

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.16579 of 2025

Date of Decision: 28.11.2025

Desh RajPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner: Mr. Anirudh Sharma, Advocate.

For the Respondents: Mr. Rajan Kahol and Mr. Vishal Panwar, Additional Advocate Generals and Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocate General

Sandeep Sharma, Judge(oral):

In nutshell, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Anirudh Sharma, learned counsel for the petitioner, is that respondents, while considering the prayer made on behalf of the petitioner for compassionate appointment, wrongly rejected his case on the ground of income criteria. It is averred in the petition that respondents, while considering the candidature of the petitioner for compassionate appointment, took into account the family of two persons, whereas the family of the deceased employee comprises of four, as a result thereof, it was wrongly concluded that the petitioner exceeds the income criteria.

¹ Whether the reporters of the local papers may be allowed to see the judgment?

2. Having carefully perused the averments contained in the petition, which are duly supported by an affidavit as well as other material adduced on record, this Court finds that late father of the petitioner died in harness on 03.10.2016 and thereafter, the petitioner being his son, applied for compassionate appointment vide application dated 02.07.2019(Annexure P-2). Alongwith afore application, he besides submitting his certificate showing his qualification of 10+2, also submitted non-employment as well as income certificate, showing the annual income of the family to the tune of Rs.2, 10,000/-. However, respondents, while processing the case of the petitioner, wrongly considered the family of the deceased comprising of two members i.e mother and son i.e. petitioner herein, whereas the deceased employee was survived by his wife, two daughters and one son.

3. As per the policy in vogue, the maximum ceiling of total family income to access indigency is fixed at Rs. 2, 50, 000/-, presuming a family of four persons, the family size shall still be presumed to be four. If the family members are less than four, then the income of the family would be calculated by multiplying Rs. 62, 500/- by the number of family members. Thus, if the family size is 03, the maximum income limit would be Rs. 1, 87, 500/- per annum to determine the indigency. Similarly, if the family size is 02,

the income limit would be Rs. 1, 25, 000/- per annum to determine the indigency.

4. In the instant case, respondents considered the family of the deceased comprising of two persons i.e. wife and son, as a result thereof, monthly income of family of the deceased was found to be more than prescribed limit of Rs. 2, 50,000/-. Had the respondents considered the family of four members, income of the deceased's family would not have exceeded the maximum limit. A Similar question arose for consideration before the Co-ordinate Bench of this Court in case titled **Savita vs. State of Himachal Pradesh and others, CWP No. 3070 of 2023**, wherein it has been held as under:-

“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 Kumar Vs. Stae of H.P. and Ors, CWPOA No.6065 of 2019**, 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 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.

5. Having regard to the nature of the order proposed to be passed in the instant proceedings, this Court sees no necessity to call for reply on behalf of the respondents, who are otherwise represented by Mr. Rajan Kahol, learned Additional Advocate General. Learned Additional Advocate General, after having gone through the judgment passed by Co-ordinate Bench of this Court in Savita case (supra), fairly states that case of the petitioner shall be re-considered.

6. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, coupled with the fair stand adopted by learned Additional Advocate General, impugned order dated 18.08.2023 (Annexure P-8) is quashed and set-aside and respondents are directed to re-consider the case of the petitioner afresh, taking note of the observations made hereinabove as well as policy in vogue.

In the aforesaid terms, the present petition is disposed of alongwith pending applications, if any.

**(Sandeep Sharma),
Judge**

November 28, 2025
(shankar)