**(2012) 06 SHI CK 0085**

**In the High Court Of Himachal Pradesh**

**Case No :** CWP No. 550 of 2012

Dhanwanti APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

**Date of Decision :** 16-06-2012

**Acts Referred:**

**Citation :** (2012) 06 SHI CK 0085

**Hon'ble Judges :** Dharam Chand Chaudhary, J

**Bench :** Single Bench

**Advocate :** Yogesh Kumar Chandel, Advcoate, for the Appellant; J.K. Verma, D.A.G. for respondents No. 1 to 3, 6 and 7 and Mr. Dilip Sharma, Senior Advcoate with Mr. Umesh Kanwar, Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

Justice Dharam Chand Chaudhary, J.—Aggrieved by the impugned order dated 27th December, 2011, Annexure P-11, passed by the Divisional Commissioner, Mandi Division at Mandi, the 6th respondent, in Appeal No. 65/2011 preferred by the 4th respondent, whereby the order dated 24.11.2011 Annexure P-10, passed by the Additional District Magistrate, Mandi in Appeal No. 18/2010 has been quashed and set aside, the petitioner has approached this Court for quashing and setting aside the same. This case has a chequered history. One Anganwari Worker was to be engaged in Anganwari Centre, Ghurahan. The process in this behalf was initiated by the 3rd respondent in the month of July, 2007. Amongst others, the petitioner, 4th and 5th respondents were interviewed by a duly constituted Selection Committee on 27.7.2007. The 4th respondent was selected and engaged as Anganwari Worker in the said Centre.

2. The appointment of the 4th respondent was challenged by the 5th respondent before the first Appellate Authority, i.e. the Deputy Commissioner, Mandi, allegedly on the ground that her income being over and above the prescribed limit i.e. Rs. 12,000/ per annum, she was not eligible for being considered to be engaged as Anganwari Worker. It was further alleged that the 4th respondent

belongs to a very rich family, as her father-in-law is a Government Contractor and a big land-lord. It was also alleged that the father-in-law of the 4th respondent is owner of one car, one scooter and running a flour mill (Atta Chakki), an industrial unit.

3. The appeal so preferred by the 5th respondent was accepted by the Deputy Commissioner, Mandi, on 25.2.2008, vide order Annexure P-1, while arriving at a conclusion that the income of the 4th respondent was over and above the prescribed limit i.e. Rs. 12,000/- per annum. Not only this, the income of the 5th respondent (appellant in that appeal) was also found to be over and above the prescribed limit. As a result thereof, a direction was issued to the 3rd respondent to appoint the candidate next in merit list as Anganwari Work in the Centre, in question.

4. It is the petitioner herein, who was in merit next to the 4th and 5th respondents and as such she was engaged as Anganwari Worker in Anganwari Centre, Ghurahan, vide order Annexure P-2, issued by the 3rd respondent.

5. The 4th respondent, aggrieved by the selection and appointment of the petitioner as Anganwari Worker, pursuant to the order Annexure P-1, hereinabove passed by the 1st Appellate Authority, i.e. the Deputy Commissioner, Mandi, preferred Misc. Appeal No. 323/2008 before the Divisional Commissioner, Mandi, who vide interim order dated 11th June, 2008, had stayed the operation of order Annexure P-1 supra. As a result thereof, the 3rd respondent had dispensed with the services of the petitioner as Anganwari Worker; with immediate effect vide order Annexure P-3. Ultimately, the Appellate Authority, i.e. the Divisional Commissioner, Mandi, accepted the appeal preferred by the 4th respondent, vide order dated 23.9.2008, Annexure P-5, and quashed the impugned order Annexure P-1.

6. Aggrieved thereby the petitioner approached this Court by way of filing CWP No. 2506/2008, questioning therein the legality and validity of the order Annexure P-5. This Court had disposed of the aforesaid writ petition, with a direction to the Appellate Authority, the Deputy Commissioner, Mandi, to get the dispute of income duly processed by the Competent Authority, after affording the affected party an opportunity to participate in the proceedings and thereafter to cancel the income certificate, if not found genuine.

7. The matter thus came to be considered afresh by the first Appellate Court i.e. the Deputy Commissioner, pursuant to the judgment of this Court. On remand, the Appellate Authority had forwarded the matter to Tehsildar, Sundernagar, District Mandi, for inquiry qua the authenticity of the certificate of income, furnished by the 4th respondent at the time of her selection as Anganwari Worker. The Tehsildar had enquired into the matter and vide report dated 30.11.2010, concluded that the certificate of income bearing No. 3484/2007 dated 15.5.2007, showing her income as Rs. 5800/- has correctly been issued to the 4th respondent. Similarly, the certificate bearing No. 3445/2007 dated

 

14.5.2007, showing the income of the petitioner as Rs. 6200/- per annum was also held to be correctly issued to her.

8. The petitioner, however, being aggrieved and dissatisfied by the order Annexure P-7 of Tehsildar, Sundernagar, preferred an appeal registered as Case No. 1/2011 before SDO (Divil), Sundernagar, the second respondent herein, who after hearing the petitioner and the 4th respondent had arrived at a conclusion that the family of the 4th respondent was not separate as on 15.5.2007, when the certificate of income showing her income as Rs. 5800/- , was issued. While setting aside Annexure P-7, a direction was issued to the Tehsildar to hold fresh inquiry into the source of income of every member of her family as on 15.5.2007. This had led the Tehsildar, Sundernagar to reconsider the whole issue and ultimately he assessed the income of the 4th respondent and her family as Rs. 19,800/- per annum as on 15.5.2007 and as a result thereof, the earlier certificate, showing her income as Rs. 5800/- per annum, was ordered to be cancelled vide order dated 12.2.2011, Annexure P-9.

9. Based upon the order Annexure P-9, the Additional District Magistrate, Mandi, seized of the appeal bearing No. 18/2010, preferred by the petitioner consequent upon the judgment of this Court Annexure P-6 supra, while accepting the appeal, quashed the appointment of the 4th respondent, as Anganwari Worker, with a direction to the 3rd respondent to engage the next candidate in merit, as Anganwari Worker in the Centre, in question.

10. The 4th respondent had assailed the order Annexure P-10 further before the Divisional Commissioner, Mandi, the 6th respondent, who while accepting the appeal and setting aside the order Annexure P-1, has observed in the order Annexure P-11, as under:

I have considered the arguments put forth by the parties, gone through the record and law on the point. It reveals from the pleadings of the parties that the annual income of the present appellant is the main contention between the parties. It transpires from the record that the selection of the present appellant was made in the year 2007 as Anganwari Worker in Anganwari Centre, Ghurahan by the selection committee and since then she is working. This selection was made by the selection committee on the basis of the income certificate issued to her by the Tehsildar Sundernagar, vide his office nO.3484 on 15.5.2007 in which the annual income of the family of the present appellant was assessed to Rs. 3000/- per annum. As per rules the income certificate is issued to a person for a period of one year only. I n the instant case, the Tehsildar, Sundernagar has sent a verification report to the Deputy Commissioner, Mandi (HP) on 30.11.2010 in which he has mentioned that the income certificates issued to present appellant and Smt. Dhanwanti Devi in the year 2007, are genuine. The appeal against the income certificate of present appellant has been filed before the Collector, Sub Division, Sadar, District Mandi, HP, only after the receipt of verification report of Tehsildar dated 12.11.2000 whereas the present respondent No. 1 had sufficient time after the pronouncement of the judgment by the Hon''ble High Court, H.P.

 

Shimla on 17.5.2010 in the instant case. Moreover, the validity of the income certificate issued to the present appellant has lapsed on 14.5.2008 as per provisions laid down in the H.P. Land Record Manual, 1992. The cancellation of certificate after the validity period does not seem to be a fair play in the interest of justice which has resulted the present appellant to depart from her appointment which she was holding since 2007. Hence, there is force in the present appeal.

11. It is the above order Annexure P-11 dated 27.12.2011 passed by the 6th respondent in the appeal, preferred by the 4th respondent, which has been assailed by the petitioner in this second round of litigation.

12. The 5th respondent did not contest the writ petition, as she seems to have lost interest in this litigation, as is disclosed by the petitioner also.

13. The 4th respondent, in reply to the writ petition, has contended that the husband of the petitioner is running a tailoring shop hired from one Khub Ram on monthly rent of Rs. 700/- and three more workers are working with him in the said shop. Her brother-in-law Sh. Bahadur Singh is stated to be a mason and a private contractor as well. He is working as such since 2000 and has also engaged 5 more labourers with him. Father-in-law of the petitioner is stated to be owner in possession of land measuring 14-17-18 bighas situated in Muhals Khagrao, Jandohal, Kotla and Bhalanu abutting to Sundernagar-Karsog Highway. In support of such contentions, she has placed on record documents, Annexures R4/1 to R4/4. As per her further case, the petitioner being one of the members of the joint family is having sufficient land and her husband and brother-in-law are earning handsome amount and as such by no stretch of imagination her income can be less than Rs. 12,000/- per annum. Further, according to the 4th respondent, after love marriage of the petitioner in the year 2006, her father-in-law had separated her husband and thus, the income of joint family cannot be taken into consideration for computing the income of petitioner''s family.

14. Respondents No. 1 to 3 and 7 while admitting the various stages of this lis mentioned in the writ petition, have urged that the 6th respondent has passed the impugned order after hearing both the parties and appreciating the evidence available on record in its right perspective and being neither illegal nor invalid needs no interference.

15. The petitioner in rejoinder to the reply filed by the 4th respondent has denied the contentions in the reply being wrong and reiterated her case as set out in the writ petition. She has also placed reliance on abstract of Parivar Register Annexure PR/1 and BPL certificate Annexure PR/2. While admitting that the land measuring 14-17-18 bighas is owned by her family alongwith her husband, she has alleged that the whole of the land is not agricultural. According to her, the order whereby the Tehsildar had cancelled the certificate issued to the 4th respondent has attained finality and as the said respondent had not disputed the income of the family of the petitioner at the relevant time, therefore, at this

 

stage she cannot be permitted to raise the issue of the genuineness of certificate of income issued to the petitioner.

16. It is in this backdrop that this Court has heard learned counsel on both sides and also gone through the record.

17. On behalf of the petitioner, it is strenuously contended that during the course of inquiry conducted by the Tehsildar, Sundernagar, on the issue of income of the 4th respondent, the same was found to be Rs. 19800/- per annum, viz., over and above Rs. 12,000/- the limit prescribed under the guidelines. The Tehsildar has thus rightly cancelled the certificate of income issued to the 4th respondent. Moreover, she has not assailed the order passed by the Tehsildar before the Appellate Authority and as such, the same has attained finality. As regards the plea of the 4th respondent that the husband of the petitioner is doing tailoring work and her brother-in-law is a mason, taken for the first time in reply to the writ petition, the same is stated to be not available to her and as such is of no help to her case.

18. On the other hand, Shri Dilip Sharma, learned Senior Counsel, while repelling the submissions made on behalf of the petitioner, has forcefully contended that the petitioner has to establish her eligibility for the post, in question, and she cannot claim appointment, merely on account of the income of the 4th and 5th respondents, allegedly over and above the prescribed limit. Learned Senior Counsel has further submitted that the plea qua the source of income of the petitioner and her family members, as raised in reply to the writ petition, is very much available to the 4th respondent and the same has to be taken into consideration while deciding the fate of this writ petition.

19. The controversy, involved in this writ petition, lies in a narrow compass, because the point in issue, which needs adjudication, is as to whether the 6th respondent while reversing the order Annexure P-10, passed by the Additional District Magistrate, on the basis of findings in the order Annexure P-9, recorded by the Tehsildar Sundernagar qua genuineness of the certificate of income furnished by the 4th respondent at the time of her selection as Anganwari Worker, was justified or not.

20. The answer to the above poser, in all fairness as well as in the ends of justice, would be in negative, because in the light of the directions of this Court in the judgment Annexure P-6 supra, the issue of income was required to be gone into by the Competent Authority, admittedly, the Tehsildar concerned, after associating the affected party and it was thereafter, the certificate was required to be cancelled, if not found genuine. The relevant portion of judgment Annexure P-6 reads as under:

5. In case the authority is of the view that the income certificate issued to any Anganwadi Workers/Help0eres in these cases is not based on proper computation of income, it will be open to the competent authority to take steps to cancel the same. But it is made clear that such cancellation shall only be, after affording an

 

opportunity for hearing to the incumbent concerned. So long as the cancellation is not made by the competent authority in accordance with law, and procedure for cancellation and incase notice is not given to the affected party in the enquiry, the incumbent concerned shall not be deprived of their posts, to which they were appointed, based on the income certificates, they produced at the relevant time.

6. There will be a direction to the appellate authority in these cases, to take appropriate steps in the cases where a dispute on income is involved, to get the same duly processed by the competent authority, in the matter of cancellation. Necessary steps in that regard will be taken and action finalized within a period of four months from the date of production of this judgment to the competent authority. That competent authority will also afford an opportunity to the affected party to participate in that proceedings. Subject to the outcome of the action thus taken by the competent authority, on the income certificate already issued to the incumbent, the appellate authority will take appropriate action within two months. We also make it clear that in the event of any appointment being cancelled, the appellate authority will also issue necessary directions for the next person from the list, to be appointed, in case a list is available. Needless to say that until the process, as above said, is completed, the incumbents now working, will be continued. We may make it clear that the inquiry will be on the basis of the Police/Guidelines as existed at the time of appointment."

21. Another important issue decided in the above referred judgment is the computation of income, based on the family status. In this behalf it is held as under:

7. Coming to the other cases, issues involved pertain to eligibility conditions other than income. In some cases issue raised is as to the computation of income, based on the family status. Family status is to be decided, based on the cut off date, namely 1.1.2004. The Parivar Register is the basic and conclusive evidence with regard to the family status. Therefore, computation of income should be on the basis of the members of the family, entered in the Parivar Register, as on 1.1.2004 and not on any other certificate. We find that in some of the cases, for the only reason that the family had not been separated as on 1.1.2004, the candidates were disqualified. The separation of the family as on 1.1.2004, is not a pre requisite condition to make a person eligible for appointment. The eligibility criterion, as appearing in the Guidelines, at 4(e) reads as follows:

Those belonging to a family which was legally separated as a separate family as per procedure laid down in the Panchayati Raj Act and Rules before 1st January, 2004

Clause 4(f) also has to be read, in conjunction with clause (e), which reads:

Those whose annual income does not exceed Rs. 8000 per annum, to be certified / countersigned by an officer not below the rank of Tehsildar.

 

8. Separation of the family is specifically mentioned in clause 4(e), only for the purpose of computation of income, and if not it will certainly be a patently unreasonable provision for making a person eligible to apply for the post of Anganwadi Workers/Helpers. Income is the criterion and that was sought to be explained as per clause 4(e). Otherwise, for the only reason that the family is not separate even if the income is far below Rs. 12,000/- , an applicant would not be entitled to make an application. That certainly is not the object of the prescription of the criterion, as extracted above.

9. Another contention raised is as to the computation of income. Computation of income and the family status are to be determined as on the date of the application for appointment. Though, a contention is raised that the date of appointment should be the relevant date, it is now well settled proposition of law that qualification/eligibility, in the matter of appointment, has to be determined as on the last date of application or the cut off date indicated in the advertisement as per rules, scheme or guidelines, applicable in the matter of recruitment and not the date of appointment.

22. The 6th respondent in utter disregard of the aforesaid directions concluded that the period of validity of certificate No. 3484 dated 15.5.2007, was only one year and as such the same having been lapsed on 14.5.2008, as per the provisions contained in H.P. Land Record Manual, 1992, could not have been cancelled. I am afraid, no such view of the matter could have been taken for the reasons that as per the guidelines, the income of a candidate for engagement as Anganwari Worker was to be seen for the period preceding one year of her selection. The 4th respondent had furnished the income certificate bearing No. 3484 on 15.5.2007, showing her income as Rs. 5800/- per annum, from all sources. It is the authenticity and genuineness of this certificate, which for the first time, was assailed by the 5th respondent before the Deputy Commissioner, Mandi, in an appeal preferred under Clause 12 of the Guidelines, registered as case No. 248/2007, as is apparent from the perusal of order Annexure P-1. Meaning thereby that the question of validity of the certificate was raised well within the period of one year from the date of its issuance. However, since in the first round the matter went right from the Deputy Commissioner upto this Court and thereafter from Tehsildar level upto Divisional Commissioner, the 6th respondent had no occasion to arrive at a conclusion that the certificate of income furnished by the 4th respondent, could not have been cancelled, for the reason that the controversy qua income of the 4th respondent has not yet attained finality, as the order Annexure P-11 is subject matter of dispute, even in this writ petition as well.

23. The above findings that the 6th respondent was not justified in holding that the certificate of income issued to the 4th respondent could not have been cancelled, are supported by the ratio of judgment Annexure P-6 of this Court in the earlier writ petition filed by the petitioner, cited supra. It is crystal clear from the law laid down by this Court in the said judgment that only a candidate having

 

income less than Rs. 12000/- per annum is eligible for appointment as Anganwari worker. The Computation of income should be for the period preceding one year from the date of selection of a candidate. The Competent Authority prescribed under the law to decide an issue of income is the Tehsildar concerned, who after holding an inquiry and associating the affected party may decide as to whether an income certificate issued to an individual is genuine or not. Not only this, but the affected party has also a legal right to prefer an appeal before the SDO (Civil) concerned.

24. In the case in hand, the authenticity and genuineness of the certificate furnished by the petitioner was challenged at the very first available opportunity by the 5th respondent. As already pointed out, the Tehsildar Sundernagar had conducted an inquiry and arrived at a conclusion that the 4th respondent on 25.5.2007, was a member of joint family and her income as well as that of her family was Rs. 19800/- per annum on that day. It is held so in order Annexure P-9. The 4th respondent was duly associated by the Tehsildar during the course of inquiry and the evidence she furnished was also taken into consideration. The order Annexure P-9 is self-speaking and a reasoned one. There is thus nothing to ignore the same and on the basis thereof it would not be improper to conclude that the income of the 4th respondent on 15.5.2007 was Rs. 19,800/- per annum. If it is so, the Additional District Magistrate, while deciding the appeal preferred by the petitioner, vide Annexure P-10, has not committed any illegality or irregularity in accepting the same and quashing the appointment of the 4th respondent. The order Annexure P-10 being legally and factually sustainable, thus, deserves to be upheld.

25. On the other hand, as discussed hereinabove, the 6th respondent has miserably failed to appreciate the material available on record and to the contrary erroneously concluded that the certificate issued in favour of the petitioner on 15.5.2007 allegedly being valid upto 15.5.2008 could not have been cancelled by the Tehsildar, in the year 2011, vide order Annexure P-3. The impugned order thus does not stand the test of judicial scrutiny and as such deserves to be quashed and set aside.

26. The plea that the husband of the petitioner is working as a tailor master with three other workers and her brother-in-law is not only a mason, but a Government Contractor also and that five more labourers work with him, raised by the 4th respondent for the first time in reply to the writ petition, cannot be taken into consideration for the reason that had it been so, she was at liberty to have brought these facts to the notice of Tehsildar Sundernagar, during the course of inquiry, he conducted in this matter or in the grounds of appeal, she preferred before the 6th respondent.

27. Otherwise also, no doubt the father-in-law of the petitioner Hukam Chand is owner of land measuring 14-17-18 bighas, which seems to be in his joint possession, but it is only about 8 bighas of land which is cultivable whereas about 6 bighas is Khadetar, i.e. un-cultivable, as is apparent from detail given in

 

Annexure R-4/4 (Colly). The petitioner had apprised the Tehsildar about such ancestral land in the name of her father-in-law. Not only this, Annexure PR-2 to the rejoinder reveals that the family of the petitioner is a family, living below poverty line. True it is that as per the copy of Parivar Register Annexure PR/1 to the rejoinder, family of Bahadur Singh, the brother-in-law of the petitioner, had separated from joint family on 19.3.2004, i.e. after about 2 months from 1.1.2004, the cut off date, but said Bahadur Singh was not a member of joint family, during the period to which the income certificate pertains. Above all even if it is believed that the family was joint, in that event also there is no evidence that the income of the petitioner from all sources was more than Rs. 12,000/- per annum. In view of all the reasons hereinabove, this petition succeeds and the same is accordingly allowed. The impugned order Annexure P-11 is hereby quashed and set aside. Consequently, the appointment of the 4th respondent as Anganwari Worker at Anganwari Centre, Ghurahan, is also quashed and set aside. There shall be a direction to the 3rd respondent to engage the petitioner as Anganwari worker within a week from the date of production of a copy of this judgment before him, by the petitioner. No costs.