

(2011) 06 SHI CK 0142
In the High Court Of Himachal Pradesh
Case No : CWP No. 636 of 2011

Shankar Sharma	Vs	APPELLANT
State of H.P. and Another		RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38

Citation : (2011) 06 SHI CK 0142

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

Bench : Single Bench

Judgement

V.K. Ahuja, J.—Present petition has been filed by the Petitioner for direction to the Respondents to give him employment on compassionate grounds. A notice of the petition was issued to the Respondents and Respondent No. 2 filed reply.

2 I have heard the learned Counsel for the parties and have gone through the record of the case.

3. The facts of the case are that the father of the Petitioner sought retirement on compassionate grounds under the CCS (Pension) Rules, 1972. Accordingly, the Petitioner's father was retired on 2.8.1996, when he was working as a driver on regular basis.

4 .Facts of the case have been admitted by Respondent No. 2 in his reply. However, it was pleaded in para 4 as under:

...it is submitted that the father of the Petitioner has sought retirement on compassionate grounds under Rule 38 of the CCS (Pension) Rules, 1972 since, the father of the Petitioner was declared medically unfit by the competent Medical Board. It is further submitted that though the Petitioner has applied for employment on compassionate ground and the name of the Petitioner was approved by the Screening Committee and the Petitioner was placed at Sr. No. 4 in the seniority list, since at the relevant time, there were three persons above the Petitioner waiting for the employment whose names have been approved for

the appointment under kith and kin policy and the claim of the Petitioner cannot be considered by ignoring the seventeen persons, who are above the Petitioner in the seniority list.

5. In para 8(i), 8(ii) and 8(iv) of the reply, it has been submitted as under:

(i) ...It is submitted that though the case of the Petitioner was approved by the Screening Committee for appointment under Kith and Kin policy but no approval from the State of Himachal Pradesh was received for the appointment of the Petitioner. It is further submitted that in case of appointment under kith and kin policy in the replying Respondent corporation, the approval of the State is necessary as the replying Respondent corporation is following the direction/instruction of the State of Himachal Pradesh with regard to the appointment on compassionate ground. Now, there is a change in the appointment of compassionate ground and on the basis of latest instruction dated 15.7.2010, received from the State of Himachal Pradesh, widows and orphans are to be considered for the appointment on compassionate ground. Since the Petitioner is not falling in any of these categories, hence, the case of the Petitioner cannot be considered for the appointment on compassionate ground.

(ii) That in reply to contents of sub para(ii), it is submitted that though the case of the Petitioner was covered under the earlier policy but at that relevant point of time, the approval was not accorded by the State of Himachal Pradesh and now there is complete change in the policy and the case of the Petitioner cannot be considered in view of the latest instructions.

(iv) it is submitted that since the Petitioner could not be appointed at that relevant point of time and at present, with the change of policy, the case of the Petitioner cannot be considered. Moreover, there are three persons above in the seniority list and the case of the Petitioner could not be considered by ignoring the senior persons.

6. According to Annexure P-4, seniority list of the candidates waiting for employment under the kith and kin Policy for Class-III&IV posts, the Petitioner is at Sl. No. 4. There is approval of the name of the Petitioner by the Screening Committee for employment under the Policy, as per letter dated 29.9.2005, Annexure P-5.

7. It is, therefore, clear from the above discussion that the Board of Directors had not taken any decision as to change the Rules vide which the kith and kin of the employee was being provided employment. No such decision has been placed on record changing the rules. It appears that since the policy of the State Government was changed and no approval was received from the State Government for appointment of the Petitioner under the kith and kin policy, the Respondents rejected the case of the Petitioner on the plea that approval of the State Government is necessary, as mentioned above, and that the Corporation is following the directions/ instructions of the State Government with regard to the appointment on compassionate grounds.

8. A reference has been made by the learned Counsel for the Petitioner to the decision of the Supreme Court in *The Andhra Pradesh State Road Transport Corporation by its Chief Executive Officer, Hyderabad v. The income tax Officer, B1B-Ward, Hyderabad and Anr.* AIR 1964 Supreme Court 1486. Their Lordships were considering the question in regard to the income of Andhra Pradesh Road Transport Corporation established under the Act and as to whether it is not exempted from union taxation. It was observed in para 17 that the Corporation though statutory has a personality of its own and this personality is distinct from that of the State or other shareholders. It cannot be said that a shareholder owns the property of the Corporation or carries on the business with which Corporation is concerned.

9. It is, therefore, clear that the HRTC is a separate legal entity and is bound to take its own decisions, though it is to be guided by the State Government and until and unless they consider the Policy of the State Government and change the Rules under which the Petitioner was entitled to employment, it cannot be said that the case of the Petitioner was liable to be rejected.

10. In view of the above discussion, the present petition is allowed and it is directed that the Respondents shall take a decision to provide employment to the Petitioner under the Kith and Kin Policy within a period of six months from today strictly as per the seniority of the Petitioner as mentioned in the reply filed by Respondent No. 2.

11. With the above directions, the petition stands disposed of, so also the pending application(s), if any.