(2020) 09 SHI CK 0060

In the High Court Of Himachal Pradesh

Case No : CWPOA No. 5552 Of 2019

Ajay Kumar Azad — APPELLANT

Vs

HRTC, Shimla — RESPONDENT

Date of Decision : 03-09-2020

Acts Referred:

Citation : (2020) 09 SHI CK 0060

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Onkar Jairath, Raman Jamalta

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. By way of instant petition, prayer has been made on behalf of the petitioner for issuance of directions to the respondent-department to consider his case for appointment on compassionate grounds. His case for appointment on compassionate grounds came to be rejected on the ground of income as prescribed under the policy. Since it is not in dispute that at the time of consideration of the case of the petitioner for compassionate appointment, Finance Department had fixed the maximum limit of income @ Rs. 1,25,000/- per annum with an individual limit of Rs. 31,250/- per annum per head, no fault, if any, can be found with the action of the respondent in as much as rejection of the case of the petitioner for appointment on compassionate grounds is concerned.

2. However, at this stage, Mr. Onkar Jairath, learned counsel for the petitioner while referring to the latest judgment passed by the Hon'ble Apex Court in case titled State of Himachal Pradesh and Anr. v. Shashi Kumar, (2019) 3 SCC 653, contends that now since State Governments have been directed to enhance the maximum limit of income, petitioner would be content and satisfied, in case respondents are directed to consider his case for appointment on compassionate

grounds afresh in terms of fresh guidelines, if any, framed by the Government of Himachal Pradesh pursuant to directions contained in the aforesaid judgment rendered by the Hon'ble Apex Court, relevant para of which is reads as under:

"34. That leads the Court to the next aspect of the matter relating to the fixation of an income slab. In our view, the fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. The High Court was of the view that it was not open to the Finance Department to amend the Scheme. The circulars which are issued by the Finance Department cannot be construed to be an amendment of the policy. They are really clarificatory of the intent and purpose of the Scheme. The circulars are explanatory, since they are intended to guide the decision maker on the concept of indigency which is incorporated in the Scheme. In fact, as we have noted earlier, in the decision of this court in Shashank Goswami(supra), the Court was specifically dealing with a circular of the Comptroller and Auditor General of India which had imposed income limits respectively for Group 'B', 'C' and 'D' posts for the purpose of guiding the decision in the case of compassionate appointment. The fixation of income limits was not construed to be and is not an arbitrary exercise of power. However, what we find from the record of this case is that the income limit was fixed (as the High Court observed) on 29 September 2008 by the letter of the Finance Department. The income limit of Rs.1,00,000/- for a family of four persons has since been revised to Rs.1,50,000/- on 20 April 2011. Mr. P.S. Patwalia has, on instructions, stated before this Court that this ceiling has been reiterated on 27 July 2017. What should be the appropriate income criterion is undoubtedly a matter of policy for the State Government to determine. However, we would impress upon the State Government the need to periodically revise the income limits preferably at intervals of three years. Inflation and the increase in the cost of living have an important bearing on financial exigencies faced by families of serving as well as deceased employees. In fixing the income criteria for considering cases of compassionate appointment, it would be appropriate if the State revisits the income limit at periodic intervals, as we have indicated above. We clarify that it would be open to the State to revise the income limits at a frequency of less than three years, if the State is so advised."

In the aforesaid judgment, the Hon'ble Apex Court has held that State Governments need to periodically revise the income limits preferably at intervals of three years. Besides above, the Hon'ble Apex Court in the aforesaid judgment has held that in fixing the income criteria for considering cases of compassionate appointment, it would be appropriate if the State revisits the income limit at periodic intervals and it would be open to the State to revise the income limits at a frequency of less than three years, if the State is so advised.

3. Learned counsel for the petitioner further contends that pursuant to aforesaid

judgment rendered by the Hon'ble Apex Court, State of Himachal Pradesh has revised the income limit, whereby maximum limit of income has been fixed @ Rs.2,25,000/- per annum. If it is so, case of the petitioner is required to be considered afresh by the authority concerned in terms of the latest policy.

4. Consequently, in view of the above, present petition is disposed of with direction to the respondents/competent authority to consider the case of the petitioner afresh for appointment on compassionate grounds in terms of latest policy framed by the Government of Himachal Pradesh in compliance to judgment rendered by the Hon'ble Apex Court in Shashi Kumar's case supra. Since case of the petitioner is hanging fire since 2015, this Court hopes and trusts that authority concerned would do the needful expeditiously, preferably within a period of four weeks from the date of production of certified copy of the instant order/judgment. Pending applications, if any, also stand disposed of accordingly.