
(2011) 01 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 12149 of 2008

Kumari Savita Sharma

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 1 ShimLC 536

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed on the following averments set up vide paras 6 (i) to (v):

6 (i). That the applicant is one of the daughters of late Smt. Indira Kumari, who were serving as Central Head Teacher with the Respondents for the last many years.

(ii). That the mother of the present applicant unfortunately died on 31.12.2001, when she was still working as such. After the death of the only earning hand in the family, the financial condition of the family becomes adverse. A copy of the death certificate is annexed as Annexure A-1.

(iii). That after the death of the mother, the applicant being the legal heir, applied to the Respondents, during the month of April, 2002, for seeking appointment under the compassionate grounds. The applicant is 10+2 and as such is eligible to be appointed as Clerk. The applicant applied on proper format after completing all the conditions as desired by the Respondents from time to time. The applicant submitted the following certificates/documents along with his application to the Respondent (1) Copy of the application, (2) Copy of +2 certificate, (3) Copy of income certificate, (4) Copy of pariwar register, (5) Un-employment certificate, (6) Legal Heir Certificate, (7), Affidavit of all the other four sisters and the affidavit of father along with self affidavit deposing that she

will support the family, duly attested by the Executive Magistrate. The copies of these are annexed as Annexures A-2 to A-13, respectively.

(iv). That after submitting the documents, the applicant kept on waiting in this hope that she will be given appointment on compassionate grounds immediately. But the Respondents did not do any thing in this behalf and finally on 6.11.2004, the applicant was informed by the Deputy Director Kangra vide the impugned order that the case of the applicant for appointment has been rejected by the Government. A copy of this impugned order is annexed as Annexure A-14, along with its E/T.

(v). That the applicant was surprised to see that no reason was given assigned by the Respondents as to why the Government has rejected the case of the applicant. Thereafter, the applicant also issued a legal notice on 2.2.2005 to the Respondent No. 3 inter alia praying for providing job to the applicant within a period of two months. A copy of this legal notice dated 2.2.2005 is annexed as Annexure A-15. Despite the issuance of the legal notice, the Respondent had done nothing and on the contrary, the financial condition of the family has further deteriorated.

2. On the above averments, the following prayers have been made vide paras 7 (i) and (ii):

7 (i). That the impugned rejection order dated 6.11.2004 (A-14) may kindly be quashed and set aside.

(ii). That the direction may kindly be issued to the Respondents to give appointment to the applicant as Clerk on compassionate grounds as per the policy of the Government immediately.

3. In reply on behalf of the Respondents, the following stand has been taken vide para 6 (v):

6 (v). That this para calls for no submission in view of the facts and submission as submitted in the preceding paras. The reply to the sub paras of this para is as under:

(A). That this para calls for no submission as no cause of action has accrued in his favour of the applicant to file the present OA against the replying Respondent. (B). That this para also calls for no submission. However, it is submitted that the appointment on compassionate ground cannot be claimed as a matter of right, it is in the prerogative of the Govt. to whome the appointment is to be given or not to be given based upon the indigent condition of the dependent. Hence, it is not mandatory to exhibit the reason and cause for rejecting the claim in the instant case. However, it is submitted that the dependents of the deceased had received the following dues as per detail given below:

Sr.No.	Particulars	Amount	
			1. Leave

encashment 102414/- 2. Ex. Gratia 44625/- 3. DCRG 342692/- 4. DCRG (before 1.11.66) 7308/- 5. PLI 30000/- 6. GPF final payment 415834/-
Total: 9,42,873/-

The dependents of the deceased have received total dues to the tune of Rs. 9,42,873/- on the event of death of the deceased apart from family pension. Thus, the applicant cannot be living in indigent condition.

(C). That this para calls for no submission in view of the facts and submission as submitted in the preceding paras. However, it is submitted that the appointment of Shri Navneet Kumar s/o Sh. Suresh Kumar, Sh. Ankush Kumar s/o late Sh. Ramesh Chand, Sh. Ravinder Kumar s/o late Sh. Sushil Kumar and Sh. Vikash s/o late Shri Ram Kumar as Clerk in the Education Department has been given after the approval of the Govt. after considering merit of each case.

4. In view of the above reply, it is manifest that the claim of the Petitioner for grant of compassionate employment has been rejected simply on the ground that pursuant to the death of her mother during harness, a sum of Rs. 9,42,873/- was paid to the family as service benefits of the deceased employee. However, a bare perusal of the table given in para 6 (v) of the reply as above would go to show that substantial amounts of the service benefits of the deceased employee are on account of GPF, gratuity, leave encashment and PLI which she would have got even otherwise had she not met with unfortunate death during harness.

5. In somewhat similar circumstances, in a case of rejection of claim for compassionate appointment on the ground of the family having received service benefits, in respect of the deceased employee, the Hon"ble Apex Court has held as under in Govind Prakash Verma v. Life Insurance Corporation of India and Ors. (2005) 10 SCC 289 vide para 6 of the judgment, which is extracted below:

6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the Appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might

casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The Respondents have wrongly refused compassionate appointment to the Appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the j widow and the family pension could not be taken into account.

6. In view of the above, the petition is allowed. Consequently, the impugned order of rejection dated 6.11.2004, Annexure A-14, is quashed with a direction to Respondents No. 1 & 2/competent authority to reconsider the case of the Petitioner for grant of compassionate appointment owing to the death of her mother during harness in the light of the law laid down by the Hon"ble Supreme Court in Govind Prakash Verma v. Life Insurance Corporation of India and Ors. (supra) within three months from the date of production of a copy of this judgment by the Petitioner.

7. The petition stands disposed of in the above terms, so also pending application(s), if any.