(2021) 10 SHI CK 0049

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3423 Of 2013

Usha Devi Wife — APPELLANT

Vs

State Of Himachal Pradesh And Others — RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Citation : (2021) 10 SHI CK 0049

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Sanjay Jaswal, Kunal Thkaur, Shriyek Sharda, Hamender Singh Chandel

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner's selection and appointment as Anganwari Worker on 14.08.2007 was found to be made on the basis of an income certificate, which was later on cancelled by the Tehsildar vide order dated 20.06.2011. The cancellation of the income certificate was upheld by all the competent authorities vide their concurrent orders. The orders passed by the authorities were upheld by the Division Bench of this Court in CWP No. 1233/2012. Since the cancellation of income certificate had been upheld in CWP No. 1233/2012, therefore, the selection and appointment of the petitioner was set aside by respondent No.3 vide order dated 15.03.2013. This order has been assailed in the instant writ petition.

2.(i) The petitioner and respondent No.5 participated in the selection process for the post of Anganwari Worker in Angawari Centre Sunet, Tehsil Fatehpur, District Kangra, H.P.. The petitioner was selected and she joined as such on 14.08.2007. Respondent No.5, challenged the petitioner's appointment on the ground of her having income higher than the outer income limit prescribed under the applicable policy.

2(ii) The Additional District Magistrate, Kangra, allowed the complaint filed by respondent No.5 on 22.11.2008 and set-aside the appointment and selection of the petitioner. Appeal filed by the petitioner was dismissed by the Divisional Commissioner Kangra on 25.05.2010. The order passed by the Additional District Magistrate Kangra on 22.11.2008 was upheld. The petitioner, thereafter, filed CWP No. 3295/2010 before this Court. This writ petition was decided on 02.07.2010, whereby, the respondents were directed to conduct a fresh inquiry regarding petitioner's income at the relevant point of time after affording an opportunity of hearing to the concerned parties.

2(iii) During second round of litigation, the Additional District Magistrate, Kangra, directed the Tehsildar Fatehpur to re-inquire into the veracity of income certificates of the petitioner and respondent No.5 as on the relevant date. In compliance thereto, the Tehsildar Fatehpur inquired into the matter and submitted his report on 26.02.2011. He reported that the income of petitioner's family at the relevant point of time was Rs.34,000/- per annum, whereas, she was selected as Anganwari Worker on the basis of an income certificate reflecting her family's income from all sources to be not exceeding Rs.8000/- per annum, which was outer limit prescribed under the policy. The Tehsildar, therefore, reported that certificate of income issued in favour of petitioner on 11.05.2007 reflecting her family's total income not exceeding Rs.8000/- per annum, was wrong and to be treated as cancelled. In his report, the Tehsildar also reported that income of the family of respondent No.5 from all sources was Rs.19,000/- per annum, whereas, income certificate issued in her favour on 15.05.2007 reflected her family's total income not exceeding as Rs.8000/- per annum. This income certificate was also found to be incorrect. It was also cancelled. Respondent No.5 has accepted this report.

2(iv) The petitioner challenged Tehsildar's report dated 26.02.2011 cancelling her income certificate dated 11.05.2007 by filing an appeal before the Sub-Divisional Magistrate, Jawali, District Kangra. Her appeal was dismissed on 30.08.2011. The report 26.02.2011 and order dated 30.08.2011, were challenged by the petitioner before this Court in CWP No. 1233/2012. This writ petition was dismissed in limini by Hon'ble Division Bench of this Court on 11.04.2012. The relevant part of the judgment is as under:-

"9. The inquiry qua the genuineness of the certificate of income Ex.P-1 conducted by the 4th respondent reveals that the same is false and on the face of such record of the case obtained by concealment of material information. The 4th respondent had verified from the revenue record that her husband Shri Mango Ram is joint owner-in-possession of the land measuring 1-86-25 hectares, which in bigha is around 24 bighas. Actual income from the land has been assessed with the assistance of criteria for assessment of income from each category of land fixed vide Annexure P-6 dated 14th July, 2004 and the same as per the record produced before us comes to Rs.14,492/-. Besides, she herself disclosed during the course of inquiry before the 4th respondent that there were three male members in her family doing the work of labourer, however, if available. The total income of the family of the petitioner at the relevant time was thus assessed as Rs.34,000/- per annum instead of Rs.8,000/-. It has also been verified from the Panchayat record that on 1.1.2004 viz the cut of date, the family of the petitioner was joint and the separation takes place on 7.1.2007 as per the copy of Parivar Register produced before us by the 4th respondent.

10. Similarly, another aspirant Ms. Sujata Devi on 1.1.2004 was also a member of the joint family. Shri Karam Chand, her father-in-law is owner in possession of land measuring 0-57-21 hectares, which in bigha is about 7 bighas. The annual income from landed property at the relevant time was assessed as Rs.5403/-. Besides, it also came on record during the course of inquiry that there were two male members of her family working as labourer no doubt if work available to them. The 4th respondents has thus assessed the annual income of aforesaid Sujata as Rs.19,000/- from all sources. Although the report submitted by the 4th respondent is not on record yet the record produced before us make it abundantly clear that the income certificate Annexure P-1 issued to the petitioner was rightly cancelled by the said respondent.

11. The order Annexure P-10 reveals that even the 3rd respondent has not committed any illegality and irregularity while dismissing the appeal preferred by the petitioner against the cancellation of the certificate Annexure P-1. We find no illegality and infirmity with the impugned order Annexure P-6/A and Annexure P-10, hence the same need not to be interfered with in this writ petition."

Subsequent to the judgment, respondent No.3 vide order dated 15.03.2013 allowed the appeal filed by respondent No.5 and cancelled the appointment of the petitioner as Anganwari Worker.

2(v) In the aforesaid background, petitioner has preferred instant writ petition, seeking quashing of the order dated 15.03.2013, whereby, the appeal filed by respondent No.5 was allowed and the petitioner's appointment as Anganwari Worker was quashed and set-aside.

3. I have heard learned counsel for the parties and have gone through the record with utmost care.

4. The facts are not in dispute. As per the policy in vogue at the time of initiating the selection process in question, the candidates should have possessed annual family income not exceeding Rs.8000/-. The petitioner as well as respondent No.5 had submitted certificates of income reflecting that their families' total income did not exceed Rs.8000/- per annum. The petitioner's appointment as Anganwari Worker on the strength of income certificate dated 11.05.2007 was questioned by respondent No.5 on the ground of petitioner's possessing higher income. The complaint preferred by respondent No.5 was allowed by the Additional District Magistrate, Kangra, on 22.11.2008. This order was upheld by the Divisional Commissioner Kangra on 25.05.2010. In CWP No. 3295/2010, instituted by the petitioner, challenging the orders dated 22.11.2008 and

25.05.2010, this Court remanded the matter to the respondents for conducting fresh inquiry in respect of petitioner's income certificate. After remand, fresh inquiry was conducted, not only in respect of the income certificate of the petitioner but also regarding the income certificate of respondent No.5. It came during inquiry that both the parties had annual income much exceeding the outer limit prescribed under the policy applicable at the relevant point of time. The income certificates issued in favour of the petitioner on which basis of which, she was selected and appointed as Anganwari Worker, and that of respondent No.5, were cancelled. Respondent No.5 has accepted the order canceling her income certificate. Petitioner's challenge to the cancellation of her income certificate was rejected by the Sub-Divisional Magistrate Jawali, District Kangra, on 30.08.2011. The report of Tehsildar dated 26.02.2011 canceling petitioner's income certificate and the order passed thereupon by the Sub-Divisional Magistrate Jawali, District Kangra, have been upheld in CWP No. 1233/2012 decided on 11.04.2012. The matter has now attained finality in respect of incomes and income certificate of the petitioner and respondent No.5. Since the petitioner was selected as Anganwari Worker on the strength of an income certificate, which later on was found to be false and incorrect, therefore, respondent No.3 was justified in passing impugned order dated 15.03.2013 cancelling petitioner's appointment as Anganwari Worker in Anganwari Center Sunet, Tehsil Fatehpur, District Kangra, H.P. In fact the order dated 15.03.2013 has only implemented the judgment passed by the Division Bench of this Court in CWP No.1233/2012.

Consequently, there is no merit in the instant petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed of. It shall be open to the respondents to hold fresh selection process for the post of Anganwari Worker in the concerned Anganwari Centre.

