(2023) 06 SHI CK 0076

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.4385 Of 2021

Vinay Kumar APPELLANT

Vs

Executive Director (Personnel), HPSEB Ltd. And Others RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Citation : (2023) 06 SHI CK 0076

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Rahul Mahajan, Tara Singh Chauhan

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

CMP No.7237 of 2023

Allowed and disposed of.

CWP No.4385 of 2021

1. With consent of learned counsel for the parties, the matter is heard at this stage.

2. Father of the petitioner, namely late Sh. Chandu Lal, was working with the respondents as Lineman. He died in harness on 05.03.2019. Petitioner moved the respondents seeking compassionate appointment. Vide order dated 23.01.2020/30.01.2020 (Annexure P-15), the respondents rejected the case of the petitioner on the ground that he did not satisfy the income criteria laid down under the prevalent policy for providing compassionate employment. Aggrieved, the petitioner has instituted the present petition seeking following substantive relief:-

"(a) The Hon'ble Court may kindly quash and set aside the office order dated 23.1.2020/30.1.2020 (Annexure P-15) and pass the direction to the respondents board to provide the job to the petitioner under the employment assistance scheme."

3. The respondents in their reply filed to the petition have tabulated the following financial benefits released to the legal heirs of deceased Sh. Chandu Lal:-

Sr. No.	Particular	Amount Paid
1.	DCRG	Rs.7,68,096/-
2.	Leave Encashment	Rs.70,714/-
3.	GPF	Rs.1,87,413/-
4.	DLI	Rs.31,261/-
5.	Benevolent Fund	Rs.1,00,000/-
6.	Ex-Gratia Advance	Rs.59,960/-
	Grand Total	Rs.11,86,183/-

It has further been submitted in the reply that family of deceased Sh. Chandu Lal is in receipt of family pension to the tune of Rs.20,160/- per month. According to the reply, the income of the family of deceased Sh. Chandu Lal does not satisfy the income criteria laid down under Clause 12 of the prevalent policy that deals with assessment of indigency of the family of deceased government employee.

Relevant para from the reply reads as under:-

"12. How to Assess Indigency:-

Indigency means a level of poverty in which real hardship and deprivation is suffered and the comforts of life are wholly lacking. Following criteria shall be adopted to assess the indigency of the family of the deceased Government employee while examining compassionate cases:-

Sr.

No.

Source of Income

Total Annual

Income

1.

Income from Pension (PPO number, Name of DTO & Drawing Bank be mentioned where

applicable)

2.

Agricultural Income

3.

Income from Rent

4.

Income from Business

5.

Income from interest

6.

Income from other sources

Total Annual Income

Income criteria will be important criteria to determine indigency. The maximum ceiling of total family income to assess indigency is fixed as Rs.2,25,000/-, presuming a family of 04 persons. Even if the number of family persons exceeds 04, the family size will still be presumed to 04. If the family members are less than 04, then the income of the family would be calculated by multiplying Rs.56,250/- by the number of family members. Thus, if the family size is 03, the maximum income limit would be Rs.1,68,750/- per annum to determine indigency. If the family size is 02, the income limit would be Rs.1,12,500/- per annum to determine indigency. The above income criteria have been mentioned to bring objectivity in the determination of indigency of a family/applicant".

It is further submitted that the deceased Sh. Chandu Lal has left the following legal heirs:-

Sr.

No.

Name of the Legal Heir

Relationship with the

deceased

1.

Indira Kumari

Wife

2.

Viney Kumar

Son

3.

Vineet Kumar

Son

As is evident from the table above the deceased Sh. Chandu Lal had left behind his three heirs and clause No.12 of the Policy for Providing Compassionate Employment to the Eligible Dependents of the Deceased Employee the maximum ceiling limit on total income in the present case shall be Rs.1,68,750/- whereas the total annual income of the petitioner from the pension comes out to be Rs.2,41,920/- only and as per the income certificate furnished by the petitioner the total annual income of the petitioner family is Rs.2,62,944/-and the application of the petitioner for grant of employment under this policy was considered within the four corners of this policy and the petitioner does not fall with the scope, ambit and purview of the policy as is revised and notified by the Govt. of HP since the family income of the petitioner is exceeding the maximum ceiling limits of Rs.1,68,750/- and is also not covered within the definition of the indigent family as such the present petition is not sustainable in the eyes of the law and the same is liable to be dismissed."

4. Hon'ble Apex Court in (2019) 3 SCC 653 (State of Himachal Pradesh and another Versus Shashi Kumar) has held that fixation of income limit is not an arbitrary exercise of power for assessing the indigency in the cases pertaining to

compassionate appointment. Relevant paras from the judgment are as under:-

“34. That leads the Court to the next aspect of the matter relating to the fixation of an income slab. In our view, the fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. The High Court was of the view that it was not open to the Finance Department to amend the Scheme. The circulars which are issued by the Finance Department cannot be construed to be an amendment of the policy. They are really clarificatory of the intent and purpose of the Scheme. The circulars are explanatory, since they are intended to guide the decision maker on the concept of indigency which is incorporated in the Scheme. In fact, as we have noted earlier, in the decision of this court in Shashank Goswami, the Court was specifically dealing with a circular of the Comptroller and Auditor General of India which had imposed income limits respectively for Group ‘B’, ‘C’ and ‘D’ posts for the purpose of guiding the decision in the case of compassionate appointment. The fixation of income limits was not construed to be and is not an arbitrary exercise of power. However, what we find from the record of this case is that the income limit was fixed (as the High Court observed) on 29-9-2008 by the letter of the Finance Department. The income limit of Rs.1,00,000 for a family of four persons has since been revised to Rs.1,50,000 on 20-4-2011. Mr. P.S. Patwalia has, on instructions, stated before this Court that this ceiling has been reiterated on 27-7-2017. What should be the appropriate income criterion is undoubtedly a matter of policy for the State Government to determine. However, we would impress upon the State Government the need to periodically revise the income limits preferably at intervals of three years. Inflation and the increase in the cost of living have an important bearing on financial exigencies faced by families of serving as well as deceased employees. In fixing the income criteria for considering cases of compassionate appointment, it would be appropriate if the State revisits the income limit at periodic intervals, as we have indicated above. We clarify that it would be open to the State to revise the income limits at a frequency of less than three years, if the State is so advised.

35 to 37. xxx xxx xxx xxx xxx

38. In the circumstances, we allow the appeal in the following terms:

38. 1. The Writ Petition (CWP No.3652 of 2015) filed by the respondent before the High Court shall stand dismissed and the direction of the High Court for reconsideration of the application for compassionate appointment shall stand set aside;

38.2 The direction issued by the High Court to the appellants to desist from taking into account the family pension and other terminal benefits is unsustainable in law and is accordingly set aside;

38.3. While we confirm the decision of the State Government to fix income limits in order to satisfy the terms of eligibility for compassionate appointment, we expect that the State Government shall, in compliance with the Policy, revisit the income limits at intervals of three years or earlier and consider whether a revision is warranted having regard to the cost of living, inflation and other relevant facts and circumstances."

The material factual averments made in the reply concerning annual income of the family of deceased employee have not been controverted by the petitioner. Since the family income of the petitioner exceeds the maximum prescribed ceiling limit and is not covered within the ambit of indigent family, therefore, the relief prayed for by the petitioner cannot be granted to him. The writ petition, therefore, fails and is accordingly dismissed alongwith pending miscellaneous application(s), if any.

