rules had to be exercised within a stipulated time frame and was subject to the conditions stipulated therein. The 2003 rules were replaced with 'The Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules' 2005" (*hereinafter referred to as the '2005 Rules'*), which were notified on 18.11.2005. Amongst other changes, the provision regarding appointment was made subject to availability of post and the ex-gratia financial assistance was increased from 2.5 lacs to 5 lacs. Thereafter the 2006 Rules come into force, wherein the object was to assist the family of a deceased Government employee by giving financial assistance. Under Rule 5 (I) thereof, the family of the employee would continue to receive as financial assistance, a sum equal to the pay and other allowance, which was last drawn by the deceased employee in the normal course without raising a specific claim. The family would be eligible to receive family pension as per the normal rules only after the period during which the financial assistance under the rules is completed.

13. Several other benefits were envisaged under the said Rules. All 'pending' cases of ex-gratia assistance were to be covered under the new rules. However, the families would 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 monthly financial assistance.

14. Undisputedly, the appellant had only prayed for grant of monthly financial assistance under the 2006 Rules, in her writ petition. As noted above, there was no prayer regarding appointment of her son on

compassionate grounds under any particular set of Rules. The appellant consciously filed a contempt petition and was granted all pending arrears under the 2006 Rules. She thereafter filed a joint writ petition, for the first time in the year 2025 with a prayer for issuance of directions to the respondents to consider and grant compassionate appointment to her son under the 2019 Rules, which was withdrawn with liberty to pursue alternative remedies. It is to be noted that her son, who was born on 06.12.1988 and attained the age of majority in December, 2006, is not before us. Although, we are of the considered view, that the Appellant cannot be permitted to seek appointment for her son, once there was no such prayer in her petition before the learned Single Judge, still, even if we were to consider the arguments regarding according consideration under 2019 Rules, we do not find that the relief sought, can be granted. A reading of the 2019 Rules, which have come into force w.e.f. 01.08.2019, would show that the option for compassionate financial assistance or appointment on a government job, is for the purpose to provide immediate relief to the family of the deceased employee from financial distress. Rule 3, reads as under:-

“Save as otherwise provided, these rules shall be applicable to the eligible family member(s) of a Government employee working on regular basis and All India Service Officers who disappears or dies while in service including death by suicide.

Note 1. *The family of deceased Government employee who died before the date of notification of these rules but have not been sanctioned the compassionate financial assistance by the competent authority due to one reason or the other, they may exercise an option within a period of six months from the date of notification either to avail the benefit under the Haryana Compassionate Assistance to the Departments of Deceased Government Employees Rules, 2006 or these rules. Option once exercised shall be final.”*

15. We are therefore of the view that the arguments of the learned counsel for the appellant that the right of compassionate appointment to the son of the appellant stands revived under the 2019 Rules, is completely misplaced. Note (I) of Rule 3, as reproduced hereinabove would clearly show that the option to avail benefit under the 2006 Rules or the 2019 Rules can only be exercised within a period of six months from the date of notification of 2019 Rules and such option is only available to the family of those deceased government employees, who have not been sanctioned financial assistance. In the instant case, it is an undisputed fact that the financial assistance under the 2006 Rules has already been released and availed by the appellant. Even otherwise, appointment to a government post on compassionate grounds is not a vested right. Such benevolent policies are for providing immediate succor to the dependents of a deceased employee and to save them from penury.

16. As a result of the above discussion, we do not find any ground to modify the judgment and order dated 16.11.2022, passed by the learned Single Judge. Accordingly, the present Letters Patent Appeal is dismissed.

17. Pending application(s), if any, shall also stand disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

01.10.2025

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Whether speaking/reasoned : Yes
Whether Reportable : No