
(2008) 10 J&K CK 0008
In the Jammu And Kashmir High Court

Sham Sunder and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 29-10-2008

Acts Referred:

Citation : AIR 2009 J&K 23 : (2008) 3 JKJ 327

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—What constitutes a family for purpose of withdrawal of cash relief and whether any member of the family having been

employed who was previously dependant, disentitle a family from grant of cash relief on his being employed is the question which is required to be

determined by this Court in this writ petition.

2. Petitioners state that Ration Cards came to be issued in their favour which entitled them for grant of cash relief. The detail of the family strength

at the initial stage is reflected in para-4 of the writ petition. It is averred that by virtue of policy decision taken by the State Government, cash and

relief assistance was provided to those families who were not gainfully employed in any Government service or in any autonomous body owned

and run by the State Government. Those who were gainfully employed in govt. service were also issued Ration Cards, but were not entitled to

cash relief from the State Govt. It is stated by the petitioners that one dependant of each family came to be gainfully employed in Police

Department by way of policy decision taken by the State Government. As a result of their having been employed, they would automatically stand

deleted from the original Ration Cards and would be treated separate from the family. It is in this contest that the petitioners have indicated in the writ petition the present strength of family members which has been reduced on account of employment of those dependants who were initially listed in the Ration Cards.

3. The positive case of the petitioners is that the dependants who have been gainfully employed would not constitute a family for purpose of cash and relief assistance. The family would be entitled to receive cash and relief assistance on the present strength of the family. The petitioners state that the respondents have stopped payment of cash relief to them on the pretext that one member of their family has been gainfully employed, as such they would disentitle themselves to receive such relief.

4. On the other hand, stand of respondents is that by way of policy decision the State Government decided to employ one member of each family in Police Department and as a consequent to that they would not be entitled to receive any cash assistance and the dependants who stand employed would be constituted to be member of the family and not a separate Unit. In other words the respondents state that by virtue of policy adopted by the Government to employ one member of the family was intended only to provide a permanent source of income to the family with the consequence that they would not be entitled to receive cash assistance. Reliance has also been placed by the petitioners on a Circular issued by the Government on 17.9.2005. The respondents have relied upon para-3 of the Circular which indicates that the employees were drawing cash assistance by concealing the fact of being employed in the Government service. In nutshell the respondents state that in view of the fact that one member of family was employed, it disentitle them from receiving cash assistance.

5. I have heard the learned Counsel for the parties and perused the record. Consequences of migration have brought hardship on the people who had to migrate. State being a welfare State, took immediate steps to provide assistance to people from time to time. Most effective and prompt step taken by the State Government was to provide cash and relief assistance to the people who have migrated and were not gainfully employed in Government service. The purpose of providing cash and relief assistance was to

ensure that sustenance is provided to the people who have lost their livelihood on account of migration. Family was constituted as a Unit for providing such assistance. Undoubtedly there were certain elements who misused this concession for which the State Government had to adopt corrective measures to ensure that undeserving do not get what they do not deserve. In the light of this, various Govt. orders were passed and intention behind such orders was to ensure that policies and schemes were implemented strictly in accordance with the norms and to check any misuse of such norms. One of the factors which weigh heavily with the State Govt. was that the some Govt. officials were also drawing cash assistance by hiding their status. It is in the light of this, a Circular of 2005 was issued which was commonly known as voluntary declaration scheme. The intent and purpose of this scheme was to find out acts of malfeasance and misfeasance against those who have violated the norms.

6. One of the most important factors in the present case is that the definition of the family could not remain static for all the times to come. People who initially were constituted in the family were dependants on their parents, but have left because they also have attained majority and want to build their own career. There were cases where a dependant after having attained majority was gainfully employed, but failed to sustain his parents. He constituted one member of the family at the time of initial registration. There were numerous such cases which were brought to the notice of the Government. The Government in lieu of this passed order dated 9th June 1997. The order states that the Relief Commissioner will be authorized to bifurcate the migrant families for the purpose of financial benefit and other facilities admissible to the migrants. The definition of family would mean and include Husband, Wife and fully dependent children only. For facility of reference this order is quoted herein below:

Government Order No. Rev (MR) 119 of 1997, Dated 9-6-1997. As approved by the Apex Level Committee for migrants in its meeting held on

28.2.197 the Relief Commissioner, Migrants Jammu is authorized to bifurcate the migrant families for the purpose of financial benefit and other

facilities as are admissible to registered migrant families, after observing all codal formalities. The family shall mean and include Husband, Wife and

fully dependent children only.

This order shall apply to the registered non-Government employee families only.

The expenditure on this account shall be debited to Account Head 2055-Police.

By order of the Government of Jammu and Kashmir.

Sd/-

(Mushtaq Ahmed) IAS, Commissioner & Secy. to Govt. Revenue Deptt

7. The Government having realized the fact that the definition of family was ever changing and it was in normal course of events that any dependant

would leave the family for seeking job outside. This necessarily would not imply that such dependants who have left the family had a legal

obligation to maintain their parents and other dependants in the family. It is in the light of this that the State Government decided to define what a

family means.

8. Applying this to the present case the petitioners have clearly indicated in their petition that one member of their family has been employed with

the police department and as such he stands deleted from the Ration Card issued in favour of the head of the family. They still would be entitled to

receive the cash and relief assistance on the existing strength of the family. Objection raised by the learned Counsel for respondents that

employment to one person was given only with the intention that they will not ask for cash and relief assistance is misplaced. Employment cannot

be related to the assistance being provided to a family by the respondents. State may take any policy decision to alleviate the suffering of the

migrants, but it cannot lose sight of the fact that a person who stand employed would not necessarily have a legal obligation to maintain his family

while he is registered as a migrant.

9. As already stated hereinabove definition of a family is ever changing and cannot remain static. Such a stance of the respondents cannot be

accepted. Reliance placed by the respondents on the circular issued does not support the case of the State Government. It only prescribes the

code of conduct for the lower staff to identify those people who have suppressed the fact that they have been gainfully employed and disentitle

them to draw cash assistance. It is not the case of respondents, that petitioners have withheld the information of the employment of their dependant

and taken cash relief. They have voluntarily declared that one of their members

is employed and is required to be deleted.

10. I, accordingly, hold that a family would mean husband, wife and dependant children. It would not include a person who has been gainfully

employed and is not dependant. He will not be, however, entitled to receive any cash assistance and he would stand deleted from the family and

relief to the said family shall be given on the existing strength. I am fortified in my view by the judgment passed in OWP No. 658/2002 on

21.7.2007 in which his lordship has said that:

From the aforesaid Govt. order it becomes evident that for purpose of bifurcation the definition of the migrant family means husband, wife and fully

dependent children only.

11. I, therefore, direct the respondents to release all cash and relief assistance to the petitioners which has been withheld from November 2005 on

the existing strength of their families. The said relief shall be given to them in future also. This exercise shall be completed by the respondents within

a period of 3 months from the date of receipt of copy of this order. In case the cash assistance as directed is not paid to the petitioners within the

stipulated period, interest (r) 9% shall be paid from the date this amount is withheld.

The petition is accordingly allowed. Connected CMPs shall stand disposed of.