

(2023) 07 SHI CK 0095
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4304 Of 2023

Sandeep Kaur

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 16(2)

Citation : (2023) 07 SHI CK 0095

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Ajay Mohan Goel, J

Bench : Division Bench

Advocate : P.D. Nanda, Anup Rattan, Rakesh Dhaulta, Pranay Pratap Singh, Arsh Rattan, Sidharth Jalta, Vinod Kumar Thakur

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, CJ

1. The petitioner's father was employed as Forest Guard in the 2nd respondent-Corporation which is an undertaking of Himachal Pradesh Government and he died while in service on 16.07.2020 after rendering 21 years and 6 months of service.
- 2) The petitioner is one of the daughters of the deceased and she is unmarried while her sister is married.
- 3) The State Government had formulated a policy for providing employment to the dependants of the deceased employees which was revised vide Office Memorandum dt. 07.03.2019 (Annexure P-1).
- 4) The petitioner had applied for employment on compassionate ground on the prescribed proforma for providing employment as a Clerk on 29.10.2021.
- 5) On 17.03.2022, reply (Annexure P-2) was given by the 2nd respondent asking the petitioner to produce an Income Certificate inclusive of family pension issued by Executive Magistrate or Tehsildar, Character Certificate issued by Executive

Magistrate or Tehsildar and a Bonafide Certificate.

6) The petitioner alleges that she procured an Income Certificate including family pension and submitted it to the 2nd respondent on 20.04.2023, but Character Certificate issued by the Executive Magistrate or Tehsildar could not be provided as she is the resident of Punjab, and such certificates in the State of Punjab are issued by the Senior Superintendent of Police. She contended that she obtained such certificate from the Senior Superintendent of Police and supplied it to the 2nd respondent on 20.04.2023.

7) She also alleged that as regards the Bonafide Certificate, she applied for it online to the prescribed authority, but the same was not issued to her for the reason that she had no permanent home in Himachal Pradesh.

8) She contends that as per the bye-laws of the 2nd respondent-Corporation, an employee need be only a citizen of India, and that she gave representation dt. 20.04.2023 to the 2nd respondent to consider her case for providing employment on compassionate grounds, as such Bonafide Certificate was not a pre-condition to get employment in the 2nd respondent - Corporation.

9) She alleged that thereafter the 2nd respondent asked the petitioner to submit an additional certificate regarding her income and the income of her family, and she submitted the same on 15.05.2023 (Annexure P -4).

10) The 2nd respondent however rejected on 07.06.2023 the petitioner's request for compassionate appointment on the ground that the documents submitted by her were not as per the compassionate policy.

11) Challenging the same, this Writ petition is filed.

12) Reply is filed by respondents no. 2 & 3 opposing grant of relief to the petitioner stating that matters not covered by bye-laws of the 2nd respondent-Corporation would be regulated under the provisions applicable to the Himachal Pradesh Government employees from time to time, and reference is made to the Office Memorandum dt. 07.03.2019 and the requirement of submitting Bonafide Himachali Certificate for seeking compassionate appointment and insisting that Character Certificate issued by Senior Superintendent of Police in Punjab cannot be accepted.

13) We have noted the contentions of the parties.

14) Admittedly, the petitioner's father was a regular employee of the 2nd respondent-Corporation and he served it in the State of Himachal Pradesh for twenty one and half years.

15) There is no dispute that the petitioner is the daughter of the deceased.

16) According to the petitioner, her father, due to his low salary, could not construct or buy a house in the State of Himachal Pradesh, that her permanent residence is at her native place at Bharatgarh, Post Office, Tehsil and District

Ropar, Punjab, and Character Certificate can be issued by the authorities where she is residing. Since her village is in the State of Punjab and in that State, Character Certificates are issued only by the Police Department, and since the petitioner had produced such certificate from the Senior Superintendent of Police, we are of the opinion that the action of the respondents in insisting the petitioner to produce a Character Certificate issued by Executive Magistrate or Tehsildar has no legs to stand because the petitioner cannot be compelled to comply with what is not possible.

17) There is a maxim in law by name 'Lex non cogit ad impossibilia' which means that the law does not compel a man to do what is not possible for him to perform.

18) This principle has been followed and re-iterated by the Hon'ble Supreme Court in Chandra Kishore Jha vs. Mahavir Prasad and others (1999) 8 SCC 266 ; Mohammed Gazi Vs. State of M.P. & others; (2000) 4 SCC 342 and Industrial Finance Corporation of India Ltd. Vs. Cannanore Spinning and Weaving Mills Ltd. & others. (2002) 5 SCC 54.

19) As regards the contention of the respondents that the petitioner should provide a certificate of Bonafide Resident of Himachal Pradesh is concerned, the petitioner has contended that though initially Himachal Pradesh, Manipur and Tripura Public Employment (Requirement As To Residence) Rules, 1954 were in force in the State of Himachal Pradesh which required production of such certificates, these Rules were deleted by the State Government after 20.04.1974.

20) It is further contended that insistence on such a certificate would violate Article 16(2) of the Constitution of India and even the main clauses of the policy dt. 07.03.2019 being relied on by the respondent do not require such a Bonafide Himachali Certificate.

21) We agree with both these contentions raised by the petitioner's Counsel. As per Art.16(2) of the Constitution no citizen can be discriminated on basis of residence. So insisting that petitioner produces such a certificate when it is undisputed that she is an Indian citizen and daughter of the deceased employee of the 2nd respondent cannot be countenanced.

22) For all these aforesaid reasons, this Writ petition is allowed; the action of the respondents in refusing to give the petitioner compassionate appointment in the 2nd respondent-Corporation vide letter dt. 07.06.2023 (Annexure P-5) is set aside; the respondents are directed to accept the Character Certificate issued to the petitioner by the Senior Superintendent of Police, Distt. Rupnagar, Punjab, though it is not issued by the Executive Magistrate or Tehsildar; the requirement of furnishing a Bonafide Himachali Certificate contained in Office Memorandum dt. 07.03.2019 for purpose of providing employment on compassionate grounds is set aside as being violative of Article 16(2) of the Constitution of India; and the respondents no. 2 & 3 are directed to provide such compassionate appointment to the petitioner within four weeks.

23) Respondents no. 2 & 3 shall pay a costs of Rs. 10,000/- to the petitioner within four weeks.

24) Pending application(s), if any, stands disposed of.