



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.3070 of 2023
Decided on: 05.09.2025

SavitaPetitioner

Versus

State of H.P. and Ors. ...Respondents

Coram

Ms. Justice Jyotsna Rewal Dua

¹ *Whether approved for reporting?*

For the petitioner: Mr. Onkar Jairath, Mr. Anshul
Jairath and Mr. Piyush Mehta,
Advocates.

For the respondents: Mr. Anup Rattan, Advocate General
with Mr. L.N.Sharma and Mr.
Vishwadeep Sharma, Additional
Advocates General.

Jyotsna Rewal Dua, Judge

Petitioner's claim for employment on
compassionate grounds after the death of her father in
harness has been rejected by the respondents, thus, the writ
petition.

2. Heard learned counsel for the parties and
considered the case file.

¹ *Whether reporters of Local Papers may be allowed to see the judgment? yes*

3. The case:-

3(i) Petitioner's father, late Sh. Shyam Prakash, was serving as Junior Basic Trained Teacher in the respondent-Education Department. He died in harness on 06.04.2012. Besides his wife, he was survived by three married daughters. Petitioner applied for employment on compassionate grounds during the year 2018. Respondents rejected her claim on 12.11.2018 on the ground that there was no provision for employment on compassionate grounds for a married daughter.

3(ii) Petitioner instituted **Savita Vs. State of H.P. and Ors²**, staking her claim to employment on compassionate grounds on the strength of decision rendered in **Mamta Devi Vs. State of H.P. and Ors³**. Petitioner's writ petition was disposed of with direction to the respondents to decide her case keeping in view *Mamta Devi³*.

At this stage, it would be in place to take note of *Mamta Devi³*, wherein married daughters were held entitled to employment on compassionate grounds subject to their satisfying the eligibility criteria under the policy for

² CWP No.826 of 2021, decided on 25.11.2022

³ CWP No.3100 of 2020 decided on 28.02.2020

compassionate appointment.

In view of judgment in *Savita*², respondents examined the case of the petitioner afresh and rejected it on 20.04.2023, now on the ground that income of family of the petitioner from all sources was Rs.2,20,000/- per annum, whereas income criteria prescribed for a family consisting of two members was Rs.1,25,000/- as per the policy.

Feeling aggrieved, petitioner preferred this writ petition.

4. Pursuant to an order passed in this writ petition on 21.08.2023, respondents re-considered the case of the petitioner for employment on compassionate grounds and once again rejected it on 22.09.2023 on the grounds that:- (i) petitioner's claim suffered from delay, having been preferred six years after the death of her father; and (ii) her family income being more than the upper prescribed limit under the policy.

In my considered view, the reasons assigned by the respondents for rejecting the case of the petitioner are not tenable. It is the pleaded case of the respondents that according to them, married daughters were not eligible for

employment on compassionate grounds under the relevant policy. Perhaps for such reason, the petitioner had not applied for employment on compassionate grounds immediately after the death of her father in the year 2012. She though had applied in the year 2018, but the respondents rejected it on 12.11.2018 for want of provision for employment on compassionate grounds for married daughters. It was only after the decision in *Mamta Devi*³ which affirmed married daughters' claim to employment on compassionate grounds subject to their satisfying eligibility criteria, that petitioner applied afresh and on not getting response thereto from the respondents, she instituted *Savita*². It is pursuant to the directions issued in the said writ petition, the respondents examined the case of the petitioner on merit. In the given facts, petitioner's claim cannot be said to suffering from delay.

The second reason assigned by the respondents about petitioner's family income being more than the limit prescribed in the policy is also fallacious. Respondents have counted the income of the petitioner's family by considering it to be a family consisting of two members, whereas it is an

admitted position that deceased's family consisted of four members i.e. his wife and three married daughters. In ***Rakesh Kuamr Vs. Staeof H.P. and Ors***⁴ it was held that married daughters are liable to be considered as part of family of the deceased and income of the family is to be computed accordingly. Relevant portion of the judgment reads as under:-

“6. This Court wants to make an observation that when the deceased was survived by his wife, two sons and a daughter, then not considering the daughter to be a part of the family of the deceased so as to assess as to whether the per person annual income of the family members of the deceased falls within the prescribed limit or not, is arbitrary. Simply because the daughter is married, this does not means that she loses her identity as member of the family of her father. The Court is making this observation for the reason that it is not as if on account of the marriage of the sons of the deceased, the wives of the sons of the deceased stand included as family members for this purpose. In case the criteria fixed by the Government is taken to its logical conclusion, then the factual position is that a girl by virtue of marriage loses her identity both as a daughter of her father as well as a member of her husband's family, for the purpose of being counted as a family member to assess the income of the members of the deceased family for

⁴ CWPOA No. 6065 of 2019 decided on 02.06.2022

compassionate appointment. This in the considered view of the Court is arbitrary and discriminatory. There is no rationale as to why a daughter after marriage should not be counted as member of the family for the purpose of assessing the annual family income for compassionate appointment. In case the criteria so fixed by the Government is given the stamp of approval by the Court, then the Court will also become a party to this gender inequality, being practised by the State. Therefore, in these circumstances, this Court is of the considered view that the annual family income of the deceased in the present case has to be assessed by considering the strength of the family to be four, i.e., wife, two sons and a daughter. The Policy has to be read down as such. Now, if the number of the family is taken to be as four, then if a sum of Rs.1,25,000/- is divided by four, there is no dispute that individual annual income per family member comes to less than Rs.31,250/-.

7. *Accordingly, this petition is allowed by holding that the act of the respondent-State considering the income of the individual family member of the deceased to be Rs.31,707/- by ignoring the daughter of the deceased, while taking into consideration the number of the family members/dependents is arbitrary and mandamus is issued to the respondents to offer appointment to the petitioner on compassionate basis as per his qualification, as from the date of filing of the petition. The appointment of the petitioner from the said date shall be deemed to be notional for all intents and purposes, including monetary and*

actual benefits thereupon shall accrue to the petitioner as from the date of appointment, which shall be offered to the petitioner not later than 15th July, 2022.”

It is not in dispute that **CMP(M) No.937 of 2023 (The State of Himachal Pradesh & Others Versus Rakesh Kumar)**, filed in the Letters Patent Appeal arising out of the aforesaid judgment, was dismissed by the Hon’ble Division Bench of this Court on 02.07.2024.

It is also an admitted position that Hon’ble Apex Court on 11.11.2024, has dismissed **SLP (Civil) Diary No(s).48949/2024**, arising out of aforesaid decision, on the ground of delay, leaving the question of law open for being considered in an appropriate case.

As per the policy issued vide office memorandum dated 07.03.2019, indigency is to be assessed as under:-

“Income Criteria will be an 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 be 04. If the family members are less than 04, then 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 family size is 02, the income limit would be Rs.1,12,500/- per annum to determine indigency. The above income criteria has been mentioned to bring objectivity in the determination of indigency of a family/applicant.”

In the instant case, at the time of death, deceased was survived by his wife and three married daughters i.e. total four members in all. Taking into consideration the assessment formula devised by the respondents, the family of petitioner has to be considered as consisting of four persons. Income of the petitioner's maternal family i.e. Rs.2,04,480/- per annum (Annexure P-8) and income of petitioner's own family i.e. Rs.50,000/- per annum (page 40 of the paper-book) does not exceed the limit prescribed under the policy.

5. In view of above, impugned orders rejecting the case of petitioner for employment on compassionate grounds are quashed and set aside. Respondents are directed to consider the case of the petitioner for employment on compassionate grounds afresh. This exercise be now carried out within six weeks and appropriate order be passed accordingly, in accordance with law. The order so passed, be

communicated to the petitioner.

The writ petition to stand disposed of in the above terms, so also pending miscellaneous application(s), if any. ◇

September 5, 2025
R.Atal

Jyotsna Rewal Dua
Judge

High Court of HP