
(2012) 01 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : CWP No. 10 of 2010-A

Kamlesh Kumari

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2012) 01 SHI CK 0120

Hon'ble Judges : Kurian Joseph, J;Dev Darshan Sood, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—This writ petition is filed with the following prayers:

1. That the Hon?ble Court may kindly be please to issue the writ of certiorari to quash the impugned order dated 5.12.2009 passed by the Respondent No. 2 Vide annexure P/1.

2. That the Hon?ble Court may kindly be pleased to direct the petitioner to allow the present petitioner to continue to the post of Anganwari Worker at Anganwari Centre Ner IV.

2. In the nature of order which we purpose to pass in this case, it is not necessary for this Court to go into the merits of the case in detail since all the related questions have been considered by this Court leading to the common judgment passed in CWP No. 1096 of 2010 along with other connected matters decided on 17th May, 2010. The extract of the judgment reads as follow:

These cases pertain to the issue regarding cancellation of appointment of the petitioners to the post of Anganwadi Workers/Helpers. In majority of the cases, appointments have been cancelled on the ground that the income of the family of the appointees was much more than the upper limit fixed in the eligibility criteria and the certificates of income were not correct. We proceed to deal with this type of cases separately in the first part of this order. Rest of the cases involving different issues are being dealt with in the second part.

2. It is not in dispute that the Anganwadi Workers/Helpers, in these cases, were appointed on the basis of a valid Income Certificate, issued by a competent authority, at the relevant time. But, it appears, owing to dispute on the income, the Appellate Authority in these cases, has looked into the matters, has conducted an independent inquiry and has come out with a version that the calculation of income by the authority, who issued the certificate, is not proper. It has also been held by the said Appellate Authority that the income is beyond the limit, prescribed for the eligibility for the appointment.

3. One of the main contentions taken by the parties is that even assuming for arguments sake that the computation of income was not properly made by the authority, who issued the certificate, there is a due process under the law by which such a certificate could have been cancelled. Even now, that certificate of income, issued by the competent authority, for the purpose of appointment, has not been cancelled.

4. Learned Senior Additional Advocate General submits that the Anganwadi Workers/Helpers, in these cases, had made an attempt to steal an appointment, based on false certificates of income. Even assuming so, the competent authority should have first taken steps to cancel such certificates, based on which the appointments were made. So long as the same having not been done, we find force in the submission made by the learned counsel for the petitioners that there is an irregularity, if not illegality, in the process of cancellation of appointment.

5. In case the authority is of the view that the income certificate issued to any Anganwadi Workers/Helpers 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 in case 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 Policy/Guidelines as existed at the time of appointment.-

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.

10. Another dispute pertains to the feeding area. Clause 4(a) of the Guidelines provides for the same, which reads as follows:

Resident of the village (in case of Rural Area)/ward (in case of Urban Area)

where Anganwadi Centre is located or belongs to the feeding villages/wards of the Anganwadi area.

11. A contention is raised by some of the petitioners that the feeding area has to be understood as the survey area. We are afraid the contention as per the policy as it stood at the relevant time can not be accepted. The policy at that time only prescribed that the person should be the resident of the village/ward, depending upon the rural or the urban area, as the case may be, where the centre is located. It is sufficient if the applicant belongs to the feeding villages/wards of the Anganwadi area. The eligibility has to be understood as on the date of the application, in terms of the policy, which ruled the field at the relevant time. Needless to say, that in case there is no candidate available from the respective feeding areas, prescribed under clause 4(a), it is open to the authorities to exercise its power under Clause 11 of the Policy Guidelines for appropriate relaxation.

12. For separation from the family, the relevant date is 1.1.2004 and it should be reflected in the Parivar Register that as on that date, the family stood separated in case income is computed on the basis of separate family.

13. Another question to be decided is whether the appointments are to be governed by the Policy of 2007 or the Policy notified in 2009. It is now settled law that the Policy, which ruled the field at the time of submission of the application, should be the Policy, that has to be made applicable for considering the eligibility, in terms of income, or in terms of the feeding area, or in terms of the family status or any other condition in respect of the vacancies available at that time.

14. Yet another contention has been raised as to whether the authority which decided an appeal, namely the Appellate Authority (Divisional Commissioner), was competent to entertain a review. It is settled law that unless a statutory authority is conferred with the specific power to review, that authority cannot entertain a review, since that power is to be expressly conferred. Such a power is not conferred in the guidelines on the appellate authority. Therefore, it is made clear that the Appellate Authority, under the Guidelines, does not have any power to entertain review.

15. Another contention pertains to the power of delegation of the Appellate Authority. It is now settled law that a delegate cannot make sub delegation. The power conferred on the delegate is the power, that is conferred under the guidelines. Therefore, the framers of the guidelines, namely the Government, is competent to confer the power that is conferred on the Appellate Authority, on any other authority as well. In other words, conferment by the Government of the power to be exercised on the Additional District Magistrates would be valid. Merely, because it was not mentioned so in the guidelines and since the Government has in fact conferred the power on the Additional District Magistrate, the action taken by the Additional Magistrates cannot be faulted. The Appellate

Authority has not made any sub delegation. It is the government itself which conferred the power of appellate authority, on a different functionary, namely the Additional District Magistrate. We also make it clear that in case there is no such valid notification by the government, on the well settled principle that a delegate cannot make sub delegation, any power exercised by the sub delegate, is illegal.

16. Another contention is as to who is competent to file the appeal. We find from the guidelines that an aggrieved candidate alone is competent to prefer the appeal under Clause 12 of the Policy Guidelines. Strangers have no say in the matter. Therefore, a valid selection can be challenged only by a candidate, who participated in the selection.

17. Another contention pertains to the transfer of Anganwadi Workers/Helpers. It is clear from Clause II (4) the Policy Guidelines, dealing with the terms and conditions of service, that transfer of Anganwadi Workers/Helpers, is not permissible, except in the event of marriage of Anganwadi Workers/Helpers and in that event alone if there is a vacancy, any such worker/helper can be adjusted in that place.

18. Another legal contention to be tackled is as to the jurisdiction of the Appellate Authority. It is seen from the 2007 Policy that an aggrieved candidate was entitled to prefer an appeal before the Deputy Commissioner and a person aggrieved by the order of the Deputy commissioner, was entitled to prefer further appeal before the Divisional Commissioner. The provision regarding second appeal before the Divisional Commissioner has been taken away only in respect of the appointments made as per the Policy framed in October, 2009. Therefore, in respect of all selections conducted as per 2007 Policy, a candidate aggrieved, was entitled to prefer an appeal before the Deputy Commissioner and a person aggrieved by the order of the Deputy Commissioner, was entitled to prefer an appeal before the Divisional Commissioner.

19. Another legal contention is as to whether the Appellate Authority has power to condone delay in filing appeal. The Guidelines provide a period of 15 days for filing an appeal. Being a statutory authority, in terms of the Policy Guidelines, the Appellate Authority does not have the power u/s 5 of the Limitation Act. No power is conferred also in the guidelines for condonation of delay. Therefore, he cannot enlarge the time, by condoning delay in filing the appeal. In other words, if an appeal is not filed within the prescribed time, it has only to be dismissed, since the Appellate Authority has no power to condone the delay in filing the appeal.

20. There will be a direction to the Appellate Authority to consider the cases afresh, in the light of the above clarifications/directions/observations and take appropriate action within a period of six months, as directed hereinabove.

21. All the writ petitions are disposed of, so also all miscellaneous applications.

3. In the light of the judgment as above, all the impugned orders are set aside.

There will be a direction to the Deputy Commissioner to consider the matter afresh in the light of the judgment, after affording opportunity of hearing to the petitioner and all the affected parties. Orders as above shall be passed within a period of four months from today. Till the order as above is passed, the interim order will continue.

4. The pending application(s), if any, also stands disposed of.

Copy dasti to the petitioner to be produced before the Deputy Commissioner.