

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 4673 - 4674 OF 2012**

**ASHA DEVI** ..... **APPELLANT**

**VERSUS**

**STATE OF HIMACHAL PRADESH & ORS.** ..... **RESPONDENTS**

**ORDER**

1. The appellant is aggrieved by an order dated 24<sup>th</sup> November, 2009, passed in a writ petition<sup>1</sup> filed by the respondent no.6, who had assailed the appointment of the appellant to the post of a Part Time Water Carrier<sup>2</sup> as per letter dated 04<sup>th</sup> May, 2002 issued by the respondent no.2. By the impugned order, the High Court has allowed the writ petition filed by the respondent no.6 and quashed and set aside the appointment letter dated 04<sup>th</sup> May, 2002 issued in favour of the appellant. Further, directions were issued to the respondents no.1 to 5 to redo the selection process for appointment to the post of PTWC in terms of the scheme framed by the respondent no.1 on 27<sup>th</sup> July, 2001 and consider the case of the respondent no.6 and other similarly situated persons for appointment to the post of PTWC in Government Primary School, Rangayan for a fixed time line. Pertinently, the review petition<sup>3</sup> filed by the appellant seeking

<sup>1</sup> CWP (T) No. 8456 of 2008

<sup>2</sup> For short the 'PTWC'

<sup>3</sup> C.Rev. No. 61 of 2010

review of the order dated 24<sup>th</sup> November, 2009, was also dismissed by the High Court *vide* order dated 29<sup>th</sup> June, 2011.

2. Briefly stated, the facts of the case are that the Education Department of the respondent no.1 – State of Himachal Pradesh framed a Scheme on 27<sup>th</sup> July, 2001 for appointment of PTWC's in schools run by the Education Department. The said Scheme was floated with the objective of providing PTWC in Himachal Pradesh Government Schools against existing vacancies or against specifically created posts. The Scheme laid down the grounds for compassionate appointment in paragraph 12, that reads as follows:

*“12. COMPASSIONATE GROUND APPOINTMENTS:*

*The Govt. will have the power to appoint any candidate as a part time water carrier on compassionate ground without following the selection process if the candidates are widows, women deserted by their husbands, or otherwise destitute, handicapped persons and if the candidates falls below the poverty lines as defined by the Rural Development Department from time to time.”*

3. The appellant applied on 18<sup>th</sup> April, 2002 for seeking appointment as a PTWC. An appointment letter was issued in her favour on 04<sup>th</sup> May, 2002 and she joined the service on 30<sup>th</sup> May, 2002.

4. Aggrieved by her appointment, the respondent no.6 filed an Original Application<sup>4</sup> before the State Administrative Tribunal, Shimla, which was subsequently transferred to the High Court of Himachal Pradesh and renumbered as a writ petition<sup>5</sup>. The respondent no.6 contended that she had

<sup>4</sup> OA No. 1064 of 2002

<sup>5</sup> CWP (T) No. 8456 of 2008

submitted a representation to the respondent no.5/Pradhan, Gram Panchayat Bhont, on 07<sup>th</sup> January, 2002, seeking appointment to the post of PTWC in Gram Panchayat Rangayan and that she was a more deserving candidate than the appellant for compassionate appointment as she was a widow with three small children to take care of.

5. The said petition was contested by the appellant as also the respondents no. 1 to 3. *Vide* judgment and order dated 24<sup>th</sup> November, 2009, the High Court allowed the writ petition filed by the respondent no.6 and quashed the appointment order dated 04<sup>th</sup> May, 2002 issued in favour of the appellant herein. The High Court was of the view that the Government authorities did not consider the application moved by the respondent no.6 on 07<sup>th</sup> January, 2002, and given the fact that both, the appellant herein and the respondent no.6, are widows, their candidature ought to have been considered and out of the two, one more deserving ought to have been appointed. Resultantly, the appointment order of the appellant herein was quashed and set aside and the entire selection process was directed to be undertaken by the authorities afresh for making appointment to the subject post.

6. The aforesaid judgment has been assailed in the present appeal *vide* order dated 16<sup>th</sup> September, 2011, when notice was issued in the present appeal and the appellant was directed to continue working as a PTWC. On 10<sup>th</sup> May, 2012, leave was granted in the present matter and the interim order dated 16<sup>th</sup> September, 2011 was made absolute till the disposal of the appeal.

7. Learned counsel for the appellant submits that there was no reason to quash and set aside the appointment order issued in favour of his client, inasmuch, as Rule 12 of the Scheme floated by the respondent no.1-State Government has clearly stipulated that the Government would have the power to appoint any candidate as a PTWC on compassionate grounds without following a selection process if the candidates are widows or women deserted by their husbands, or otherwise destitute, or being handicapped persons and below the poverty line.

8. In the instant case, the appellant is a widow, her husband having expired in March, 1998. She has two minor children, who at the relevant point in time, were four years and six years old. Therefore, she was eligible for compassionate appointment, as was submitted in her representation dated 18<sup>th</sup> April, 2002.

9. Learned counsel for the appellant further submits that the respondent no.6 had made wrong averments about submitting an application on 07<sup>th</sup> January, 2002, for appointment to the post of a PTWC. When the appellant resorted to the Right to Information Act, 2005<sup>6</sup> and gathered information, it was revealed that as per the records of the Panchayat, there was no application dated 07<sup>th</sup> January, 2002, available in the records. Further, the Gram Panchayat had enquired from Sh. Hem Chand, the then member of the Gram Panchayat, who had allegedly certified the representation submitted by the respondent no.6 dated 07<sup>th</sup> January, 2002 and in the course of the said enquiry, he had denied having received/ signed or certified any such letter/representation purportedly

<sup>6</sup> For short 'RTI'

submitted on behalf of the respondent no.6.

10. The aforesaid submissions regarding non-availability of the purported representation dated 07<sup>th</sup> January, 2002, by the respondent no.6 in the records of the Gram Panchayat have been endorsed by the respondent no.1-State Government in the latest affidavit dated 26<sup>th</sup> February, 2024. It has been stated on behalf of the State Government that as per the records available and maintained in the office of the Gram Panchayat Bhont, Tehsil and District Shimla, there is no application dated 07<sup>th</sup> January, 2002 submitted by of the respondent no.6 and during the course of the enquiry conducted by the Department, it was found that Sh. Hem Chand, the then Member of the Gram Panchayat had never received or signed or certified any such representation.

11. Learned counsel for the respondent no.6 refutes the aforesaid submission and states that if such was the stand of the respondent authorities then they ought to have stated so before the High Court, but no such averment was made in the counter affidavit.

12. Be that as it may, even if the counter affidavit filed by the respondents before the High Court was not clear on the aforesaid aspect, the said fact is borne out from the information gathered by the appellant's family through RTI route which makes it abundantly clear that there was no such representation dated 07<sup>th</sup> January, 2002 available in the records of the Gram Panchayat. Further, Sh. Hem Chand, the then Member of the Gram Panchayat had categorically denied *vide* letter dated 24<sup>th</sup> June, 2010, that he had issued any

certificate in favour of the respondent no.6 endorsing her representation for being appointed as a PTWC.

13. In view of the aforesaid facts and circumstances of the case, we are of the opinion that the impugned order dated 24<sup>th</sup> November, 2009 deserves to be quashed and set aside. The appointment order dated 04<sup>th</sup> May, 2002, issued in favour of the appellant is restored. In any event, the appellant has been continuing to discharge her duties with the respondent no.2/Director of Education, Himachal Pradesh, in terms of the interim order passed on 16<sup>th</sup> September, 2011, duly confirmed on 10<sup>th</sup> May, 2012.

14. The appeals are allowed, while leaving the parties to bear their own costs.

.....J.  
[HIMA KOHLI]

.....J.  
[AHSANUDDIN AMANULLAH]

**NEW DELHI**  
**FEBRUARY 28, 2024**  
PS

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 4673-4674/2012

ASHA DEVI

APPELLANT(S)

VERSUS

STATE OF HIMACHAL PRADESH & ORS.

RESPONDENT(S)

Date : 28-02-2024 These appeals were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI  
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s) Mr. Suryanarayana Singh, Sr. Adv.  
Ms. Pragati Neekhra, AOR  
Mr. Aditya Bhanu Neekhra, Adv.  
Mr. Aniket Patel, Adv.

For Respondent(s)  
Mr. Ashok Basoya, Adv.  
Mr. Sandeep Kumar Jha, AOR  
Ms. Shruti Jose, Adv.  
  
Mr. Md. Farman, AOR  
Mr. Salman Khan, Adv.  
Mr. Aditya Tanwar, Adv.  
Mr. Sanjay Malik, Adv.  
Mrs. Shalu Bhati, Adv.

UPON hearing the counsel, the Court made the following  
O R D E R

1. The appeals are allowed in terms of the signed order, which is placed on the file.
2. Pending application(s), if any, is/are disposed of.

(POOJA SHARMA)  
COURT MASTER (SH)

(NAND KISHOR)  
COURT MASTER (NSH)