

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 31st DAY OF AUGUST 2021

BEFORE

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

CIVIL WRIT PETITION(ORIGINAL APPLICATION) No. 7486 OF 2019

Between:-

NAVAL KISHORE
S/O LATE SH. RASILA RAM
R/O VILLAGE MIYANA,
POST OFFICE, BALETH,
TEHSIL SUJANPUR TIHRA,
DISTRICT HAMIRPUR, H.P.

.....PETITIONER

(BY SH. JAGDISH THAKUR, ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH,
THROUGH ITS SECRETARY
(PWD) TO THE GOVT. OF H.P.
SHIMLA-2.
2. STATE OF HIMACHAL PRADESH,
THROUGH ITS SECRETARY
(FINANCE) TO THE GOVERNMENT OF
HIMACHAL PRADESH, SHIMLA-2.
3. ENGINEER-IN-CHIEF,
HPPWD, HIMACHAL PRADESH,
SHIMLA-2
4. CHIEF ENGINEER, (HAMIRPUR ZONE)
HPPWD, HAMIRPUR.
5. ASSISTANT ENGINEER,
SUJANPUR SUB DIVISION
HPPWD, SUJANPUR,
DISTRICT HAMIRPUR, H.P.

.....RESPONDENTS

(Ms. Ritta Goswami, Additional Advocate

**General with Ms. Seema Sharma,
Deputy Advocate General)**

Whether approved for reporting?

*This petition coming on for orders this day, the
Court passed the following:*

ORDER

Petitioner has preferred this petition against the rejection of his case for appointment on compassionate ground.

2. Undisputed factual position is that Sh. Rasila Ram, father of the present petitioner was working as Beldar on regular basis with the respondent Public Works Department. He died during the course of employment on 20.06.2011. The petitioner sought appointment as Beldar/Peon on compassionate ground on 01.07.2013. His case was considered by the respondents. On 19.03.2015, respondent No.3 rejected the case of the petitioner for employment on compassionate ground citing following reason:-

“In response to this office letter referred above the Additional Chief Secretary (PW) to the Govt. of HP vide his letter No.PBW-AB-(2)-134/2014- dated 19.02.2015 has observed that the matter was taken up with Finance Department and it is observed that

the instant proposal of the Department does not meet the financial/income criteria so fixed by the Government in F.D. as per Department of personnel's instruction(s) dated 24.08.2002 & 02.09.2002 vis-vis F.D.'s latest instruction(s) dated 21.12.2012, 18.07.2014 & 19.07.2014 respectively. Thus, it cannot be considered."

The reasoning given in the above extracted order makes it evident that petitioner's case of appointment on compassionate ground was rejected as it did not meet the financial/income criteria so fixed by the Government as per the applicable policy.

3. The only ground taken by the petitioner in assailing the above extracted communication dated 19.03.2015 is that the rejection of his case was in violation of law laid down in *CWP No.9094/2013, titled Surender Kumar Vs State of H.P & Ors, decided on 06.10.2015*, wherein it was held that the benefits received by the family of the deceased on account of death as well as pension, are not to be taken into account for the purpose of income for the grant of employment on compassionate ground.

4. The judgment relied upon by learned counsel passed by a Division Bench of this Court on 06.10.2015 in CWP

No.9094/2013, was challenged by the respondents/State before the Hon'ble Apex Court in the *State of Himachal Pradesh & Another Vs Shashi Kumar*. The appeal was decided by the Hon'ble Apex Court on 16.01.2019 as *reported in (2019) 3 SCC 653*. The Hon'ble Apex Court in para-4 of the judgment noticed all the issues framed by the High Court in the judgment dated 6.10.2015. One of the issues framed by the High Court pertained to inclusion or otherwise of the family pension & retiral benefits of the deceased employee in the family income for considering the cases of compassionate appointment. Relevant part of para-4 of the judgment reads as under:-

“4. The High Court, during the course of the judgment framed as many as nine issues which were in the following terms:

(i) Whether the amount of family pension and other retiral benefits, received by the family of the deceased employee, can be included in the family income for denying the compassionate appointment?”

(ii)”

The appeal was preferred by the respondents/State before the Hon'ble Apex Court *inter alia* on the above issue as

well. Relevant para-5 of the judgment in this regard is extracted hereinafter:-

“5. Insofar as the present appeal is concerned, the State of Himachal Pradesh has contested the decision of the High Court on issues (i) and (vii). Hence, for the purposes of this appeal, the present judgment governs only the above aspects of the case.”

The observation of the High Court was noted by the Hon'ble Apex Court in following paragraph-15:-

The High Court while dealing with the first issue which it framed for decision, held that the State is not entitled to take into account family pension and other terminal benefits in determining whether compassionate appointment should be granted to the defendant of a deceased employee. In coming to this conclusion, the High Court has relied upon a decision of this Court in Govind Prakash Verma Vs. Life Insurance Corporation of India and on two subsequent decisions in APSRTC, Musheerabad Vs. Sarvarunnisa Begum and in Canara Bank Vs. M. Mahesh Kumar. Having held that the State is not entitled to consider the family pension and other terminal benefits received by the defendants of the deceased employee, the High Court has held that the income slab which was prescribed by the Finance Department did not constitute an amendment of the Policy and that, consequently, it must be disregarded in deciding upon cases of compassionate appointment.”

After considering the entire matter, the Hon'ble Apex Court held that the direction issued by the High Court to the respondents/State to desist from taking into account the family pension and other terminal benefits was unsustainable in law and was accordingly set aside, relevant paragraphs whereof read as under:-

“33. For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma (supra) in issuing a direction to the State to act in a manner contrary to the express terms of the Scheme which require that the family pension received by the dependants of the deceased employee be taken into account.

34 to 37.

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

38.1.

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.

.....”

In view of clear pronouncement of the Hon'ble Apex Court, the family pension and other terminal benefits are required to be taken into account for ascertaining the income of the family for

deciding whether case for appointment on compassionate ground actually meets the financial/income criteria so fixed by the Government in the applicable policy or not. No other point was urged. Consequently, no interference is called for in the impugned order dated 19.03.2015. The petition is dismissed accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

**Jyotsna Rewal Dua
Judge**

August 31, 2021 (rohit)